



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF THE COMMISSIONER

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Governor

KIM GUADAGNO
Lt. Governor

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BOB MARTIN
Commissioner

IN THE MATTER OF:

EXELON GENERATION COMPANY, LLC.
OYSTER CREEK GENERATING STATION
741 ROUTE 9
FORKED RIVER, NEW JERSEY 08731
NEA# 170001-757910

ADMINISTRATIVE CONSENT ORDER

This Administrative Consent Order (hereinafter "ACO") is entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "NJDEP" or "Department") by N.J.S.A. 13:1D-1 et seq., the Radiation Protection Act, N.J.S.A. 26:2D-1 et seq., and the Radiation Accident Response Act (the "Act"), N.J.S.A. 26:2D-37 et seq.

FINDINGS

1. Exelon Generation Company, LLC ("Exelon") owns and operates the Oyster Creek Nuclear Generating Station ("Station" or "Facility"), a nuclear fueled electric generating station (SIC Code 4911) that is a "nuclear facility" within the meaning of the Act, N.J.S.A. 26:2D-39(c). The Facility is located at 741 Route 9, Forked River, New Jersey 08731 on the west side of Route 9, between the South Branch of the Forked River and Oyster Creek, two tributaries of Barnegat Bay. The Facility consists of a single boiling water reactor rated to produce 670 megawatts, and was constructed between December 1964 and September 1969 and operation commenced in December 1969. The Facility

operates under a license issued by the United States Nuclear Regulatory Commission ("NRC"), which most recently renewed the license on April 1, 2009 for a 20-year time period, to 2029.

2. Exelon has agreed that it will permanently cease power generation operations at the Facility no later than December 31, 2019 under the terms provided in an Administrative Consent Order executed on December 9, 2010 by Exelon and the Department ("the 2010 ACO," Attachment 1 hereto). For purposes of this ACO, the terms "Termination" and "Terminate Operations" shall be used to refer to the permanent cessation of power generation operations at the Facility. Notwithstanding the preceding sentence or any other provisions of this ACO, the parties agree that other ongoing and necessary operations and activities at the Station, such as decommissioning activities including the activities contained in the Facility's Post-Shutdown Decommissioning Activities Report ("PSDAR"), shall continue after Termination and may require the use of spent fuel pools and Independent Spent Fuel Storage Installations ("ISFSI"), also known as "dry cask storage".
3. Upon Termination, Exelon will initiate actions in accordance with NRC regulations, including 10 C.F.R. § 50.82(a), to certify the permanent cessation of power operations at the Facility. Such actions include the removal of all reactor fuels from the reactor core and placing the fuels into the spent fuel pool and/or dry cask storage for continued cooling and secured storage purposes.
4. Upon certification of permanent defueling, Exelon will initiate decommissioning activities at the Facility in accordance with the Facility's PSDAR filed with the NRC

under 10 CFR 50.82(a)(4)(i). The PSDAR is to be filed no later than December 31, 2018, as specified in the 2010 ACO.

5. It is anticipated that Exelon will file exemption requests with the NRC seeking an exemption from certain radiological emergency planning requirements of 10 CFR 50.47 and 10 CFR Part 50, Appendix E. It is further anticipated that the NRC will grant Exelon's exemption requests, as it has done with regard to exemption requests filed by other recently shut down nuclear power plants.
6. Regardless of any request by Exelon for an exemption from the Emergency Planning ("EP") requirements of 10 CFR 50.47 et. seq. and Appendix E and regardless of any relief NRC may provide, in order to ensure that the Department and N.J State Police Office of Emergency Management ("SPOEM") continue to meet their collective statutory mandate to provide the maximum protection to the citizens of New Jersey from threats to their health and welfare which may result from a radiation accident at the Oyster Creek nuclear Facility or ISFSI, Exelon and the Department have agreed to entry of this ACO and to be bound by its terms and conditions.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

I. TERMINATION REQUIREMENTS

7. Exelon shall continue to meet its obligations as set forth in the 2010 ACO, including its obligation to terminate power generation operations on or before December 31, 2019. Except with respect to the obligations set forth in paragraph 2, second sub-paragraph, and paragraph 35 of the 2010 ACO, which obligations are modified by Section VI of this

ACO, nothing herein shall alter the obligations set forth in the 2010 ACO or the Department's authority to enforce those obligations.

