IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

THE STATE OF ILLINOIS, ex rel. JAMES E. RYAN, Attorney General of the State of Illinois,	)	
Plaintiff,	)	
v.	)	No. 02 C 3073
COMMONWEALTH EDISON COMPANY, an Illinois corporation, EXELON GENERATION COMPANY, L.L.C., a Pennsylvania Limited Liability Company,	)	Judge Manning
	)	Magistrate Nolan
Defendants.	)	

CONSENT DECREE

This action was commenced on behalf of the PEOPLE OF THE STATE OF ILLINOIS, *ex rel.*, JAMES E. RYAN, Attorney General of the State of Illinois ("Attorney General"), as Plaintiff, on his own motion and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA") and the ILLINOIS DEPARTMENT OF NATURAL RESOURCES ("IDNR"), hereinafter collectively referred to as "the State" or "the State of Illinois". The State and Defendants, COMMONWEALTH EDISON COMPANY and EXELON GENERATION COMPANY, L.L.C., having agreed to the formation and entry of this Consent Decree, do hereby stipulate and agree as follows:

PREAMBLE

1. The parties stipulate that this Consent Decree is entered into for the purposes of settlement only, and that

neither the fact that a party has entered into this Consent Decree, nor any of the factual allegations herein, shall be used for any purpose in this or any other proceeding by any person except to enforce the terms hereof by the parties to this agreement. Notwithstanding the previous sentence, this Consent Decree may be used for purposes of Section 42(h) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(h) (2000), in any future enforcement action commenced by Plaintiff against Defendant, Commonwealth Edison Company, as evidence of a previously adjudicated violation(s) of the Act.

2. It is expressly understood and agreed to by and between the parties that the agreements, stipulations, and statements contained herein are not binding on the parties, and shall be deemed null and void, in the event this Consent Decree is not executed by all parties.

3. If, for any reason, the Court should decline to enter this Consent Decree in the form presented, this Consent Decree shall be deemed null and void, and the terms of the Consent Decree may not be used as evidence, or introduced into evidence in any litigation between the parties, by third parties, or otherwise.

4. The undersigned representative for each party warrants that he or she is fully authorized by the party

whom he or she represents to enter into the terms and conditions of this Consent Decree and to legally bind the party he or she represents to the Consent Decree.

SUBJECT MATTER

5. On June 25, 2000, Defendant, Commonwealth Edison Company, owned and operated a nuclear power plant located in Braceville, Will County, Illinois (hereinafter, the "Site" or "facility").

6. Sometime after June 25, 2000, that date better known to Defendants, Exelon assumed ownership and operation of the facility.

7. On or about June 25, 2000, that date better known to Defendants, there was a release of approximately 4,450 gallons of diesel oil and/or other petroleum material into water in a perimeter ditch on the Site which then migrated along the ditch for approximately 2 miles and flowed into a wetland area causing the deaths of fish, amphibians, reptiles and migratory birds.

8. The State alleges that this release of oil from the Site has resulted in impacts including, but not limited to, soil contamination, surface water contamination, and groundwater contamination, and has adversely impacted flora and fauna or has threatened to impact flora, fauna, and aquatic life.

9. The State alleges that, by causing or allowing the release of contaminants from the Site into waters of the State, Defendants have caused or allowed water pollution and

therefore violated Section 12(a) of the Act, 415 ILCS 5/12(a)(2000).

10. The State alleges that, by causing, threatening or allowing the deposit of contaminants from the Site into soil from which they can enter and contaminate waters of the State, Defendants have created a continuing water pollution hazard and therefore violated Section 12(d) of the Illinois Environmental Protection Act, 415 ILCS 5/12(d)(2000).

11. The State alleges that, by causing or allowing the release of waste from its facilities to a Site that was not a sanitary landfill, Defendants have caused or allowed open dumping and therefore violated Section 21(a) of the State Act, 415 ILCS 5/21(a) (2000).

12. The State alleges that since June 25, 2000, the State has incurred and will continue to incur costs associated with response activities related to the discharged oil and/or petroleum products and with actions necessary to minimize or mitigate damage to the public health or welfare and the environment.

13. The Illinois EPA and the IDNR have been designated by the Governor of the State of Illinois as co-trustees for natural resource damages for the State of Illinois.

