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Title: Exelon Nuclear Texas Holdings
Victoria County Station Site
Oral Arguments

Docket Number: 52-02-042

ASLBP Number: 11-908-01-ESP-BD01

Location: Victoria, Texas

Date: Thursday, March 17, 2011

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1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

3 ATOMIC SAFETY AND LICENSING BOARD PANEL

4 ORAL ARGUMENTS

5 _____

6 IN THE MATTER OF Docket No.

7 EXELON NUCLEAR TEXAS 52-042

8 HOLDINGS, LLC

9 (Victoria County Station ASLBP No.

10 Site) 11-908-01-ESP-BD01

11 _____

12 Thursday, March 17, 2011

13

14 Theatre Victoria

15 Leo J. Welder Center

16 214 N. Main Street

17 Victoria, Texas

18

19 The above-entitled matter came on for oral

20 argument at 9:00 a.m.

21

22 BEFORE THE LICENSING BOARD:

23 MICHAEL M. GIBSON, Chair

24 DR. MARK BARNETT, Administrative Judge

25 DR. ANTHONY J. BARATTA, Administrative Judge

1 APPEARANCES:

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1 P R O C E E D I N G S

2 JUDGE GIBSON: Good morning.

3 Does anybody have anything to report

4 this morning?

5 MR. FRANTZ: Yes, the parties met

6 yesterday after the termination of the proceedings

7 yesterday afternoon, and we were successful in

8 reaching agreement to admit two new contentions.

9 Mr. Rund, if you could hand out the

10 contentions to the Board and the court reporter?

11 JUDGE GIBSON: Thank you.

12 MR. FRANTZ: And these contentions would

13 replace the existing contentions, the Environmental

14 Contentions 7 through 14, which would be withdrawn

15 and replace by these two contentions.

16 JUDGE GIBSON: Why don't you give us a

17 minute to look these over --

18 MR. FRANTZ: Yes.

19 JUDGE GIBSON: -- if you don't mind.

20 MR. FRANTZ: And these are double-sided

21 by the way, so there is typing on the back also.

22 JUDGE GIBSON: Good.

23 (Pause.)

24 JUDGE GIBSON: Was this -- has this ever

25 been done before?

1 (General laughter.)

2 MR. FRANTZ: I remember back when I

3 was --

4 JUDGE GIBSON: I'm just wondering if

5 this is an historical event, Mr. Frantz.

6 (General laughter.)

7 MR. FRANTZ: Just as a background, as a

8 young associate over 30 years ago, we used to do

9 this, not frequently, but the rules were very

10 different then.

11 JUDGE GIBSON: Right.

12 MR. FRANTZ: There was a much more

13 relaxed standard for admission of contentions.

14 Since the rules changed in the late 1980s it's been

15 much rarer for this to happen.

16 JUDGE GIBSON: Okay. Well, my

17 experience on the other side of this bench was that,

18 you know, when the right occasion arose, good

19 lawyers should be able to work things out. And I

20 commend you all for this. The Board is -- at least

21 based on our quick review of it, it looks fine.

22 Is there anything at all that you all

23 want to put on the transcript about this?

24 MR. BLACKBURN: Not from our --

25 JUDGE GIBSON: Okay.

1 MR. BLACKBURN: -- perspective. I
2 think --
3 JUDGE GIBSON: Other than it's
4 acceptable to you.
5 MR. BLACKBURN: It's certainly
6 acceptable to me, and I appreciate everyone's
7 willingness to work with us on this.
8 JUDGE GIBSON: Staff?
9 MR. ROACH: No, we're satisfied, Your
10 Honor. Thanks.
11 JUDGE GIBSON: Okay.
12 MR. FRANTZ: Again, we also appreciate
13 the cooperation of Mr. Blackburn. It made things
14 much easier.
15 JUDGE GIBSON: Good. Well, I commend
16 you all for that.
17 If we could turn to Safety Contention 3?
18 On page 18 of your petition, Mr.
19 Blackburn, you raise a safety challenge claiming
20 that the applicant has not properly characterized
21 the dangers from oil and gas wells and borings. Is
22 that correct?
23 MR. BLACKBURN: That is correct.
24 JUDGE GIBSON: Now the applicant, in its
25 answer, says that the focus of this contention is

