



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

March 1, 2017

Mr. Brian Sullivan  
Site Vice President  
Entergy Nuclear Operations, Inc.  
James A. FitzPatrick Nuclear Power Plant  
P.O. Box 110  
Lycoming, NY 13093

SUBJECT: JAMES A. FITZPATRICK NUCLEAR POWER PLANT—ORDER APPROVING DIRECT TRANSFER OF RENEWED FACILITY OPERATING LICENSE AND INDEPENDENT SPENT FUEL STORAGE INSTALLATION GENERAL LICENSE AND CONFORMING AMENDMENT (CAC NOS. MF8293 AND MF8294)

Dear Mr. Sullivan:

The U.S. Nuclear Regulatory Commission (NRC) staff has completed its review of the application dated August 18, 2016, as supplemented by letter dated November 29, 2016. In the application, Entergy Nuclear FitzPatrick, LLC and Entergy Nuclear Operations, Inc. (collectively, Entergy) and Exelon Generation Company, LLC (Exelon) request written consent approving the transfer of the James A. FitzPatrick Nuclear Power Plant (FitzPatrick) Renewed Facility Operating License No. DPR-59 and the generally licensed FitzPatrick Independent Spent Fuel Storage Installation from Entergy to Exelon. The applicants also request that the NRC approve a conforming amendment to the license to reflect this transfer.

Enclosure 1 is the Order that, pursuant to Sections 50.80 and 50.90 of Title 10 of the *Code of Federal Regulations*, approves the proposed direct transfer of ownership, subject to the condition described therein, and approves the enclosed conforming license amendment, which will be issued and made effective at the time the transfer is completed.

Enclosure 2 is the conforming license amendment. Enclosure 3 is the nonproprietary version of the NRC staff's safety evaluation (SE) related to the preceding actions. Enclosure 4 is the proprietary version of the NRC staff's SE. The nonproprietary SE will be placed in the NRC public document room and added to the Agencywide Documents Access and Management System Publicly Available Records System Library.

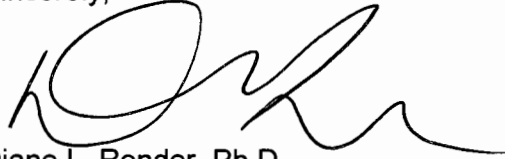
Enclosure 4 contains Proprietary Information. When separated from Enclosure 4, this letter is DECONTROLLED.

B. Sullivan

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The Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,



Diane L. Render, Ph.D.  
Project Manager  
Plant Licensing Branch I  
Division of Operating Reactor Licensing  
Office of Nuclear Reactor Regulation

Docket Nos. 50-333 and 72-012

Enclosures:

1. Order
2. Conforming License Amendment to DPR-59
3. Safety Evaluation (nonproprietary)
4. Safety Evaluation (proprietary)

cc w/Enclosures 1, 2, and 3 only:

Mr. Bryan C. Hanson  
Senior Vice President  
Exelon Generation Company, LLC  
President and Chief Nuclear Officer  
Exelon Nuclear  
4300 Winfield Road  
Warrenville, IL 60555

Mr. Christopher H. Mudrick  
Chief Operating Officer  
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Senior Vice President  
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Exelon Generation Company, LLC  
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**ENCLOSURE 1**

ORDER APPROVING APPLICATION REGARDING DIRECT TRANSFER OF JAMES A.  
FITZPATRICK NUCLEAR POWER PLANT RENEWED FACILITY OPERATING LICENSE  
AND INDEPENDENT SPENT FUEL STORAGE INSTALLATION GENERAL LICENSE  
FROM ENTERGY NUCLEAR FITZPATRICK, LLC  
AND ENTERGY NUCLEAR OPERATIONS, INC.  
TO EXELON GENERATION COMPANY, LLC,  
AND CONFORMING LICENSE AMENDMENT

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

|  |   |                               |
|--|---|-------------------------------|
| In the Matter of                         | ) |                               |
|  | ) |                               |
| ENERGY NUCLEAR FITZPATRICK, LLC          | ) |                               |
| ENERGY NUCLEAR OPERATIONS, INC.          | ) |                               |
|  | ) |                               |
|  | ) |                               |
| James A. FitzPatrick Nuclear Power Plant | ) | Docket Nos. 50-333 and 72-012 |
|  | ) | License No. DPR-59            |

ORDER APPROVING DIRECT TRANSFER OF LICENSE AND APPROVING  
CONFORMING AMENDMENT

I.

Entergy Nuclear FitzPatrick, LLC (ENF) and Entergy Nuclear Operations, Inc. (ENO) (collectively, Entergy) are the owner and operator, respectively, of the James A. FitzPatrick Nuclear Power Plant (FitzPatrick) and are the co-holders of Renewed Facility Operating License No. DPR-59 and the general license for the FitzPatrick Independent Spent Fuel Storage Installation (ISFSI). FitzPatrick is a General Electric boiling-water reactor located in Oswego County, New York.

II.

By application dated August 18, 2016, as supplemented by letter dated November 29, 2016, Entergy and Exelon Generation Company, LLC (Exelon) jointly requested, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), section 50.80 (10 CFR 50.80), that the U.S. Nuclear Regulatory Commission (NRC) consent to the direct transfer of the FitzPatrick renewed facility operating license and the FitzPatrick ISFSI general license from Entergy to Exelon. Future references to FitzPatrick include the general license for the FitzPatrick ISFSI.

In response to the request by Entergy and Exelon for consent to the direct transfer of the FitzPatrick renewed facility operating license and the FitzPatrick ISFSI general license, the NRC published a notice entitled, "James A. FitzPatrick Nuclear Power Plant; Consideration of Approval of Transfer of License and Conforming Amendment," in the *Federal Register* on September 15, 2016 (81 FR 63500). The NRC received 22 comments and no hearing requests. All comments were in support of the proposed action.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the NRC shall give its consent in writing. Upon review of the information in the application, and other information before the NRC, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Exelon is qualified to hold the FitzPatrick renewed facility operating license and the FitzPatrick ISFSI general license. The NRC staff has also determined that the transfer of these licenses is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the NRC, pursuant thereto, subject to the condition set forth below.

Upon review of the application for a conforming license amendment to reflect this transfer, the NRC staff has determined that the application for the conforming license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR chapter I; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by this amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of this amendment will be in accordance with

10 CFR part 51 of the Commission's regulations and all applicable requirements will have been satisfied.

The findings set forth above are supported by an NRC safety evaluation dated March 1, 2017, and available under Agencywide Documents Access and Management System (ADAMS) Accession No. ML17041A196.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended (the Act), 42 USC §§ 2201(b), 2201(i), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the application regarding the proposed direct license transfer is approved, subject to the following condition:

Prior to the completion of the license transfer, Exelon Generation Company, LLC shall provide satisfactory documentary evidence to the Director of the Office of Nuclear Reactor Regulation that it has obtained the appropriate amount of insurance required of a licensee under 10 CFR part 140 and 10 CFR part 50.

