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NUCLEAR REGULATORY COMMISSION

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
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ATOMIC SAFETY AND LICENSING BOARD
(ASLB)
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TELECONFERENCE
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_____||
In the Matter of: ||
EXELON GENERATION CO., LLC || Docket No. 52-007-ESP
Early Site Permit for ||
Clinton ESP Site ||
_____||

Thursday
September 23, 2004

Teleconference

The above-entitled matter came on for
hearing, pursuant to notice, at 2:00 p.m.

BEFORE:

- DR. PAUL B. ABRAMSON Chair
- DR. ANTHONY J. BARATTA Administrative Law Judge
- DR. DAVID L. HETRICK Administrative Law Judge

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1 APPEARANCES:

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P R O C E E D I N G S

(2:01 p.m.)

JUDGE ABRAMSON: Let's go on the record.

Eric.

THE REPORTER: Yes.

JUDGE ABRAMSON: Let me note for you that this is a continuation of a prior proceeding, and so the first page for today's transcript should be number 411.

THE REPORTER: All right.

JUDGE ABRAMSON: Okay. It's 2:00 p.m., Eastern Standard Time, on Thursday, September 23rd, 2004. We are convened to conduct an initial prehearing conference call regarding Exelon Generation Company, LLC's application for an early site permit for the Clinton, Illinois site.

This is a first conference call for the separate consideration of matters related to the Clinton site, the prior proceedings having been consolidated with consideration at a preliminary level of the essentially simultaneous proceedings with early site permits for Grand Gulf and North Anna.

We scheduled this prehearing conference call to discuss scheduling and administrative matters regarding this proceeding, and we note that 10 CFR

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1 2.332(a) requires this Board to consult with all of
2 you and issue an order as soon as practicable
3 regarding scheduling, and that is the principal focus
4 of today's call.

5 So let me begin by introducing the Board
6 members. In the room with me at NRC headquarters here
7 in Rockville is Dr. Anthony Baratta. Dr. Baratta is
8 a nuclear engineer and a full-time member of the
9 ASLBP.

10 And the third member of this Board who is
11 on the call from sunny Arizona -- I assume it's sunny
12 out there, Dave.

13 JUDGE HETRICK: Yes, it is.

14 JUDGE ABRAMSON: -- is Dr. Dave Hetrick,
15 Professor Emeritus of nuclear engineering at the
16 University of Arizona, and Dave is a part-time member
17 of the ASLB.

18 My name is Paul Abramson. I'm an attorney
19 and a physicist, and I serve on the panel as both a
20 technical judge and a legal judge, and I'm the
21 Chairman.

22 At this point, I would like to have
23 counsel for the participants identify themselves and
24 the other members of their team for the record
25 commencing with counsel for the Intervenor. So,

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1 Shannon, do you want to tell us who you've got?

2 MR. FISK: Yes, it's just myself, Shannon
3 Fisk from the Environmental Law and Policy Center.

4 JUDGE ABRAMSON: Thank you, Shannon.

5 And, Steve, who have you got with you for
6 the company?

7 MR. FRANTZ: We have Steve Frantz and Paul
8 Bessette from Morgan, Lewis, counsel for Exelon.

9 JUDGE ABRAMSON: Okay, and for the staff?

10 MS. HODGDON: I'm Ann Hodgdon, counsel for
11 the NRC staff, and I have with me today Mauri
12 Lemoncelli, L-e-m-o-n-c-e-l-l-i, first name M-a-u-r-i,
13 and Shana Zipkin -- can you spell that? S-h-a-n-a Z-
14 i-p-k-i-n. Shana is an honor law graduate who is on,
15 well, the rotation with our office. Mauri has just
16 joined Reactor Programs, having just graduated from
17 the honor law program.

18 I also have two members of the staff, the
19 project manager on the safety side, who is Nanette
20 Gilles, G-i-l-l-e-s, and Tom -- well, I said safety --
21 and on the environmental side is Tom Kenyon.

