

For the Nuclear Regulatory Commission.

**Carl F. Lyon,**

*Project Manager, Plant Licensing Branch IV-1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

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## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-317 and 50-318; NRC-2016-0181]

### Exelon Generation Company, LLC; Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Update Schedule for Updated Final Safety Analysis Report

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a January 29, 2016, application from Exelon Generation Company, LLC (Exelon), the licensee for Calvert Cliffs Nuclear Power Plant (CCNPP), Units 1 and 2, for Renewed Facility Operating License Nos. DPR-53 and DPR-60, which requested an exemption from the updated final safety analysis report (UFSAR) update schedule requirements in the NRC's regulations. The NRC staff reviewed this request and is granting an exemption from the requirement that an update to the UFSAR be submitted 6 months after the refueling outage for each unit. The exemption allows the update to the CCNPP UFSAR to be submitted within 6 months following the completion of each CCNPP Unit 2 refueling outage, not to exceed 24 months from the last submittal.

**DATES:** The exemption was issued on August 18, 2016.

**ADDRESSES:** Please refer to Docket ID NRC-2016-0181 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2016-0181. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the

ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if it available in ADAMS) is provided the first time that a document is referenced.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

#### FOR FURTHER INFORMATION CONTACT:

Richard V. Guzman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1030, email: [Richard.Guzman@nrc.gov](mailto:Richard.Guzman@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

### I. Background

The CCNPP is a two-unit plant, both units of which share an UFSAR. A strict interpretation of the language contained in 50.71(e)(4) of title 10 of the *Code of Federal Regulations* (10 CFR), would require Exelon to update this single UFSAR within 6 months after each unit's refueling outage. In August 1992, the NRC promulgated a rule change entitled "Reducing the Regulatory Burden on Nuclear Licensees," which affected 10 CFR 50.71(e)(4). This rule change was published in the **Federal Register** on August 31, 1992 (57 FR 39358), with an effective date of October 1, 1992, and was intended to provide a reduction in regulatory burden by, in part, providing licensees with the option to submit UFSAR updates once per refueling outage, not to exceed 24 months between successive updates, instead of annually. However, when a single UFSAR is shared between the units of a multi-unit plant and those units have staggered refueling outages (*i.e.*, one unit a year on alternating years), as is the case with CCNPP, 10 CFR 50.71(e)(4) has the net effect of still requiring that the UFSAR be updated annually. Therefore, as written, the burden reduction provided by 10 CFR 50.71(e)(4) of providing licensees with the option to submit UFSAR updates each refueling outage instead of annually can only be realized by single-unit facilities, by multi-unit facilities that maintain separate UFSARs for each unit, or by multi-unit facilities that share a single UFSAR and have non-staggered refueling outages—none of

which is the case for CCNPP.

Consequently, since CCNPP is a multi-unit facility with a single shared UFSAR and a staggered refueling outage schedule, the phrase "each refueling outage" in 10 CFR 50.71(e)(4) does not decrease the regulatory burden on the licensee as was the intent of the rule.

### II. Request/Action

Pursuant to 10 CFR 50.12, "Specific exemptions," the licensee has, by application dated January 29, 2016 (ADAMS Accession No. ML16033A048), requested an exemption from the requirements of 10 CFR 50.71, "Maintenance of records, making of reports," paragraph (e)(4), related to the schedule for submitting periodic updates to the CCNPP UFSAR. Pursuant to 10 CFR 50.12(a), the NRC may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security and when special circumstances are present.

### III. Discussion

Pursuant to 10 CFR 50.12, the NRC may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, including 10 CFR 50.71(e)(4) when: (1) The exemptions are authorized by law, will not present an undue risk to the public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under 10 CFR 50.12(a)(2), special circumstances include, among other things, when application of the specific regulation in the particular circumstances would not serve, or is not necessary to achieve, the underlying purpose of the rule.