IT IS FURTHER ORDERED that, consistent with 10 CFR 2.1315(b), the license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject direct license transfer is approved. The amendment shall be issued and made effective at the time the proposed direct license transfer is completed.

IT IS FURTHER ORDERED that, after receipt of all required regulatory approvals of the proposed direct license transfer, Exelon shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt, and of the date of closing of the transfer, no later than 2 business days prior to the date of the closing of the direct license transfer. Should the

proposed direct license transfer not be completed within 1 year of this Order's date of issuance, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may be extended by order. This Order is effective upon issuance.

For further details with respect to this Order, see the application dated August 18, 2016 (ADAMS Accession No. ML16235A081), as supplemented by letter dated November 29, 2016 (ADAMS Accession No. ML16335A104), and the NRC's nonproprietary Safety Evaluation dated March 1, 2017 (ADAMS Accession No. ML17041A196), which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

Dated at Rockville, Maryland, this 1<sup>st</sup> day of March 2017.

FOR THE NUCLEAR REGULATORY COMMISSION

A handwritten signature in black ink, appearing to read 'W. M. Dean', with a long horizontal flourish extending to the right.

William M. Dean, Director,  
Office of Nuclear Reactor Regulation.

**ENCLOSURE 2**

CONFORMING LICENSE AMENDMENT

TO RENEWED FACILITY OPERATING LICENSE NO. DPR-59

JAMES A. FITZPATRICK NUCLEAR POWER PLANT

TO REFLECT DIRECT LICENSE TRANSFER FROM

ENTERGY NUCLEAR FITZPATRICK, LLC AND ENTERGY NUCLEAR OPERATIONS, INC.

TO EXELON GENERATION COMPANY, LLC





UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

EXELON GENERATION COMPANY, LLC

DOCKET NO. 50-333

JAMES A. FITZPATRICK NUCLEAR POWER PLANT

AMENDMENT TO RENEWED FACILITY OPERATING LICENSE

Amendment No.  
License No. DPR-59

1. The U.S. Nuclear Regulatory Commission (the Commission) has found that:
  - A. The application for amendment by Entergy Nuclear FitzPatrick, LLC, Entergy Nuclear Operations, Inc. and Exelon Generation Company, LLC (collectively, the applicants), dated August 18, 2016, as supplemented by letter dated November 29, 2016, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I;
  - B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;
  - C. There is reasonable assurance (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;
  - D. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and
  - E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

2. Accordingly, the license is amended by changes as indicated in the attachment to this license amendment.
3. This license amendment is effective as of its date of issuance and shall be implemented within 30 days from the date of issuance.

FOR THE NUCLEAR REGULATORY COMMISSION

William M. Dean, Director  
Office of Nuclear Reactor Regulation

Attachment:  
Changes to Renewed Facility Operating  
License No. DPR-59

Date of Issuance:

JAMES A. FITZPATRICK NUCLEAR POWER PLANT

ATTACHMENT TO LICENSE AMENDMENT NO. \_\_\_\_\_

RENEWED FACILITY OPERATING LICENSE NO. DPR-59

DOCKET NO. 50-333

Replace the following pages of the renewed facility operating license with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

Remove Page

1  
2  
3  
4  
5  
6  
7  
8  
9

Insert Page

1  
2  
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9

Replace the following pages of Appendix C to the renewed facility operating license with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

Remove Page

1  
2

Insert Page

1  
2

EXELON GENERATION COMPANY, LLC

DOCKET NO. 50-333

JAMES A. FITZPATRICK NUCLEAR POWER PLANT

RENEWED FACILITY OPERATING LICENSE

Renewed License No. DPR-59

1. The Nuclear Regulatory Commission (NRC or the Commission), having previously made the findings set forth in Facility Operating License No. DPR-59, dated November 21, 2000, has found that:
  - A. The application to renew Facility Operating License No. DPR-59 complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I, and all required notifications to other agencies or bodies have been duly made;
  - B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;
  - C. Actions have been identified and have been or will be taken with respect to: (1) managing the effects of aging on the functionality of structures and components that have been identified to require review under 10 CFR 54.21(a)(1) during the period of extended operation, and (2) time-limited aging analyses that have been identified to require review under 10 CFR 54.21(c), such that there is reasonable assurance that the activities authorized by this renewed operating license will continue to be conducted in accordance with the current licensing basis, as defined in 10 CFR 54.3 for the facility, and that any changes made to the facility's current licensing basis in order to comply with 10 CFR 54.29(a) are in accordance with the Act and the Commission's regulations;
  - D. There is reasonable assurance (i) that the activities authorized by this renewed operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;
  - E. Exelon Generation Company is financially and technically qualified to engage in the activities authorized by this renewed operating license;
  - F. Exelon Generation Company has satisfied the applicable provisions of 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," of the Commission's regulations;
  - G. The issuance of this renewed operating license will not be inimical to the common defense and security or to the health and safety of the public;
  - H. The receipt, possession, and use of source, byproduct, and special nuclear material as authorized by this renewed operating license will be in accordance

Amendment  
Renewed License No. DPR-59

with the Commission's regulations; in 10 CFR Parts 30, 40, and 70, including 10 CFR Sections 30.33, 40.32, 70.23, and 70.31; and

- I. The issuance of this renewed operating license is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.
2. Accordingly, Facility Operating License No. DPR-59 (previously issued to the Power Authority of the State of New York and Niagara Mohawk Power Corporation pursuant to the Atomic Safety and Licensing Board's Initial Decision and Supplemental Initial Decision dated November 12, 1973, and January 10, 1974, respectively; and the Atomic Safety and Licensing Appeal Board's Decision dated January 29, 1974) as previously amended and transferred to Entergy Nuclear FitzPatrick, LLC (ENF) and Entergy Nuclear Operations, Inc. (ENO) dated November 21, 2000, is superseded by Renewed Facility Operating License No. DPR-59, hereby issued to Exelon Generation Company to read as follows:
    - A. This renewed operating license applies to the James A. FitzPatrick Nuclear Power Plant, a boiling water nuclear reactor and associated equipment (the facility), owned and operated by Exelon Generation Company. The facility is located in Scriba, Oswego County, New York, and is described in the "Final Safety Analysis Report," as supplemented and amended, and the Environmental Report, as supplemented and amended.
    - B. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses:
      - (1) Pursuant to Section 104b of the Act and 10 CFR Part 50, "Licensing of Production and Utilization Facilities," Exelon Generation Company to possess, use, and operate the facility at the designated location in Scriba, Oswego County, New York, in accordance with the procedures and limitations set forth in this renewed operating license;
      - (2) Exelon Generation Company pursuant to the Act and 10 CFR Part 70, to receive, possess, and use at any time, special nuclear material as reactor fuel, in accordance with the limitations for storage and amounts required for reactor operation, as described in the Final Safety Analysis Report, as supplemented and amended;
      - (3) Exelon Generation Company pursuant to the Act and 10 CFR Parts 30, 40, and 70, to receive, possess, and use, at any time, any byproduct, source, and special nuclear material as sealed neutron sources for reactor startup, sealed sources for reactor instrumentation and radiation monitoring equipment calibration, and as fission detectors in amounts as required;