1 with the risks of abandoned wells. Would you agree
2 with that characterization?
3 MR. BLACKBURN: Well, I would say it's
4 primarily the risk of abandoned wells, but there's
5 also active wells not only within the site at the
6 current time, which I presume would not be active
7 ultimately, but there's also active wells in the
8 immediate vicinity. So I would say that there is a
9 double risk that we have identified, both active and
10 inactive wells.
11 JUDGE GIBSON: Okay. I'm curious from
12 the staff perspective, do you agree with petitioners
13 that the applicant did not fully describe the active
14 and abandoned oil and gas wells and borings with
15 accordance with NRC rules?
16 MS. PRICE: I do go back to the staff
17 hasn't finished the review, so we haven't made any
18 final determinations. What we recognized in the
19 petition was that they identified a discrepancy in
20 the data set of the wells that were included.
21 What the applicant put in their
22 application was permitted wells and active oil and
23 gas -- and oil and gas wells. What the petitioners
24 pointed to in their petition was the data set from
25 the Texas Railroad Commission, which included some

1 old and abandoned wells which were not in the
2 application.
3 So to the extent that there's a
4 discrepancy in that data set, staff would not oppose
5 the admissibility of the contention.
6 JUDGE GIBSON: Okay. Mr. Frantz, on
7 page 25 of your answer, if I understand correctly,
8 you seem to be claiming that the petitioners were
9 not sufficiently precise about the wells that may be
10 abandoned that may pose a risk of leaking and
11 exploding. Is that correct?
12 MR. FRANTZ: Yes, they speculate that
13 the abandoned wells may be leaking, but they have
14 not identified any actual leaking wells.
15 JUDGE GIBSON: Okay.
16 JUDGE BARATTA: But from what we just
17 heard, you did not include any inactive wells in
18 your analysis. Is that --
19 MR. FRANTZ: We did to a certain extent.
20 First of all, as we discussed yesterday, we've
21 agreed to go out and make sure that any wells within
22 the footprints of the cooling basin and the power
23 block are appropriately plugged in accordance with
24 state regulations.
25 Also, we picked the bounding case, and

1 this is typical for safety analysis. We picked the
2 bounding case; the bounding case is a breach of one
3 of the nearby natural gas transmission lines. The
4 active wells and the abandoned wells both are
5 located further away than any transmission --
6 pipeline transmission lines. And because we picked
7 the bounding case, that's appropriate for the
8 purposes of the safety analysis.
9 JUDGE BARATTA: I have another question,
10 but I'll --
11 JUDGE GIBSON: Okay.
12 JUDGE BARATTA: -- hold it for a minute.
13 JUDGE GIBSON: Okay. Well, I guess the
14 question that it raised for me was, if you don't
15 know -- you know, you don't know, or at least have
16 not completely characterized all the wells there,
17 which I think you said you haven't, and
18 understandably so, it's a little difficult to see
19 how they, the intervenor, the petitioners, could
20 have been sufficiently specific about the threat
21 that's posed by an individual well when they
22 certainly don't know either.
23 Apparently they were able to come up
24 with some railroad database that had some wells on
25 it that, you know, weren't in what you all

1 described. But I'm just curious, how could they
2 have been more specific, I guess?
3 MR. FRANTZ: Well, first of all, I'm not
4 sure that they identified any wells that we have
5 not. They have assumed, for example, that we have
6 relied upon the Texas Railroad Commission database
7 as the sole source of our identification of the
8 wells. That's not correct. In addition to looking
9 at that information, we've also looked at various
10 land plots. We've also done walk downs of the site
11 to identify wells.
12 And so it's not just a matter of looking
13 at records from one agency; we've actually been on
14 the ground identifying wells. And so I think we do
15 have a complete characterization of wells. They
16 have really not identified any wells that we have
17 not identified.
18 We do have a plot, or a diagram, and
19 it's our figure 2.2-5, which identifies the numerous
20 wells around the site and in the area of the site.
21 JUDGE GIBSON: Do we know when the
22 earliest oil and gas exploration production activity
23 occurred in this area?
24 MR. FRANTZ: I don't know the precise
25 date, but it's been I think for a good period of

1 years, decades.

