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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 03/08/04

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ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Chief Administrative Judge:

G. Paul Bollwerk, III

In the Matter of

EXELON GENERATION COMPANY, LLC

(Early Site Permit for Clinton ESP Site)

Docket No. 52-007-ESP

ASLBP No. 04-821-01-ESP

March 8, 2004

In the Matter of

DOMINION NUCLEAR NORTH ANNA, LLC

(Early Site Permit for North Anna ESP Site)

Docket No. 52-008-ESP

ASLBP No. 04-822-02-ESP

March 8, 2004

In the Matter of

SYSTEM ENERGY RESOURCES, INC.

(Early Site Permit for Grand Gulf ESP Site)

Docket No. 52-009-ESP

ASLBP No. 04-823-03-ESP

March 8, 2004

MEMORANDUM AND ORDER
(Initial Prehearing Order)

In the above-captioned proceedings, Exelon Generation Company, LLC, (EGC) Dominion Nuclear North Anna, LLC, (DNNA) and System Energy Resources, Inc., (SERI) each have applied under 10 C.F.R. Part 52 for an early site permit (ESP) relative to their respective North Anna, Clinton, and Grand Gulf facilities. In a March 2, 2004 memorandum and order (CLI-04-08), in response to applicant requests, the Commission (1) determined that hearings on

pending petitioner challenges to each of these applications should be conducted in accord with recently revised procedural provisions of 10 C.F.R. Part 2 (69 Fed. Reg. 2812 (Jan. 14, 2002)); (2) provided petitioners in each proceeding sixty days within which to file their contentions; and (3) referred the proceedings to the Atomic Safety and Licensing Board Panel for presiding officer appointment.

Pending the appointment of a presiding officer in each of these proceedings, in accordance with 10 C.F.R. §§ 2.318(a), 2.319, the following directives shall apply to the conduct of these proceedings:

I. SUPPLEMENT TO HEARING REQUESTS/INTERVENTION PETITIONS AND RESPONSES/REPLIES

Under section 2.714(a)(3) of the superseded Part 2 provisions governing intervention petitions, a petitioner was afforded an opportunity to amend its petition relative to its standing showing. Moreover, under the section 2.309(g) of the new Part 2, a request regarding the selection of hearing procedures must be submitted with the intervention petition. The pending hearing petitions in each of these proceedings, however, were submitted before the agency's final rule adopting the recent Part 2 revisions was published in the Federal Register. As such, the provisions of the new rules that do not provide for such supplementation and that permit hearing procedure selection requests had not been officially noticed when the petitions were filed. To ensure that these aspects of the transition between the old Part 2 and the new Part 2 do not disadvantage the petitioners, at the time they file their contentions, they are permitted to supplement their petition to provide additional standing-related information in accord with section 2.714(a)(3) of the superseded Part 2 and to address the selection of hearing procedures in accord with section 2.309(g).

As was noted in the Commission's March 2 issuance, the petitioners' contentions are to be filed on or before Monday, May 3, 2004. Contentions and their supporting bases must conform to the requirements of section 2.309(f). Any contention submitted after this date will be considered a late-filed contention that must meet the requirements for admission set forth in section 2.309(c).

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Administrative -- primarily concerns issues relating to matters discussed or referenced in the Administrative Information (AI) portion of the ESP application at issue in the proceeding, or matters a petitioner asserts should be discussed in the AI portion of the ESP application.
2. Site Safety Analysis -- primarily concerns issues relating to non-emergency planning matters discussed or referenced in the Site Safety Analysis Report (SSAR) portion of the ESP application at issue in the proceeding, or matters a petitioner asserts should be discussed in the SSAR portion of the ESP application..
3. Environmental -- primarily concerns issues relating to matters discussed or referenced in the Environmental Report (ER) portion of the ESP application at issue in the proceeding, or matters a petitioner asserts should be discussed in the ER portion of the ESP application.
4. Emergency Planning -- primarily concerns issues relating to matters discussed or referenced in the Emergency Plan (EP) or the SSAR emergency planning portion of the ESP application at issue in the proceeding, or matters a petitioner asserts should be discussed in the EP portion of the ESP application or the SSAR emergency planning portion of the ESP application.
5. Miscellaneous -- does not fall into one of the categories outlined above.

