

The findings set forth above are supported by a safety evaluation dated August 3, 2000.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the transfer of the licenses as described herein to Exelon Generation Company is approved, subject to the following conditions:

(1) Exelon Generation Company shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Exelon Generation Company to its proposed direct or indirect parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of Exelon Generation Company's consolidated net utility plant, as recorded on Exelon Generation Company's books of account.

(2) ComEd shall transfer to Exelon Generation Company the decommissioning trust funds for Byron, Units 1 and 2, in the following minimum amounts, when Byron, Units 1 and 2, are transferred to Exelon Generation Company:
Byron, Unit 1—\$169,659,917
Byron, Unit 2—\$156,560,489

(3) The decommissioning trust agreements for Byron, Units 1 and 2, at the time the transfer of the units to Exelon Generation Company is effected and, thereafter, are subject to the following:

(a) The decommissioning trust agreements must be in a form acceptable to the NRC.

(b) With respect to the decommissioning trust funds, investments in the securities or other obligations of Exelon Corporation or affiliates thereof, or their successors or assigns are prohibited. Except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.

(c) The decommissioning trust agreements for Byron, Units 1 and 2, must provide that no disbursements or payments from the trusts shall be made by the trustee unless the trustee has first given the Director of the Office of Nuclear Reactor Regulation 30 days prior written notice of payment. The decommissioning trust agreements shall further contain a provision that no

disbursements or payments from the trusts shall be made if the trustee receives prior written notice of objection from the NRC.

(d) The decommissioning trust agreements must provide that the agreements can not be amended in any material respect without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.

(e) The appropriate section of the decommissioning trust agreements shall state that the trustee, investment advisor, or anyone else directing the investments made in the trusts shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.

(4) Exelon Generation Company shall take all necessary steps to ensure that the decommissioning trusts are maintained in accordance with the application for approval of the transfer of the Byron, Units 1 and 2, licenses and the requirements of this Order approving the transfer, and consistent with the safety evaluation supporting this Order.

(5) Before the completion of the transfer of Byron, Units 1 and 2, to it, Exelon Generation Company shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that Exelon Generation Company has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(6) After receipt of all required regulatory approvals of the transfer of Byron, Units 1 and 2, ComEd shall inform the Director of the Office of Nuclear Reactor Regulation, in writing, of such receipt within 5 business days, and of the date of the closing of the transfer no later than 7 business days prior to the date of the closing. Should the transfer of the licenses not be completed by July 31, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

(7) Approval of the transfer of the licenses for Byron, Units 1 and 2 is conditioned upon all of the PECO and ComEd nuclear units described in the application to be transferred to Exelon Generation Company becoming owned by Exelon Generation Company contemporaneously.

It Is Further Ordered that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 8 to the cover letter forwarding this Order, to conform the licenses to reflect the subject license

transfers are approved. The amendments shall be issued and made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated December 20, 1999, and supplemental submittals dated January 14, March 10, March 23, March 29, and June 16, 2000, and the safety evaluation dated August 3, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

Dated at Rockville, Maryland this 3rd day of August 2000.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00-20578 Filed 8-11-00; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50-456, STN 50-457]

In the Matter of Commonwealth Edison Company (Braidwood Station, Units 1 and 2); Order Approving Transfer of Licenses and Conforming Amendments

I

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating Licenses Nos. NPF-72 and NPF-77, which authorize the possession, use, and operation of the Braidwood Station, Units 1 and 2 (the facility). The facility is located at the licensee's site in Will County, Illinois.

II

Under cover of a letter dated December 20, 1999, ComEd submitted an application requesting approval of the proposed transfer of the facility operating licenses to a new generating company, Exelon Generation Company, LLC (Exelon Generation Company or EGC) to be formed in connection with the proposed merger of Unicom Corporation (Unicom), the parent of ComEd, and PECO Energy Company (PECO). ComEd also requested approval of conforming license amendments to reflect the transfer. Supplemental information was provided by submittals dated January 14, March 10, March 23, March 29, and June 16, 2000. Hereinafter, the December 20, 1999,

application and supplemental information will be referred to collectively as the "application." The conforming amendments would remove ComEd from the facility operating licenses, add Exelon Generation Company in references to the licensee, and make several miscellaneous administrative changes that accurately reflect the transfer of the licenses to Exelon Generation Company. After completion of the proposed transfer, Exelon Generation Company will be the sole owner and operator of Braidwood, Units 1 and 2.