2 JUDGE GIBSON: Yes. And oftentimes --

3 if this was an early formation that was formation

4 produced, oftentimes, you know, records were not as

5 precise in those days. And so I can certainly

6 appreciate the difficulty that you might have in

7 delineating that.

8 But I was just -- at least that's the

9 question it called into me. It was hard for me to

10 see how they could be a lot more specific when there

11 seems to be a lot of information that we just don't

12 know.

13 MR. FRANTZ: Well, again, it's not just

14 those records. We have been on the ground and doing

15 walk downs, and that's what we've done for the

16 application.

17 Obviously, too, once we get into

18 construction we'll be doing excavation of both the

19 cooling basin and the power block, and to the extent

20 there are any additional wells out there, we'd

21 identify those during the construction activities

22 and ensure that they are properly plugged too. So

23 it's not just what we're doing now, it's what we'll

24 be doing during the construction period also.

25 JUDGE GIBSON: Okay. Mr. Blackburn, do

1 you have anything additional to tell us about any --
2 do you all -- were you all able to ascertain
3 anything more about the age of this field, when it
4 was -- when it began to be produced?
5 MR. BLACKBURN: I don't have the
6 specific information. A lot of the adjacent area
7 was developed in the time period prior to World War
8 II. So it wouldn't surprise me certainly to see
9 some of the activity dating back to the -- I think
10 the primary development began in the '30s and '40s I
11 would say. It wouldn't surprise me to see --
12 JUDGE GIBSON: Okay.
13 MR. BLACKBURN: -- exploration
14 activities going back into the '20s, if not even
15 earlier, but -- and we've seen -- Railroad
16 Commission records are really the primary source we
17 have for abandoned and for older wells, and they're
18 often truly inadequate.
19 And so I think what we have identified
20 is a significant data gap, that the illustration
21 2.5-151 is active oil wells. And I understand I
22 mean that's a much easier thing to find and locate
23 than --
24 JUDGE GIBSON: Right.
25 MR. BLACKBURN: -- than these. But we

1 do think there's a significant data gap, and we do
2 think there are significant safety hazards that
3 haven't been fully looked at and that the bounding
4 condition does not adequate address.
5 JUDGE GIBSON: Well, you know, that
6 raises another question that I had. If I understand
7 the sort of gist of this contention, it is that --
8 sort of two-fold. First of all, they didn't
9 characterize these wells adequately.
10 And secondly, it is that those wells, if
11 we don't know exactly what they are and they're not
12 all plugged and protected, could pose a problem in
13 terms of explosions or in terms of hydrogen sulfide
14 that might be released from those wells. I know
15 there are some other hydrocarbons that might seep
16 up, I think is what --
17 MR. BLACKBURN: Those were the
18 primary --
19 JUDGE GIBSON: -- you said. But
20 essentially one of your contentions was that it
21 posed a threat to seepage down, now it's a threat
22 that essentially would be seepage up.
23 How do you see this as a safety
24 contention in terms of posing a threat to, you know,
25 the safety -- I believe -- I don't know if power

1 block is the right word here, but obviously as
2 you've learned, perhaps painfully so, there is a
3 much more discreet area that is defined as, you
4 know, of safety concern than would be for
5 environmental concerns.
6 MR. BLACKBURN: I have so learned, and I
7 think my response would be really a couple of
8 different responses. One is we don't -- like I say,
9 first of all, we don't really know truly what we're
10 looking at here in terms of what the depths of these
11 wells were that were particularly abandoned, and,
12 you know, what the activity is that is occurring in
13 the area, which I would think is actually within the
14 scope of this data gap at issue. But, you know,
15 it's primarily the abandoned wells.
16 But it's also a characterization of
17 what's happening. There's a question of zone of
18 control, and this really goes to data gap. You
19 know, how far out -- I mean is it going to be
20 acceptable for there to be oil and gas activity full
21 speed ahead, 15,000 feet, pulling out the whole next
22 generation of hydrocarbons, is that acceptable.
23 What are the implications of that I think is also
24 sort of raised by this. I'm not sure we're there
25 yet by any means.

