

RAS 7917  
RAS 7918  
RAS 7919

June 1, 2004

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD PANEL

June 9, 2004 (3:15PM)

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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

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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

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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

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**PETITIONERS' MOTION FOR EXTENSION OF TIME  
TO REPLY TO RESPONSES TO CONTENTIONS**

Pursuant to the Atomic Safety and Licensing Board's ("ASLB's") Initial Prehearing Order of March 8, 2004, 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 has petitioned to intervene in at least one of the three above-captioned Early Site Permit ("ESP") proceedings, hereby move for an extension of the June 4, 2004, deadline for replying to responses to their contentions, until

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SECY-02

June 9. Petitioners received Dominion Nuclear North Anna's response on May 25, 2004, and the other responses on May 28, 2004. *See* Dominion's Answer to Petitioners' Contentions (May 25, 2004); NRC Staff's Answer to Contentions of Blue Ridge Environmental Defense League, Nuclear Information and Resource Service, and Public Citizen Regarding the Early Site Permit Application for the North Anna Nuclear Power Plant Site (May 28, 2004); Exelon Generation Company's Answer to Proposed Contentions (May 28, 2004); NRC Staff's Response to Petitioners' Contentions Regarding the Early Site Permit Application for the Clinton Site (May 28, 2004); Answer by System Energy Resources, Inc. to Proposed Contentions (May 28, 2004); NRC Staff's Response to Petitioners' Contentions Regarding the Early Site Permit for the Grand Gulf Site (May 28, 2004).

Petitioners submit the following "unavoidable and extreme" circumstances prevent them from meeting the seven-day reply deadline established in 10 C.F.R. § 2.309(h)(2). *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 21 (1998). First, the time period for replying to applicants and the NRC has fallen on the Memorial Day holiday, during which Petitioners' counsel had family obligations. Thus, as a practical matter, the time for preparing Petitioners' replies amounts to only four working days from May 28, the date when Petitioners received all but one of the responses.<sup>1</sup> Second, in the North Anna and Grand Gulf ESP cases Petitioners are represented by only one counsel, who is also representing BREDL and providing substantial assistance to counsel for ELPC and Petitioners' other representatives in the Clinton ESP cases. Accordingly, as a result of the ASLB's establishment of simultaneous filing deadlines for all three of these cases, counsel for Petitioners must review and reply to a large

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<sup>1</sup> Petitioners note that while they received Dominion's response on May 25, they did not receive the Staff's response regarding the North Anna ESP application, or any of the other responses, until May 28. Moreover, many of the issues raised in the North Anna ESP proceeding overlap

volume of material, amounting to approximately 275 pages of argument. Finally, the issues raised by Petitioners and responded to by applicants and the NRC Staff are both novel and complex, including factual issues on which Petitioners must consult their technical experts in preparing a reply. Thus, preparation of a meaningful reply will consume a significant amount of time. Petitioners do not believe the Commission contemplated such extreme circumstances in establishing the seven-day time period for replies in 10 C.F.R. § 2.309(h)(2).

Accordingly, Petitioners request that the ASLB grant an additional five days to Petitioners to prepare their replies to the applicants and the NRC Staff, or until June 9, 2004. Petitioners respectfully submit that the requested extension will not delay the pre-hearing conference or otherwise adversely affect the parties. If the extension is granted, the Board and parties will have Petitioners' replies in hand for seven working days before the prehearing conference begins on June 21. Moreover, if Petitioners are given an adequate opportunity to prepare their written replies, the prehearing conference should be more efficient and helpful to the ASLB.

As required by the ASLB's Initial Prehearing Order of March 8, 2004, Petitioners have attempted to consult with counsel for the applicants and the NRC Staff regarding this motion. Counsel for the Staff stated that under the circumstances, the Staff does not object to this motion. Counsel for the Systems Energy Resource, Inc. stated that his client would agree to an extension but only until June 8. Counsel for Exelon Generation Company, L.L.C. stated that his client would not agree to an extension. Counsel for Petitioners was unable to reach counsel for Dominion Nuclear North Anna, L.L.C. regarding this motion.<sup>2</sup> Petitioners note that a one or

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with issues raised in the other two proceedings, and thus it is necessary to review all of the responses together in order to prepare an adequate reply.

<sup>2</sup> Counsel for Petitioners spoke with counsel for Dominion on Friday May 28, 2004, and requested agreement to an extension until June 11, 2004. Counsel for Dominion stated that his

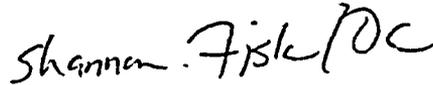
two day extension would compensate for the fact that the reply period fell on a holiday, but would not provide adequate additional time for Petitioners to prepare a reply to the voluminous materials submitted by the applicants and the NRC Staff.

Respectfully Submitted,



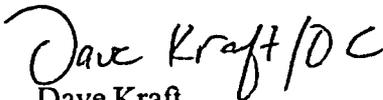
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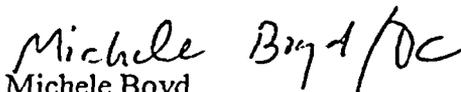
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Representative of Public Citizen

June 1, 2004

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client would oppose such an extension. Subsequently, counsel for Petitioners attempted to reach counsel for Dominion to request agreement to an extension until June 9, but was unable to reach him.

UNITED STATES OF AMERICA  
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**CERTIFICATE OF SERVICE**

I hereby certify that on June 1, 2004, copies of the foregoing Petitioners' Request for Extension of Time to Reply to Responses to Contentions were served on the following by e-mail and/or first-class mail, as indicated below:

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