8. Exelon agrees that:

- A. After Termination, Exelon will retain spent fuel, high-level waste, and other materials in the reactor vessel, spent fuel pool and/or its ISFSI as authorized by the Facility's NRC license, for a period of time that is consistent with NRC regulations and license requirements.
- B. Exelon will transfer all fuel to the ISFSI as soon as technically and financially feasible and in accordance with the Facility's PSDAR.
- C. Once the U.S. Department of Energy ("DOE") begins acceptance of waste for interim storage, long-term disposal or other purpose, Exelon will invoke, exercise, pursue, and/or demand all available legal priorities and avenues for expedited removal of the spent fuel rods and other high level radioactive waste from the site, to the extent consistent with the existing terms of the DOE Standard Contract (see 10 CFR Part 961) and any settlement between DOE and Exelon.

II. POST-SHUT DOWN EMERGENCY PLANNING REQUIREMENTS

9. Following Termination and until all spent fuel is secured into the ISFSI, Exelon shall comply with the following obligations, subject to and in accordance with the regulatory requirements of the NRC:

- A. Continue to provide unescorted access for authorized Bureau of Nuclear Engineering (BNE) personnel to all Facility protected areas

- and owner controlled areas;
- B. Continue to provide an on-site office for BNE staff;
 - C. Continue to provide onsite and remote access to BNE staff of Exelon's computer network in order to access work plans, daily update reports, and decommissioning progress reports;
 - D. Initially and annually, provide BNE staff with a point of contact person that has direct knowledge of the Facility's radiological safety systems and equipment. Exelon shall notify BNE in writing within ten calendar days of any changes in point of contact personnel;
 - E. Copy BNE on all of Exelon's formal submittals to the NRC related to decommissioning and on decommissioning reports to outside agencies;
 - F. Continue to monitor and provide remote access to BNE staff to Oyster Creek's Effluent and Safety Data including but not limited to:

ventilation exhaust monitoring, area radiation monitoring, spent fuel pool level and temperature, and water discharge monitoring;
 - G. Continue to maintain on-site meteorological equipment and provide BNE remote access to collected real-time and meteorological data in accordance with site Emergency Plan procedures. Meteorological data shall include wind speed, direction and temperature at the 380 and 33 foot elevations. In the event data from onsite equipment is not available, the equipment shall be returned to service as soon as

technically feasible;

- H. Provide BNE staff with a roster of emergency personnel including their position within the site emergency plan. Identify Oyster Creek Site staff members who will meet quarterly with BNE staff to coordinate schedules for drills and exercises, review and discuss any changes to Exelon's onsite security plan or the state's offsite response plan, and ensure lines of communication are functioning through training and exercises as needed;
- I. Provide notification within one hour of initiation of any emergency event to both the BNE and to the SPOEM through the currently established means of communication with the Regional Operations and Intelligence Center Duty Officer;
- J. Maintain operability of notification sirens for state or county office of emergency management use as specified in the RERP to alert the public of any emergency conditions at the site and maintain siren operability until all spent fuel is in dry cask storage;
- K. Identify qualified personnel responsible for making offsite dose projections and coordinating the development of dose projections with the BNE assessment team and notify BNE in writing within ten calendar days of any changes in such qualified personnel;
- L. Continue to maintain full participation in state, county or local (onsite and

offsite) exercises annually and testing of communications capabilities quarterly;

- M. Continue to maintain availability of electrical power and other physical requirements in support of the operation of the on-site Continuous Radiological Environmental Surveillance Telemetry (CREST) monitors;
- N. Provide access to BNE to, and permit the installation of, additional CREST monitor(s) should the ISFSI need to be expanded;
- O. Support state efforts in performing routine testing of a public alert and notification system;
- P. Annually, provide communication on the Facility's emergency plan to the public located within—a 10-mile radius of the Facility via brochures through the summer of 2020 and the Site's external website after that time; and,
- Q. Conduct annual Stakeholder Information Forums to inform the public of Emergency Management Plans and Facility operating and decommissioning status and to solicit public comments. Establish and maintain a website that is accessible to the public as another venue to disseminate this information.