1 But subsurface activity is occurring
2 adjacent to this site. There is inter-connects by
3 sand layers across this site to adjacent sites. If
4 you've got activities going on, you've got -- and
5 the faulting is connected here because faulting in
6 oil and gas development oftentimes go hand-to-hand
7 together.
8 And I think that's what you'll find
9 where there have been examples -- for example there
10 was a not -- in the not-too-distant past a blow out
11 occurred and not too far from there -- where there
12 is literally so much pressure in the subsurface that
13 the penetration activity failed because of a blow
14 out, not unlike what happened in the Gulf.
15 The point is that subsurface is active
16 and it has the ability to transmit gas at
17 significant volumes that we have not characterized.
18 I mean I've thought of -- frankly
19 thought quite a lot about this and, again, in the
20 context of sort of -- it seems that the safety
21 problems that one encounters in this business seem
22 to be one event compounding another event, and you
23 begin to layer events and you get the question,
24 Okay, what's a reasonable layering and that's, I
25 guess, a different inquiry.

1 But the idea that there could be gas,
2 particularly poison gas, toxic gas, coming up at a
3 time when there's an attempt to -- perhaps dealing
4 with a serious situation at the plant, something
5 like that, and, you know, you look back and you go,
6 Why would anybody in their right mind locate a
7 nuclear power plant in the midst of a field that has
8 hydrogen sulfide gas?
9 There's H2S gas not far away from --
10 McFadden is not far away, and we have proof of
11 hydrogen sulfide gas at 15, 16 parts per million at
12 McFadden. That's scary. I mean everybody in Texas,
13 and we don't worry about a whole lot, we worry about
14 hydrogen sulfide gas. It is a very nasty, naturally
15 occurring phenomenon.
16 I just don't think it's particularly
17 wise to go into an area like this without fully
18 understanding just exactly what you've gotten into
19 with locating a nuclear power plant in both an
20 active and inactive oil and gas field with hydrogen
21 sulfide gas and methane remnants.
22 We don't locate much of anything in oil
23 and gas. We build everywhere in this state. But
24 you don't find a lot of construction activity in oil
25 and gas fields.

1 JUDGE GIBSON: Okay. I just would
2 appreciate --
3 I'll give you a chance to respond, Mr.
4 Frantz.
5 -- but I just would like to know -- I
6 understand the staff is okay with the fact that
7 maybe -- though this contention would be admissible
8 insofar as there's an issue about whether the wells
9 were properly characterized, but with respect to
10 whether this is appropriate as a safety contention
11 in terms of the threat it may pose to the limited
12 discreet area that would be of concern for a safety
13 matter.
14 Do you all have a view on that? Not
15 merits but just --
16 MS. PRICE: Yes.
17 JUDGE GIBSON: -- purely whether it's
18 admissible as a --
19 MS. PRICE: Based on --
20 JUDGE GIBSON: -- contention.
21 MS. PRICE: -- the contention.
22 JUDGE GIBSON: Okay.
23 MS. PRICE: I think that was fairly well
24 articulated in our response, which was that where
25 the petitioners asserted there would be issues with

1 hydrogen sulfide gas, they don't recognize that that
2 sort of thing is part of the control room design
3 which will actually occur at the COL stage.
4 So hydrogen sulfide gas, whether or not
5 it's from the oil fields, has been identified as a
6 potential hazard as the site -- I believe for this
7 site it was based on travel up and down I-77 -- that
8 will be considered in the design of the control
9 room, and that's where the safety issue comes in.
10 The other things that they asserted,
11 which was the upper migration, I understand that
12 they're saying that there's wells that you don't
13 know about, but considering the fact that the power
14 block area, which we've all agreed is where the
15 safety related systems, structures and components
16 will be, that area will be pretty well bulldozed.
17 I don't think that there's anything that
18 could possibly be there that would be able to escape
19 detection, and proper plugging and abandonment
20 according to what the applicant has said.
21 The other thing that they bring up was
22 the explosion hazard for the upward migration, and
23 there's nothing in the petition that even asserts
24 that, if they found an oil and gas well, of any size
25 diameter, that there was a potential for that oil