14. The State alleges that pursuant to Section 311(f)(4) and (5) of the Federal Clean Water Act, ("CWA"),

33 U.S.C. 1231(f)(4) and (5), and Section 1002 of the Oil Pollution Act of 1990, ("OPA") 33 U.S.C. 2702, Defendants are liable to the State for all costs of replacing or restoring natural resources, and lost use value as a result of the June 2000 release.

15. Defendants deny the State's allegations.

16. Since the June 2000 release, Defendants have been engaged in continuing efforts to address environmental impacts associated with the release, and allege they have been diligent in attempting to comply with the requirements of the State Act, CWA and OPA.

17. Since the June 2000 release, Defendants allege they have been cooperative with the Attorney General, Illinois EPA and IDNR in addressing the matter.

JURISDICTION

18. This Court has jurisdiction over the subject matter of this action (including any enforcement of this Consent Decree provided for herein), pursuant to Section 311 of the CWA, 33 U.S.C. 1321, and Section 1017 of the OPA of 1990, 33 U.S.C. 2717, Section 107(f) of CERCLA, 42 U.S.C. 9607(f) and 28 U.S.C. Section 1331, and, pursuant to 28 U.S.C. 1367, this Court has pendent jurisdiction over the claims under the Act, 415 ILCS 5/1, *et seq.*, (2000).

19. This Court has jurisdiction over the parties. The parties to this Consent Decree shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

PARTIES AND APPLICABILITY

20. The parties to this Consent Decree are the State of Illinois, including the Attorney General, Illinois EPA, IDNR and the Defendants, Commonwealth Edison Company, an Illinois corporation and Exelon Generation L.L.C., a Pennsylvania Limited Liability Company.

21. This Consent Decree shall apply to and be binding upon the State of Illinois, Defendants, and all of their parents, affiliates, related entities, subsidiaries, predecessors, successors, and assigns, and all officers, directors, employees, and agents thereof (collectively referred to as "Defendants' Privies").

FINAL JUDGMENT ORDER

22. This Court having jurisdiction over the parties and subject matter, the Court having considered the State's complaint and being advised in the premises, the Court finds the following relief appropriate:

IT IS HEREBY ORDERED AND ADJUDGED:

A. RESOLUTION OF CLAIM FOR INJURIES TO NATURAL RESOURCES

23. The Impacted State natural resources reported during the investigation of the June 2000 release included flora, fauna, wildlife, surface waters, wetlands, soil, aquatic life and migratory birds. No other impacts to State natural resources were reported during those investigations. No impacts to federal resources such as federally listed endangered species were reported during the course of the investigation.

24. To resolve its liability for natural resource damages as a result of the June 2000 release, Defendants shall undertake the measures delineated below.

25. Natural Resource Restoration Trust Fund:

Within sixty (60) days of the date of entry of this Consent Decree, Defendants shall pay a total of Four Thousand Seven Hundred Dollars ($4,700.00) as compensation for injuries to and lost use of natural resources for the June 2000 release. Said amount shall be paid by certified check or money order and made payable to "Treasurer of the State of Illinois, for deposit in the Natural Resource Restoration Trust Fund" and be delivered to:

Illinois Department of Natural Resources
Office of Fiscal Management
Attention: John Bandy, Manager
One Natural Resources Way

Springfield, Illinois 62702-1271

A copy of the check and transmittal letter shall be contemporaneously provided to the Illinois EPA, IDNR and the Office of the Illinois Attorney General at the addresses listed in paragraph 70 below.

26. **Funding of Educational Projects:**

Within sixty (60) days of the date of entry of this Consent Decree, Defendants shall pay a total of One Thousand Dollars ($1,000.00) to fund environmental educational activities that involve natural resource restoration. This payment shall be made in the manner specified in paragraph 25 above, with copies sent to the same parties.

27. **Assessment Costs for NRD Claims:**

Within sixty (60) days of the date of entry of this Consent Decree, Defendants shall pay a total of Four Thousand Five Hundred Dollars ($4,500.00) to reimburse the IDNR and Attorney General's Office for the Costs they incurred in investigating and evaluating the impact of the June 2000 release on the State's natural resources and in negotiating the resolution of the claim for natural resource damages for the June 2000 release. This payment shall be made in the manner specified in paragraph 25, above, with copies sent to the same parties. Any further or future Assessment Costs related to the June 2000 release shall not

be payable by Defendants except as provided in paragraph 32 below.