- (4) Exelon Generation Company pursuant to the Act and 10 CFR Parts 30, 40, and 70, to receive, possess, and use, at any time, any byproduct, source, and special nuclear material without restriction to chemical or physical form, for sample analysis or instrument calibration; or associated with radioactive apparatus, components or tools.
- (5) Pursuant to the Act and 10 CFR Parts 30 and 70, to possess, but not separate, such byproduct and special nuclear materials as may be produced by the operation of the facility.

C. This renewed operating license shall be deemed to contain and is subject to the conditions specified in the following Commission regulations in 10 CFR Chapter I: Part 20, Section 30.34 of Part 30, Section 40.41 of Part 40, Sections 50.54 and 50.59 of Part 50, and Section 70.32 of Part 70; and is subject to all applicable provisions of the Act and to the rules, regulations, and orders of the Commission now or hereafter in effect; and is subject to the additional conditions specified or incorporated below:

(1) Maximum Power Level

Exelon Generation Company is authorized to operate the facility at steady state reactor core power levels not in excess of 2536 megawatts (thermal).

(2) Technical Specifications

The Technical Specifications contained in Appendix A, as revised through Amendment No. \_\_\_\_\_, are hereby incorporated in the renewed operating license. The licensee shall operate the facility in accordance with the Technical Specifications.

(3) Fire Protection

Exelon Generation Company shall implement and maintain in effect all provisions of the approved fire protections program as described in the Final Safety Analysis Report for the facility and as approved in the SER dated November 20, 1972; the SER Supplement No. 1 dated February 1, 1973; the SER Supplement No. 2 dated October 4, 1974; the SER dated August 1, 1979; the SER Supplement dated October 3, 1980; the SER Supplement dated February 13, 1981; the NRC Letter dated February 24, 1981; Technical Specification Amendments 34 (dated January 31, 1978), 80 (dated May 22, 1984), 134 (dated July 19, 1989), 135 (dated September 5, 1989), 142 (dated October 23, 1989), 164 (dated August 10, 1990), 176 (dated January 16, 1992), 177 (dated February 10, 1992), 186 (dated February 19, 1993), 190 (dated June 29, 1993), 191 (dated July 7, 1993), 206 (dated February 28, 1994), and 214 (dated June 27, 1994); and NRC Exemptions and associated safety evaluations dated April 26, 1983, July 1, 1983, January 11, 1985,

April 30, 1986, September 15, 1986, and September 10, 1992, subject to the following provision:

Exelon Generation Company may make changes to the approved fire protection program without prior approval of the Commission only if those changes would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire.

- (4) Systems Integrity  
Deleted by Amendment No. 274
- (5) Iodine Monitoring  
Deleted by Amendment No. 274
- (6) New or Revised ITS Surveillance Requirements Applicability:

The schedule for performing Surveillance Requirements (SRs) that are new or revised in Amendment No. 274 shall be as follows:

- (a) For SRs that are new in this amendment, the first performance is due at the end of the first surveillance interval that begins on the date of implementation of this amendment.
- (b) For SRs that existed prior to this amendment whose intervals of performance are being reduced, the first reduced surveillance interval begins upon completion of the first surveillance performed after implementation of this amendment.
- (c) For SRs that existed prior to this amendment whose intervals of performance are being extended, the first extended surveillance interval begins upon completion of the last surveillance performed prior to implementation of this amendment.
- (d) For SRs that existed prior to this amendment that have modified acceptance criteria, the first performance is due at the end of the first surveillance interval that began on the date the surveillance was last performed prior to the implementation of this amendment.

D. Physical Protection

Exelon Generation Company shall fully implement and maintain in effect all provisions of the Commission-approved physical security, training and qualification, and safeguards contingency plans including amendments made pursuant to provisions of the Miscellaneous Amendments and Search Requirements revisions to 10 CFR 73.55 (51 FR 27817 and 27822), and to the authority of 10 CFR 50.90 and 10 CFR 50.54(p). The combined set of plans<sup>1</sup>,

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<sup>1</sup> The Training and Qualification Plan and Safeguards Contingency Plan are Appendices to the Security Plan.

which contain Safeguards Information protected under 10 CFR 73.21, is entitled: "James A. FitzPatrick Nuclear Power Plant Physical Security, Training & Qualification and Safeguards Contingency Plan, Revision 0," submitted by letter dated October 26, 2004, as supplemented by letter dated May 17, 2006.

Exelon Generation Company shall fully implement and maintain in effect all provisions of the Commission-approved cyber security plan (CSP), including changes made pursuant to the authority of 10 CFR 50.90 and 10 CFR 50.54(p). Exelon Generation Company CSP was approved by License Amendment No. 300, as supplemented by changes approved by License Amendment Nos. 303, 308, and 311.

Exelon Generation Company has been granted Commission authorization to use "stand alone preemption authority" under Section 161A of the Atomic Energy Act, 42 U.S.C. 2201a with respect to the weapons described in Attachment 1, Section II contained in its application submitted by letter dated August 30, 2013, as supplemented by letters dated November 12, 2013, and July 11, 2014. Exelon Generation Company shall fully implement and maintain in effect the provisions of the Commission-approved authorization.

E. Power Uprate License Amendment Implementation

The licensee shall complete the following actions as a condition of the approval of the power uprate license amendment.

(1) Recirculation Pump Motor Vibration

Perform monitoring of recirculation pump motor vibration during initial Cycle 13 power ascension for uprated power conditions.

(2) Startup Test Program

The licensee will follow a startup testing program, during Cycle 13 power ascension, as described in GE Licensing Topical Report NEDC-31897P-1, "Generic Guidelines for General Electric Boiling Water Reactor Power Uprate." The startup test program includes system testing of such process control systems as the feedwater flow and main steam pressure control systems. The licensee will collect steady-state operational data during various portions of the power ascension to the higher licensed power level so that predicted equipment performance characteristics can be verified. The licensee will do the startup testing program in accordance with its procedures. The licensee's approach is in conformance with the test guidelines of GE Licensing Topical Report NEDC-31897P-1, "Generic Guidelines for General Electric Boiling Water Reactor Power Uprate," June 1991 (proprietary), GE Licensing Topical Report NEDO-31897, "Generic Guidelines for General Electric Boiling Water Reactor Power Uprate," February 1992 (nonproprietary), and NEDC-31897P-AA, Class III (proprietary), May 1992.



