



As noted by the Licensing Board in its Initial Decision, EGC – in response to questions raised by the Licensing Board during the November 7 and 8, 2006 evidentiary hearing – agreed to an additional Permit Condition to cover buildings or systems with liquid radwaste outside of the radwaste building. EGC, therefore, does not object to the Licensing Board’s decision to modify Permit Condition 3. EGC notes, however, that the Initial Decision does not precisely reflect EGC’s agreement regarding the Permit Condition.

In its Initial Decision, the Board states that Permit Condition 3 should be expanded to include, “as Applicant agreed, ‘piping leading into the radwaste building or other buildings [containing] liquid radwaste.’” LBP-06-28, slip. op at 39-40. This decision, however, only quotes a portion of EGC’s agreement. More specifically, during the hearing, EGC agreed to the following:

We would have no problem with expanding that permit condition to include other piping leading into the radwaste building or other buildings with the liquid radwaste or a condition that says either we have that gradient *or we show we have other design features that would preclude a release of radioactive --*

Tr. 733-34 (emphasis added). Further, in response to a question from the Licensing Board, EGC stated that it would suggest how the expanded condition might be phrased, and that EGC would confer with the NRC staff regarding such phrasing. *Id.* In subsequent discussions with the NRC staff on this issue, EGC proposed to add a new Permit Condition as follows:

The COL applicant must confirm that (1) the hydraulic gradient based on baseline groundwater conditions is inwards towards structures, systems, and components (“SSCs”) designed to hold liquid radioactive waste; *or (2) provide SSCs designed to hold liquid radioactive waste with features to preclude accidental releases of radio-nuclides into potential liquid pathways.* (Emphasis added)

The nature of Exelon’s agreement is reflected in the NRC staff’s Response to the Board’s December 12, 2006 Order, page 2, where the staff states that “under the Applicant’s proposed permit condition, the Applicant would have the option of either including ‘other piping leading

into the radwaste' or having 'a gradient or . . . other design features' that would preclude a release." However, as correctly indicated in the Initial Decision, the NRC staff did not support EGC's proposed modification.

EGC notes that the language emphasized in the two quotations provided above is an essential component of its agreement and should be included in any expansion of Permit Condition 3. Specifically, if the Permit Condition includes a condition covering buildings or systems with liquid radwaste outside of the radwaste building, EGC believes that the combined license ("COL") applicant should have the option of either showing that the gradient points inward to those buildings or systems or showing that there are design features to preclude a release of radioactive material to the groundwater. Design features are acceptable means to preclude radioactive releases into liquid pathways. *See* Permit Condition 4, NUREG-1844 at A-3.<sup>3</sup>

## II. NRC STAFF VERIFICATION OF FACTUAL ASSERTIONS

In its Initial Decision, the Licensing Board cited several instances where the NRC staff did not independently verify facts or technical conclusions included in EGC's safety analysis. LBP-06-28, at 35-37. The Board further noted that but for Commission direction to the Licensing Board "to give deference to the Staff's technical expertise and findings," the Board may not have accepted such an approach stating that the results of any licensing analysis cannot be relied upon without careful consideration of the input data. *See id.* at 37.

EGC believes that accurate input data are necessary elements of licensing analyses, but does not believe there is any legal or regulatory requirement for the NRC staff to verify each fact or technical conclusion in the safety analysis. Further, EGC believes that such a requirement, if

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<sup>3</sup> *See also* Safety Evaluations Reports for the Grand Gulf (NUREG-1840) and North Anna (NUREG-1835) ESP applications, neither of which requires that the hydraulic gradient point inwards into the radwaste holding and storage facility.

imposed, would be contrary to current regulatory practice and would significantly increase the time and cost to approve reactor license applications, without any measurable safety benefit.

The NRC standards for review of an ESP application are outlined in 10 C.F.R. § 52.18. The NRC conducted its review in accordance with RS-002, "Processing Applications for Early Site Permits," which provides detailed guidance to the NRC staff for review of ESP applications. There is no requirement in RS-002 for the Staff to verify each fact cited in an ESP application.<sup>4</sup> In fact, Section 1.0 of RS-002 states the goal of RS-002 is to ensure that the staff's reviews of licensing actions are effective, *efficient*, and consistent. (Emphasis added). Further, Section 2.0 states that the SER will reach conclusions regarding whether there is *reasonable assurance* that the site can safely host a future nuclear power plant or plants. (Emphasis added). In order to achieve these goals, an ESP applicant is authorized to use existing information about the site or nearby facilities in support of its application. In addition, RS-002 directs the NRC staff to conduct site visits to gather information, independent of that supplied in the safety assessment. RS-002, at 2.1.1-3. If information gathered on the site visit indicates the need for clarification of certain facts or conclusions in the Safety Assessment, RS-002 further directs the NRC staff to pursue these issues with the applicant. *Id.*

The NRC staff, in its response to the Board's August 17, 2006 Order, identified approximately 110 facts or technical conclusions in the SER that were not independently verified by the staff. LBP-06-28, at n. 108. These facts included such things as the geographic location of certain natural and man-made features in the vicinity of the site (*e.g.*, Clinton Dam, intake structure, reservoirs), safety-related functions and design measurements of the existing Clinton

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<sup>4</sup> This is especially true for ESP applications for sites with existing operating reactors. "The NRC recognizes the advantages of licensing sites and plants in a mature industry environment. . . . The NRC expects that applicants for ESPs will rely on previously filed siting information to the extent feasible, as is permitted under existing NRC regulations." RS-002, at 13. This allows the staff to appropriately focus on changes since the information was previously filed and on new information, as appropriate.