#### Authorized by Law

In accordance with 10 CFR 50.12, the NRC may grant an exemption from the requirements of 10 CFR part 50 if the exemption is authorized by law. The exemption requested in this instance is authorized by law because no other prohibition of law exists to preclude the activities which would be authorized by the exemption. Additionally, even with the granting of the exemption, the underlying purpose of the regulation will continue to be served. The underlying purpose of 10 CFR 50.71(e)(4) is to ensure that licensees periodically update their UFSARs to assure that the UFSARs remain up-to-date such that they accurately reflect the

plant design and operation. The rule does not require that licensees review all of the information contained in the UFSAR for each periodic update. Rather, the intent of the rule is for licensees to update only those portions of the UFSAR that have been affected by licensee activities since the previous update. As required by 10 CFR 50.71(e)(4), UFSAR updates shall be submitted within 6 months after each refueling outage provided that the interval between successive updates does not exceed 24 months. Submitting updates to the single shared CCNPP UFSAR 6 months after the CCNPP Unit 2 refueling outage as proposed and not exceeding 24 months between successive updates continues to meet the intent of the regulation from the perspective of regulatory burden reduction and maintaining UFSAR information up-to-date. Therefore, this exemption request is authorized by law.

#### *No Undue Risk to the Public Health and Safety*

The underlying purpose of 10 CFR 50.71(e)(4) is to ensure that licensees periodically update their UFSARs to assure that the UFSARs remain up-to-date such that they accurately reflect the plant design and operation. The NRC has determined by rule that an update frequency not exceeding 24 months between successive updates is acceptable for maintaining UFSAR content up-to-date. The requested exemption provides an equivalent level of protection to the existing requirements because it ensures that updates to the CCNPP UFSAR are submitted with no greater than 24 months between successive updates. The requested exemption also meets the intent of the rule for regulatory burden reduction. Additionally, based on the nature of the requested exemption and that updates will not exceed 24 months from the last submittal as described above, no new accident precursors are created by the exemption; therefore, neither the probability nor the consequences of postulated accidents are increased. In conclusion, the requested exemption does not result in any undue risk to the public health and safety.

#### *Consistent With the Common Defense and Security*

The requested exemption from 10 CFR 50.71(e)(4) would allow Exelon to submit its periodic updates to the CCNPP UFSAR within 6 months following the completion of each CCNPP Unit 2 refueling outage, not to exceed 24 months from the last submittal. Neither the regulation nor the

proposed exemption thereto has any relation to security issues. Therefore, the common defense and security is not impacted by the exemption.

#### *Special Circumstances*

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. As explained above, the rule change promulgated in August 1992 (57 FR 39358; August 31, 1992) was intended to provide a reduction in regulatory burden by providing licensees with the option to submit UFSAR updates once per refueling outage, not to exceed 24 months between successive updates, instead of annually. However, as written, this burden reduction can only be realized by single-unit facilities, by multi-unit facilities that maintain separate UFSARs for each unit, or by multi-unit facilities that share a single UFSAR and have non-staggered refueling outages—none of which is the case for CCNPP. Since CCNPP is a dual-unit facility with a single shared UFSAR and staggered refueling outages, the phrase “each refueling outage” in 10 CFR 50.71(e)(4) does not decrease the regulatory burden on the licensee as was the intent of the rule. Therefore, special circumstances exist under 10 CFR 50.12(a)(2)(ii) in that application of the requirements in these particular circumstances would not serve the underlying purpose of the rule and are not necessary to achieve the underlying purpose of the rule.

#### *Environmental Considerations*

With respect to its impact on the quality of the human environment, the NRC has determined that the issuance of the exemption discussed herein meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25). Under 10 CFR 51.22(c)(25), the granting of an exemption from the requirements of any regulation of 10 CFR chapter I (which includes 10 CFR 50.71(e)(4)) is an action that is a categorical exclusion.

The NRC staff's determination that all of the criteria for this categorical exclusion are met is as follows:

I. 10 CFR 51.22(c)(25)(i): There is no significant hazards consideration.

*Staff Analysis:* The criteria for determining whether an action involves a significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of an update to the application. Therefore, there are

no significant hazard considerations because granting the exemption would not:

- (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or
- (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or
- (3) Involve a significant reduction in a margin of safety.

II. 10 CFR 51.22(c)(25)(ii): There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite.

*Staff Analysis:* The proposed action involves only a schedule change, which is administrative in nature, and does not involve any changes in the types or significant increase in the amounts of any effluents that may be released offsite.

III. 10 CFR 51.22(c)(25)(iii): There is no significant increase in individual or cumulative public or occupational radiation exposure.

*Staff Analysis:* Since the proposed action involves only a schedule change, which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

IV. 10 CFR 51.22(c)(25)(iv): There is no significant construction impact.

*Staff Analysis:* Since the proposed action involves only a schedule change, which is administrative in nature, it does not involve any construction impact.

