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**Subject: Three Mile Island Nuclear Station, Unit 1**

 **Shutdown Decommissioning Activities Report**

 **Renewed Facility Operating License No. DPR 50**

 **NRC Docket No. 50-289**

 **10 CFR 50.82(a)(4)**

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 **Three Mile Island Alert, Inc.’s**

**Opposition to Exelon’s Request for Exemptions Relating to**

**Three Mile Island Unit-1’s Decommissioning Trust Funds**

 July 22, 2019

U.S. Nuclear Regulatory Commission

Attention: Document Control Desk

Washington, DC 20555-0001

**Introduction**

Exelon Generation Company, LLC (“Exelon” or “the Company”) is requesting an exemption from 10 CFR 50.82(a)(8)(i)(A) for Three Mile Island Nuclear Station, Unit 1, (“TMI-1”) to allow use of a portion of the funds from the TMl-1 decommissioning trust fund (“DTF”) for the management of spent fuel based on the TMl-1 decommissioning cost estimate (“DCE”.) [See Enclosure 1 for a discussion on the unreliability of decontamination and decommissioning estimates at Three Mile Island.] Exelon also requests, pursuant to 10 CFR 50.12, an exemption from 10 CFR 50. 75(h) (1) (iv) to allow TMl-1 DTF disbursements for spent fuel management to be made without prior notice, similar to withdrawals in accordance with 10 CFR 50.82(a)(8).

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**TMI-Alert (“TMIA”) opposes raiding ratepayer funds to subsidize a core function of nuclear power plant operations. Every nuclear plant in Pennsylvania– with the exception of Three Mile Island - has used corporate funds to construct spent fuel dry casks including Beaver Valley Power Station (“Beaver Valley”), Limerick Generating Station (“Limerick”), Peach Bottom Atomic Power Station (“Peach Bottom”), and Susquehanna Steam Electric Station (“Susquehanna”).**

**Exelon has intentionally delayed dry cask construction to provoke a radioactive waste crisis. Exelon, at peril to the community, is exploiting the situation to raid hostage**

**The data Exelon provided to the NRC is inconsistent and omits information contained in SEC filings and Exelon’s 2017 and 2018 Annul Reports.** Refer to discussions under “Nuclear Waste Storage and Disposal,” “Nuclear Insurance,” “Decommissioning,” “Asset Retirement Obligations,” “NRC Minimum Funding Requirements,” and “Asset Retirement

“Exelon maintains two separate trusts for this purpose, a tax qualified fund (“Qualified Trust”) and a non-tax qualified fund (“Non-Qualified Trust”). The trustee for both funds is Northern Trust Bank. As of December 31, 2018, the DTF has a total balance of **$669,617,000**. The inadequacy of these funds to cover the **minimal amount projected** for non-radiological decommissioning and Greenfield costs is shown in Table 2.2., and these funds are exposed to changing tax protocols.

 “When asked by a member of the public why the approximately $670 million in the fund as of December does not seem to cover the cost estimates of more than $1 billion for decommissioning, about $158 million for fuel management and about $86 million for site restoration, officials said funds would continue to accrue over many years.” (“York Dispatch,” July, 18, 2019.) **By its own admission in the Post-Shutdown Decommissioning Activities Report (“PSDAR”), Exelon’s projections are based on low-end estimates, i.e., “minimal savings”, which are in turn contingent on guestimates of future economic behaviors.**

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Neither Exelon or the NRC have defined “unrestricted use.” TMI has been the location of a functioning industrial complex since 1974. **Projecting funding levels based on ill defined standards is a prescription for underfunding.**

 **After the NRC terminates the license, site restoration (another term without a clear definition) will cost approximately $86 million and is not adequately funded. The metrics for the final site status is unknown, and no NRC oversight is required. Exelon acknowledges throughout the PSDAR that site restoration will be performed at Exelon’s discretion.**

“Exelon currently assumes that remaining structures will be removed to a nominal depth of three feet below the surrounding grade level. Affected area(s) would then be backfilled with suitable fill materials, graded, and appropriate erosion controls established [proximate to the Susquehanna River.] Non-contaminated concrete remaining after the demolition activities may be used for backfilling subsurface voids or may be transported to an offsite area for appropriate disposal as construction debris.” (PSDAR, p. 14. Refer to discussion on pp. 12-13.)

  **Exelon has no funds to carry out post-termination obligations. In addition, the Company’s Asset Retirement Obligations (“ARO”) have increased steadily since 2016. (Exelon Annual Report, 2017 and Exelon Annual Report, 2018.)**

  **Prior to raiding the DTF, there is gap between savings’ balance - $669,617,000 – and the “minimal amount” - $1,001,552,000 – or the amount to partially clean-up TMI-1.**

 “The 10 CFR 50.75(c) minimum formula amount for TMl-1 as of December 31, 2018 is **$493,028,000**. As indicated in Table 2.2, the **estimated cost** of radiological decommissioning at TMl-1 is **$1,001,552,000. There is no enforcement mechanism available to the NRC to compel Exelon to make up the $331,935,000 shortfall when the plant is no longer operating.**

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Furthermore, these projections conflict with Exelon’s costs as submitted in their Security and Exchange filings (Enclosure 9), and do not include the cost of Greenfield and non-radiological decommissioning, e.g., site-restoration, caustic, chemical, and effluent monitoring, earthquakes, emergency planning outside of the fence line, flooding, ice jams, on-site fire protection, hardened security for dry casks and spent fuel pools, State-of-the-Art Reactor Consequence Analyses (“SOARCA”) scenarios, or implementation of a no-fly zone.

The Nuclear Regulatory Commission admits: “NRC decommissioning trust funds [**contributions derived from Pennsylvania Public Utility Commission tariffs**] are used for decommissioning as defined and regulated by the NRC. The NRC formulas address only those decommissioning costs needed to remove a facility or site safely from service and reduce radioactivity to safe levels to allow for termination of the license.**”**

**“…the costs of removal of non-radiological systems and structures are not included in the NRC decommissioning cost formulas. In addition, the costs of managing and storing spent fuel on site until transfer to the Department of Energy for permanent disposal are not included in NRC decommissioning cost formulas. The NRC does not ensure that there are sufficient funds to bring a site to Greenfield status**.” (Communication Strategy for the Enhancement of Public Awareness Regarding Power Reactors Transitioning to Decommissioning, February, 2015.)

 **Conclusion.**

**The proposed exemptions would allow Exelon to subvert the TMI-1 decommissioning trust fund for spent fuel management which is a core function of nuclear power operations. Pennsylvania ratepayers should not be subsidizing Exelon’s poor corporate decision to delay construction of dry casks. Taxpayers, through the Department of Energy’s settlement with Exelon, have already furnished TMI with additional millions in funds for spent fuel management.**

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Granting these exemptions is inconsistent with the purposes underlying NRC decommissioning regulations as the exemptions: (1) Would foreclose release of the site for possible unrestricted use; (2) Would result in significant environmental impacts not previously reviewed by the NRC; and (3) Would undermine the existing and continuing reasonable assurance that adequate funds will be available for decommissioning.

Pursuant to the provisions of 10 CFR 50.12, TMI-Alert strongly opposes permanent or temporary exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) for TMl-1. Based on the considerations discussed above, the requested exemptions clearly undermine both state and federal laws, and present an undue risk to the public health and safety.

Respectfully submitted,

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