1 and gas well to create an explosion that would be
2 larger than the bounding analysis.
3 They didn't address -- the bounding
4 analysis was actually in the application and they
5 didn't even postulate the possibility other than to
6 say, Oh, you know, there could be an explosion.
7 They didn't postulate some sort of situation where
8 that -- in which that could exceed the bounding
9 analysis.
10 So from a safety standpoint, I don't
11 think that there's anything in the petitioner that
12 supports that. What we recognized was the
13 discrepancy in the database for the wells.
14 JUDGE GIBSON: Okay. I've got another
15 question, but I think Judge Baratta --
16 JUDGE BARATTA: Yes.
17 JUDGE GIBSON: -- needs to ask you one.
18 JUDGE BARATTA: What I'm somewhat
19 troubled by is whether or not what the applicant's
20 done, and I think this is what the petitioner is
21 getting at, whether or not they satisfy section
22 100.20(b) which requires that -- that section's
23 entitled Factors to be Considered When Evaluating
24 Sites.
25 And one of those factors, item (b) is

1 the nature and proximity of man related hazards, and
2 it talks about military and chemical facilities, and
3 clearly a well, in a way, is a chemical facility --
4 MS. PRICE: Sure.
5 JUDGE BARATTA: -- if you like. And I
6 guess what I've heard so far is that -- and I want
7 to make sure I understand your position, okay, is
8 that you do agree that they haven't identified the
9 proximity of man related hazards since they haven't
10 actually -- with respect to these wells, because
11 they haven't really located all of them as they --
12 or may not have located all of them. Okay.
13 MS. PRICE: May have not have located
14 all of them. I think that is the point where we
15 agree. The point where we agree is that they may
16 not have Part 100 because there is a discrepancy in
17 the data set.
18 JUDGE BARATTA: Right. And you don't --
19 but you don't agree -- and there are really two
20 issues here -- that they have raised an issue
21 relative to the noxious gas, and you say that's
22 really a COL issue.
23 MS. PRICE: It's really a COL issue for
24 design of the control room, to make sure that the
25 air intake can filter out that so that you have

1 habitability within the control room.

2 The other thing is that the information

3 that Mr. Blackburn was just giving about lateral

4 movement along bedding and hydrogen sulfide from

5 other areas is not in their petition, and I don't

6 think it's in any of their supporting documentation,

7 so that will be new and shouldn't be considered as a

8 basis for this contention, or support for this

9 contention.

10 JUDGE BARATTA: But they did raise the

11 issue of hydrogen sulfide gas.

12 MS. PRICE: They did raise the issue of

13 hydrogen sulfide gas, and that is something that is

14 looked at for control room habitability.

15 JUDGE BARATTA: Okay. And your position

16 is that they did not provide specific critique of

17 the bounding analysis that --

18 MS. PRICE: Which is necessary to meet

19 2.309(f)(1)(vii).

20 JUDGE BARATTA: Yes. Let's

21 hypothetically say that we admit that part of the

22 contention you feel is admissible, and we find a

23 well some fairly close distance, very close to the

24 power block. And they come in and say, Well,

25 they're -- because that well's there, we don't think

1 the bounding analysis is adequate because of X, Y
2 and Z. Would that --
3 MS. PRICE: At this time it's a
4 hypothetical, and I'm not sure quite how --
5 JUDGE BARATTA: What would your position
6 be on the admissibility of that?
7 MS. PRICE: Again, I'm not sure. It
8 would depend on the facts of that. Certainly they
9 would have an opportunity to file anything
10 admissible that would be based on the specific
11 situation. But at this time, where they had a
12 responsibility to address the information in the
13 SSAR, they certainly didn't do it.
14 JUDGE BARATTA: Right.
15 MS. PRICE: And they postulated no
16 circumstance under which a well found closer to the
17 facility could exclude that bounding analysis, which
18 I think should have been done at this stage.
19 JUDGE BARATTA: Okay. Would you care to
20 comment?
21 MR. BLACKBURN: Well, I just think we
22 could not basically challenge the bounding analysis,
23 per se, because we didn't have the data, so -- but,
24 you know, I think that certainly if you were to
25 admit as a contention the data gap as an issue and