If the petitioner believes a contention raises issues that cannot be classified as primarily falling into only one of these categories, it must set forth the contention and supporting bases in full

separately for each category into which it is asserted to fall with a separate designation for that category (e.g., Site Safety Analysis-3 and Environmental-3).

In accordance with section 2.309(h), applicant and NRC staff responses to petitioner contention/supplement submissions shall be filed on or before Friday, May 28, 2004, and petitioner replies to the applicant and staff answers shall be filed on or before Friday, June 4, 2004.

II. ADMINISTRATIVE MATTERS

A. Notice of Appearance

If they have not already done so, within seven days of the date of this memorandum and order, each counsel or representative for each participant shall file a notice of appearance complying with the requirements of 10 C.F.R. § 2.314(b). In each notice of appearance, besides providing a business address and telephone number, if an attorney or representative has a facsimile number and/or an Internet e-mail address, the attorney or representative should provide that information as well. Counsel or representatives who have already submitted a notice of appearance that does not provide facsimile or e-mail information should file a supplemental statement with that information within seven days of the date of this issuance.

B. Service on the Licensing Board Panel and Other Participants

1. Service on Presiding Officer

For each pleading or other submission filed before the Licensing Board Panel presiding officer or the Commission in these proceedings,¹ subject to the requirement of section II.B.1.g below, in addition to submitting an original and two conforming copies to the Office of the

¹ Pending the appointment of a presiding officer, any pleadings or other submissions in these proceedings should be filed with the Chief Administrative Judge (e-mail address: gpb@nrc.gov) in accord with the procedures set forth below.

Secretary as required by 10 C.F.R. § 2.304(f) and serving a copy on every other participant in a particular proceeding in accordance with section 2.305(b),² a participant should serve conforming copies on the presiding officer:

a. Regular Mail. To complete service on the presiding officer, a participant should send conforming copies to the presiding officer at the following address:

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

For regular mail service, the staff may use the NRC internal mail system (Mail Stop T-3F23) in lieu of first-class mail.

b. Overnight or Hand Delivery. To complete service on the presiding officer via overnight (e.g., express mail) or hand delivery, a participant should send conforming copies to the presiding officer at the following address:

Atomic Safety and Licensing Board Panel
Third Floor, Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2738

It should be noted that use of the presiding officer's regular mail address (see section II.B.1.a above) on an overnight/hand delivery (such as Federal Express) may delay receipt of the filing.

c. Facsimile Transmission. To complete service on the presiding officer by facsimile transmission, a participant should (i) send one copy by rapifax to the attention of the presiding

² Although a joint initial prehearing order is being issued in these three proceedings, a participant in each proceeding need only serve electronic and paper copies of its filings upon the other participants to that particular proceeding. A participant is, of course, free to provide electronic or paper copies of its pleadings to the participants in the other two proceedings if it wishes to do so.

officer at (301) 415-5599 (verification (301) 415-7399); and (ii) that same date, send conforming copies to the presiding officer by regular mail at the address given in section II.B.1.a above.

d. E-Mail. To complete service on the presiding officer by e-mail transmission, a participant should (i) send the filing (which should include the certificate of service) as a file attached to an e-mail message directed to the presiding officer; and (ii) send paper conforming copies that same date to the presiding officer by regular mail at the address given in section II.B.1.a above.

If a participant has a pleading it wishes to send by e-mail that includes attachments it is unable to convert to electronic form, it should do one of the following:

- i. If the attachments the participant is unable to convert to electronic form are fifteen pages or less, contemporaneous with the transmission of the pleading by e-mail the attachments should be sent by a separate facsimile transmission. The e-mail and facsimile transmissions should note that separate transmission modes are being used. The paper conforming copies of the pleading and attachments should be sent to the presiding officer by regular mail at the address given in section II.B.1.a above.
- ii. If the attachments the participant is unable to convert to electronic form are more than fifteen pages, the pleading should be sent by e-mail and the paper conforming copy of the pleading with the attachments should be sent to the presiding officer by express mail or other means that will ensure delivery on the next business day. The e-mail should note that there will be next-day service of the pleading with the attachments.

e. Timely Service by Hand Delivery, Facsimile Transmission, or E-Mail. To make timely service on the presiding officer, any pleading or other submission served by (i) hand delivery must be received by 4:30 p.m. Eastern Time; and (ii) facsimile transmission or e-mail must be received by the presiding officer on the due date no later than 5:00 p.m. in the time zone of the participant to the proceeding (other than the participant filing the pleading or other submission) within the most western United States time zone, as reflected by the locations upon which the certificate of service indicates the document was served.

