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April 17, 2015

Ms. Sophia Angelini
U.S. Department of Energy
Office of the General Counsel
Mailstop GC-72
Section 934 Rulemaking
1000 Independence Avenue, SW
Washington, DC 20585

Subject: Docket Number DOE-HQ-2014-0021 – RIN 1990-AA39; Exelon Generation Company, LLC Comments on Proposed Rulemaking (NOPR), 79 Fed. Reg. 75,076 (Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation)

Dear Ms. Angelini:

Exelon Generation Company, LLC (“Exelon Generation”) and its subsidiary Exelon Nuclear Partners, LLC (“ENP”), referred to hereafter, collectively as “Exelon,” submit these comments on the Department’s proposed regulations in the subject proceedings to be published as 10 C.F.R. Part 951 (“Part 951”). In general, Exelon supports and endorses the comments submitted by the Nuclear Energy Institute (“NEI”) that the methodology used to determine a nuclear supplier’s cost allocation be revised to make it simple, transparent and insurable. Exelon reserves comment on most of the specifics until the additional supplier information and data is made available.

However, Exelon does not support the imposition of a minimum contribution from all suppliers. In its comments, NEI notes that some members of the industry favor imposition of a minimum contribution from each nuclear supplier. Exelon is not among the “some in the industry” who favor the imposition of a minimum contribution. The imposition of a minimum contribution applicable to all suppliers is inconsistent with the statutory requirement that the allocation be equitable and risk-informed, and that the Secretary may consider excluding nuclear suppliers with a *de minimus* share of the contingent cost. Such a requirement would disproportionately impact smaller suppliers by placing more of a burden on those suppliers and alleviating the burden on larger suppliers. Many of the smaller suppliers who will be impacted by such a requirement are not members of NEI and may not even be aware of or following this rulemaking, particularly since the alternative methodologies set forth in the NOPR apply only to nuclear suppliers whose materials and services would be subject to 10 CFR Part 21 if sold in the United States. Moreover, the rationale for the minimum contribution (to avoid the prospect that DOE would have to pursue or litigate very small claims) appears to assume that smaller nuclear suppliers would not comply with the law, and is inconsistent

with later comments that nuclear suppliers should not be required to demonstrate financial assurance and that any penalties for non-payment be discretionary.

In addition, while Exelon takes no position at this time as to whether some form of cap on an individual nuclear supplier's liability may be reasonable, Exelon believes that it would be inequitable to establish such a cap based upon an arbitrary dollar amount, such as \$5 million (particularly in the absence of supplier data and information). Given the statutory prohibition against shifting the liability to Federal taxpayers, such an arbitrary cap would shift the cost to small nuclear suppliers whose share of the cost allocation would become disproportionate to their share of the market. Such a result is contrary to the stated objectives of creating a risk-informed assessment formula, encouraging new entry into the global nuclear market, and leveling the playing field for all participants. .

With respect to the proposal in the NOPR itself, Exelon submits these additional comments to request clarification of the proposed regulation's definitions of "covered nuclear supplier" and "reportable transaction" for the purpose of ensuring that a nuclear supplier which provides services as the operator of an overseas covered installation is not subjected to double liability in the event of a covered incident, a matter not addressed in the NEI comments and of particular concern to Exelon.

Exelon Generation owns and operates or provides support services to twenty-three reactors at fourteen sites in Illinois, Maryland, Nebraska, New York and Pennsylvania. ENP offers a range of nuclear management and support services to existing and new nuclear owners and operators inside and outside the United States. ENP's services range from providing consulting assistance in the area of new nuclear development to assisting with performance improvement at existing nuclear plant, all from the perspective of an experienced nuclear owner and operator. Although the scope of ENP's services abroad has so far been limited to time-and-material consultative engagements, Exelon is interested in pursuing comprehensive management services contracts with covered installations where Exelon would assume substantial responsibility for the day-to-day management of a foreign nuclear facility, up to and potentially including the role of "Operator" of a "covered installation" as those terms are used in the Convention on Supplementary Compensation for Nuclear Damage ("Convention") and Part 951, respectively (hereinafter referred to as "Operator Services").