(3) Human Factors

The licensee will review the results of the Cycle 13 startup test program to determine any potential effects on operator training. Training issues identified will be incorporated in Licensed Operator training during 1997. Simulator discrepancies identified will be addressed in accordance with simulator Configuration Management procedural requirements.

F. Additional Conditions

The Additional Conditions contained in Appendix C, as revised through Amendment No. 289, are hereby incorporated into this renewed operating license. Exelon Generation Company shall operate the facility in accordance with the Additional Conditions.

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P. For purposes of ensuring public health and safety, Exelon Generation Company, upon the transfer of this license to it, and upon transfer of decommissioning funds from ENF to Exelon Generation Company, shall provide decommissioning funding assurance for the facility, to be held in a decommissioning trust fund for the facility by the prepayment or equivalent method, of no less than the amount required under NRC regulations at 10 CFR 50.75. Any amount held in any decommissioning trust maintained by Exelon Generation Company for the facility after the transfer of the facility license to Exelon Generation Company may be credited towards the amount required under this paragraph.

Q. Exelon Generation Company shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application for the transfer of this license to Exelon Generation Company, and the requirements of the order approving the transfer and order approving the transfer of decommissioning funds from PASNY to ENO, and consistent with the safety evaluations supporting such orders.

R. Mitigation Strategy License Condition

Develop and maintain strategies for addressing large fires and explosions and that include the following key areas:

- (a) Fire fighting response strategy with the following elements:
  - 1. Pre-defined coordinated fire response strategy and guidance
  - 2. Assessment of mutual aid fire fighting assets
  - 3. Designated staging areas for equipment and materials
  - 4. Command and control
  - 5. Training of response personnel
  
- (b) Operations to mitigate fuel damage considering the following:
  - 1. Protection and use of personnel assets
  - 2. Communications
  - 3. Minimizing fire spread
  - 4. Procedures for implementing integrated fire response strategy
  - 5. Identification of readily-available pre-staged equipment
  - 6. Training on integrated fire response strategy
  - 7. Spent fuel pool mitigation measures
  
- (c) Actions to minimize release to include consideration of:
  - 1. Water spray scrubbing
  - 2. Dose to onsite responders

- S. The licensee shall implement and maintain all Actions required by Attachment 2 to NRC Order EA-06-137, issued June 20, 2006, except the last action that requires incorporation of the strategies into the site security plan, contingency plan, emergency plan and/or guard training and qualification plan, as appropriate.
- T. License Renewal – UFSAR supplement submitted pursuant to 10 CFR 54.21(d), as revised during the license renewal application review process, and as supplemented by Appendix A of NUREG-1905, "Safety Evaluation Report Related to the License Renewal of James A. FitzPatrick Nuclear Power Plant," dated April 2008, describes certain programs to be implemented and activities to be completed prior to the period of extended operation (PEO).
- a. The licensee shall implement those new programs and enhancements to existing programs no later than the PEO date.
  - b. The licensee shall complete those inspection and testing activities by the PEO date.

The licensee shall notify the NRC in writing within 10 days after having accomplished item (a) above and include the status of those activities that have been or remain to be completed in item (b) above.

- U. UFSAR Supplement Changes - The UFSAR supplement, as revised, submitted pursuant to 10 CFR 54.21(d), shall be included in the next scheduled update to the UFSAR required by the 10 CFR 50.71(e)(4) following the issuance of this renewed operating license. Until that update is complete, Exelon Generation Company may make changes to the programs and activities described in the supplement without prior Commission approval, provided that Exelon Generation Company evaluate such changes pursuant to the criteria set forth in 10 CFR 50.59 and otherwise complies with the requirements in that section.
- V. Capsule withdrawal schedule - All capsules in the reactor vessel that are removed and tested must meet the test procedures and reporting requirements of the most recent NRC-approved version of the Boiling Water Reactor Vessel and Internals Project (BWRVIP) Integrated Surveillance Program (ISP) appropriate for the configuration of the specimens in the capsule. Any changes to the capsule withdrawal schedule, including spare capsules, must be approved by the NRC prior to implementation. All capsules placed in storage must be maintained for future insertion. Any changes to storage requirements must be approved by the NRC, as required by 10 CFR Part 50, Appendix H.

3. This renewed operating license is effective as of the date of issuance and shall expire at midnight on October 17, 2034.

FOR THE NUCLEAR REGULATORY COMMISSION

**IRAI**

Eric J. Leeds, Director  
Office of Nuclear Reactor Regulation

**Attachments/Appendices:**

1. Appendix A - Technical Specifications
2. Appendix B - Deleted
3. Appendix C - Additional Conditions

Date of Issuance: September 8, 2008

APPENDIX C  
ADDITIONAL CONDITIONS  
OPERATING LICENSE NO. DPR-59

| Amendment Number | Additional Conditions  |
|------------------|--|
| 243              | Exelon Generation Company shall describe snubber operation and surveillance requirements in the Final Safety Analysis Report such that future changes to those requirements will be subject to the provisions of 10 CFR 50.59.   |
| 250              | Exelon Generation Company shall relocate operability and surveillance requirements for logic bus power monitors, core spray sparger differential pressure, and low pressure coolant injection cross-connect valve position instruments to an Exelon-controlled document where future changes to those relocated requirements are controlled under the provisions of 10 CFR 50.59.  |
| 274              | Exelon Generation Company shall relocate the Technical Specification requirements identified in Table LA – “Removal of Details Matrix” and Table R – “Relocated Specifications” to licensee-controlled documents, as described in the application, as supplemented on June 12, 2002, and the NRC staff’s Safety Evaluation enclosed with Amendment No. 274, dated July 3, 2002. Further, relocations to the updated Final Safety Analysis Report (UFSAR) shall be reflected in the next UFSAR update required by 10 CFR 50.71(e) following implementation of this amendment.   |
| 289              | <p>Control Room Envelope Habitability</p> <p>Upon Implementation of Amendment No. 289, adopting TSTF-448, Revision 3, the determination of control room envelope (CRE) unfiltered air inleakage required by SR 3.7.3.3 in accordance with TS 5.5.14.c.(i), the assessment of CRE habitability, as required by Specification 5.5.14.c.(ii), and the measurement of CRE pressure as required by Specification 5.5.14.d shall be considered met. Following implementation:</p> <p>(a) The first performance of SR 3.7.3.3 in accordance with Specification 5.5.14.c(i) shall be within the specified Frequency of 6 years, plus the 18-month allowance of SR 3.0.2, as measured from June 28, 2004, the date of the most recent successful tracer gas test, as stated in the licensee’s letter, “NRC Generic Letter 2003-01 Control Room Habitability Initial Action Summary Report” (JAFP-04-0159), dated September 27, 2004, or within 18 months if the time period since the most recent successful tracer gas test is greater than 6 years.</p> |