10 From the point when all spent fuel is secured into the ISFSI and until all spent fuel is removed from the site, Exelon shall comply with the following obligations, subject to and in accordance with the regulatory requirements of the NRC:

- A. Continue to maintain and provide unescorted access for BNE personnel to the ISFSI. For all other areas of the Facility, upon request, provide access to BNE personnel for the purposes of observing progress towards decommissioning and determining compliance with this ACO;
 - B. Provide BNE, at its request, reasonable access to Facility work plans related to decommissioning activities and planned work;
 - C. Copy BNE on all of Exelon's formal submittals to the NRC related to decommissioning and on decommissioning reports to outside agencies;
 - D. Provide BNE staff with a point of contact who has direct knowledge of the Facility's radiological safety systems and equipment. Exelon shall notify BNE in writing within ten calendar days of any changes in point of contact personnel;
 - E. Continue to maintain availability of electrical power and other physical requirements to support operation of the ISFSI CREST monitors; and,
 - F. Conduct annual Stakeholder Information Forums to inform the public of Emergency Management Plans and Facility decommissioning status and to solicit public comments. Establish and maintain a website that is accessible to the public as another venue to disseminate this information.
11. Exelon will establish an environmental monitoring program in accordance with all state and federal requirements.

III. ASSESSMENTS

12. In order to defray the expenses of State agencies in discharging their responsibilities under the Act after Exelon Terminates Operations, Exelon shall pay the assessments set forth in paragraphs 13-15 below.
13. Exelon shall pay \$2,500,000.00 the first fiscal year after it Terminates Operations. Exelon shall make payment no later than July 31 of the first fiscal year after it Terminates Operations. For purposes of this ACO, a fiscal year begins July 1 and ends June 30 of the following year.
14. Each subsequent July 1st in which spent fuel remains within the reactor vessel or spent fuel pool, Exelon shall pay \$1,500,000.00, which shall cover the fiscal year beginning that July 1 and ending the following June 30. Payment shall be made no later than July 31 of each fiscal year. The Department may adjust this amount periodically based on the Bureau of Labor Statistics's Consumer Price Index or other generally recognized method of measuring inflation. If, at any time after July 1 and before the next fiscal year, all of the spent fuel has been moved to the ISFSI, the Department agrees to pro-rate, on a monthly basis, the assessment paid for that fiscal year and to give Exelon a credit equal to the prorated amounts for each full month in the applicable fiscal year in which all of the spent fuel is located at the ISFSI. The Department will issue a reimbursement to Exelon in the full amount of the credit or apply the full amount of the credit to future assessments due pursuant to paragraph 15 below.
15. Exelon shall pay \$75,000.00 each fiscal year following movement of all spent fuel to the ISFSI and until the Facility is decommissioned. Payment shall be made no later than July

31 of each fiscal year, unless a credit is owed to Exelon pursuant to Paragraph 14 above, in which case the amount due by Exelon will be reduced by the amounts to be credited until such time as the credit is reduced to zero. The Department may adjust this assessment amount periodically based on the Bureau of Labor Statistics's Consumer Price Index or other generally recognized method of measuring inflation.

16. Payment of assessments listed in paragraphs 13, 14 or 15 above shall be made by cashier's or certified check payable to "Treasurer, State of New Jersey" and shall be submitted with the appropriate assessment invoice to the following address:

Division of Revenue
New Jersey Department of Treasury
P.O. Box 417
Trenton, New Jersey 08625-0417

IV. STIPULATED PENALTIES

17. Except as provided in Section V (Force Majeure) of this ACO, Exelon may be subject to stipulated penalties for failure to comply with Paragraphs 9 through 16 and/or Section VI of the ACO in accordance with the following:

Calendar Days Not in Compliance	Stipulated Penalties Per Calendar Day
1 st through 7 th day	\$250
8 th through 14 th day	\$1000
15 th day and beyond	\$2500

18. All stipulated penalties shall be due and payable twenty-one (21) calendar days following Exelon's receipt of a written demand for stipulated penalties from the Department.