22 JUDGE ABRAMSON: Okay. It sounds like we
23 have everybody that's going to be on. So why don't we
24 start? Thank you for identifying yourselves.

25 The first matter that we on the panel

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1 would like to discuss is how the applicant wants to
2 proceed with this sole admitted contention.

3 We note that we received a joint response
4 from the applicant and the staff to our September 2nd
5 order, indicating that both the applicant and the
6 staff intend to provide evidence with respect to
7 Contention 3.1 as admitted by this Board and
8 speculating that the intervenors would do the same.
9 Since this is a contention of omission, we'd like to
10 begin with hearing from both sides how this should
11 proceed in light of two things:

12 One, the fact that the applicant has an
13 appeal pending before the Commission regard -- I'm
14 sorry -- that the intervenors have an appeal pending
15 before the Commission regarding certain portions of
16 our ruling on energy alternatives.

17 And, two, the expectation that the EIS
18 will treat these matters at issue.

19 So why don't we begin with the applicant?
20 Steve, what is your view on how we should proceed
21 here?

22 MR. FRANTZ: With respect to Contention
23 3.1, the NRC staff has issued a request for additional
24 information, or RAI, to us that pertains to the
25 contention. We are preparing a fairly extensive

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1 response which will eventually take the form of a
2 revision to the application itself. The revision to
3 the application, which will be in Section 9.2 of the
4 environmental report, will include a fairly detailed
5 discussion of wind by itself, solar by itself, and
6 then combinations of both wind and/or solar with
7 fossil fuel generating facilities.

8 We believe that this revision will
9 essentially fully address the contention of 3.1, and
10 we would use that as a basis for either further
11 settlement negotiations with Mr. Fisk or for motions
12 for summary disposition or for hearing as appropriate.

13 JUDGE ABRAMSON: Do you have a rough idea
14 what the schedule is for that, Steve?

15 MR. FRANTZ: I would think within the next
16 few days that will be going into the NRC, and of
17 course, we'll get copies out to all of the parties and
18 the Board.

19 JUDGE ABRAMSON: So that will be coming
20 out shortly is what you're telling us.

21 MR. FRANTZ: That is correct.

22 JUDGE ABRAMSON: Okay. Staff, Ann, any
23 comment on that?

24 MS. HODGDON: Mauri Lemoncelli is going to
25 address most of these matters, but the only comment

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1 that I would have -- and she will address the other
2 matters -- on the matter of the pending appeal, we
3 don't expect that that would have any effect, and on
4 the other things, we agree with the applicant. I
5 mean, they will respond to the RAIs, and they might
6 file for summary disposition, and we will address
7 these matters in the EIS.

8 JUDGE ABRAMSON: Let me ask: has a copy
9 of the RAI been sent to the intervenors?

10 MS. HODGDON: Yes.

11 JUDGE ABRAMSON: Yes?

12 MS. HODGDON: Yes.

13 JUDGE ABRAMSON: Okay. So given that,
14 Shannon, what's your view of this?

15 MR. FISK: Well, the intervenors, we will
16 review the additional information when we receive it,
17 and I guess should Exelon file a motion for summary
18 disposition, we'll reply in kind to that.

19 You know, beyond that, we were intending
20 to have expert testimony at a hearing on the
21 contention. I believe we had thought after the EIS
22 was issued, but have never seen that.

23 JUDGE ABRAMSON: So you're thinking
24 that -- let me see if I understand this correctly --
25 first of all, of course, you'll look at what they

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1 produce in their response to the RAI. So it sounds to
2 me like we shouldn't make any plans to schedule a
3 hearing at this point at least until you have looked
4 at those.

5 And then second, did I understand
6 correctly that your thought is that even if there is
7 to be a hearing on this, it would be after you had
8 either the preliminary EIS or the final EIS?

9 MR. FISK: Yes. I believe Exelon and the
10 staff also agreed on this, that all of our thought was
11 to not have a hearing until after the final EIS was
12 issued by the NRC staff.