## Appendix C

- 2 -

(b) The first performance of the periodic assessment of CRE habitability Specification 5.5.14.c(ii) shall be within 3 years, plus the 9-month allowance of SR 3.0.2, as measured from June 28, 2004, the date of the most recent successful tracer gas test, as stated in the licensee's letter, "NRC Generic Letter 2003-01 Control Room Habitability Initial Action Summary Report" (JAFP-04-0159), dated September 27, 2004, or within 9 months if the time period since the most recent successful tracer gas test is greater than 3 years.

(c) The first performance of the periodic measurement of CRE pressure, Specification 5.5.14.d shall be within 18 months, plus the 138-day allowance of SR 3.0.2 as measured from the date of the most recent successful pressure measurement test or within 138 days if not performed previously.

**ENCLOSURE 3**

NON-PROPRIETARY

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

FOR DIRECT TRANSFER OF OWNERSHIP FROM

ENERGY NUCLEAR FITZPATRICK, LLC AND

ENERGY NUCLEAR OPERATIONS, INC. TO

EXELON GENERATION COMPANY, LLC

RENEWED FACILITY OPERATING LICENSE NO. DPR-59

JAMES A. FITZPATRICK NUCLEAR POWER PLANT

DOCKET NOS. 50-333 AND 72-012



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

FOR DIRECT TRANSFER OF OWNERSHIP FROM

ENERGY NUCLEAR FITZPATRICK, LLC AND

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DOCKET NOS. 50-333 AND 72-012

Proprietary information pursuant to Title 10 of the *Code of Federal Regulations* Section 2.390 has been redacted from this document. Redacted information is identified by blank space enclosed with boldface double brackets as shown here **[[ ]]**.

1.0 INTRODUCTION

By application dated August 18, 2016 (Agencywide Documents Access and Management System (ADAMS) Accession Number ML16235A081), as supplemented by letter dated November 29, 2016 (ADAMS Accession No. ML16335A104), Entergy Nuclear FitzPatrick, LLC (ENF) and Entergy Nuclear Operations, Inc. (ENO) (collectively, Entergy) and Exelon Generation Company, LLC (Exelon) (all collectively referred to as the applicants), pursuant to Section 184 of the Atomic Energy Act of 1954, as amended (AEA), and Title 10 of the *Code of Federal Regulations* (10 CFR) 50.80, 10 CFR 72.50, and 10 CFR 50.90, requested that the U.S. Nuclear Regulatory Commission (NRC or the Commission) consent to the proposed direct transfer of the James A. FitzPatrick Nuclear Power Plant (FitzPatrick) Renewed Facility Operating License (RFOL) No. DPR-59 and the FitzPatrick Independent Spent Fuel Storage Installation (ISFSI) general license (collectively referred to as the facility) from Entergy to Exelon. Future references to FitzPatrick include the general license for the FitzPatrick ISFSI. The applicants also requested that the NRC approve a conforming amendment to the license to reflect this transfer.

The proposed transfer would result from an all cash transaction by which Exelon would acquire FitzPatrick from Entergy as an asset purchase. Due to the then present economic conditions for operating a nuclear power plant in upstate New York, Entergy had previously informed the NRC of its intention to close FitzPatrick in January 2017 via a "Certification of Permanent Cessation of Power Operations" letter (ADAMS Accession No. ML16076A391). However, since that time, the New York Public Service Commission (NYPSC) has approved a new mechanism, which will be implemented beginning on April 1, 2017, to compensate eligible nuclear generating facilities for their zero-emission attributes, thereby allowing the State to avoid losing the carbon emission reduction gains secured to date and assisting it in achieving its goal of a 40 percent reduction in carbon emissions by the year 2030. This new mechanism is Tier 3 of the State's Clean Energy Standard program. In its order dated August 1, 2016, adopting the Clean Energy Standard



program, the NYPSC explained that the Tier 3 program is intended to “encourage the preservation of the environmental values or attributes of zero-emissions nuclear-powered electric generating facilities for the benefit of the electric system, its customers and the environment.” In determining that FitzPatrick met the public necessity requirement to be eligible to participate in the Tier 3 program, the NYPSC explicitly acknowledged the critical role of FitzPatrick, along with the state’s other upstate nuclear power plants, in meeting New York’s important emissions reductions goals.

By letter dated January 4, 2017 (ADAMS Accession No. ML17012A280), Entergy withdrew its “Certification of Permanent Cessation of Power Operations” letter. The NRC staff acknowledged this withdrawal and the continuing operation of FitzPatrick by letter dated January 19, 2017 (ADAMS Accession No. ML17005A456). Entergy also submitted a letter to the NRC withdrawing all of the requests and regulatory commitments that it had made to the NRC with respect to its previously planned permanent cessation of operations of FitzPatrick (ADAMS Accession No. ML17015A000). The NRC staff acknowledged these withdrawals by letter dated January 25, 2017 (ADAMS Accession No. ML17018A045).

## 2.0 BACKGROUND

FitzPatrick is a single unit boiling-water reactor (BWR) electric generating facility with a rated thermal power of 2,536 megawatts thermal. FitzPatrick is located on Lake Ontario in Oswego County, New York, and consists of the BWR, other associated plant equipment, and related site facilities, including the generally licensed FitzPatrick ISFSI. The facility is owned by ENF and operated by ENO. The original operating license was granted in 1974, and commercial operation began in July 1975. The NRC issued a renewed operating license for FitzPatrick on September 8, 2008, which expires on October 17, 2034. Following the proposed transfer, Exelon would become the owner and operator of FitzPatrick, at which point the operation of FitzPatrick would be integrated into the existing operation of Exelon’s nuclear fleet.

The transfer of the FitzPatrick RFOL and the FitzPatrick ISFSI general license to Exelon would result in the continued operation of FitzPatrick. The applicants state that the integration of FitzPatrick into Exelon’s fleet operations would make it part of a single organization with responsibility over all of the plants partially or fully owned by Exelon and for which Exelon is the licensed operator. The applicants state that, as the operator of the largest nuclear fleet in the U.S., Exelon would bring substantial experience, knowledge, and skills to the operation of FitzPatrick and that Exelon’s consolidated structure would allow for the elimination of the duplication of organizations and would enhance the sharing of resources and operating experience.