By a separate application dated December 20, 1999, PECO requested approval of the transfer of the facility operating licenses that it holds to Exelon Generation Company. That application is being addressed separately.

Approval of the transfer of the facility operating licenses and conforming license amendments was requested by ComEd pursuant to 10 CFR 50.80 and 10 CFR 50.90. Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on March 9, 2000 (65 FR 12584). The Commission received no comments or requests for hearing pursuant to such notice.

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 Commission shall give its consent in writing. Upon review of the information in the application by ComEd, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Exelon Generation Company is qualified to hold the licenses, and that the transfer of the licenses to Exelon Generation Company is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, 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 the proposed license amendments 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 the proposed license amendments will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

The findings set forth above are supported by a safety evaluation dated August 3, 2000.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* that the transfer of the licenses as described herein to Exelon Generation Company is approved, subject to the following conditions:

(1) Exelon Generation Company shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Exelon Generation Company to its proposed direct or indirect parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of Exelon Generation Company's consolidated net utility plant, as recorded on Exelon Generation Company's books of account.

(2) ComEd shall transfer to Exelon Generation Company the decommissioning trust funds for Braidwood, Units 1 and 2, in the following minimum amounts, when Braidwood, Units 1 and 2, are transferred to Exelon Generation Company:

Braidwood, Unit 1—\$154,273,345
Braidwood, Unit 2—\$154,448,967

(3) The decommissioning trust agreements for Braidwood, Units 1 and 2, at the time the transfer of the units to Exelon Generation Company is effected and, thereafter, are subject to the following:

(a) The decommissioning trust agreements must be in a form acceptable to the NRC.

(b) With respect to the decommissioning trust funds, investments in the securities or other obligations of Exelon Corporation or affiliates thereof, or their successors or assigns are prohibited. Except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or

more nuclear power plants are prohibited.

(c) The decommissioning trust agreements for Braidwood, Units 1 and 2, must provide that no disbursements or payments from the trusts shall be made by the trustee unless the trustee has first given the Director of the Office of Nuclear Reactor Regulation 30 days prior written notice of payment. The decommissioning trust agreements shall further contain a provision that no disbursements or payments from the trusts shall be made if the trustee receives prior written notice of objection from the NRC.

(d) The decommissioning trust agreements must provide that the agreements can not be amended in any material respect without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.

(e) The appropriate section of the decommissioning trust agreements shall state that the trustee, investment advisor, or anyone else directing the investments made in the trusts shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.

(4) Exelon Generation Company shall take all necessary steps to ensure that the decommissioning trusts are maintained in accordance with the application for approval of the transfer of the Braidwood, Units 1 and 2, licenses and the requirements of this Order approving the transfer, and consistent with the safety evaluation supporting this Order.

(5) Before the completion of the transfer of Braidwood, Units 1 and 2, to it, Exelon Generation Company shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that Exelon Generation Company has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(6) After receipt of all required regulatory approvals of the transfer of Braidwood, Units 1 and 2, ComEd shall inform the Director of the Office of Nuclear Reactor Regulation, in writing, of such receipt within 5 business days, and of the date of the closing of the transfer no later than 7 business days prior to the date of the closing. Should the transfer of the licenses not be completed by July 31, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

(7) Approval of the transfer of the licenses for Braidwood, Units 1 and 2,

is conditioned upon all of the PECO and ComEd nuclear units described in the application to be transferred to Exelon Generation Company becoming owned by Exelon Generation Company contemporaneously.

