

RAS 8812

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

Exelon Generation Company, LLC

(Early Site Permit for Clinton ESP Site)

Docket No. 52-007

ASLBP No. 04-821-01-ESP

DOCKETED
USNRC

November 5, 2004 (7:38AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

**INTERVENORS' MOTION TO SUSPEND PROCEEDING
PENDING REINSTATEMENT OF
AGENCYWIDE DOCUMENT ACCESS AND MANAGEMENT SYSTEM**

Intervenors, the Environmental Law and Policy Center, Blue Ridge Environmental Defense League, Nuclear Information and Resource Service, Nuclear Energy Information Service, and Public Citizen hereby request the Presiding Officer of the Atomic Safety and Licensing Board Panel to suspend the above-captioned Early Site Permit ("ESP") licensing proceeding pending the reinstatement of the U.S. Nuclear Regulatory Commission's ("NRC's") Agencywide Document Access and Management System ("ADAMS"), which was closed to public access on October 25, 2004. Suspension of the proceeding is necessary because the unavailability of ADAMS renders it impossible for Intervenors and the general public to participate in this proceeding in a meaningful way.

Undersigned counsel, Shannon Fisk, certifies pursuant to 10 C.F.R. 2.323(b) that he contacted counsel for Exelon and the NRC Staff regarding this motion, but that attempts to resolve the issues raised herein were unsuccessful.

I. Factual Background

The ADAMS document collection is the NRC's central repository for publicly available documents regarding the NRC's regulatory activities. ADAMS holds hundreds of thousands of

documents generated by the NRC and outside sources. See Press Release: NRC Initiates Additional Security Review of Publicly Available Documents; Temporarily Suspends Agency's On-Line Library (hereinafter "October 25 Press Release").¹

Not only does the NRC post all licensing document on ADAMS, but it also posts on ADAMS all publicly available notices, technical reports, generic correspondence, enforcement orders and correspondence, and interagency correspondence. ADAMS can be searched by a variety of parameters, including the date, docket number, nature of the document, topic of the document, or identification (*i.e.*, "accession") number. Thus, ADAMS is the principal tool used by members of the public for access to NRC documents regarding the agency's regulatory activities.

On October 25, 2004, the NRC closed off public access to ADAMS, pending completion of a review of the ADAMS library to determine whether it contains "sensitive" documents that should be removed. See October 25 Press Release. The NRC stated that ADAMS will be closed for "at least several weeks" before ADAMS is even partially restored. *Id.*

II. Argument

Pursuant to Section 189a of the Atomic Energy Act, interested members of the public have a right to a hearing on construction permit and operating license applications for nuclear power plants. 42 U.S.C. § 2239(a). The hearing offered by the NRC must be a "meaningful" one. *Union of Concerned Scientists v. NRC*, 735 F.2d 1437, 1446 (D.C. Cir.1984), cert. denied, 469 U.S. 1132 (1985). In a 1998 policy statement, the Commission re-affirmed the importance of ensuring that the opportunity for a hearing is meaningful. *Statement of Policy on Conduct of*

¹ This press release is posted on the NRC's website at www.nrc.gov.

Adjudicatory Proceedings, CLI-98-12, 48 NRC 18 (1998) (hereinafter "CLI-98-12"). As the Commission observed, its objectives in conducting licensing hearings are:

[t]o provide a fair hearing process, to avoid unnecessary delays in the NRC's review and hearing processes, and to produce an informed adjudicatory record that supports agency decision making on matters related to the NRC's responsibilities for protecting public health and safety, the common defense and security, and the environment.

In carrying out these objectives, it is the presiding officer's "duty" to:

conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing process, to avoid delay and to maintain order.

10 C.F.R. § 2.319. Intervenors respectfully submit that in order to ensure the fairness and orderliness of this proceeding, the "appropriate action" is to suspend this ESP proceeding until 30 days after ADAMS is fully restored.

To proceed with this ESP case at the same time that Intervenors are denied access to ADAMS would deprive them of a meaningful opportunity for a hearing. While Intervenors' lack of access to ADAMS can be partially compensated for by service of all correspondence between Exelon Generation Company L.L.C. ("Exelon") and the NRC Staff regarding Exelon's ESP application, a huge body of other information that is potentially relevant to this case is now completely inaccessible to Intervenors. For instance, Intervenors have no access to generic NRC documents regarding advanced reactor siting and design issues that may be relevant to admitted contentions or that may provide a basis for late-filed contentions. Intervenors also lack access to documents related to other ESP applications, which similarly may contain information related to admitted contentions or may provide a basis for late-filed contentions. In summary, virtually the entire body of accumulated understanding regarding safety and environmental issues that are relevant to Exelon's ESP application has been blacked out. This body of information includes existing information and information that may be generated in the coming months as the ESP

proceeding progresses. Therefore, the unavailability of ADAMS would severely prejudice Intervenor's ability to participate in this proceeding.

The unavailability of ADAMS would also prejudice other members of the public who seek to become informed about this ESP proceeding. ADAMS has replaced the local public document rooms that formerly were maintained at public libraries and other institutions near Clinton and other nuclear facilities. Thus, there is no publicly accessible electronic *or* paper collection of licensing documents related to Exelon's ESP application.

In CLI-98-12, the Commission suggested that a balance must be struck between the public's right to a meaningful hearing opportunity and the applicant's right to a "prompt resolution of disputes" concerning its application. *Id.* at 19. Intervenor respectfully submit that the grave prejudice to Intervenor and the general public caused by the closing of ADAMS far outweighs any inconvenience to Exelon caused by the delay. Intervenor's inability to gain access to relevant documents in ADAMS could prevent them from making an effective case on admitted issues or raising new issues in a timely way. If they are unable to present their case in an effective manner in this ESP proceeding, they are likely to be foreclosed from raising those issues later in a construction permit proceeding. Similarly, non-intervenor members of the public who might use licensing information to comment on NRC safety and environmental review documents or participate in public meetings regarding the ESP proceeding will be prevented from doing so.

In contrast, no apparent prejudice to Exelon would result from the requested delay. An ESP functions as a place-holder, allowing only minimal construction activity. To Intervenor's knowledge, Exelon has not filed a construction permit application for the Clinton site, and thus

no actual construction or operation of a nuclear plant would be delayed by the requested suspension.

III. Conclusion

For the foregoing reasons, Intervenor respectfully request the ASLB to suspend this proceeding until 30 days after the ADAMS system is restored in its entirety. A 30-day period following restoration of ADAMS is necessary to provide Intervenor with a reasonable period of time to review the ADAMS document collection for new documents that are relevant to this proceeding for purposes of supporting testimony or late-filed contentions.

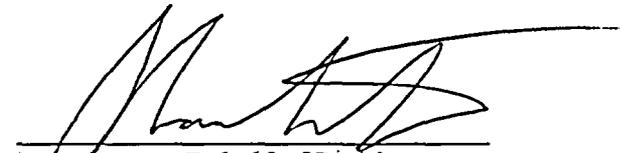
Dated: November 4, 2004

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I, Shannon Fisk, hereby certify that copies of the Intervenor's Motion to Suspend Proceeding Pending Reinstatement of Agencywide Document Access and Management System in the above captioned proceeding have been served on the following via electronic mail and by deposit in the U.S. mail, first class, on this 4th day of November, 2004.

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