## 3.0 REGULATORY EVALUATION

The proposed transaction described in the application constitutes a direct transfer of ownership interest of FitzPatrick from Entergy to Exelon, requiring prior NRC approval. For direct transfers of control of a license, the NRC must find that the direct transfer of the license is otherwise consistent with applicable provisions of law, NRC regulations, and orders issued by the Commission.

Pursuant to 10 CFR 50.80(a):

No license for a production or utilization facility (including, but not limited to, permits under this part and part 52 of this chapter, and licenses under parts 50 and 52 of this chapter), or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing.

In addition, the regulations in 10 CFR 50.80(b) and (c) apply. Section 50.80(b)(1)(i) of 10 CFR states that an application for a license transfer shall include as much of the information described in 10 CFR 50.33 and 10 CFR 50.34 with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license.

Section 50.80(c) of 10 CFR states, in part, that:

... the Commission will approve an application for the transfer of a license, if the Commission determines: (1) That the proposed transferee is qualified to be the holder of the license; and (2) That transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Section 50.33(f) of 10 CFR states, in part, that:

Except for an electric utility applicant for a license to operate a utilization facility of the type described in § 50.21(b) or § 50.22, [each application shall state] information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought.

Section 50.2, "Definitions," of 10 CFR states, in part, that an electric utility means:

[A]ny entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority.

The NRC staff applies guidance in NUREG-1577, Revision 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance" (ADAMS Accession No. ML013330264), issued February 1999, to evaluate whether the financial qualifications of licensees would be affected by proposed transfers.

Also, 10 CFR 50.33(k)(1) requires that applicants provide information in the form of a report, as described in 10 CFR 50.75, "Reporting and recordkeeping for decommissioning planning," indicating that there is reasonable assurance that funds will be available to decommission the facility.

Section 50.75(c) of 10 CFR provides a table of minimum amounts (in 1986 dollars, the "base year") required to demonstrate reasonable assurance of funds for decommissioning by reactor type and power level.

The NRC staff also applies guidance in NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition," Chapter 13, "Conduct of Operations," Revision 6 of Section 13.1.1, "Management and Technical Support Organization" (ADAMS Accession No. ML15005A449), for the review of the corporate-level management and technical support organization of applicants. Guidance in Revision 7 of Section 13.1.2 – 13.1.3, "Operating Organization" (ADAMS Accession No. ML15007A296), is applied for the review of the operating organization of applicants, including the structure, functions, and responsibilities of the onsite organization established to safely operate and maintain the facility.

In addressing foreign ownership, control, or domination (FOCD) issues, Section 103d of the AEA provides, in relevant part, that no license may be issued to:

[A]ny corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.

The NRC's regulation in 10 CFR 50.38 is the regulatory provision that implements the FOCD provision of the AEA. The NRC staff evaluates license transfer applications in a manner consistent with the guidance provided in the Final Standard Review Plan on Foreign Ownership, Control, or Domination to determine whether the applicant is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government as published in the *Federal Register* on September 28, 1999 (64 FR 52357-52359).

The NRC staff also reviews information that relates to nuclear property damage insurance requirements under 10 CFR 50.54(w) and the Price-Anderson insurance and indemnity requirements under Section 170 of the AEA and 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements."

Finally, with respect to the requested conforming license amendment, 10 CFR 50.90 states, in part, whenever a holder of a license, including a construction permit and operating license under this part, desires to amend the license or permit, application for an amendment must be filed with the Commission fully describing the changes desired and following as far as applicable the form prescribed for original applications. Pursuant to 10 CFR 2.1315, where license amendments are necessary to reflect an approved license transfer, such amendments will be included in the order that approves the license transfer.

#### 4.0 FINANCIAL QUALIFICATIONS

Exelon is a wholly owned subsidiary of Exelon Corporation, a U.S. utility services holding company. Exelon's stock is publicly traded on the New York Stock Exchange and is widely held. Exelon, for itself or through its co-owned subsidiary, owns or co-owns and operates 22 nuclear reactors at 13 sites in 5 states, including the Nine Mile Point Nuclear Station (NMP) located immediately adjacent to FitzPatrick. The NRC staff notes that Nine Mile Point Nuclear Station, LLC, the owner of NMP, is not a party to this direct license transfer application.

A pre-condition of the direct license transfer application was for the Power Authority of the State of New York (PASNY, which does business as the New York Power Authority) to transfer the control of the decommissioning trust for FitzPatrick to ENO. Therefore, the conforming license amendment proposed for the direct license transfer application included the changes proposed in the separate decommissioning trust license amendment request (LAR). The

decommissioning trust LAR has since been granted by the NRC and, therefore, the language of the conforming license amendment proposed for the direct license transfer application is currently accurate. The decommissioning trust LAR was filed separately because the transactions contemplated under that LAR were not dependent upon the closing of the transactions contemplated in the direct license transfer application.

Exelon provided 5-year *pro forma* financial projections for itself and for FitzPatrick in Enclosures 7A and 9A of its direct license transfer application because it does not qualify as an electric utility under 10 CFR 50.2. The financial projections were for the years 2017 through 2021 and were provided to demonstrate financial qualifications in accordance with 10 CFR 50.33(f)(2). Enclosures 7A and 9A are designated as proprietary because they contain Exelon's confidential commercial and financial information as described in the 10 CFR 2.390 Affidavit provided in Enclosure 8. Exelon requested that Enclosures 7A and 9A be withheld from public disclosure pursuant to 10 CFR 9.17(a)(4) and 10 CFR 2.390(a)(4). Non-proprietary versions of Enclosures 7A and 9A suitable for public disclosure are provided as Enclosures 7 and 9, respectively. On September 19, 2016 (ADAMS Accession No. ML16250A461), the NRC staff determined, on the basis of the statements in the affidavit, that Enclosures 7A and 9A contain proprietary commercial information and should be withheld from public disclosure.