1 that the applicant would be required to go out and
2 gather that, I think that would then certainly
3 provide information that may allow us to go further
4 and develop that issue into perhaps a -- maybe a
5 more specific, perhaps better drafted safety
6 contention.
7 But I frankly think the issue is posed
8 right now. I mean one of the things that I both
9 appreciate and am frustrated by is this step-wise
10 process that we seem to be engaged in, where it's
11 sort of like I petition to open the door, then I
12 open the door, then I walk in room, then I ask
13 permission to sit at the couch. And it's a very
14 step-wise process in that way.
15 And I think it's pretty clear that if
16 we're even halfway close to being right about the
17 number of wells that are undiscovered on this site
18 and what that database looks like, there's going to
19 be issues about safety, and there will be a
20 challenge to the bounding analysis properly drawn,
21 if it's improperly drawn at the current time.
22 So I would just simply say I think that
23 we have posed sufficient information to raise a
24 safety related challenge, and I do think it goes to
25 the section that you quoted of the regulations which

1 is about the manmade hazards.

2 That's what we quoted in our

3 documentation, and it's, you know, I think

4 clearly -- I think clearly relevant and it's clearly

5 been raised at this point in time.

6 JUDGE BARATTA: Yes. Let me go back to

7 the staff on that issue, whether or not this is a

8 safety -- since that talks to -- I think we agree

9 that that section is the operative section, section

10 100.20(b), and since it has the word "hazards" in

11 it, to me that implies safety.

12 So do you have any issue with this being

13 called a safety issue? I mean it's a contention of

14 omission, but it falls not under the environmental

15 report side, but under the SSAR side, is that --

16 MS. PRICE: Yes, I think that the

17 staff's expectation when they're looking at meeting

18 Part 100 is that you will, not just from a safety

19 perspective but from a bigger picture perspective,

20 identify what's on the site. At that point you can

21 decide whether it becomes a safety issue.

22 So to the extent that there may be more

23 wells on the site that weren't identified --

24 JUDGE BARATTA: But it's not a NEPA

25 issue, is what I'm trying to get at.

1 MS. PRICE: It's not a NEPA issue, no --
2 JUDGE BARATTA: Okay.
3 MS. PRICE: -- it certainly would be --
4 JUDGE BARATTA: All right.
5 MS. PRICE: -- on the safety side.
6 JUDGE BARATTA: Whether or not we call
7 it a safety issue or a site characterization issue
8 or whatever, it's not a NEPA issue.
9 MS. PRICE: No.
10 JUDGE BARATTA: And you concur with
11 that?
12 MR. BLACKBURN: I would be happy if you
13 were to allow it as a contention however it is
14 framed.
15 (General laughter.)
16 JUDGE GIBSON: Well, I want to be -- the
17 staff and Mr. Blackburn have weighed in on this.
18 Mr. Frantz, I didn't want to keep you
19 from having an opportunity to speak to it.
20 MR. FRANTZ: Thank you, Judge Gibson.
21 First of all, there have been allegations that there
22 are data gaps or data discrepancies, and frankly
23 there are not. Figure 2.2-5 identifies both the
24 active and abandoned wells; both types of wells are
25 shown on that figure.