B. COMPLETION OF CLEAN UP ACTIONS

28. Defendants have taken steps to remediate the June 2000 release. In order to complete the clean up, the Defendants shall use the process outlined in 35 Ill. Adm. Code Part 740, as modified by this Consent Decree:

a. Defendants shall remediate all contamination from IEMA Incidents #20001215, #980605 and #903753 remaining on-site and off-site at levels above applicable remediation objectives in accordance with the Illinois Environmental Protection Act and 35 Ill. Adm. Code 740 and 742 and according to the time frame noted below.

b. The Defendants have obtained the Illinois EPA's approval of a Site Remediation Program Form (DRM-1) that identifies a Remediation site that includes those areas on-site and off-site impacted by the above-referenced IEMA Incidents.

c. Within 210 days of the entry of this Consent Decree, the Defendants shall obtain a No Further Remediation determination from the Illinois EPA and properly execute and record the No Further Remediation determination along with any applicable Institutional Controls pursuant to 35 Ill. Adm. Code Part 740 and 742.

29. Not withstanding the terms of paragraph 66 of this Consent Decree the following paragraph is limited to the Defendants participation in the Illinois EPA Site Remediation Program. The Illinois EPA may extend any time frame specified in Paragraph 28 by one period not to exceed

thirty (30) days if, during its review of any submittal, the Illinois EPA identifies a deficiency which, in the Illinois EPA's judgment, the Defendants can remedy within the extension period. A time frame extension pursuant to this subsection must be made in writing by the Illinois EPA.

30. The failure of the Defendants to provide plans, reports or other submittals in a timely fashion, or in form or with information which causes the Illinois EPA to disapprove or modify the plan, report or other submittal, shall not be a cause for dispute resolution or otherwise excuse the failure of the Defendants to meet any time frame in this Consent Decree.

31. Within one hundred and twenty (120) days of the entry of this Consent Decree the Defendants shall complete an evaluation of the condition and integrity of all underground diesel pipelines and aboveground diesel tanks at the Site for compliance with the standards contained in the following: API 650 (Welded Steel Tanks for Oil Storage) or equivalent; API 570 (Piping Inspection Code) or equivalent; API 422 (Groundwater Protection Programs for Petroleum Refining and Storage Facilities: A Guidance Document); API 651 (Cathodic Protection of Aboveground Petroleum Storage Tanks); API 653 (Tank Inspection, Repair, Alteration, and Reconstruction); and API 2350 (Overfill Protection for

Petroleum Storage Tanks). This evaluation shall be conducted under the supervision of and certified by a Professional Engineer licensed in the State of Illinois. The Defendants shall implement API Standards 570, 650 and 653 to the extent recommended by an independent certified Inspector's review of previously performed pressure testing of underground diesel oil piping and previously performed ultrasonic testing of diesel oil storage tank bottoms. Within one hundred and fifty (150) days of entry of this Consent Decree the Defendants shall submit a certified evaluation report, work plan and schedule summarizing all deficiencies, causes thereof, and proposed remedies for the Illinois EPA's review and comment. In addition to the Force Majeure provisions of this Consent Decree, the parties may agree, in writing to an extension of the 120-day schedule set out in this paragraph 31.

32. The Illinois EPA shall have thirty (30) days from receipt to review and comment on the report, plan and schedule. In the event that the Defendants do not elect to modify the report, plan and/or schedule in accordance with the Illinois EPA's comments, the Defendants shall provide the Illinois EPA with a written technical justification for not implementing the Illinois EPA's comments within thirty

(30) days of the Defendants' receipt of the Illinois EPA's comments.

33. The Defendants waive and agree not to avail themselves of the appeal provisions in 35 Ill. Adm. Code 740.505(h). Except as provided in paragraph 30, above, the Parties agree to use the dispute resolution provisions of this Consent Decree in lieu of the appeal provisions in 35 Ill. Adm. Code 740.505(h).

34. In addition to costs already paid to the State under the Site Remediation Program, the Defendants shall pay all Past Oversight Costs and Future Response or Oversight Costs of the State and Illinois EPA related to the Site. As soon as practicable after the effective date of this Consent Decree, the Illinois EPA will send the Defendants' a bill for Past Oversight Costs at the Site. The Illinois EPA's bill will include an Itemized Cost Summary. "Past Oversight Costs" are all costs, including, but not limited to, direct and indirect costs and interest, that the Illinois EPA, and their employees incurred with regard to the Site's enrollment in the Illinois EPA's Site Remediation Program prior to the effective date of this Consent Decree.