It Is Further Ordered that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 7 to the cover letter forwarding this Order, to conform the licenses to reflect the subject license transfers are approved. The amendments shall be issued and made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated December 20, 1999, and supplemental submittals dated January 14, March 10, March 23, March 29, and June 16, 2000, and the safety evaluation dated August 3, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

Dated at Rockville, Maryland this 3rd day of August 2000.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50-382, License No. NPF-38 EA-00-093]

Entergy Operations, Inc., Waterford 3; Confirmatory Order Modifying License (Effective Immediately)

I

Entergy Operations, Inc. (Licensee) is the holder of Facility Operating License No. NPF-38 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on March 16, 1985. The license authorizes the operation of Waterford 3 (facility) in accordance with conditions specified therein. The facility is located on the Licensee's site in Taft, Louisiana.

II

10 CFR 73.55(a) states, in part, that the Licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high

assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety. The physical protection system shall be designed to protect against the design basis threat as stated in Paragraph 73.1(a).

Paragraph 1.3.3 of the Waterford 3 Safeguards Contingency Plan states, in part, that the security concept of operations was based on response to unauthorized entry or activity, and delay of intruders short of the vital areas by barriers and the security/response force. Further, that these basic functions are the responsibility of the security organization in order to assure protection of the plant against hostile acts of sabotage.

On October 4-7, 1999, the NRC conducted an inspection at the Waterford Steam Electric Station, Unit 3 facility to review the Licensee's compliance with 10 CFR Part 73 and its physical security plan (reference NRC Inspection Report 50-382/99-17). Based on the conduct of tabletop exercises, weaknesses were identified with the Licensee's capabilities to respond adequately to a design basis threat intrusion. Specific information about the inspection findings has been classified as Safeguards Information and is not available to the public.

As a result of these October 1999 inspection findings, the Licensee attended a management meeting in the NRC Region IV office on November 10, 1999, to discuss the identified weaknesses. During that meeting, the Licensee indicated that corrective actions would be taken to improve weapons deployment, defensive strategy, and hardened barriers, and that additional training would be conducted as appropriate. The Licensee indicated its belief that, although there were problems, its physical security plan was capable of meeting its intended function, and invited the NRC to assess its program during the conduct of force-on-force exercises. Subsequently, it was agreed that an inspection of the conduct of force-on-force exercises would occur in March 2000.

On March 20-23, 2000, the NRC conducted the follow-up inspection at the Waterford facility, which included tabletop and force-on-force exercises (reference NRC Inspection Report 50-382/00-03). In addition to identifying findings which were similar to those identified during the October 1999 inspection, the NRC identified additional significant weaknesses. Problem areas included target sets, defensive positions, armed responder

staffing levels, response time calculations, operations/security interface particularly with respect to drill/target set development and participation, command and control, guidance on the use of protective masks by the armed responders, response weapon proficiency, and administrative controls to ensure that plant conditions are evaluated to ensure protective strategy assumptions remain valid. More specific information about the inspection findings has been classified as Safeguards Information, and is not available to the public. During the exit briefing, the NRC identified an apparent violation of 10 CFR 73.55(a) and the safeguards contingency plan for the failure to demonstrate a capability to protect vital equipment by locating and stopping adversaries during force-on-force exercises. The Licensee implemented immediate interim corrective actions and compensatory measures which were satisfactory to the NRC.

A closed, predecisional enforcement conference was conducted on May 30, 2000, with the Licensee. During the conference, the Licensee identified as the root cause of its weaknesses in the physical security program a breakdown in management controls; specifically that: responsibility and accountability had not been clearly defined; repetitive management changes had resulted in a lack of organization; reduced staffing levels had affected security force training; change management practices had not been applied to a changing environment; a lack of accountability had resulted in a failure to act on available information; and Entergy Operations had not exercised adequate oversight of several critical functions being conducted by contractors. The Licensee identified several contributing causes for its deficiencies as well, including: inadequate design of the security program; poor security program implementation; a complacent culture; and inadequate training. In addition, the Licensee identified several missed opportunities to identify these problems.

During the conference, the Licensee noted the interim compensatory measures it had taken to address these problems and discussed its Security Improvement Plan (SIP) which would provide more permanent improvements. By letter dated June 8, 2000, the NRC requested additional information regarding the SIP. The Licensee responded by letter dated June 23, 2000, and revised the SIP to reflect its response. While acknowledging the interim compensatory measures the Licensee has taken, the NRC believes