For the reasons set forth below, Exelon respectfully requests that the Department revise Part 951 to expressly (1) exclude provision of Operator Services to a covered installation from the definition of "covered nuclear supplier" and "reportable transaction" in Part 951 and (2) more broadly, exclude an entity that provides Operator Services from responsibility under Part 951 for a retrospective premium for the potential liability of the United States for nuclear damage as a result of its adherence to the Convention. As discussed in more detail, below, inclusion of Operator Services within the scope of Part 951 is inconsistent with the structure and intention of the Convention and contrary to the

interests of the United States in promoting the safe use of commercial nuclear power around the world.

While Exelon agrees, generally, that 10 CFR Part 21 is an acceptable, risk-informed criterion for identifying those nuclear suppliers which should be subject to a cost allocation under the proposed regulations; without clarification in the regulations, reliance on 10 CFR Part 21 in Part 951 would inadvertently sweep up a U.S. nuclear supplier of Operator Services. Section 951.3 defines “*covered nuclear supplier*” as meaning “a nuclear supplier whose goods or services, if supplied in the United States, would be subject to the requirements of 10 CFR Part 21.” In 10 CFR §21.21(a)(1), an entity is subject to Part 21 if it is “applying for or holding a license or permit ... to ... *operate* ... any production or utilization facility or independent spent fuel storage installation (ISFSI)...” (emphasis added). Therefore, entities that provide Operator Services to a covered installation would, if in the United States, fall within the requirements of 10 CFR Part 21 and, therefore, be covered suppliers under the proposed regulations.

Similarly, Section 951.3 defines a “reportable transaction” to mean “any transaction by a covered nuclear supplier after 1959 to provide any item listed in appendix A of this part, or after 2007 for items listed in appendix B of this part, for use in the design, construction, operation, or decommissioning of any nuclear installation outside the United States or in the transportation outside the United States of nuclear material to or from a nuclear installation.” Both appendix A and appendix B include “services for the ... operation ... of the nuclear installations identified below....” Thus, providing Operator Services to covered installation, i.e., Operator Services, could potentially be interpreted as being a reportable transaction.

By its terms, the system for supplemental compensation established by the Convention applies to “nuclear damage for which an operator of a nuclear installation ... in the territory of a Contracting Party is liable” under the Vienna Convention, Paris Convention, or national law mentioned in paragraph 1(b) of Article II of the Convention. Indeed, Article 3 of the Convention’s Annex lays out explicit operator liability requirements that must be incorporated into the national law of any Contracting Party who is not a party to the Vienna or Paris conventions. Moreover, each Installation State is required to ensure the availability of 300 million Special Drawing Rights under Article III of the Convention, which will likely be underwritten by insurance or other financial protection paid for by the operators in that nation. Thus, it would be inconsistent with the structure of the Convention, and fundamentally unfair, to require a U.S. entity which provides Operator Services to the covered installation, and is liable as Operator under the laws of the Installation State, to also be liable for a retrospective premium under Part 951 for those same Operator Services.

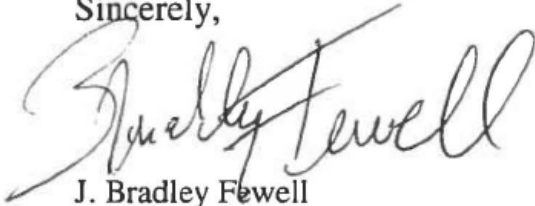
Finally, imposing double liability on U.S. entities providing Operating Services at covered installations is contrary to the interests of the United States in promoting the safe

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use of commercial nuclear power around the world. The knowledge, experience and safety record of U.S. nuclear plant operators like Exelon is the best in the world. It is, therefore, in the best interests of the United States to encourage U.S. operators to extend that knowledge, experience and safety record to overseas installations by providing Operator Services to those installations. Excluding Operator Services and those that provide them from the definitions of “reportable transactions” and “Covered Suppliers, and from the scope of Part 951 in its entirety, will encourage U.S. operators to expand their operations overseas.

For these reasons, Exelon respectfully the Department revise Part 951 as discussed herein.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Bradley Fewell". The signature is written in a cursive, flowing style with a large initial "J" and "F".

J. Bradley Fewell
Senior Vice President, Regulatory Affairs
& General Counsel