35. The Illinois EPA will send the Defendants a bill for Future Response or Oversight Costs on at least an annual

basis. "Future Response or Oversight Costs" are all costs, including, but not limited to, direct and indirect costs, that the State and the Illinois EPA, and their employees, incur in reviewing or developing plans, reports and other items pursuant to this Consent Decree and the Site's participation in the Illinois EPA's Site Remediation Program. The failure of the Illinois EPA to send the Defendants a bill for response or oversight costs on an annual basis shall not excuse the Defendants obligation to pay oversight costs as described, below.

36. The Defendants shall, within forty-five (45) calendar days of receipt of a bill from the Illinois EPA, remit a cashier's or certified check for the amount of the bill made payable to the "Illinois Environmental Protection Agency, for deposit in the Hazardous Waste Fund," and forwarded to:

Illinois Environmental Protection Agency
Division of Administration, Fiscal Services Section
1021 North Grand Avenue East, P.O. Box 19276
Springfield, Illinois 62794-9276

37. In the event that any payment of Past Oversight Cost or Future Response or Oversight Costs referred to in paragraphs 34 and 35 above is not made within the deadlines described above, the Defendants shall pay interest on the unpaid balance. Interest is established at the rate

specified in Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a), pursuant to Section 42(g) of the Environmental Protection Act (415 ILCS 5/42). The interest shall begin to accrue on the date of the Defendants receipt of the bill. Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the State and the Illinois EPA by virtue of the Defendants failure to make timely payments under this Section.

38. If any dispute over Past Oversight Costs or Future Response or Oversight Costs is resolved before payment is due, the amount due will be adjusted as necessary, and an adjusted bill will be sent to Defendants. If the dispute is not resolved before payment is due, the Defendants shall pay the full amount of the uncontested costs into the Hazardous Waste Fund as specified above on or before the due date. Within the same time period, the Defendants shall pay the full amount of the contested costs into an interest-bearing escrow account. Disputes shall be resolved pursuant to the Dispute Resolution provisions herein. Upon resolution of the dispute, the Defendants shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus

interest within twenty (20) calendar days after the dispute is resolved.

C. RESOLUTION OF VIOLATIONS OF THE ACT

39. Penalty payment:

a. To resolve the violations of the Act alleged in the Complaint filed herein, Defendants shall make a one-time penalty payment of One Hundred Twenty Five Thousand Dollars ($125,000.00) to the Environmental Protection Trust Fund, within sixty (60) days of the Court's entry of this Consent Decree. This amount shall be paid by certified check or money order, payable to the "Illinois Environmental Protection Agency for deposit in the Environmental Protection Trust Fund" and be delivered to:

Illinois Environmental Protection Agency
Fiscal Services Section
1021 North Grand Avenue East, P.O. Box 19276
Springfield, IL 62794-9276

A copy of the penalty payment transmittal and check shall be simultaneously submitted to:

Gerald Karr
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
188 W. Randolph St. 20th Fl.
Chicago, IL 60601

b. The following information shall appear on the check:

Case name: State of Illinois v. Com Ed & Exelon
Case Court No.: 02 C 3073

Defendant Exelon's FEIN Nos.: 23-2990190

c. For purposes of payment, collection and notice, Defendants may be reached at the following address:

John R. Petro
Senior Environmental Analyst
Exelon Generation Company
4300 Winfield Road
Warrenville, Illinois 60555

d. In the event the penalty is not paid in a timely fashion, interest shall accrue and be paid by Defendants at the rate set forth in subsection 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a)(2000), pursuant to subsection 42(g) of the Act, 415 ILCS 5/42(g)(2000).

e. In the event that the State has to bring an action against Defendants to collect the penalty, above, Defendants shall be responsible for all costs and attorney's fees related to any collection action.

40. Stipulated Penalties

a. If the Defendants fail to complete any activity by the date specified above, the Defendants shall provide notice to the Plaintiff of each failure to comply with this Consent Decree. In addition, the Defendants shall pay to the Plaintiff, for payment into the Environmental Protection Trust Fund, stipulated penalties per violation for each day of violation in the amount of Five Hundred

Dollars ($500) until such time that compliance is achieved.

b. Following the Plaintiff's determination that the Defendants have failed to complete performance of any task or other portion of work, failed to provide a required submittal, including any report or notification, Plaintiff may make a demand for stipulated penalties upon Defendants for their noncompliance with this Consent Decree. Failure by the Plaintiff to make this demand shall not relieve the Defendants of the obligation to pay stipulated penalties.