Payment of stipulated penalties shall be made by check payable to "Treasurer, State of New Jersey" and shall be submitted to the following address with the appropriate penalty invoice:

Division of Revenue
New Jersey Department of Treasury
P.O. Box 417
Trenton, New Jersey 08625-0417

19. If Exelon disputes its obligation to pay part or all of a demanded stipulated penalty, it may avoid the imposition of a separate stipulated penalty for failure to pay the disputed penalty by depositing the disputed amount in a commercial escrow account pending resolution of the matter. If the dispute is thereafter resolved in Exelon's favor, the escrowed amount, plus any accrued interest, shall be returned to Exelon. If the dispute is resolved in NJDEP's favor, NJDEP shall be entitled to the escrowed amount determined to be due by the Court, plus any accrued interest.
20. If Exelon fails to pay stipulated penalties, NJDEP may institute civil proceedings to collect such penalties pursuant to N.J. Court Rules R. 4:67-6 and R. 4:70, assess civil administrative penalties for the violations of this ACO, or take any other appropriate enforcement action authorized by law. Exelon reserves the right to appeal or otherwise challenge any assessment of or demand for stipulated penalties and any associated enforcement action under this ACO.
21. The payment of stipulated penalties does not alter Exelon's responsibility to complete all requirements of this ACO.

V. FORCE MAJEURE

22. For the purpose of this ACO, a “Force Majeure Event” means an event which causes a delay in performing or an inability to perform any requirement or obligation of this ACO which has or will be caused by circumstances beyond the control of Exelon, and which Exelon could not have prevented by the exercise of due diligence.
23. If a Force Majeure Event occurs, Exelon shall notify NJDEP in writing as soon as practicable, but in no event later than seven (7) business days following the date Exelon first knew, or within ten (10) business days following the date Exelon should have known by the exercise of due diligence -- whatever comes earlier -- that the Force Majeure Event caused or may cause such delay or inability to perform. In this notice Exelon shall reference this Paragraph and describe the anticipated length of time that the delay or inability to perform may persist, the cause or causes of the delay or inability to perform, the measures taken or to be taken by Exelon to prevent or minimize the delay or inability to perform, and the schedule by which those measures will be implemented. Exelon shall adopt all reasonable measures to avoid or minimize such delays or inability to perform. NJDEP shall notify Exelon in writing regarding its claim of Force Majeure within fifteen (15) business days of receipt of the Force Majeure notice provided under this section. If NJDEP determines that a) a delay or inability to perform has been or will be caused by a Force Majeure Event, and b) Exelon has taken all necessary actions to prevent or minimize the delay or inability to perform, the Parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay or inability to perform for a period of time equivalent to the delay or inability to perform actually

caused by such circumstances.

24. Exelon shall not be liable for stipulated penalties for a period where the delay or inability to perform is caused by a Force Majeure Event under this Section V.
25. If NJDEP denies Exelon's claim that a Force Majeure Event prevented it from performing the requirements set forth in paragraphs 9-16 or Section VI herein, Exelon must pay the penalties as stipulated in Section IV of this ACO. For any stipulated penalties that Exelon may be subject to because of NJDEP's denial of Exelon's claim of Force Majeure, Exelon may refuse NJDEP's demand for payment of such stipulated penalties and may raise whatever defenses it is otherwise entitled to assert in any action brought by NJDEP to enforce any demand for payment.
26. Exelon shall bear the burden of proving that any delay in performing or failure to perform any requirement of this ACO was caused or will be caused by a Force Majeure Event. Exelon shall also bear the burden of proving the duration and extent of any delay attributable to a Force Majeure Event. An extension of one compliance date based on a particular Force Majeure Event may, but will not necessarily, result in an extension of a subsequent compliance date.
27. Unanticipated or increased costs or expenses associated with Exelon's performance of its obligations under this ACO shall not constitute a Force Majeure Event. A breach of any of Exelon's contracts may, but shall not automatically, constitute a Force Majeure Event.
28. The Parties agree that, depending upon the circumstances related to an event and Exelon's responses to such circumstances, the following kinds of events could also qualify as a Force Majeure Event within the meaning of this Section: acts of God, acts of

war, and acts of terrorism.