V. 10 CFR 51.22(c)(25)(v): There is no significant increase in the potential for or consequences from radiological accidents.

*Staff Analysis:* The proposed action involves only a schedule change, which is administrative in nature and does not impact the potential for or consequences from accidents.

VI. 10 CFR 51.22(c)(25)(vi): The requirements from which the exemption is sought involve scheduling requirements and other requirements of an administrative, managerial, or organizational nature.

*Staff Analysis:* The proposed action involves scheduling requirements and other requirements of an administrative, managerial, or organizational nature because it is associated with the submittal schedule requirements contained in 10 CFR 50.71(e)(4), which stipulate that revisions to the UFSAR must be filed annually or 6 months after each refueling outage provided the interval between successive updates does not exceed 24 months.

Based on the above, the NRC staff concludes that the proposed exemption

meets the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(25). Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC's issuance of this exemption.

#### IV. Conclusions

The NRC has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances pursuant to 10 CFR 50.12(a)(2)(ii) are present. Therefore, the NRC hereby grants Exelon an exemption from the requirements of 10 CFR 50.71(e)(4) to allow Exelon to file its periodic updates to the CCNPP UFSAR within 6 months following the completion of each CCNPP Unit 2 refueling outage, not to exceed 24 months from the last submittal.

Dated at Rockville, Maryland, this 22nd Day of August 2016.

For the Nuclear Regulatory Commission.

**Anne T. Boland,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78667; File Nos. SR-BX-2016-037; SR-NASDAQ-2016-067; SR-Phlx-2016-58]

### Self-Regulatory Organizations; NASDAQ BX, Inc.; The Nasdaq Stock Market LLC; NASDAQ PHLX LLC; Notice of Filing of Amendments No. 1 and Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments No. 1, To Adopt Limit Order Protections

August 24, 2016.

#### I. Introduction

On June 24, 2016, NASDAQ BX, Inc. ("BX"), The Nasdaq Stock Market LLC ("Nasdaq"), and NASDAQ PHLX LLC ("Phlx," and together with BX and Nasdaq, "Exchanges") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposed rule changes to

adopt Limit Order Protections ("LOP"). The proposed rule changes were published for comment in the **Federal Register** on July 13, 2016.<sup>3</sup> On July 28, 2016, each of the Exchanges filed an Amendment No. 1 to its proposed rule change (collectively "Amendments No. 1").<sup>4</sup> The Commission received no comment letters on the proposals. The Commission is publishing this notice to solicit comments on the Exchanges' proposals, as modified by Amendments No. 1, from interested persons and is approving the Exchanges' proposals, as modified by Amendments No. 1, on an accelerated basis.

#### II. Description of the Proposed Rule Changes, as Modified by Amendments No. 1

Each of the Exchanges proposes to adopt LOP, which is a new mandatory feature designed to prevent certain Limit Orders at prices outside of pre-set standard limits ("LOP Limit") from being accepted by the System.<sup>5</sup>

As proposed, LOP would apply to all Quotes and Orders, including any modified Orders,<sup>6</sup> but would not apply to Market Orders, Market Maker Peg Orders, and Intermarket Sweep Orders ("ISOs").<sup>7</sup> According to the Exchanges, Market Maker Peg Orders are designed to assist Market Makers with meeting their quoting obligations, and Market Makers have more sophisticated

infrastructures than other market participants and are able to manage their risk, particularly with respect to quoting, using tools that may not be available to other market participants.<sup>8</sup> Moreover, according to the Exchanges, the ISO designation on an order presumes that the market participant has satisfied its obligation to route to all protected quotes with a price that is superior to the limit price of the ISO.<sup>9</sup>

As proposed, LOP would be operational each trading day but would not be operational during trading halts and pauses.<sup>10</sup> On Nasdaq, LOP also would not be operational for orders designated for the opening, re-opening, and closing crosses and initial public offerings.<sup>11</sup> According to Nasdaq, the opening, re-opening, closing, and initial public offering processes already have their own price protections, and these processes involve certain price discovery features that are important in arriving at the best price.<sup>12</sup>