c. All penalties owed the Plaintiff under this section of this Consent Decree that have not been paid shall be payable within thirty (30) days of the date the Defendants know or should have known of their noncompliance with any provision of this Consent Order.

d. All stipulated penalties shall be paid by certified check or money order payable to the Illinois EPA for deposit in the EPTF and delivered to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

e. The name and number of the case and the Defendant Exelon's FEIN 23-2990190 shall appear on the face of the check. A copy of the check(s) and the transmittal

letter shall be sent to:

Gerald Karr
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

f. The stipulated penalties shall be enforceable by the Plaintiff and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Consent Decree.

COVERED MATTERS

41. Covered matters include only the claims asserted in the State's Complaint concerning liability for violations of the Act, 415 ILCS 5/1 *et seq.* (2000), and all regulations promulgated thereunder, and liability for violations of Section 311 of CWA, 33 U.S.C. 1321, and Section 1002, 1006 and 1017 of OPA, 33 U.S.C. 2702, 2706 and 2717, and all regulations promulgated thereunder, and the common law, for the IEMA Incidents #20001215.

42. Covered matters also specifically include any liability incurred for natural resource damages, including lost use value, or for assessment of natural resource damages as a result of IEMA Incident #20001215, described in the Complaint and herein or liability under Section 22.2 (f)

of the State Act, 415 ILCS 5/22.2 (f) (2000); Section 311 of the CWA, 33 U.S.C. 1321; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601-9675, and OPA 33 U.S.C. 2700, et seq.

43. "Covered Matters" is defined to include all matters described in all the foregoing paragraphs of this Section. Covered Matters do not include, without exclusion:

i) Criminal liability;

ii) Claims based on Defendants' failure to meet the requirements of this Consent Decree including, but not limited to, acts or omissions during implementation and completion of any remedial actions; and

iii) Liability for past unreported or unknown releases of oil or other hazardous substances from the facility, by Defendants or their Privies.

RELEASE FROM LIABILITY

44. In consideration for Defendants' various undertakings outlined in this Consent Decree and their payment of the penalty and compensation for injuries to natural resources as set forth above, and upon the completion of all activities required hereunder, the Attorney General, Illinois EPA, and IDNR releases, waives

and discharges the Defendants from any further liability or penalties for any Covered Matters as defined herein. The Plaintiff reserves, and this Consent Decree is without prejudice to, all rights of the State of Illinois against the Defendants with respect to all other matters not covered by this Consent Decree.

45. Nothing in this Consent Order is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois or the Illinois EPA may have against any person, as defined by Section 3.26 of the Act, 415 ILCS 5/3.26, or entity other than the Defendants and their Privies.

46. This release is conditioned upon the complete performance by Defendants of their obligations under this Consent Decree. The release and covenant not to sue set forth above does not pertain to any other matters other than those expressly specified herein.

RESERVATION OF RIGHTS

47. The parties expressly reserve any and all rights, defenses, claims, demands, and causes of action which either party may have against any person or entity except as against the State, Defendants and/or their Privies.

48. Nothing herein shall constitute an admission of facts or law by either party concerning IEMA Incidents #20001215, #980605 and #903753.

49. Except as to Defendants' Privies, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a party to this Consent Decree may have under applicable law.

50. The parties expressly reserve any and all rights (including, but not limited to, any right of contribution), defenses, claims, demands, and causes of action against any person not a party to this Consent Decree which each may have with respect to any matter, transaction or occurrence relating in any way to IEMA Incidents #20001215, #980605 and #903753.

DISPUTE RESOLUTION

51. The dispute resolution procedure provided by this section shall be available to resolve all disputes arising under this Consent Decree, except as otherwise provided in the *force majeure* section, and except where the Defendants have violated any payment or compliance deadline within this Consent Decree. If the Defendants have violated any payment

or compliance deadline, the Plaintiff may elect to file a petition for adjudication of contempt or rule to show cause. Notwithstanding the above, disputes regarding an imminent and substantial endangerment to the public health, welfare or the environment, or the Illinois EPA's approval, comment on, or denial of any report, plan or remediation objective, or the Illinois EPA's decision regarding appropriate or necessary response activity, are not subject to the dispute resolution provisions of this Consent Decree.

