

RAS 8908

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

DOCKETED 11/30/04

SERVED 11/30/04

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

November 30, 2004

ORDER

(Denying Intervenors' Motion to Suspend Proceeding Pending Reinstatement of Agencywide Document Access and Management System ("ADAMS"))

This Order is in response to the joint motion of Intervenors Environmental Law and Policy Center, Blue Ridge Environmental Defense League, Nuclear Information and Resource Service, Nuclear Energy Information Service, and Public Citizen requesting that the subject Early Site Permit ("ESP") licensing proceeding be suspended until 30 days after the NRC's Agencywide Document Access and Management System ("ADAMS") is restored in its entirety.¹

On October 25, 2004, the NRC temporarily suspended public access to ADAMS pending review of the information contained therein for security purposes.² Intervenors claim that the unavailability of documents on ADAMS results in deprivation of a meaningful opportunity for a hearing. In its answer to Intervenors' motion, Applicant Exelon Generation

¹Motion to Suspend Proceeding Pending Reinstatement of Agencywide Document Access and Management System (November 4, 2004).

²NRC Press Release, "NRC Initiates Additional Security Review of Publicly Available Documents; Temporarily Suspends Agency's On-Line Library," October 25, 2004.

Company opposes Intervenor's request.³ The NRC Staff, in its answer, also opposes the request.⁴

The NRC has stated that it is "moving expeditiously to complete the necessary determinations and restore public access to appropriate documents."⁵ As the schedule currently stands, the projected release date for the Staff's Draft Environmental Impact Statement ("DEIS") is March 2005, and the projected release date for the Final Environmental Impact Statement ("FEIS") is October 2005, and the parties have agreed that their final positions cannot be determined until after receipt and review of the FEIS. Therefore, hearings cannot be expected to commence before the end of CY 2005. We agree with the Applicant that due to the projected dates for the DEIS and FEIS, there is currently no activity which can be expected to be materially affected, in the reasonably near term, by the unavailability of ADAMS. Intervenor's motion to suspend the proceeding until 30 days after restoration of public access to ADAMS is therefore denied.

The Board notes, however, that if, at any point in the future, Intervenor is able to demonstrate actual delay resulting from the unavailability of ADAMS, this issue may be revisited. To do so, Intervenor must identify specific documents needed which are unavailable due to ADAMS restrictions, and identify actual time delays caused by that unavailability.

³Answer in Opposition to Intervenor's Motion to Suspend Proceeding Pending Reinstatement of Agencywide Document Access and Management System (November 12, 2004).

⁴Answer Opposing Intervenor's Motion to Suspend Proceeding Pending Reinstatement of Agencywide Documents Access and Management System (ADAMS) (November 15, 2004).

⁵NRC Press Release, "NRC Restores Additional, Hearing-Related Documents to its Web Site," November 16, 2004.

The Board also directs that, in the future, parties include the submission date in the upper right-hand corner of the first page of all documents filed in this proceeding.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁶

/RA/

Paul B. Abramson, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland

November 30, 2004

⁶Copies of this order were sent this date by Internet e-mail transmission to counsel for (1) applicant EGC; (2) the Intervenor; and (3) the NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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(Early Site Permit for Clinton ESP Site))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (DENYING INTERVENORS' MOTION TO SUSPEND PROCEEDING PENDING REINSTATEMENT OF AGENCYWIDE DOCUMENT ACCESS AND MANAGEMENT SYSTEM ("ADAMS")) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

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Docket No. 52-007-ESP
LB ORDER (DENYING INTERVENORS' MOTION
TO SUSPEND PROCEEDING PENDING
REINSTATEMENT OF AGENCYWIDE DOCUMENT
ACCESS AND MANAGEMENT SYSTEM ("ADAMS"))

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 30th day of November 2004