Exelon Generation Company, LLC  
Consolidated Projected Income Statement  
(in \$ millions)

|                               | 2017 | 2018 | 2019 | 2020 | 2021 |
|-------------------------------|------|------|------|------|------|
| <b>Total Revenue:</b>         | [[   |      |      |      | ]]   |
| <b>Total Operating Exps.:</b> | [[   |      |      |      | ]]   |
| <b>Operating Income:</b>      | [[   |      |      |      | ]]   |
| <b>Other Exps/Taxes:</b>      | [[   |      |      |      | ]]   |
| <b>NET INCOME:</b>            | [[   |      |      |      | ]]   |

James A. FitzPatrick Nuclear Power Plant  
Projected Income Statement  
(in \$ millions)

|                               | 2017 | 2018 | 2019 | 2020 | 2021 |
|-------------------------------|------|------|------|------|------|
| <b>Total Revenue:</b>         | [[   |      |      |      | ]]   |
| <b>Total Operating Exps.:</b> | [[   |      |      |      | ]]   |
| <b>Operating Income:</b>      | [[   |      |      |      | ]]   |
| <b>Other Exps/Taxes:</b>      | [[   |      |      |      | ]]   |
| <b>NET INCOME:</b>            | [[   |      |      |      | ]]   |

The applicants have provided financial information consistent with a scenario that changes the assumptions for revenue from FitzPatrick. Specifically, if electric prices per megawatt hour were to drop by an average of 10 percent, the effect on the 5-year net income stream would be a drop from the projected average of  million per year to a possible  million per year. The NRC staff concludes that the impact on net income under this scenario will not affect Exelon's ability to provide reasonable assurance of adequate funding to cover costs for operations over the 5-year period.

Additionally, Exelon's consolidated net income provides assurance of sufficient funds to cover the estimated fixed operating and maintenance (O&M) expenses for a FitzPatrick outage of at least 6 months (O&M non-outage, O&M outage, and property taxes). This is consistent with the guidance in NUREG-1577. Exelon notes that the anticipated revenues from FitzPatrick presented in the financial projections include the anticipated payments for the Clean Energy Standard Tier 3 Zero-Emissions Credits, which are conditions precedent to closing the transaction.

Based on the above, the NRC staff concludes that Exelon is financially qualified to be the holder of the FitzPatrick license.

#### 5.0 DECOMMISSIONING FUNDING ASSURANCE

Upon the closing of the direct license transfer, the FitzPatrick decommissioning trust, including all cash and other assets in the trust, will be transferred to Exelon. Entergy provided information regarding the status of the FitzPatrick ISFSI decommissioning funding plan pursuant to a 10 CFR 72.30 letter dated December 17, 2015 (ADAMS Accession No. ML15351A524). Entergy also reported the status of the decommissioning funding for FitzPatrick, as of December 31, 2015, in its Decommissioning Funding Status Report pursuant to 10 CFR 50.75(f)(1) and 10 CFR 50.82(a)(8)(v), dated March 30, 2016 (ADAMS Accession No. ML16090A355). The proposed direct license transfer does not involve any changes to this information that Entergy provided for the facility.

Entergy reported an estimated cost to decommission the facility of \$655,710,000, consisting of \$647,540,000 in costs to decommission the site (estimated pursuant to 10 CFR 50.75(b) and (c) in 2015 dollars), and \$8,170,000 in costs to decommission the ISFSI in its decommissioning funding status report. As of December 31, 2015, there was a decommissioning trust fund balance in the amount of \$746,190,000. Accordingly, Entergy met and exceeded the NRC's minimum funding requirements for FitzPatrick using the prepayment method in accordance with 10 CFR 50.75(e)(1)(i) and 10 CFR 72.30(e)(1).

On August 16, 2016 (ADAMS Accession No. ML16230A308), ENO, on behalf of itself, ENF, Entergy Nuclear Indian Point 3, LLC, and PASNY requested that the NRC issue an order consenting to the transfer to ENO of the beneficial interest in the Master Decommissioning Trust (Master Trust) for FitzPatrick and Indian Point Nuclear Generating Unit No. 3 (IP3), including all rights and obligations thereunder, held by PASNY. ENO also requested the NRC's consent to issue an amendment to the Master Decommissioning Trust Agreement, dated July 25, 1990, as amended on November 21, 2000, governing the Master Trust in order to facilitate this transaction. Lastly, ENO requested approval of the amendment to the FitzPatrick and IP3 licenses to reflect the proposed transfer of control of the Master Trust and to delete other license conditions so as to apply the requirements of 10 CFR 50.75(h) to FitzPatrick and IP3.

Under a separate safety evaluation dated January 27, 2017 (ADAMS Accession No. ML16336A492), the NRC staff granted these requests.

At the time of the closing of the proposed sale of the facility to Exelon, ENO will transfer the assets of the decommissioning trust fund related to FitzPatrick from the Master Trust to an established fund under Exelon. Exelon will continue to provide decommissioning funding assurance for FitzPatrick using the prepayment method in accordance with 10 CFR 50.75(e)(1)(i) and 10 CFR 72.30(e)(1) and will assume all liabilities for the decommissioning of FitzPatrick.

Exelon's management of the decommissioning trust, including all investments and disbursements, will continue to meet the regulatory requirements in 10 CFR 50.75. Exelon will maintain the decommissioning trust fund segregated from its assets and outside its administrative control in accordance with the requirements of 10 CFR 50.75(e)(1). Therefore, in accordance with 10 CFR 50.75, the NRC staff concludes that there continues to be reasonable assurance that Exelon will have the funds necessary to cover the estimated decommissioning costs of the facility at the end of licensed operations.

## 6.0 TECHNICAL QUALIFICATIONS

### 6.1 Management and Technical Support Organization

The purpose of this technical evaluation is to ensure that the proposed corporate management is involved with, informed of, and dedicated to the safe operation of FitzPatrick. In addition, the review is intended to ensure that sufficient technical resources have been, are being, and will continue to be provided to adequately accomplish these objectives. Guidance provided in Revision 6 of Section 13.1.1 of NUREG-0800 was used, in part, to evaluate this portion.

The applicants stated in Section VI, "Technical Qualifications," of Enclosure 1 of the direct license transfer application that, as a result of the proposed transfer, there will be no material changes in the management or technical organizational structure of FitzPatrick, nor will there be any adverse changes in the day-to-day operations of FitzPatrick. Exelon currently operates the adjacent NMP and also owns or co-owns, directly or through a co-owned subsidiary, and operates 22 other nuclear power reactors at different sites, which demonstrates that Exelon has sufficient background and experience in nuclear energy operation. In addition, NMP already shares some facilities with FitzPatrick, such as the Emergency Operations Facility and the Joint Information Center, and certain employee resources. Therefore, the proposed transfer will allow for even more sharing of resources and technical support than currently exists. Based on the above, the NRC staff finds the proposed management and technical support organization to be acceptable.

### 6.2 Operating Organization

The NRC staff reviewed the direct license transfer application to ensure that sufficient technical resources will continue to be provided to adequately operate the facility in both normal and off-normal conditions as a result of the license transfer. Guidance provided in Revision 7 of Section 13.1.2 – 13.1.3 in NUREG-0800 was used, in part, to evaluate this portion.

The applicants stated in the application:

Prior to closing the transaction, Exelon Generation will offer employment to substantially all of the Entergy employees at FitzPatrick such that at the time of the closing of the transaction and transfer of the License, the Entergy employees who accept offers of employment will become employees of Exelon Generation.

