

July 5, 2006

Mr. Matthew J. Dunn
Assistant Attorney General
Chief Environmental Enforcement and
Asbestos Litigation Division
Office of the Illinois Attorney General
188 W. Randolph Street, 20th Floor
Chicago, IL 60601

Re: *Illinois v. Exelon Corp.*, No. 06 MR 248 (Will County Court)

Dear Mr. Dunn:

I would like to thank you and your colleagues for participating in our June 15, 2006, telephone discussion about the above-captioned lawsuit. In the lawsuit Illinois seeks judicial relief concerning unplanned tritium releases at the Braidwood Nuclear Generating Station. As we indicated during the phone call, certain aspects of a recently-entered "Agreed Preliminary Injunction Order" raise the question whether Illinois is taking (or contemplating) regulatory action in a preempted area – *i.e.*, regulating radioactive emissions from nuclear power reactors, a function the Atomic Energy Act assigns exclusively to the U.S. Nuclear Regulatory Commission. See, Northern States Power Co. v. Minnesota, 447 F.2d 1143 (8th Cir. 1971), *aff'd*, 405 U.S. 1035 (1972). See generally, Train v. Colorado Public Interest Research Group, Inc., 426 U.S. 1 (1976); Pacific Gas & Electric v. State Energy Res. Conservation and Dev. Comm'n, 461 U.S. 190 (1983).

We understand that the parties will present the Court with a status report in August. As we discussed, if the lawsuit moves forward one option for us is to seek leave to participate in the lawsuit to raise the Commission's preemption concerns. We urge the State to consider the Commission's preemption concerns when determining a path forward in this litigation. We also encourage the State to keep the preemption issue in mind when pursuing the violation notices issued by the Illinois Environmental Protection Agency for the unplanned radioactive releases at Exelon's Byron and Dresden facilities.

During our June 15 call, we discussed specific provisions of the Agreed Preliminary Injunction Order entered into by Illinois and Exelon. We expressed some of the Commission's preemption concerns, and you explained the terms of the Order from the State's perspective. The seven provisions of the Order that we discussed primarily address activities occurring within the boundaries of the Braidwood facility. These provisions also relate to the regulation of radioactive effluents and implicate general plant operations.

First, paragraph 11 requires Exelon to implement alternatives that it finds reasonably feasible to limit the amount of tritium generated at and discharged through the blowdown line at

Braidwood, “following any required approvals.” You explained that these “approvals” specifically refer to NRC-approvals in recognition of our agency’s regulatory oversight of nuclear power plant operation.

Second, paragraph 14(e) of the Order requires Exelon to “operate the blowdown line in a flooded condition.” This requirement raises preemption concerns, in our view, because it seemingly attempts to govern operations of an NRC-licensed facility for radiological health and safety purposes.

Third, paragraph 34 of the Order prohibits Exelon from discharging tritiated wastewater through its blowdown line without giving the State 28 days written notice. You informed us that this provision was intended to apply only to the first occurrence of Exelon resuming tritiated water discharges through the blowdown line, and not for each subsequent release. You also stated that the State interprets this provision to give the State the power to stop Exelon from this discharge if it believes Exelon cannot perform it safely. This interpretation raises preemption concerns because it gives the State authority to regulate the use of Braidwood’s blowdown line – an activity that is licensed by the NRC under the Commission’s exclusive authority to regulate radioactive effluent. Furthermore, as we discussed, the specific use of the blowdown line could have safety implications for plant operations.

Fourth, paragraph 21 of the Order requires Exelon to develop action plans to address tritium in groundwater at levels above 200 pCi/L. We noted that 200 pCi/L is well below the NRC’s dose standard for radiological releases, and that this provision raises preemption concerns, at least to the extent that it is applied within the facility’s NRC-licensed site boundary.

Fifth, paragraph 24 requires Exelon to provide the State with a plan detailing all measures that have been or will be implemented to prevent the reoccurrence of releases from the onsite fixed rear-axle container (FRAC) tanks in which Exelon is currently storing tritiated wastewater. We stated that our preemption concern with this requirement is based on the extent to which the State seeks to exercise control over onsite plant operations. You informed us that the State’s objective embodied in this paragraph is not to direct Exelon’s usage of the tanks, but rather to gain information on them.

Sixth, we discussed paragraph 37 of the Order, which allows the State’s representatives to enter the Braidwood facility, subject to the NRC’s access requirements, to conduct inspections regarding the requirements of the Order. Our concern stems from the types and extent of inspections that the State’s representatives would be conducting, as well as the ability to take photographs during these inspections. You responded that this provision was taken from standard language used in many of the State’s environmental enforcement cases, and that you do not expect that any such inspections will be conducted.

Lastly, paragraph 18 requires Exelon to notify the State of any unlicensed radionuclide release at the Braidwood facility, “regardless of whether the amount is below the reportable quantity and not otherwise reportable.” However, due to the enactment of a new state law (HB 1620) – which establishes reporting requirements for unpermitted releases of radionuclides at nuclear power plants to the extent not preempted by federal law or regulation – it is our

understanding that this provision of the Order is now moot.

During our discussion, you requested that the NRC share any information as to the current status of the FRAC tanks. As of June 30, 2006, 8 of Braidwood's 21 tanks are full. Beginning on May 22, 2006, Exelon began processing the contents of these tanks to meet primary water standards and transferred the processed water to the primary water storage tanks. Exelon will continue to process these tanks each week, and estimates that the process will be completed by August 2006.

As we mentioned in our phone call, the Commission has established a task force ("Liquid Radioactive Release Lessons-Learned Task Force") to examine the issue of inadvertent, unmonitored releases of radioactive liquids containing tritium from NRC-licensed commercial nuclear power plants. The Task Force's goal is to recommend areas for improvement applicable to the NRC and/or the industry by August 31, 2006. More information about the Task Force and the NRC's actions regarding unplanned tritium releases can be found on our website:

<http://www.nrc.gov/reactors/operating/ops-experience/grndwtr-contam-tritium.html>

Again, thank you for your time. Open lines of communication with the State are crucial for effectively and efficiently dealing with unplanned releases of radioactive effluent in your state, and we appreciate the opportunity to discuss our concerns with you. Please contact me (301-415-1956) or Darani Reddick (301-415-3841) should you have any questions.

Sincerely,

John F. Cordes
Solicitor

cc: Charles Gunnarson, Illinois Environmental Protection Agency
Bill Buscher, Illinois Environmental Protection Agency
James W. Glasgow, Will County State's Attorney
Joan Fencik, Exelon Corporation
Bradley Fewell, Exelon Corporation

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