

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

DOCKETED  
USNRC

January 26, 2004 (1:55PM)

Before the Commission

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

**In the Matter of**

**EXELON GENERATION COMPANY, LLC**

**(Early Site Permit for the Clinton ESP Site)**

**Docket No. 52-007**

**January 26, 2004**

**EXELON GENERATION COMPANY'S ANSWER TO HEARING REQUEST  
AND PETITION TO INTERVENE FILED BY THE ENVIRONMENTAL LAW  
AND POLICY CENTER, BLUE RIDGE ENVIRONMENTAL DEFENSE  
LEAGUE, NUCLEAR INFORMATION AND RESOURCE SERVICE, NUCLEAR  
ENERGY INFORMATION SERVICE, AND PUBLIC CITIZEN**

Exelon Generation Company, LLC ("Exelon") hereby files its Answer to the January 12, 2004, Hearing Request and Petition to Intervene ("Hearing Request") filed by the Environmental Law and Policy Center, Blue Ridge Environmental Defense League, Nuclear Information and Resource Service, Nuclear Energy Information Service, and Public Citizen ("Petitioners") concerning Exelon's application for an Early Site Permit ("ESP") at the Clinton site.<sup>1</sup> Exelon does not challenge Petitioners' representational standing. However, Exelon reserves the right to oppose Petitioners' intervention if Petitioners fail to later plead at least one admissible contention.

In the Hearing Request, pp. 5-6, Petitioners have identified three aspects of the ESP as to which they wish to intervene including: (1) whether Exelon's Environmental

<sup>1</sup> As noted in the Certificate of Service for the Hearing Request and Petition to Intervene, Mr. Thomas O'Neill, Exelon Nuclear Associate General Counsel, and Mr. Steven P. Frantz, Morgan, Lewis, and Bockius, LLP, were served by Express Mail only and not by facsimile. Therefore, this Answer is due January 26, 2004.

Report and the Nuclear Regulatory Commission (“NRC”) consider all reasonable energy alternatives as required by the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* (“NEPA”); (2) whether Illinois statute 220 ILCS, 5/8-406(c), which restricts construction of new nuclear plants within Illinois unless certain conditions pertaining to high level waste disposal are met, prohibits NRC approval of the ESP; and (3) whether the NRC’s Waste Confidence Rule (“WCR”), 10 C.F.R. § 51.23, should apply to this proceeding for an ESP.

Exelon does not object to the first aspect pertaining to alternative energy sources. However, Exelon believes that its Environmental Report for the Clinton ESP includes a complete and accurate assessment of technically reasonable and commercially viable alternatives to the proposed action including alternate energy sources, and complies fully with all applicable regulations. Accordingly, Exelon will defend its Environmental Report against proposed contentions in this area, and reserves the right to file objections to proposed contentions pertaining to this aspect.

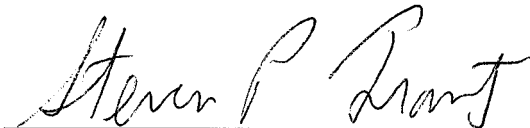
With regard to the second aspect, Petitioners assert that Illinois statute § 220 ILCS 5/8-406 prohibits NRC approval of the ESP. On its face, however, the Illinois Statute only prohibits *construction* of a new nuclear power plant in Illinois unless specified conditions pertaining to the disposal of high level waste are met. An ESP, however, does not permit construction of a new nuclear power plant. Instead, it allows a site to be “banked” for future reference in an application for a construction permit or combined license. Accordingly, an ESP is not prohibited by or inconsistent with the Illinois Statute.

With regard to the third aspect, Petitioners assert that the NRC’s WCR should not apply to this proceeding because the high level waste generated by a new Clinton reactor

was not considered by the NRC when it promulgated the WCR and because of the limited storage capacity of Yucca Mountain. Contrary to Petitioners' assertions, however, the limited capacity of Yucca Mountain, the construction of new reactor plants, the generation of spent fuel from new reactor plants, and construction and operation of a second high level waste repository were all fully considered by the NRC as part of the rulemaking for 10 C.F.R. § 51.23. *See* 55 Fed. Reg. 38474, 38502-03, Issue II.B.2.b (September 18, 1990). Further, it is a fundamental rule of NRC adjudication that any contention challenging a Commission regulation, including NRC's WCR, is outside the scope of a proceeding and impermissible. *See* 10 C.F.R. § 2.758. Therefore, the Petitioners may not challenge the WCR in this proceeding.

In summary, the last two aspects cited by petitioners are not appropriate for hearing and should be excluded from further consideration in this proceeding. Exelon is prepared to provide detailed legal positions on these issues if Petitioners continue to pursue them in their proposed contentions.

Respectfully submitted,



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COUNSEL FOR EXELON GENERATION COMPANY, LLC

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**Before the Commission**

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EXELON GENERATION COMPANY, LLC )

(Early Site Permit for the Clinton ESP Site) )  
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**Docket No. 52-007**

**January 26, 2004**

**NOTICE OF APPEARANCE OF STEVEN P. FRANTZ**

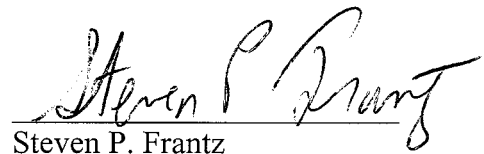
The undersigned, being an attorney at law in good standing admitted to practice before the courts of the District of Columbia, hereby enters his appearance in the above-captioned matter as counsel on behalf of Applicant, Exelon Generation Company, LLC, 200 Exelon Way, KSA3-E, Kennett Square, PA, 19348.

Name:

Phone:

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E-mail:



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Dated: January 26, 2004

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**Before the Commission**

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In the Matter of )

**Docket No. 52-007**

EXELON GENERATION COMPANY, LLC )

(Early Site Permit for the Clinton ESP Site) )

**January 23, 2004**

**NOTICE OF APPEARANCE OF PAUL M. BESSETTE**

The undersigned, being an attorney at law in good standing admitted to practice before the courts of the District of Columbia, hereby enters his appearance in the above-captioned matter as counsel on behalf of Applicant, Exelon Generation Company, LLC, 200 Exelon Way, KSA3-E, Kennett Square, PA, 19348.

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Dated: January 23, 2004

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NUCLEAR REGULATORY COMMISSION**

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Answer to Hearing Request and Petition to Intervene Filed by the Environmental Law and Policy Center, Blue Ridge Environmental Defense League, Nuclear Information and Resource Service, Nuclear Energy Information Service, and Public Citizen, Notice of Appearance of Steven P. Frantz, and Notice of Appearance of Paul M. Bessette were served upon the persons listed below by U.S. mail, first class, postage prepaid, and where indicated by an asterisk by electronic mail, on this 26th day of January 2004.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Secretary of the Commission\* \*\*  
Attn: Rulemakings and Adjudication Staff  
U.S. Nuclear Regulatory Commission  
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(E-mail: hearingdocket@nrc.gov)

Atomic Safety and Licensing Board  
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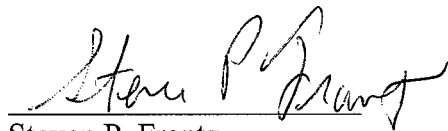
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\*\* Original and two copies