1 And there are three types of hazards
2 here that we're talking about. We're talking about
3 pipelines, we're talking about active wells, we're
4 talking about abandoned wells. By their nature,
5 abandoned wells are the least hazardous of all these
6 because they've been depleted. That's why they've
7 been abandoned. And they've been plugged.
8 The biggest hazard is the natural gas
9 pipeline. Not only is it substantially closer to
10 the power block, there are substantially -- it's a
11 substantially greater hazard by itself.
12 Just to give you an order of magnitude
13 feel for this, the natural gas pipeline that comes
14 closest to the plant is anywhere from 26 to 30
15 inches in diameter at a pressure of anywhere from
16 750 to 900 psi.
17 In contrast, these wells are much
18 smaller typically, on the order of, say, six inches
19 in diameter. And for an abandoned well, it's
20 essentially atmospheric pressure. So you're talking
21 about an abandoned well that is further away than
22 the pipeline, that has a lower diameter, a much
23 lower pressure, and it's a much lower risk.
24 And so we've looked at the risk from the
25 pipelines, which is greatest, and shown that it

1 bounds it from -- bounds the active wells and the
2 active wells bound to the abandoned wells. And to
3 provide a specific evaluation of the least hazardous
4 wells doesn't make sense when we've a bounding
5 analysis for the transmission lines.
6 JUDGE GIBSON: Okay. Thank you.
7 I want to get back with the staff on one
8 other point. You indicated that it -- there are
9 some things that can't be challenged until the COL
10 stage.
11 And, you know, I think that we get back
12 into this, you know, unscrambling an egg problem
13 that we talked about yesterday, and that is the
14 concern addressed by the Texans for a Sound Energy
15 Policy has to do with this alleged threat to safety
16 posed by the wells, the pipelines and other things.
17 If it's not appropriate to lodge that
18 until the COL stage, does that concern you, is that
19 appropriate? I guess maybe it's -- you're going to
20 say that's what the rules require. But I just want
21 to make sure. I mean perhaps this is -- this goes
22 to the whole question of alternative site selection
23 that we talked about yesterday. I don't know.
24 If it turns out that there really is
25 some hazard posed here that there wouldn't be posed

1 in Matagorda County, and I must say there's a lot of
2 oil and gas operations in Matagorda County too. But
3 I'm just curious, is that of concern, this
4 segmenting question and postponing it?
5 MS. PRICE: As you rightfully pointed
6 out, that's what the regulations are. Hydrogen
7 sulfide gas as a potential hazard has been
8 identified, and from a safety perspective that goes
9 to control room habitability, and that's something
10 that would be handled at the COL stage.
11 JUDGE GIBSON: Okay. Mr. Blackburn, do
12 you wish to address that point?
13 MR. BLACKBURN: Well, you know, it seems
14 to me that -- I mean it's called an early site
15 permit.
16 JUDGE GIBSON: I'm sorry, I didn't hear
17 what you said.
18 MR. BLACKBURN: I'm sorry. It's called
19 an early site permit, and it seems like -- and
20 again, I keep coming back to common sense, which
21 goes only so far in certain of these structures, but
22 if there are problems with the site, they ought to
23 be clearly articulated and understood at this stage,
24 because there hasn't been a tremendous amount of
25 money spent yet. I mean, well, there's been a lot

1 of money spent, but not by -- not like what there
2 will be spent at a later stage.
3 And as my understanding is, once this
4 process unfolds, and if it turns out that an ESP is
5 issued, then basically these issues are not going to
6 be revisited except in the context of engineering,
7 if then.
8 And I think that's what worries me is
9 now is the easy time from a decision making
10 standpoint to honestly and objectively evaluate
11 these issues. So anything that is deferred to the
12 COL stage is worrisome to me in that it becomes a
13 constraint as opposed to what is now an opportunity
14 to find another site.
15 And I just think that the siting
16 process, as I've understood it throughout my
17 professional career, has been to try to identify
18 problems with the site, realistically assess the
19 hazards associated with those, fully vet that, and
20 then, if you're comfortable, move forward.
21 I don't think these issues have been
22 fully vetted. I think that's the basis of our
23 safety contentions. We think there are issues
24 associated with these things.
25 And certainly at the least we need the