The applicants identified three specific areas intended to ensure and secure appropriate staffing levels and technical expertise in response to an NRC staff request for additional information. The applicants stated that they are doing the following: (1) directly securing expertise throughout the transition process; (2) communicating openly with FitzPatrick employees to ensure transparency and build trust; and (3) ensuring continued compliance with industry best practice and high standards. Appropriate staffing levels was a potential issue that was identified early on, and the applicants remain actively engaged to ensure that following the license transfer, a sufficient number of appropriately trained and qualified personnel continue their employment at FitzPatrick. FitzPatrick does not expect changes to the current staffing and qualifications of personnel; therefore, with the application of the three areas listed above, the NRC staff has a high degree of confidence that appropriate staffing levels and technical expertise will be maintained and finds the operating organization to be acceptable.

Based on the above, the NRC staff concludes that Exelon is technically qualified to be the holder of the FitzPatrick license.

#### 7.0 STANDARD CONTRACT FOR DISPOSAL OF SPENT NUCLEAR FUEL

Upon closing, Exelon will assume title to, and responsibility for, the management and interim storage of spent nuclear fuel at FitzPatrick. Entergy and Exelon will be seeking the consent of the U.S. Department of Energy (DOE) to the assignment to Exelon of the rights and obligations relating to FitzPatrick under the Standard Contract for the Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste, No. DE-CR01-83NE-44407 (DOE Standard Contract) with one of Entergy's affiliates retaining the rights and obligations relating to IP3 under that same contract. Subject to obtaining that consent, which is a condition to the closing of the transaction, Entergy will assign, and Exelon will assume, Entergy's rights and obligations under the DOE Standard Contract for FitzPatrick, including liability for payment of the one-time fee described in Article VIII of the Standard Contract and any fees payable to DOE under the Standard Contract for spent fuel existing as of the date of closing. Exelon has entered, or will enter, into commercial arrangements through which it will be reimbursed for its payment of these fees, separate and apart from its obligations under the terms of the DOE Standard Contract.

#### 8.0 ANTITRUST REVIEW

The AEA does not require or authorize antitrust reviews of post-operating license transfer applications (*Kansas Gas and Electric Co., et al* (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (1999)). This application postdates the issuance of the operating license for the unit under consideration in this safety evaluation and, therefore, no antitrust review is required or authorized.

#### 9.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

The direct license transfer application provides that Exelon is not owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. Exelon's securities are widely held and publicly traded on the New York Stock Exchange. Section 13(d) of the Securities Exchange Act of 1934 (SEC), 15 United States Code (U.S.C.) 78m(d), as amended, requires that a person or entity that owns or controls more than 5 percent of the securities of a company must file notice with the SEC. Based upon filings with the SEC, Exelon is not aware of any alien, foreign corporation, or foreign government that holds or may hold more than 5 percent of the securities of Exelon. Unless otherwise indicated in Enclosure 5 of the direct license transfer application, the current directors and executive officers of Exelon Corporation and Exelon are U.S. citizens. In seeking to become the licensed owner and operator of FitzPatrick, Exelon is not acting as an agent or a representative of another entity.

Based on this information, the NRC staff finds that the transfer of ownership and operating authority of the facility to Exelon as proposed in the application does not raise any issues related to FOCD within the meaning of the AEA.

In light of the above, the NRC staff concludes that it does not know, or have reason to believe, that FitzPatrick will be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, as a result of the proposed direct license transfer.

#### 10.0 NUCLEAR INSURANCE AND INDEMNITY

Pursuant to the requirements of the Price-Anderson Act (Section 170 of the AEA) and the NRC's implementing regulations in 10 CFR Part 140, the current indemnity agreement must be modified to reflect that, after the proposed direct license transfer takes effect, Exelon will be the sole licensee for FitzPatrick.

Consistent with NRC practice, the NRC staff will require Exelon to provide and maintain onsite property insurance as specified in 10 CFR 50.54(w), "Conditions of licenses." Exelon is also required to provide evidence that it has obtained the appropriate amount of insurance in accordance with 10 CFR 140.11(a)(4), which will be effective concurrent with the date of the license transfer and amended indemnity agreement. Therefore, the order approving the transfer will be conditioned as follows:

Prior to the completion of the license transfer, Exelon Generation, LLC shall provide satisfactory documentary evidence to the Director of the Office of Nuclear Reactor Regulation that it has obtained the appropriate amount of insurance required of a licensee under 10 CFR part 140 and 10 CFR part 50.

Based on the above, the NRC staff concludes that the proposed direct license transfer, as conditioned, satisfies the nuclear insurance and indemnity requirements of 10 CFR Part 140 and 10 CFR Part 50.

#### 11.0 SUMMARY

Based on its review, which is summarized above, of the information provided in the direct license transfer application, as supplemented, and subject to the condition described herein, the NRC staff concludes that Exelon is financially and technically qualified to be the holder of



FitzPatrick. Exelon's corporate management structure and technical support organization is acceptable for the safe operation of FitzPatrick and the operating organization will not be adversely affected by the proposed license transfer. The NRC staff further concludes that there are no disqualifying decommissioning funding assurance, foreign ownership, control, or domination, antitrust, or nuclear insurance and indemnity issues associated with the proposed direct license transfer. Finally, the NRC staff concludes that the proposed direct license transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto and that the proposed transfer will not have any adverse impact on the public health and safety, nor will it be inimical to the common defense and security.

#### 12.0 STATE CONSULTATION

In accordance with the Commission's regulations, the New York State official was notified of the proposed license transfer and issuance of the amendment. The State official made one comment in support of the license transfer.

#### 13.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of the transfer of a license issued by the NRC and a conforming amendment to the license to reflect this transfer. Accordingly, the actions involved meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with approval of the application.

#### 14.0 CONCLUSION

The Commission has concluded, based on the considerations discussed above, that (1) the proposed transferee is qualified to be the holder of the license and (2) transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) there is reasonable assurance that such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will be not inimical to the common defense and security or to the health and safety of the public.

Principal Contributors: M. Dusaniwskyj  
D. Ki

Date: March 1, 2017

B. Sullivan

SUBJECT: JAMES A. FITZPATRICK NUCLEAR POWER PLANT – ORDER APPROVING DIRECT TRANSFER OF RENEWED FACILITY OPERATING LICENSE AND INDEPENDENT SPENT FUEL STORAGE INSTALLATION GENERAL LICENSE AND CONFORMING AMENDMENT (CAC NOS. MF8293 AND MF8294) DATED MARCH 1, 2017

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**ADAMS Accession No.: ML17041A196 (non-proprietary) FRN: ML17041A274**  
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