13 JUDGE ABRAMSON: Okay, and do we have a
14 rough idea of when that is going to happen?

15 MS. LEMONCELLI: Judge Abramson, this is
16 Mauri Lemoncelli for the staff.

17 JUDGE ABRAMSON: Okay.

18 MS. LEMONCELLI: Originally, according to
19 the schedule, the FEIS was scheduled to be issued
20 8/25/05. I'm told by the staff that that date will be
21 pushed back by at least one month. So we're now
22 looking at approximately 9/25/05.

23 JUDGE ABRAMSON: Is that the FEIS or the
24 draft?

25 MS. LEMONCELLI: That's the FEIS, Your

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1 Honor.

2 JUDGE ABRAMSON: Okay.

3 MS. LEMONCELLI: In addition, that date is
4 our best guess at this point. It is subject to change
5 based on any unforeseen circumstances, as is the date
6 for the SER.

7 JUDGE ABRAMSON: Okay. Well, I guess that
8 means that there isn't any rush to try to do things
9 now. I think that Dr. Baratta has raised the question
10 of whether we should try to establish some kind of
11 schedule for filings after we receive these responses,
12 but I think at this point -- and I think that's
13 probably a good idea -- let's wait until we see what
14 the responses to the RAI look like and what the
15 intervenors think of those RAIs, and maybe let's talk
16 about having another conference call, say, a week or
17 two after you have had the response to the RAI so that
18 we can then sensibly have a discussion about it.

19 Mr. Fisk, can you give me a rough idea how
20 long it will take you to think them over and review
21 them before you'd be ready to have an intelligent
22 conversation with us?

23 MR. FISK: Right. If it would work, I
24 would say probably two to three weeks just so that we
25 would be able to consult, you know, with experts on

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1 our side.

2 JUDGE ABRAMSON: So we're talking about
3 the response to the RAIs being in, let's say, for sure
4 by the end of this month. Is that a pretty good
5 guess?

6 MR. FRANTZ: Yes.

7 JUDGE ABRAMSON: Okay. So if we schedule
8 something, say, the third week of October, fourth week
9 of October, will that give you plenty of time?

10 MR. FISK: Yes. How about the fourth
11 week? That would work?

12 JUDGE ABRAMSON: Yes. All right.

13 MR. FRANTZ: And that's a conference or a
14 written --

15 JUDGE ABRAMSON: No, we'll just do a
16 conference call. I don't see any reason to make
17 people do the international dance until we know we
18 have something we really need to do. Let's talk about
19 it on the phone and see where we are.

20 JUDGE BARATTA: It would have to be the
21 beginning of that fourth week because we have other
22 commitments at the latter couple of days of that.

23 This is Judge Baratta, by the way.

24 So if we could plan on --

25 JUDGE ABRAMSON: Does anybody have a

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1 calendar handy?

2 JUDGE BARATTA: -- say Tuesday --

3 JUDGE HETRICK: Yes, I have a calendar
4 handy. The fourth week, the Monday of the fourth week
5 is October 25th.

6 JUDGE ABRAMSON: So how about the 26th?
7 Does the 26th work for everybody?

8 JUDGE HETRICK: That works for me.

9 MR. FRANTZ: Okay here.

10 JUDGE BARATTA: Is this time a quick time
11 (phonetic)?

12 MS. LEMONCELLI: Your Honor, I don't
13 believe that would be a good date for the staff. If
14 you could just give us one moment, please.

15 JUDGE ABRAMSON: Sure.

16 MS. LEMONCELLI: Thank you.

17 (Pause in proceedings.)

18 JUDGE ABRAMSON: From now on folks, the
19 court reporter has been guessing at names. When you
20 speak, please identify yourself.

21 THE REPORTER: Thank you.

22 JUDGE ABRAMSON: For the staff, we
23 recognize that's the week when the research meeting is
24 being held, and perhaps we should think about moving
25 it up to the Thursday or Friday of the preceding week,

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1 which would put it at October 22nd or 21st. Does that
2 sound right?

