

May 2, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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| In the Matter of |) | |
| |) | |
| EXELON GENERATION COMPANY, LLC. |) | Docket No. 52-007-ESP |
| |) | |
| (Early Site Permit for Clinton ESP Site) |) | ASLBP No. 04-821-01-ESP |

NRC STAFF MOTION FOR CLARIFICATION

INTRODUCTION

On April 22, 2005, the Environmental Law and Policy Center, Blue Ridge Environmental Defense League, Nuclear Information and Resource Service, Nuclear Energy Information Service, and Public Citizen (collectively, "Intervenors") filed a Motion to Amend Contention 3.1 pursuant to 10 C.F.R. § 2.309(f). The Board set a schedule for filing, indicating that any responses should be filed on or before May 6, 2005.¹ Pursuant to 10 C.F.R. § 2.323, the Staff of the Nuclear Regulatory Commission ("Staff") respectfully seeks clarification of the Board's Scheduling Order. As set forth below, the Staff believes that the applicable regulation, 10 C.F.R. § 2.309(h)(1), contemplates a longer time for party responses and requests the Board to clarify its Order to replace the date of May 6, 2005, with the date of May 17, 2005, *i.e.*, 25 days from the date of the Motion.

BACKGROUND

On April 4, 2005, the Board held a conference call to discuss the Hearing Schedule, among other items. In a subsequent Memorandum, which, in part, memorialized the April 4th conference call, the Board noted that any petition to amend or file a new contention "will not be deemed

¹ Order (Schedule for Responses to Motion to Amend Contention 3.1) (April 25, 2005) at 2 [hereinafter "Scheduling Order"].

untimely if it is filed within 45 days of the issuance of the DEIS (i.e., on or before April 22, 2005).²

The Board also indicated that a newly-filed contention or an amendment to an existing contention must satisfy the general contention admissibility standards of 10 C.F.R. § 2.309(f).³ On April 22, 2005, pursuant to 10 C.F.R. § 2.309(f), the Intervenors filed a Motion to Amend Contention 3.1.

DISCUSSION

As indicated above, the Intervenors filed their Motion to Amend Contention 3.1 in accordance with 10 C.F.R. § 2.309(f). The NRC's Rules of Practice at 10 C.F.R. § 2.309(h)(1) provide that an answer may be filed 25 days after service of the contention(s).⁴ Accordingly, the Staff respectfully requests that the Board clarify its scheduling order to provide, in accordance with 10 C.F.R. § 2.309(h)(1), that the Staff's answer to the Intervenors' Motion to Amend Contention 3.1 is to be filed 25 days from April 22, 2005, or not later than May 17, 2005, as provided by the rule.

² Memorandum (Clarifying March 30 Memorandum and Order; Memorializing April 4 Conference Call) (April 6, 2005) at 3 (emphasis in original).

³ *Id.*

⁴ 10 C.F.R. § 2.309(h)(1) states: "The applicant/licensee, the NRC staff, and any other party to a proceeding may file an answer to a request for a hearing, a petition to intervene and/or proffered contentions within twenty-five (25) days after service of the request for hearing, petition and/or contentions."

CONCLUSION

For the reasons discussed above, the Staff requests that the Board clarify its scheduling order to provide that answers to the Intervenors' Motion to Amend Contention 3.1 be filed on or before May 17, 2005.

Respectfully submitted,

/RA/
Mauri T. Lemoncelli
Counsel for NRC Staff

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF MOTION FOR CLARIFICATION" in the captioned proceeding have been served on the following through electronic mail, with copies to follow by deposit in the NRC's internal mail system as indicated by a single asterisk, or through electronic mail, with copies to follow by deposit in the U.S. Mail, first class, as indicated by a double asterisk, this 2nd day of May, 2005:

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