52. The dispute resolution procedure shall be invoked upon the giving of written notice by one of the parties to this Consent Decree to another describing the nature of the dispute and the noticing party's position with regard to such dispute. The party receiving such notice shall acknowledge receipt of the notice; thereafter the parties shall schedule a meeting to discuss the dispute informally not later than 14 days from the receipt of such notice.

53. Disputes submitted to dispute resolution shall, in the first instance, be the subject of informal negotiations between the parties. Such period of informal negotiations shall be for a period of 30 calendar days from the date of the first meeting between representatives of the Plaintiff and the Defendants, unless the parties' representatives agree to shorten or extend this period.

54. In the event that the parties are unable to reach agreement during the informal negotiation period, the Plaintiff shall provide the Defendants with a written summary of its position regarding the dispute. The position advanced by the Plaintiff shall be considered binding unless, within 20 calendar days of the Defendants' receipt of the written summary of the Plaintiff's position, the Defendants file a petition with this Court seeking judicial resolution of the dispute. Upon proper notice of this petition, the Plaintiff shall respond to the petition by filing the administrative record of the dispute and any argument within 20 calendar days of such notice.

55. The invocation of dispute resolution, in and of itself, shall not excuse compliance with any requirement, obligation or deadline contained herein, and stipulated penalties may be assessed for failure or noncompliance during the period of dispute resolution.

56. Notwithstanding any other provision of this Consent Decree, this Court shall make its decision based on the administrative record and shall not draw any inferences nor establish any presumptions adverse to any party as a result of invocation of this section or the parties' inability to reach agreement with respect to the disputed issue.

57. As part of the resolution of any dispute, the parties, by agreement, or by order of this Court, may, in appropriate circumstances, extend or modify the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of dispute resolution.

FORCE MAJEURE

58. For the purposes of this Consent Decree, *force majeure* is an event arising solely beyond the control of the Defendants which prevents the timely performance of any of the requirements of this Consent Decree. For purposes of this Consent Decree *force majeure* shall include, but is not limited to, events such as floods, fires, tornadoes, other natural disasters, and labor disputes beyond the reasonable control of the Defendants. *Force majeure* shall specifically include events related to the security at the Site, including but not limited to, limitations on access due to security concerns, limitations placed on facilities, including this Site, by the Federal Government due to security concerns and such similar security issues.

59. When, in the opinion of the Defendants, a *force majeure* event occurs which causes or may cause a delay in the performance of any of the requirements of this Consent Decree, the Defendants shall orally notify the Plaintiff

within 48 hours of the occurrence. Written notice shall be given to the Plaintiff as soon as practicable, but no later than ten (10) calendar days after the claimed occurrence.

60. Failure by the Defendants to comply with the notice requirements of the preceding paragraph shall render this section voidable by the Plaintiff as to the specific event for which the Defendants have failed to comply with the notice requirement. If voided, this section shall be of no effect as to the particular event involved.

61. Within 10 calendar days of receipt of the *force majeure* notice required under paragraph 59, the Plaintiff shall respond to the Defendants in writing regarding the Defendants' claim of a delay or impediment to performance. If the Plaintiff agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the control of the Defendants, including any entity controlled by the Defendants, and that the Defendants could not have prevented the delay by the exercise of due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay, by a period equivalent to the delay actually caused by such circumstances. Such stipulation may be filed as a modification to this Consent Decree pursuant to the modification procedures established in this Consent Decree.

The Defendants shall not be liable for stipulated penalties for the period of any such delay.

62. If the Plaintiff does not accept the Defendants' claim of a *force majeure* event, the Defendants may submit the matter to this Court within 20 calendar days of receipt of Plaintiff's determination for resolution to avoid payment of stipulated penalties, by filing a petition for determination of the issue. Once the Defendants have submitted such a petition to the Court, and upon proper notice, the Plaintiff shall have 20 calendar days to file its response to said petition. If this Court determines that the delay or impediment to performance has been or will be caused by circumstances solely beyond the control of the Defendants, including any entity controlled by the Defendants, and that the Defendants could not have prevented the delay by the exercise of due diligence, the Defendants shall be excused as to that event (including any imposition of stipulated penalties), for all requirements affected by the delay, for a period of time equivalent to the delay or such other period as may be determined by this Court.

63. An increase in costs associated with implementing any requirement of this Consent Decree shall not, by itself, excuse the Defendants under the provisions of this section of this Consent Decree from a failure to comply with such a

requirement.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

64. Except as specifically provided in this Consent Decree, this Consent Decree in no way affects the responsibility of Defendants or their Privies to comply with any other federal, state, or local statutes and regulations, including, but not limited to, the State Act, 415 ILCS 5/1, *et seq.* (2000).