3 MR. FRANTZ: This is Steve Frantz.

4 I have a conflict on the 22nd. I would be
5 available on the 21st.

6 JUDGE ABRAMSON: The 21st. Okay. How
7 about the rest of you on the 21st?

8 MS. LEMONCELLI: This is Mauri Lemoncelli
9 for the staff.

10 Judge, we apologize. Our staff members
11 will be on travel as of the 21st. However, we're
12 available on the 20th. No, I'm sorry. Travel
13 beginning the 20th. We're available the 18th and
14 19th.

15 JUDGE ABRAMSON: Okay. So how about the
16 19th? I want to try to maximize the amount of time
17 that the intervenors have to look at this. Does the
18 19th work?

19 MS. LEMONCELLI: That's fine. That's fine
20 with the staff. Thank you.

21 JUDGE ABRAMSON: Okay. How about for the
22 intervenors?

23 MR. FISK: This is Shannon Fisk.

24 The 19th works for me. I would need to
25 just check with our other counsel.

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1 JUDGE ABRAMSON: Yes, why don't you do
2 that and get back to us? But that is going to be
3 nearly three weeks after the distribution of the
4 answers, assuming that that stays on track.

5 And does that work for the applicant?

6 MR. FRANTZ: Yes, it does.

7 JUDGE ABRAMSON: All right, and the same
8 time would be okay, assuming that that's a go for the
9 intervenors?

10 MR. FRANTZ: Yes.

11 MR. FISK: Yes.

12 JUDGE HETRICK: This is Judge Hetrick.

13 I need two minutes to check a calendar in
14 another room. I'll be right back to the phone.

15 JUDGE ABRAMSON: Okay. Go to it.

16 (Pause in proceedings.)

17 JUDGE HETRICK: Judge Hetrick back to the
18 phone.

19 JUDGE ABRAMSON: Okay.

20 JUDGE HETRICK: I'm okay any time after
21 October 14th.

22 JUDGE ABRAMSON: Okay, great. So let's
23 tentatively set this for October 19th. We'll put out
24 a short order describing where we are and calling for
25 the call on the 19th, and, Shannon, if you can check

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1 with other members of your group that you might need
2 to have on that call and get back to me or to all of
3 us perhaps by E-mail, that would be useful.

4 MR. FISK: Yes, Your Honor, I will.

5 JUDGE BARATTA: Has anyone had problems
6 getting connected on the system this time at all?

7 Judge Baratta.

8 JUDGE ABRAMSON: We didn't hear any.

9 JUDGE BARATTA: All right.

10 JUDGE ABRAMSON: Okay. Well, thank you
11 all. It's nice to do things short and sweet. We'll
12 talk to you in almost a month.

13 Okay. Thanks a lot.

14 JUDGE BARATTA: Court Reporter, do you
15 need anything from us before we go?

16 JUDGE ABRAMSON: Yes, maybe we should make
17 sure you get the spelling of everybody's name.

18 (Discussion concerning spellings was held
19 off the record.)

20 MS. LEMONCELLI: Judge Abramson, we have
21 some additional questions for the Board.

22 JUDGE ABRAMSON: Okay.

23 MS. LEMONCELLI: Just one item actually.
24 With respect to the updates to the mandatory
25 disclosures, I assume that the Board received Mr.

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1 Frantz's letter on behalf of all parties regarding the
2 agreement between the parties on the updates to the
3 disclosures.

4 JUDGE ABRAMSON: Yes.

5 MS. LEMONCELLI: Okay. I just wanted to
6 touch upon the staff's request that we only send E-
7 mail updates. As per the Board's prehearing order,
8 I'm aware that the order mandates E-mail and
9 conforming paper copies to be sent.

10 While the parties have agreed that E-mail
11 would suffice, I'm just wondering about the preference
12 of the Board members.

13 In addition, the staff is certainly
14 willing and prepared to file a formal motion unless
15 the Board deems it unnecessary.

