

RAS 7550
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April 1, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD PANEL April 5, 2004 (3:36PM)

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

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

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

**PETITIONERS' MOTION FOR RECONSIDERATION OF
MEMORANDUM AND ORDER
SCHEDULING INITIAL PREHEARING CONFERENCE**

Petitioners, Blue Ridge Environmental Defense League ("BREDL"), Environmental Law and Policy Center ("ELPC"), National Association for the Advancement of Colored People - Claiborne County Mississippi Branch ("NAACP"), Nuclear Energy Information Service ("NEIS"), Nuclear Information and Resource Service ("NIRS"), Public Citizen, and Sierra Club - Mississippi Chapter, each of which have petitioned to intervene in at least one of the three above-captioned Early Site Permit ("ESP") proceedings, move for reconsideration of the Atomic Safety and Licensing Board's ("ASLB's") March 22, 2004, Memorandum and Order (Scheduling Initial Prehearing Conference) (hereinafter "Order"). In that Order, the ASLB

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decided to hold a single prehearing conference for all three ESP proceedings at the Nuclear Regulatory Commission's ("NRC's" or "Commission's") headquarters in Rockville, Maryland.

Petitioners respectfully submit that holding a single prehearing conference in Rockville, Maryland, would have an adverse impact on Petitioners' members ability to attend the prehearing conference, which is a critical stage in the ESP proceedings; would discourage the general public and the press from attending and becoming informed about the safety and environmental issues raised by these ESP proceedings; would be inconsistent with the Commission's long-established policy of holding public portions of NRC licensing proceedings in the locales of proposed facilities; and would also be inconsistent with NRC environmental justice guidance. Therefore, Petitioners request that the ASLB hold separate prehearing conferences in the vicinity of each site. Petitioners are prepared to assist the ASLB in the identification of suitable locations for the prehearing conferences.

Any nuclear licensing proceeding is a matter of significant concern to potential neighbors of a proposed facility. Moreover, as the ASLB has observed, these ESP proceedings are "first-of-a-kind." Order at 1. Thus, Petitioners' members, the general public, and the press, have a very strong interest in being able to observe the conduct of the proceedings, including oral argument on standing and the admissibility of contentions at the prehearing conference. The prehearing conference is a particularly important part of the proceeding, because it amounts to a live debate on whether the petitioners should be heard on the safety, environmental and security-related issues that concern them regarding the proposed early site permits. In fact, the prehearing conference is particularly may constitute the only point at which the issues raised in these proceedings are engaged in a live setting. If the contentions are dismissed and/or standing is denied, the proceedings will end. Even if the contentions are admitted, under the Commission's

new procedural rules, it is possible that any contentions that are admitted will be decided without any live hearing.

Holding a single prehearing conference in Rockville would have an adverse impact on Petitioners' members ability to attend, and would also discourage the general public and the local press from attending. In fact, it would be a great hardship for many of Petitioners' members to travel the significant distance from their homes in Mississippi, Illinois, and Virginia to Rockville, Maryland. Even for Petitioners' members who live in the neighboring state of Virginia, attending the prehearing conference in Rockville would require a significant amount of highway travel and expensive overnight stays.

Petitioners submit that holding the prehearing conferences in the vicinity of the proposed ESP sites is needed for consistency with the public participation requirements of Section 189a of the Atomic Energy Act, 42 U.S.C. § 2239(a), and the NRC's longstanding general principle and practice of holding NRC public licensing proceedings in locations that are convenient and necessary for the parties. *See Power Authority of the State of New York (James. A. Fitzpatrick Nuclear Power Plant and Indian Point Nuclear Generating Unit No. 3)*, unpublished Memorandum and Order (CAN Motion for Schedule Change and Change of Hearing Location) at 4 (Dec. 22, 2000) (granting intervenor's motion to change the locale of a hearing on an operating license transfer from NRC headquarters to the location of the plant site).¹ *See also* 10 C.F.R. Part 2, Appendix A(1)(a) and (b) (requiring that construction permit hearings be begun in the vicinity of the proposed plant, with "due regard" to the "convenience and necessity of the parties.") While the recently revised 10 C.F.R. Part 2 no longer includes the NRC statement of general policy and procedure, the NRC's policy of holding its proceedings in locations that are

¹ The *Fitzpatrick* order can be found in the NRC's ADAMS system at ML003780267.

convenient to petitioners should continue to apply as an important means of implementing the strong public participation goals of Section 189a of the Atomic Energy Act.

Finally, to hold a single prehearing conference, at considerable distance from any of the three sites, would be inconsistent with NRC guidance for implementation of EO 12898, the President's Executive Order on Environmental Justice, 59 Fed. Reg. 7,629 (1994). The Office of Nuclear Reactor Regulation ("NRR"), for example, encourages public participation in decisions under the National Environmental Policy Act ("NEPA") by directing that:

The staff should develop effective public participation strategies. The staff should acknowledge and seek to overcome linguistic, cultural, institutional, geographic, and other barriers to meaningful participation and should incorporate active outreach to affected groups.

The staff should strive for meaningful community representation in the process. The staff should be aware of the diverse constituencies within any community and should endeavor to have complete representation of the community as a whole. The staff should be aware that community participation must occur as early as possible if it is to be meaningful.

NRC Office Instruction LIC-203, Procedural Guidance for Preparing Environmental Assessments and Considering Environmental Issues at D-2 (June 21, 2001) (emphasis added).

While this guidance is not specifically applicable to the ASLB, Petitioners submit that the principles are appropriately applied in these proceedings, where Petitioners have raised NEPA and/or environmental justice issues. Moreover, two of the three sites (Grand Gulf and North Anna) have neighboring minority and low-income populations. It would be a great hardship for members of these communities to travel the significant distance to Rockville, Maryland, for the prehearing conference.

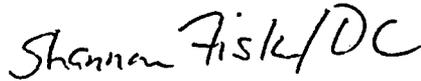
Accordingly, the ASLB should grant this motion for reconsideration, and hold separate prehearing conferences for each of these ESP proceedings, in the vicinity of the Clinton, North Anna, and Grand Gulf sites.

Respectfully Submitted,



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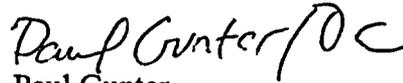
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April 1, 2004

CERTIFICATE OF SERVICE

I certify that on April 1, 2004, copies of the foregoing Motion for Reconsideration of Memorandum and Order Scheduling Initial Prehearing Conference were served on the following by e-mail and/or first-class mail as indicated below:

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