ENTIRE AGREEMENT

65. This Consent Decree and documents referenced herein constitute the entire understanding of the parties with respect to its subject matter.

SUBSEQUENT AMENDMENTS, EXTENSIONS AND MODIFICATIONS

66. Except as provided in paragraphs 29 and 31 above, the parties may, by mutual written consent, extend any compliance dates or modify the terms of this Consent Decree without leave of court. Any such agreed modification shall be in writing, signed by authorized representatives of each party, filed with the court and incorporated into this Consent Decree by reference.

SEVERABILITY

67. It is the intent of the parties hereto that the provisions of this Consent Decree shall be severable and,

should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

VENUE

68. The parties agree that the venue of any action commenced for the purposes of interpretation, implementation, and enforcement of the terms and conditions of this Consent Decree shall be in the Northern District of Illinois.

CONTINUING JURISDICTION

69. This Court shall retain jurisdiction of this matter for the purpose, upon motion of a party, of amending, interpreting, implementing and enforcing the terms and conditions of this Consent Decree, and for the purpose of adjudicating all matters of dispute among the parties.

NOTICES

70. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be submitted by one party to another, such notices or submissions shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to all listed individuals, and their successors.

As to the State of Illinois:

Office of the Illinois Attorney General
Environmental Bureau
Attn: Gerald Karr
188 W. Randolph St., 20th Floor
Chicago, IL 60601

Illinois Department of Natural Resources
Natural Resources Trustee Program
Attn: Michael Henry
One Natural Resources Way
Springfield, IL 62702-1271

Illinois Environmental Protection Agency
Division of Legal Counsel
Todd Rettig, Associate Counsel
P.O. Box 19276
1021 North Grand Avenue East
Springfield, IL 62794-9276

As to Defendants:

John Van Vranken
Assistant General Counsel
Exelon Corporation
10 S. Dearborn St.
35th Floor
P.O. Box 805379
Chicago, IL 60680-5379

John R. Petro
Senior Environmental Analyst
Exelon Generation Company
4300 Winfield Road
Warrenville, Illinois 60555

SUBMISSION TO THE COURT

71. **WHEREFORE**, the parties, by their representatives, enter into this Consent Decree and submit it to the Court that it may be approved and entered.

AS TO THE PLAINTIFF, PEOPLE OF THE STATE OF ILLINOIS,

JAMES E. RYAN,
Attorney General of the
State of Illinois,

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

BY: _____
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: _____
JOSEPH E. SVOBODA
Chief Counsel
Division of Legal Counsel

ILLINOIS DEPARTMENT OF
NATURAL RESOURCES, as Trustee

BY: _____
ROBERT T. LAWLEY
Chief Counsel

SUBMISSION TO THE COURT

71. WHEREFORE, the parties, by their representatives, enter into this Consent Decree and submit it to the Court that it may be approved and entered.

AS TO THE PLAINTIFF, PEOPLE OF THE STATE OF ILLINOIS,

JAMES E. RYAN,
Attorney General of the
State of Illinois,

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

BY:_____
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY:_____
JOSEPH E. SVOBODA
Chief Counsel
Division of Legal Counsel

ILLINOIS DEPARTMENT OF
NATURAL RESOURCES, as Trustee

BY:_____
ROBERT T. LAWLEY
Chief Counsel

AS TO THE DEFENDANT, COMMONWEALTH EDISON COMPANY:

COMMONWEALTH EDISON
COMPANY

BY: _____

AS TO THE DEFENDANT, EXELON GENERATION COMPANY, L.L.C:

EXELON GENERATION
COMPANY, L.L.C

BY: _____

ENTRY BY THE COURT

72. Upon motion of the parties, this Consent Decree is ENTERED, this _____ day of _____, 2002

_____
JUDGE

AS TO THE DEFENDANT, COMMONWEALTH EDISON COMPANY:

COMMONWEALTH EDISON
COMPANY

BY: _____

AS TO THE DEFENDANT, EXELON GENERATION COMPANY, L.L.C:

EXELON GENERATION
COMPANY, L.L.C

BY: _____

ENTRY BY THE COURT

72. Upon motion of the parties, this Consent Decree is ENTERED, this 13th day of August, 2002

Blanche M. Manning
JUDGE