

September 28, 2006

Administrative Judge Paul B. Abramson, Chair
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, D.C. 20555-0001

Administrative Judge David L. Hetrick
8740 East Dexter Drive
Tucson, AZ 85715

Administrative Judge Anthony J. Baratta
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, D.C. 20555-0001

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

Dear Administrative Judges:

In its Order dated August 2, 2006, the Licensing Board set a prehearing conference for October 3, 2006, as part of its preliminary schedule for the remainder of the mandatory proceeding. The parties view this prehearing conference as a timely opportunity to confirm the Board's expectations with respect to A) prefiled direct testimony, B) presentations at the mandatory hearing itself, C) the scope of issues on which the Board anticipates it may need specific technical reviewers to be present in person for questioning at the hearing, D) certain hearing-related logistics, and E) the nature of public participation in the hearing. Consequently, after consultation, the parties respectfully submit the following proposed agenda items for the Board's consideration at the prehearing conference.

A) Structure and Submission of Prefiled Direct Testimony

The Board indicated in its preliminary schedule and at the prehearing conference on September 5, 2006, that the prefiled direct testimony should address the subject matter of the briefs filed on September 14, 2006, as well as any additional issues that the Board may identify at the October 3 prehearing conference. The Staff is proceeding on the understanding that its testimony should therefore, for the most part, represent the Staff's sworn confirmation of the topics addressed in its September 14 brief and in the Staff's submitted responses to the Board's SER and EIS inquiries, in order to introduce these Staff positions into the formal evidentiary record for decision.

Along with the SER and EIS, the Staff intends to submit its prefiled testimony in the form of one comprehensive safety-related document and one comprehensive environmental-related document, sponsored into evidence by the appropriate safety or environmental Project Manager. However, this document will include a signed statement from each contributing reviewer, confirming that the reviewer attests to those portions of the testimony document for which he/she had technical responsibility (and which will be marked with the reviewer's initials) and that the reviewer approves the Project Manager's introducing it as evidence. Under this framework, the source of and responsibility for the testimony will be clear to the Board, and the testimony will be supported by the applicable subject matter expert. However, it will not be necessary for all 25 reviewers who contributed to the Staff's safety and environmental review to attend the hearing in person.

The parties recognize that this need not be the only approach to the presentation of testimony. The Applicant has indicated that it may structure its testimony around (1) testimony providing an overview of the applicant and application, (2) testimony on environmental issues, and (3) testimony on safety issues. The Applicant has also indicated that, depending on the issues identified by the Board on October 3, it may incorporate those issues into that testimony or choose to submit stand-alone testimony on specific topics.

Proposed Agenda Item #1: The parties request that the Board comment on whether these approaches to submitting testimony will be acceptable. If not, the parties would like to discuss what approach would meet the Board's needs.

B) Scope and Structure of Oral Presentations at the Mandatory Hearing

Based on the guidance provided by the Board at the September 5 prehearing conference, the Staff and the Applicant are preparing oral presentations for the mandatory hearing. The Staff contemplates that these presentations will be conducted in the form of two panels, one safety-related and one environmental-related. The Staff expects that each Project Manager would begin that panel's presentation with a short overview of the nature and breadth of the Staff's review, and that approximately 2 to 4 additional panelists (on each panel) would then make a short presentation on a subset of issues that the Staff considered particularly significant to the Staff's ultimate safety or environmental recommendations. Depending on the Board's preference, the panelists would respond to any associated Board inquiries after each panel's presentation, or after both panels have presented. (With respect to Board questions on subjects other than the presentations, please see discussion in topic C, below.)

The Applicant has indicated that it may also use a similar panel format, but with one lead presenter and others available to answer questions.

Proposed Agenda Item #2: The parties request that the Board comment on whether these approaches to the presentations will be acceptable. If not, the parties would like to discuss what approach would meet the Board's needs.

C) Scope of Additional Board Questions at the Mandatory Hearing

The Staff recognizes that the Board may have questions at the mandatory hearing not only about the oral presentations, but also with respect to the Staff's responses to the Board's previous inquiries, with respect to the prefiled testimony, or in connection with issues identified by the Board at the October 3 prehearing conference. However, if there are certain topical areas for which the Board does not anticipate that it will have further questions at the hearing, the Staff proposes that it would be most efficient to require in-person attendance of only a subset of the 25 reviewers who contributed to the Staff's safety and environmental reviews. (The Staff's approach discussed above, in connection with proposed topic A, has the advantage of permitting this more focused set of live witnesses while still placing the full scope of the Staff's testimony on the formal record for the Board's decision.)

With this possibility in mind, the Staff proposes that, after completing its review of the Staff's responses to the Board's previous inquiries and the Staff and Applicant's prefiled testimony, the Board could identify those subject areas for which it expects the Staff and Applicant to have the responsible subject matter expert present at the hearing to answer direct questions. Although these reviewers would not necessarily be the same reviewers who would be giving the oral presentations, these additional witnesses could be seated with the appropriate panel and, during the Board's questioning of those panels, could field the Board's issue-specific questions.

If, at the hearing, the Board has a question for which the responsible technical reviewer is not present because the question relates to a matter outside the scope of issues identified by the Board prior to the hearing, the Staff and/or Applicant will submit an appropriate post-hearing response to address the Board's inquiry, within a time period specified by the Board.

The Staff recognizes that this issue may be of less direct concern to the Applicant (to the extent its testimony and presentations differ in certain respects from the Staff's approach), but that the Board's approach to questioning witnesses at the hearing will have generic implications.

Proposed Agenda Item #3: The parties request that the Board comment on whether the Staff's approach to the in-person attendance of technical reviewers would be acceptable. If not, the parties would like to discuss what approach would meet the Board's needs.

D) Other Hearing-Related Logistics

The parties would also like to discuss the Board's expectations with respect to certain logistical details. These details include the location and schedule of the hearing, the number of copies the Board would like of any documents to be introduced by the parties, the Board's preferred procedure for introducing into evidence any documents supporting the presentations, and any Board guidance or restrictions on the presentation format and length.

Proposed Agenda Item #4: The parties request that the Board provide any guidance it may have with respect to these logistical concerns.

E) Nature of Public Participation at the Mandatory Hearing

Finally, the parties would like to confirm the role of the public during the mandatory hearing. It is the understanding of the parties that the public will participate in the limited appearance sessions but will not be permitted to ask questions directly to the Board, Staff, or Applicant.

Proposed Agenda Item #5: The parties request that the Board comment on the scope of public participation at the hearing.

Counsel for the Applicant, Paul M. Bessette, has authorized me to state that the Applicant concurs with this proposed agenda.

Respectfully submitted,

/RA/

Patrick A. Moulding
Counsel for NRC Staff

cc: Janet Marsh Zeller
Stephen P. Frantz, Esq.
Thomas S. O'Neill, Esq.
Paul Gunter
Diane Curran, Esq.
Howard A. Learner, Esq.

Michele Boyd
Dave Kraft
Jered Lindsey
SECY
OCAA