16 JUDGE ABRAMSON: Well, the only difficulty
17 is that Dr. Hetrick has very great difficulty
18 receiving long E-mails. So if you want to send --
19 Dave, would you rather have a hard copy or a hard to
20 read E-mail?

21 JUDGE HETRICK: Well, I would hope that I
22 don't get an E-mail attachment that is more than about
23 40 pages. That's all.

24 MS. LEMONCELLI: And we would be happy to
25 send Judge Hetrick a paper copy or a copy on CD-ROM.

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1 JUDGE HETRICK: I would prefer paper if
2 that is all right with you.

3 MS. LEMONCELLI: A paper copy would be
4 fine, sure.

5 JUDGE ABRAMSON: Okay. But as for us here
6 at headquarters, we're quite comfortable with E-mail.
7 So we'll make sure to add something in our order about
8 dealing with the distribution requirements.

9 MS. LEMONCELLI: Very good. The staff
10 appreciates that. Thank you.

11 JUDGE BARATTA: This is Judge Baratta.
12 Are you limiting that to the mandatory
13 disclosures or are you saying that would also be true
14 for any other filings?

15 MS. LEMONCELLI: No, Judge, just for the
16 mandatory disclosure for purposes of the hearing file.
17 Any other filings would be both E-mail and conforming
18 paper copies.

19 JUDGE BARATTA: All right. Thank you for
20 clarifying that.

21 JUDGE ABRAMSON: Yes, and we'll take care
22 of that in our order.

23 MR. FISK: Your Honor.

24 JUDGE ABRAMSON: Yes.

25 MR. FISK: Shannon Fisk for the

1 intervenors.

2 I realize I haven't addressed the issue of
3 our interlocutory review petition.

4 JUDGE ABRAMSON: Okay.

5 MR. FISK: Obviously should we prevail on
6 that, that would impact the issues we were able to
7 raise in our contention.

8 JUDGE ABRAMSON: Yes, I agree. I think we
9 all recognize that we have to await the outcome. I
10 just wanted to see whether -- and if the outcome is
11 favorable to the intervenors, it will change the path.

12 MR. FISK: Right. Okay.

13 MS. HODGDON: Judge Abramson, Ann Hodgdon.

14 If I may speak, when I said that the
15 appeal pending has no effect, I meant the pendency of
16 the appeal has no effect whatsoever on our scheduling.
17 We just assume that it will not be granted and all
18 appeals of that sort.

19 JUDGE ABRAMSON: Okay.

20 MS. HODGDON: I mean, that's the
21 regulations. That's according to the regulations.
22 You just go ahead with what you're doing, and if the
23 Commission in whatever way it acts, you know, that's
24 when we need to deal with it. We can't anticipate it
25 anyway.

1 JUDGE ABRAMSON: No, we understand that.
2 But what I was concerned with was since the response
3 from the staff and the applicant said you were ready
4 to put on witnesses, I thought maybe you thought you
5 were going to start a hearing right now and we needed
6 to ferret that out.

7 So I appreciate your view, and we'll see
8 what happens.

9 Anything else?

10 MS. LEMONCELLI: On behalf of the staff,
11 no. I think we're all set. Thank you, Judge.

12 JUDGE ABRAMSON: Okay. From the
13 intervenors?

14 MR. FISK: Nothing else, Your Honor.

15 JUDGE ABRAMSON: And from the applicant?

16 MR. FRANTZ: Nothing else.

17 JUDGE ABRAMSON: Okay. Thank you all for
18 participating, and once again, we'll talk to you in a
19 month, and we'll get an order out shortly.

20 PARTICIPANTS: Thank you.

21 JUDGE ABRAMSON: Thank you very much.

22 (Whereupon, at 2:21 p.m., the hearing in
23 the above-entitled matter was adjourned.)

24

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CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: Exelon Generation Station

ESP

Docket Number: 52-007-ESP

Location: Telephone Conference

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.



Eric Mollen

Official Reporter

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