

May 30, 2006 (12:44pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of)	Docket No. 52-007-ESP
EXELON GENERATION COMPANY, LLC)	ASLBP No. 04-821-01-ESP
(Early Site Permit for the Clinton ESP Site))	May 30, 2006

**EXELON GENERATION COMPANY'S ANSWER IN SUPPORT
OF NRC STAFF'S PETITION FOR INTERLOCUTORY REVIEW**

I. INTRODUCTION

On May 23, 2006, the staff of the Nuclear Regulatory Commission ("NRC" or "Staff") filed a Petition for Interlocutory Review ("Petition") of the Order issued by the presiding Atomic Safety and Licensing Board ("Board") on May 3, 2006 ("May 3rd Order"), ordering the Staff to produce certain documents and briefings in support of the uncontested mandatory hearing in this proceeding. Exelon Generation Company ("EGC") hereby files its Answer in support of the Petition.

II. PROCEDURAL BACKGROUND

On September 23, 2003, EGC filed its application for an Early Site Permit ("ESP") seeking approval of the existing Clinton nuclear power station site in DeWitt County, Illinois, for the possible construction of one or more new nuclear reactors. The Board admitted a single contention, Contention 3.1, regarding energy alternatives including wind and solar power and combinations thereof. See *Exelon Generation Company, LLC* (Early Site Permit for Clinton ESP Site), LBP-04-17, 60 NRC 229, 252 (2004). The Board subsequently granted EGC's motion for

summary disposition of Contention 3.1. *See Exelon Generation Company, LLC* (Early Site Permit for Clinton ESP Site), LBP-05-19, 62 NRC 134, 183 (2005). The Commission denied review of the Board's decision. *See Exelon Generation Company, LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801 (2005). Accordingly, the mandatory hearing for this proceeding is uncontested.

On April 17, 2006, the Board issued an Order requesting documents and briefings ("April 17th Order") in order to commence its review for the safety portion of the mandatory hearing. In the April 17th Order, the Board directed the Staff and EGC, as relevant, to submit copies of documents pertaining to the EGC ESP application as described in Items 1 through 8 of the April 17th Order and also directed the Staff to prepare and submit a detailed report of how Staff guidance was applied to the application as described in Item 9 of the April 17th Order.¹ In response to the Staff's Motion for Reconsideration of the April 17th Order, the Board issued the May 3rd Order granting in part and denying in part the Staff's Motion for Reconsideration.

In the May 3rd Order, the Board directed the Staff to produce (1) a detailed report setting out the relevant regulatory guidance applied by the Staff in reviewing the Application and a description of each instance where the Staff's review deviated from the guidance (Items 9a-b) and (2) a list of all areas of the application review where the project manager disagreed with the proposed finding of a reviewing staff member, the topic at issue, the ultimate resolution, and the rationale for such resolution. (Item 9d). May 3rd Order at 4-6. The Board deferred its request for documents listed in Items 7-8 (Staff summaries of telephone calls and meetings; Staff reports of reviews of documents maintained by the Applicant) and Item 9c (name and job title of Staff

¹ Items 1 – 5 include the ESP application and related documents, the Final Safety Evaluation Report, Staff Requests for Additional Information and EGC's responses thereto, all of which have been provided to the Board as requested and are not the subject of the Staff's Petition.

member and his/her immediate supervisor) pending further review by the Board. The May 3rd Order is the subject of the Staff's Petition.

III. INTERLOCUTORY REVIEW

As noted in the Staff's Petition, interlocutory review is appropriate if a particular ruling affects the basic structure of the proceeding in a pervasive or unusual manner. 10 C.F.R. § 2.341(f)(2)(ii). EGC agrees with the Staff that the instant case warrants interlocutory review.² Given the disagreement between the NRC Staff and the Licensing Board, Commission guidance on the appropriate scope of the Board's review in an uncontested mandatory hearing is warranted. Further, because there are two other pending ESP proceedings and numerous combined license proceedings are expected over the next several years, this issue may be expected to recur. Therefore it would be beneficial for the Commission to provide guidance that is generically applicable to all mandatory hearings.

IV. COMMISSION DIRECTIONS TO THE BOARD

For many of the same reasons cited in the Petition, EGC concurs with the Staff that certain of the Board's requests for information appear to go beyond that called for by the Commission's regulations and contemplated by the Commission. *See* 10 C.F.R. § 2.104; *see also Exelon Generation Co., LLC* (Early Site Permit for the Clinton ESP Site), CLI-05-17, 62 NRC 5, 39 (2005). Specifically, EGC believes that Board review of the information requested in Items 7-8 (Staff summaries of telephone calls and meetings and Staff reports of reviews of documents maintained by the Applicant), Item 9c (name, job title of involved Staff members and

² EGC understands that System Energy Resources, Inc. ("SERI") and USEC, Inc. ("USEC") each filed Answers to Staff Motion's for Clarification in their applicable proceedings (ASLBP Nos. 04-823-03-ESP and 05-838-01-ML) in which SERI and USEC disagreed with the Staff's suggestions that the respective Boards refer their rulings or certify a question to the Commission with regard to the Boards' requests for documents and briefings. Instead, both SERI and USEC urged the Boards to rule on the Staff's motions themselves. EGC believes, however, that Commission action in this proceeding is warranted given the status of the current dispute between the Board and the Staff, and the fact that the Staff has already filed its Petition for Interlocutory Review with the Commission.

his/her immediate supervisor) and Item 9d (list of areas wherein the Project Manager disagreed with the Staff review) may result in the Board redoing NRC staff work and could result in an unnecessarily lengthy and inefficient hearing process – especially for an uncontested proceeding such as this. We agree with the Staff that the Board should focus on the Staff’s review of documents, and not on the process of the Staff’s review.