Power Station ("CPS") ultimate heat sink, and CPS operating history (*e.g.*, ice formation in the existing discharge channel).

There is no requirement for the NRC staff to independently verify basic facts such as these or other similar facts identified by the applicant in the safety analysis. Much of this information is based on previously-filed siting information, as authorized by RS-002, and there is no regulatory or technical basis for the NRC staff to expend resources to verify this information without some indication, through a site visit or otherwise, that the data is not complete or accurate. Similarly, there is no reason to verify facts involving CPS's operating history unless there is some indication, *e.g.* through the extensive application review process or ongoing NRC inspection programs for the CPS, that this information is unreliable or otherwise invalid. Independent verification of these basic facts, which could involve extensive staff resources, would be inefficient and is not required for reasonable assurance.

Furthermore, as a matter of policy, it would be an unproductive use of NRC staff resources to verify every fact in an application. Many facts are provided for information purposes, and are not critical or material to the staff's safety findings. It would be a needless waste of resources for the staff to verify such facts.

Additionally, applicants are under legal requirements (*e.g.*, 10 C.F.R. § 50.9) to provide the NRC with information that is complete and accurate in all material respects, and pursuant to Section 186 of the Atomic Energy Act a license may be revoked for any material false statement in an application. These regulatory provisions instill an obligation within applicants to ensure the accuracy of the facts in their applications. As a result, in both its application reviews and inspection activities, the NRC staff has never attempted to verify 100% of the information in question, and has always relied on audits and inspections of a sample of activities. There is no

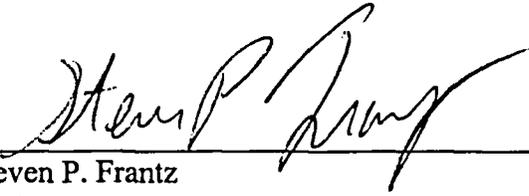
basis for altering the staff's long-standing approach to implementing the Commission's regulations.

Finally, as EGC testified during the evidentiary hearing, EGC believes that the Staff conducted an exceedingly thorough review of the ESP application. In the course of the Staff's review, the EGC ESP organization responded to twelve separate safety and emergency planning-related requests for additional information that included approximately 110 subparts. Exelon held numerous public meetings with the Staff on safety topics, including meetings on seismic and quality assurance issues, and the NRC Staff conducted several site visits and inspections regarding field investigations, seismic issues, hydrology, security, site hazards, meteorology, emergency planning, and other issues. Overall, the review performed by the NRC staff was systematic, comprehensive, and probing. Tr. 557, 573 –74.

#### **IV. CONCLUSION**

For the reasons stated above, EGC does not object to the Board's decision to amend Permit Condition 3 but recommends that the amendment reflects EGC's agreement as described in Section I above. EGC, however, does not concur with the Board's position that the NRC staff needs to independently verify each fact included in the safety analysis. NRC staff verification of each fact, without regard to its significance, would not result in any safety benefits and would extend further an already lengthy review process.

Respectfully Submitted,



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Steven P. Frantz

Paul M. Bessette

MORGAN, LEWIS & BOCKIUS, LLP

1111 Pennsylvania Avenue, N.W.

Washington, DC 20004

Phone: 202.739.3000

Fax: 202.739.3001

[sfrantz@morganlewis.com](mailto:sfrantz@morganlewis.com)

[pbessette@morganlewis.com](mailto:pbessette@morganlewis.com)

COUNSEL FOR EXELON GENERATION COMPANY, LLC.



<p>Dr. Paul B. Abramson          Atomic Safety and Licensing Board Panel          U.S. Nuclear Regulatory Commission          Washington, DC 20555-0001          email: pba@nrc.gov</p>	<p>Dr. Anthony J. Baratta          Atomic Safety and Licensing Board Panel          U.S. Nuclear Regulatory Commission          Washington, DC 20555-0001          email: ajb5@nrc.gov</p>
<p>Dr. David L. Hetrick          8740 E. Dexter Drive          Tucson, AZ 85715          email: dlmwh@dakotacom.net</p>	<p>Ann P. Hodgdon          Patrick A. Moulding          Tison A. Campbell          Office of the General Counsel          U.S. Nuclear Regulatory Commission          Washington, DC 20555-0001          email: aph@nrc.gov. pam3@nrc.gov,          tac2@nrc.gov</p>


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 Paul M. Bessette  
 Morgan, Lewis & Bockius LLP  
 Counsel for Exelon Generation Company, LLC

\* Original and two copies