

RAS 8388

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 08/31/04

SERVED 08/31/04

Before Administrative Judges:

Dr. Paul B. Abramson, Chairman
Dr. Anthony J. Baratta
Dr. David L. Hetrick

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

August 31, 2004

NOTICE OF HEARING
(Application for Early Site Permit)

This proceeding concerns the September 25, 2003 application of Exelon Generation Company, LLC (EGC) for a 10 C.F.R. Part 52 early site permit (ESP). The ESP application seeks approval of the site of the existing Clinton nuclear power facility in DeWitt County, Illinois, for the possible construction of one or more new nuclear reactors. In response to a December 8, 2003 notice of hearing and opportunity to petition for leave to intervene regarding the EGC ESP application (68 Fed. Reg. 69,426 (Dec. 12, 2003)), on January 12, 2004, the Environmental Law and Policy Center, the Nuclear Energy Information Service, the Blue Ridge Environmental Defense League, the Nuclear Information and Resource Service, and Public Citizen (collectively Clinton Intervenors) filed a request for hearing and petition to intervene contesting the EGC ESP application. Their petition was referred by the Commission to the Atomic Safety and Licensing Board Panel to conduct any subsequent adjudication. (See CLI-04-08, 59 NRC 113, 118-19 (2004).) On March 22, 2004, a three-member Atomic Safety and Licensing Board was established to adjudicate this ESP proceeding. (See 69 Fed. Reg. 15,910 (Mar. 26, 2004).)

On June 21-22, 2004, the Board conducted a two-day initial prehearing conference at the NRC's Rockville, Maryland headquarters facility during which it heard oral presentations regarding the standing of the ESP petitioners and the admissibility of their six proffered contentions. Thereafter, in an August 6, 2004 issuance the Board noted that the petitioners have established the requisite standing to intervene in this proceeding and ruled that they have submitted one admissible contention concerning the EGC ESP application so that they can be admitted as parties to this proceeding. (Exelon Generation Company, LLC (Early Site Permit for Clinton ESP Site), LBP-04-17, 60 NRC __ (Aug. 6, 2004).)

1. Hearing(s) Will Be Conducted. In light of the foregoing, please take notice that a hearing will be conducted in this contested proceeding. This hearing will be governed by the hearing procedures set forth in 10 C.F.R. Part 2, Subparts C and L (10 C.F.R. §§ 2.300-.390, 2.1200-.1213).

2. Matters to Be Considered. In its August 6, 2004 Order (referred to above), the Board set forth the specific admitted contention which will be litigated in this contested hearing. In addition, as was indicated in the December 2003 notice regarding the EGC ESP application (68 Fed. Reg. at 69,426) and the applicable regulations in 10 C.F.R. § 52.21, the Licensing Board is to: **(a)** consider whether issuance of an ESP will be inimical to the common defense and security or to the health and safety of the public (Safety Issue 1); **(b)** determine whether, taking into consideration the site criteria contained in 10 C.F.R. Part 100, a reactor or reactors having characteristics that fall within the parameters for the site, can be constructed and operated without undue risk to the public health and safety (Safety Issue 2); and **(c)** consider whether in accordance with the requirements of

10 C.F.R. Part 51, Subpart A, the ESP should be issued as proposed. Additionally, in accord with the December 2003 notice, the Board is to: **(d)** determine whether the requirements of sections 102(2)(A), (C), and (E) of the National Environmental Policy Act of 1969 and 10 C.F.R. Part 51, Subpart A, have been complied with in the proceeding; **(e)** independently consider the final balance among conflicting factors contained in the record of proceeding with a view to determining the appropriate action to be taken; and **(f)** determine, after considering reasonable alternatives, whether a license should be issued, denied, or appropriately conditioned to protect environmental values.

3. Hearing Procedures: Public Attendance. During the course of the proceeding, the Board may conduct an oral argument, as provided in 10 C.F.R. § 2.331, may hold additional prehearing conferences pursuant to 10 C.F.R. § 2.329, and may conduct evidentiary hearings in accordance with 10 C.F.R. §§ 2.327-.328, 2.1206-.1208. The public is invited to attend any oral argument, prehearing conference, or evidentiary hearing. Notices of those sessions will be published in the Federal Register and/or made available to the public at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and through the NRC web site, www.nrc.gov.
4. Limited Appearances. As provided in 10 C.F.R. § 2.315(a), any person not a party to the proceeding may submit a written limited appearance statement. Limited appearance statements, which are placed in the docket for the hearing, provide members of the public with an opportunity to make the Board and/or the participants aware of their concerns about matters at issue in the proceeding. A written limited appearance statement can be submitted at any time and should be sent to the Office of the Secretary using one of the methods prescribed below:

Mail to: Office of the Secretary
Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Fax to: (301) 415-1101 (verification (301) 415-1966)

E-mail to: hearingdocket@nrc.gov

In addition, a copy of the limited appearance statement should be sent to the Licensing Board Chairman using the same method at the address below:

Mail to: Administrative Judge Paul B. Abramson
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Fax to: (301) 415-5599 (verification (301) 415-7550)

E-mail to: gpb@nrc.gov

At a later date, the Board may entertain oral limited appearance statements at a location or locations in the vicinity of the proposed EGC ESP. Notice of any oral limited appearance sessions will be published in the Federal Register and/or made available to the public at the NRC PDR and on the NRC website, www.nrc.gov.

5. Document Availability. Documents relating to this proceeding are available for public inspection at the Commission's PDR or electronically from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC web site at www.nrc.gov/reading-rm/adams.html (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in

accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Paul B. Abramson
ADMINISTRATIVE JUDGE

Rockville, Maryland

August 31, 2004

* Copies of this notice of hearing were sent this date by Internet e-mail transmission to counsel for (1) applicant EGC; (2) the Clinton Intervenors; and (3) the NRC staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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EXELON GENERATION COMPANY, LLC) Docket No. 52-007-ESP
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB NOTICE OF HEARING (APPLICATION FOR EARLY SITE PERMIT) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

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

Administrative Judge
Dr. Paul B. Abramson, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Dr. David L. Hetrick
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Dr. Anthony J. Baratta
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Ann P. Hodgdon, Esq.
Tyson R. Smith, Esq.
Darani M. Reddick, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dave Kraft, Executive Director
Nuclear Energy Information Service
P.O. Box 1637
Evanston, IL 60204-1637

Paul Gunter, Director
Reactor Watchdog Project
Nuclear Information and Resource Service
1424 16th St., NW, Suite 404
Washington, DC 20036

Michele Boyd
Public Citizen
215 Pennsylvania Ave., SE
Washington, DC 20003

Docket No. 52-007-ESP
LB NOTICE OF HEARING (APPLICATION FOR
EARLY SITE PERMIT)

Howard A. Learner, Esq.
Ann Alexander, Esq.
Shannon Fisk, Esq.
Environmental Law and Policy Center
35 E. Wacker Dr., Suite 1300
Chicago, IL 60601

Thomas S. O'Neill, Esq.
Associate General Counsel
Exelon Nuclear
4300 Winfield Rd.
Warrenville, IL 60555

Steven P. Frantz, Esq.
Paul M. Bessette, Esq.
Alex S. Polonsky, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004

Diane Curran, Esq.
Harmon, Curran, Spielberg
& Eisenberg, L.L.P.
1726 M Street, NW, Suite 600
Washington, DC 20036

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 31st day of August 2004