VI. APPLICABILITY AND SALE OR TRANSFER OF FACILITY OWNERSHIP

29. The provisions of this ACO shall apply to and be binding upon the Department, upon Exelon and its successors and assigns, and upon Exelon's officers, employees, and agents solely in their capacities as such. Exelon's obligations under this ACO are independent of, and in addition to, any applicable requirements under federal and state law.
30. If Exelon sells or transfers all or part of its Operational or Ownership Interest in the Facility or ISFSI to an entity or entities unrelated to Exelon ("Third Party"), at least thirty (30) days prior to the closing date of any such sale or transfer, Exelon shall advise the Third Party in writing of the existence of this ACO and shall provide a copy of this ACO to the Third Party. Exelon shall provide written notice of such sale or transfer to NJDEP, pursuant to Section VII (General Provisions) of this ACO, at least thirty (30) days prior to the closing date of such sale or transfer. For purposes of this ACO, "Operational or Ownership Interest" means Exelon's legal or equitable operational or ownership interest.
31. This ACO shall not be construed to prohibit a contractual allocation – as between Exelon and any Third Party – of the burdens of compliance with this ACO based on an allocation of Operational or Ownership Interest. This ACO shall not be construed to impede Exelon's right to sell or transfer all or any part of its Operational or Ownership Interest in the Facility or ISFSI to a Third Party as long as the requirements of this Article VI are met.
32. Provided the NRC approves a transfer of all or a part of Exelon's Operational or Ownership Interest in the Facility or ISFSI to a Third Party, Exelon shall require as an

explicit, written condition of said transfer that the Third Party assume, for the benefit of NJDEP, all of the rights, obligations and liabilities of the ACO applicable to the purchased or transferred Ownership or Operational Interests in the Facility or ISFSI. Upon the closing date of any transfer of an Operational or Ownership Interest in the Facility or ISFSI, Exelon shall provide NJDEP with a copy of the section or provision of the transfer agreement pursuant to which the Third Party agrees to assume the obligations and liabilities of the ACO for the benefit of NJDEP.

33. Provided the NRC approves a transfer of all or a part of Exelon's Operational or Ownership Interest in the Facility or ISFSI to a Third Party, Exelon and the Third Party may execute an amendment to this ACO, which NJDEP shall agree to and acknowledge, that relieves Exelon of liability under this ACO for, and makes the Third Party liable for, all obligations and liabilities of this ACO applicable to the purchased or transferred Ownership or Operational Interests in the Facility or ISFSI.
34. In the event that Exelon and a Third Party execute an amendment to this ACO as provided in paragraph 33, above, Exelon thereafter shall not be responsible for the actions or omissions of the Third Party pertaining to the ACO.
35. If Exelon decides to sell or transfer its Operational or Ownership Interest, in whole or in part, in the Facility or ISFSI to a Third Party, the State of New Jersey will not intervene in any proceeding as long as Exelon complies with all statutory or regulatory requirements and this Article VI.

VII. GENERAL PROVISIONS

36. Obligations or penalties imposed by this ACO are imposed pursuant to the police powers

of the State of New Jersey for the enforcement of law and the protection of public health, safety, welfare and the environment. No obligations imposed by this ACO are intended to constitute a debt, claim, penalty or other civil action that could be limited or discharged in a bankruptcy proceeding. Obligations imposed by this ACO are not subject to the automatic stay of 11 U.S.C. § 362(a), but, instead, fall within the exemption from the automatic stay at 11 U.S.C. § 362(b)(4).

37. Notwithstanding any exemption requests Exelon files with the NRC or exemption terms granted by the NRC, Exelon agrees to comply with the conditions of this ACO.
38. Nothing contained in this ACO restricts the ability of the Department to raise the above Findings in any other proceeding.
39. This ACO shall be fully enforceable as a final Administrative Order in the New Jersey Superior Court upon the filing of a summary action for compliance pursuant to N.J.S.A. 13:1D-1 et seq. and R. 4:67-6, and may also be enforced in the same manner as an Administrative Order issued by the Department pursuant to these same authorities.
40. Exelon agrees not to contest the terms or conditions of this ACO except that Exelon may contest the Department's interpretation or application of such terms or conditions in any action brought to enforce this ACO.
41. This ACO shall not relieve Exelon from any obligation to obtain and comply with all required federal, state and local permits, or from any obligation to comply with all applicable statutes, codes, rules, regulations and orders. Nothing in this ACO precludes the Department from taking enforcement action against Exelon for any violation of applicable law or precludes Exelon from raising any and all objections and challenges to

the Department's jurisdiction or authority over any matter at issue or enforcement action which is outside the scope of obligations set forth in this ACO.