f. Service on Other Participants. Whichever of the methods outlined above (e.g., facsimile or e-mail with conforming paper copies to follow by mail) is used for service on the Licensing Board, the participant serving the pleading should make service on all other participants and the Office of the Secretary (e-mail: hearingdocket@nrc.gov; facsimile number: (301) 415-1101 (facsimile verification number: (301) 415-1966)) by the same or a comparable method.

g. Service of all Filings. Absent some other directive from the presiding officer, all filings in these cases directed to the presiding officer shall be served on the presiding officer and the other participants so as to ensure receipt on the day of filing. Absent some other directive from the presiding officer, the participants may use any of the methods outlined above so long as the filing is timely received by presiding officer and the other participants.

C. Limitations on Pleading Length and Reply Pleadings

1. Page Limitation

Any motion filed after the date of this memorandum and order and any related responsive pleadings shall not exceed ten pages in length (including signature page) absent preapproval of the presiding officer.³ A request for presiding officer preapproval to exceed this page limitation shall be sought in writing no less than three business days prior to the time the motion or responsive pleading is filed or due to be filed. A request to exceed this page limitation must (1) indicate whether the request is opposed or supported by the other participants to the proceeding; (2) provide a good faith estimate of the number of additional pages that will be filed; and (3) demonstrate good cause for being permitted to exceed the page limitation.

³ The intervention petition supplement and any responses/replies thereto permitted under section I are not subject to this page limitation. However, any subsequent motion for admission of a late-filed contention and responses thereto are subject to this page limitation.

2. Reply Pleadings

In accordance with the agency's rules of practice, leave must be sought to file a reply to a response to a motion. See 10 C.F.R. § 2.323(c). A request for presiding officer preapproval to file a reply shall be sought in writing no less than three business days prior to the time the reply will be filed.⁴ A request to file a reply must (1) indicate whether the request is opposed or supported by the other participants to the particular proceeding; and (2) demonstrate good cause for permitting the reply to be filed.

D. Motions for Extension of Time

A motion for extension of time filed with the presiding officer in these proceedings shall be submitted in writing at least three business days before the due date for the pleading or other submission for which an extension is sought. A motion for extension of time must (1) indicate whether the request is opposed or supported by the other participants to the particular proceeding; and (2) demonstrate appropriate cause that supports permitting the extension.

E. Opposing a Request to Exceed the Page Limitation, to File a Reply, or to Extend the Time for Filing a Pleading

Any written opposition to a request to exceed the page limit, to file a reply, or to extend the time for filing a pleading shall be served on the presiding officer, the Office of the Secretary, and counsel for the other participants in the particular proceeding by facsimile transmission, e-mail, or other means that will ensure receipt on the next business day after the filing of the request.

⁴ Although the agency's rules of practice do not provide for reply pleadings, a presiding officer will presume that for a reply to be timely, it would have to be filed within ten days of the date of service of the response it is intended to address.

F. Exhibits/Attachments to Filings.

If a participant files a pleading or other submission with the presiding officer that has additional documents appended to it as exhibits or attachments, a separate alpha or numeric designation for each appended document (e.g., Exhibit 1; Attachment A) should be given to each appended document, either on the first page of the appended document or on a cover/divider sheet in front of the appended document.

Exhibits and attachments to a motion and any related responsive pleadings are not subject to the page limitation set forth in section II.C.1 above.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD PANEL⁵

/RA/

G. Paul Bollwerk, III
CHIEF ADMINISTRATIVE JUDGE

Rockville, Maryland

March 8, 2004

⁵ Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel or the representatives for the applicants, the petitioners, and the NRC staff in each of the above-captioned proceedings.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
EXELON GENERATION COMPANY, LLC) Docket No. 52-007-ESP
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)
(Early Site Permit for Clinton ESP Site))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (INITIAL PREHEARING ORDER) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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

Chief Administrative Judge
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Atomic Safety and Licensing Board Panel
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Docket No. 52-007-ESP
LB MEMORANDUM AND ORDER
(INITIAL PREHEARING ORDER)

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[Original signed by Adria T. Byrdsong]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 8th day of March 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 8th day of March 2004