With regard to the information requested by the Board in Item 9a-b (detailed report on how Staff guidance was applied to the ESP application), EGC is sympathetic to the Board’s desire to identify means to facilitate its efficient review of the application, Final Safety Evaluation Report (“FSER”) and Final Environmental Impact Statement (“FEIS”). See May 3rd Order, at 4-5. However, EGC is concerned about the schedule impacts of preparation of the information requested by the Board. The Staff has indicated it would likely take substantial time to staff, research, and prepare the documents requested by the Board. EGC is concerned that this could lead to further delay in this proceeding.

EGC suggests that there may be means to satisfy the Board’s desire for an efficient “roadmap” to the application, FSER and FEIS that does not result in any significant delay in this proceeding. For example, the Staff could prepare a table (without a narrative discussion) that lists the various sections of the FSER and FEIS, the staff guidance used to prepare each section, and whether any deviations were approved for those sections. EGC believes that such a table could be prepared with less Staff resources than the narrative requested by the Board and yet would still be sufficient to facilitate the Board’s efficient review of the application, FSER, and FEIS.

V. NEED FOR A SCHEDULE

If the Commission accepts review, EGC respectfully submits that the Commission has sufficient information now to rule on the merits of the Petition, without further briefing by the parties. In particular, the Staff, in its Motion for Reconsideration of the Board's April 17th Order and its Petition to the Commission, clearly describes the areas of and bases for disagreement with the Board. Similarly, the Board's May 3rd Order clearly describes its bases for the various document requests. Thus, the Commission should promptly issue an order on the merits of the issue raised by the Staff.

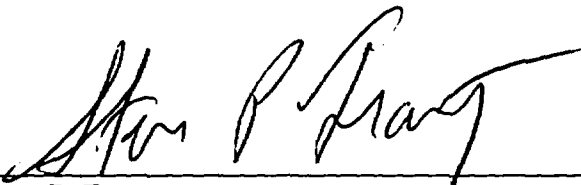
However the Commission decides it should proceed on this matter, EGC urges the Commission to establish a schedule for the remainder of this proceeding. As noted previously, EGC submitted the ESP application in September 2003 and, even prior to this dispute between the Board and Staff, the NRC did not expect to issue a final decision on the ESP until May 2007 (or 44 months after submission of the application).³ Without a schedule set by the Commission, it is likely that there will be significant further delays in this and other ESP proceedings – possibly resulting in issuance of the ESP four or more years after submission of the application. Given the relatively simple nature of this proceeding *i.e.*, an uncontested ESP proceeding for a site with an existing, operating reactor, such a lengthy NRC review process is inappropriate and unfair to EGC. Furthermore, any further delays to this already lengthy licensing process may adversely impact public confidence in the NRC's new plant licensing and hearing processes. Therefore, we strongly urge the Commission to set a schedule for the remainder of this proceeding.

³ EGC understands that the published Clinton ESP review schedule is not binding on the Commission or Board. It nevertheless has played an important role in instilling discipline and confidence in the licensing process.

VI. CONCLUSION

For the reasons stated above, the Commission should grant interlocutory review of the Board's May 3rd Order and promptly issue a decision on the merits, without further briefing by the parties.

Respectfully Submitted,



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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of

Docket No. 52-007

EXELON GENERATION COMPANY, LLC

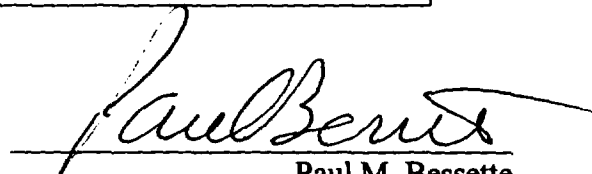
(Early Site Permit for the Clinton ESP Site)

CERTIFICATE OF SERVICE

I hereby certify that copies of Exelon Generation Company's Answer in Support of NRC Staff's Petition for Interlocutory Review in the captioned proceeding have been served as shown below by deposit in the United States mail, first class, this 30th day of May, 2006. Additional service has also been made this same day by electronic mail as shown below.

The Honorable Nils J. Diaz Chairman U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 email: cmrdiaz@nrc.gov	The Honorable Gregory B. Jaczko Commissioner U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 email: cmrjaczko@nrc.gov
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* Original and two copies