As proposed, LOP would reject incoming Limit Orders that exceed the LOP Reference Threshold.<sup>13</sup> The LOP Reference Threshold for buy orders would be the LOP Reference Price (*i.e.*, the current National Best Offer) plus the applicable LOP Limit and the LOP Reference Threshold for sell orders would be the LOP Reference Price (*i.e.*, the current National Best Bid) minus the applicable LOP Limit.<sup>14</sup> The LOP Limit would be the greater of 10% of the LOP Reference Price or \$0.50 for all securities across all trading sessions.<sup>15</sup> LOP would not apply if there is no established LOP Reference Price (*e.g.*, there is a one-sided quote), or if the National Best Bid, when used as the

<sup>3</sup> See Securities Exchange Act Release Nos. 78244 (July 7, 2016), 81 FR 45320 ("BX Notice"); 78246 (July 7, 2016), 81 FR 45332 ("Nasdaq Notice"); and 78245 (July 7, 2016), 81 FR 45337 ("Phlx Notice").

<sup>4</sup> Each of the Exchanges specified in its Amendment No. 1 that LOP would not apply if there is no established LOP Reference Price, or if the National Best Bid, when used as the LOP Reference Price, is equal to or less than \$0.50. In addition, in its Amendment No. 1, Nasdaq clarified that it reserves the ability to temporarily disable LOP for certain securities in the event of extraordinary market conditions and explained the process for temporarily disabling LOP. Nasdaq also clarified that LOP would not be operational for orders designated for the re-opening cross, and further explained the existing protections for the Nasdaq opening, re-opening, and closing crosses and initial public offerings. Amendment No. 1 to the BX filing is available at <https://www.sec.gov/comments/sr-bx-2016-037/bx2016037-1.pdf>. Amendment No. 1 to the Nasdaq filing is available at <https://www.sec.gov/comments/sr-nasdaq-2016-067/nasdaq2016067-1.pdf> ("Nasdaq Amendment No. 1"). Amendment No. 1 to the Phlx filing is available at <https://www.sec.gov/comments/sr-phlx-2016-58/phlx201658-1.pdf>.

<sup>5</sup> See proposed BX Rule 4757(d); proposed Nasdaq Rule 4757(c); and proposed NASDAQ OMX PSX ("PSX") Rule 3307(f).

<sup>6</sup> The Exchanges state that if an order is modified, LOP would review the order anew and, if LOP is triggered, the modification would not take effect and the original order would be rejected. See BX Notice, *supra* note 3, at n.5; Nasdaq Notice, *supra* note 3, at n.4; and Phlx Notice, *supra* note 3, at n.4.

<sup>7</sup> See proposed BX Rule 4757(d)(i); proposed Nasdaq Rule 4757(c)(i); and proposed PSX Rule 3307(f)(i).

<sup>8</sup> See BX Notice, *supra* note 3, at 45321; Nasdaq Notice, *supra* note 3, at 45333; and Phlx Notice, *supra* note 3, at 45338.

<sup>9</sup> See BX Notice, *supra* note 3, at 45321; Nasdaq Notice, *supra* note 3, at 45333; and Phlx Notice, *supra* note 3, at 45338. See also BX Rule 4703(j); Nasdaq Rule 4703(j); and PSX Rule 3301B(j) (discussing ISOs).

<sup>10</sup> See proposed BX Rule 4757(d)(i); proposed Nasdaq Rule 4757(c)(i); and proposed PSX Rule 3307(f)(i).

<sup>11</sup> See proposed Nasdaq Rule 4757(c)(i) and Nasdaq Amendment No. 1, *supra* note 4.

<sup>12</sup> See Nasdaq Amendment No. 1, *supra* note 4.

<sup>13</sup> Specifically, a buy Limit Order would be rejected if the price of the Limit Order is greater than the LOP Reference Threshold and a sell Limit Order would be rejected if the price of the Limit Order is less than the LOP Reference Threshold. See proposed BX Rule 4757(d)(v); proposed Nasdaq Rule 4757(c)(v); and proposed PSX Rule 3307(f)(v).

<sup>14</sup> See proposed BX Rule 4757(d)(iii)-(iv); proposed Nasdaq Rule 4757(c)(iii)-(iv); and proposed PSX Rule 3307(f)(iii)-(iv).

<sup>15</sup> See proposed BX Rule 4757(d)(ii); proposed Nasdaq Rule 4757(c)(ii); and proposed PSX Rule 3307(f)(ii).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.