42. Nothing in this ACO shall relieve Exelon from its obligations to remediate the Facility site or ISFSI as required by applicable federal and state law.
43. No modification or waiver of this ACO shall be valid except by written amendment executed by Exelon and the Department.
44. Unless otherwise specifically provided herein, any communication made by Exelon to the Department pursuant to this ACO shall be sent by certified mail and email to:

Bureau of Nuclear Engineering
PO Box 420, Mail Code 25-01
33 Arctic Parkway
Trenton, New Jersey 08625-0420
Attention: Patrick Mulligan
E-mail: patrick.mulligan@dep.nj.gov

Unless otherwise specifically provided herein, any communication by the Department to Exelon pursuant to this ACO shall be sent by certified mail and by email to:

Senior Vice President Regulatory Affairs and General Counsel
Exelon Generation Company, LLC
4300 Winfield Road
Warrenville, Illinois 60555
Attention: Bradley Fewell
E-mail: bradley.fewell@exeloncorp.com

With a copy to

Site Decommissioning Plant Manager
Oyster Creek Nuclear Generating Station
Exelon Generation Company, LLC
741 Route 9
Forked River, New Jersey 08731
Attention: Jeffrey Dostal
E-mail: Jeffrey.dostal@exeloncorp.com

45. Exelon shall not construe any unwritten or informal advice, guidance, suggestions, or comments by the Department, or by persons acting on behalf of the Department, as relieving Exelon of its obligations under this ACO.
46. In addition to the Department's statutory and regulatory rights to enter and inspect, Exelon shall allow the Department and its authorized representatives access to the site at all times for the purpose of determining compliance with this ACO.
47. The Department reserves all statutory and common law rights to require Exelon to take additional action(s) if the Department determines that such actions are necessary to protect public health, safety, welfare and the environment. Nothing in this ACO shall constitute a waiver of any statutory or common law right of the Department to require such additional measures should the Department determine that such measures are necessary. However, nothing in this ACO creates authority within the Department to regulate in the field of radiological health and safety to the extent such regulation may be preempted, and Exelon has not, and is not, waiving any right to challenge Department action that intrudes upon that preempted field.
48. This ACO shall be governed and interpreted under the laws of the State of New Jersey.
49. If any provision of this ACO is found invalid or unenforceable, the remainder of this ACO shall not be affected thereby and each provision shall be valid and enforced to the fullest extent permitted by law. The Department does, however, retain the right to terminate this ACO if, after such finding, it determines that the remaining ACO does not serve the purpose for which it was intended.
50. This ACO, together with the December 9, 2010 ACO, represents the entire integrated

agreement between the Department and Exelon on the matters contained herein. The parties to this ACO acknowledge that there are no representations, agreements or understandings relating to this ACO other than those expressly contained herein or in the December 9, 2010 ACO.

51. The Department reserves the right to unilaterally terminate this ACO in the event Exelon violates its terms and to take any additional enforcement action it deems necessary.
52. This ACO shall terminate when all spent fuel is removed from the site.
53. This ACO shall become effective upon the execution hereof by both parties, subject to completion of any required public participation process.
54. Each undersigned representative of Exelon and the Department certifies that he or she is fully authorized to enter into and execute this ACO and legally bind the entity for which he or she signs. This ACO may be executed in one or more counterparts, each of which shall be deemed an original as to any party having executed it, but all of which together shall constitute one and the same document.

[SIGNATURE PAGE ON PAGE 20]

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NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION

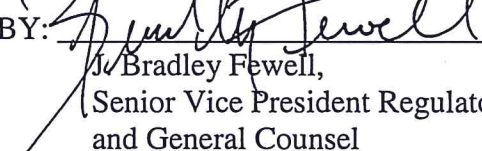
DATE: 1/9/2018

BY: 
Bob Martin, Commissioner

By this signature, I certify that I have full authority
to execute this document on behalf of NJDEP.

EXELON GENERATION COMPANY, LLC

DATE: 1-8-2018

BY: 
J. Bradley Fewell,
Senior Vice President Regulatory Affairs
and General Counsel

By this signature, I certify that I have full authority
to execute this document on behalf of EXELON
GENERATION COMPANY, LLC