1 Railroad Commission data, certainly at the least we
2 need a full understanding of this issue. But I
3 think more generally there is a bona fide concern
4 that needs to be addressed at the ESP stage, and I
5 think it's through the manmade hazard side of that.
6 JUDGE GIBSON: Okay. Okay. Thank you.
7 Did you have anything, Mark?
8 JUDGE BARNETT: Yes. What section of
9 the SSAR is this bounding analysis?
10 MR. FRANTZ: It's in section 2.3.1, I
11 believe it is.
12 JUDGE BARNETT: 2.3.1?
13 MR. FRANTZ: Yes -- I'm sorry, it's
14 2.2.2-34.
15 JUDGE BARNETT: Okay.
16 MR. FRANTZ: And I believe that refers
17 to other sections in the SSAR.
18 JUDGE BARNETT: Okay. You said you did
19 this bounding analysis and the biggest threat comes
20 from the natural gas pipeline.
21 MR. FRANTZ: Yes, that's because it's
22 the closest, it's much closer than the active wells
23 and abandoned wells, and it also has a higher volume
24 and higher pressure.
25 JUDGE BARNETT: But isn't it a different

1 kind of threat, so the threat from the natural gas
2 pipeline is an explosion threat, and the threat from
3 these abandoned wells could be H2S leakage. Right?
4 MR. FRANTZ: Yes, I think you raise a
5 good point, that they are separate hazards. And as
6 the staff has pointed out though, with respect to
7 the toxic gas hazard, it is standard practice to
8 defer that to the COL stage because you don't
9 evaluate that hazard in isolation. You can't
10 determine the impact of that hazard without actually
11 having a design in place. And the design could
12 account for that hazard.
13 And therefore at this stage of the
14 proceeding there's not much you can evaluate without
15 a design. You need that design to determine whether
16 or not that hazard is acceptable or not, the toxic
17 gas hazard. With respect to the explosive gas
18 hazard, you can do that evaluation now.
19 JUDGE BARNETT: For the petitioner, what
20 is your response to this bounding analysis that
21 they've done? So they claim that the explosion
22 hazard is the maximum threat. What's your response
23 to that -- so therefore they don't need to consider
24 the abandoned wells further than what they've done
25 already?

1 MR. BLACKBURN: Well, I actually
2 disagree with it in a couple of respects. One,
3 natural gas pipelines can be shut off, and, you
4 know, the idea that it would be an uncontrolled,
5 unabated event is really less likely.
6 I think what's worrisome about these
7 abandoned wells and about this, if there is a
8 leakage, if there is a source there, you don't have
9 a shut-off valve. I mean this is a different type
10 of event.
11 And I think that the hydrogen sulfide
12 issue does go beyond the control room and I think
13 that it is a separate type of concern that is in no
14 way addressed by the bounding analysis. So I would
15 respond in that way.
16 JUDGE GIBSON: Judge Baratta?
17 JUDGE BARATTA: The applicant, in their
18 answer to your petition, pointed out that you used
19 the terminology "may be improperly plugged" for
20 example. Does that put this into the speculative
21 background?
22 MR. BLACKBURN: No, Your Honor.
23 JUDGE BARATTA: Why not?
24 MR. BLACKBURN: Because we were really
25 exploring data gaps, and we were exploring

1 information that was not present. And when you're
2 talking, first of all, about omissions, it's hard to
3 be specific. I think the term "may" is just a much
4 more honest assessment of the situation because
5 there are things we don't know.
6 But we did put in our petition a lot of
7 specifics. That there was a large number of wells
8 that were identified from the records and that there
9 were problems with those data. That's not a
10 speculative concept.
11 You know, the speculation would be
12 whether there's leakage. Now that would be I think
13 what was claimed as speculation. My co-counsel
14 shudders when I use the term.
15 We're at a funny point where we don't
16 have data, we can't conduct an engineering analysis
17 on information we don't have, and "may" is the
18 appropriate term I think to use.
19 I don't see how else one raises -- I
20 mean we had essentially an engineering report that
21 identifies that in the assessment of a professional
22 engineer these are bond fide issues and bond fide
23 risks.
24 I don't think that we can say with
25 absolute certainty -- I think if we said that you

1 wouldn't believe it, and I think the honest
2 statement is "may" and it is not speculative.
3 When we have site access, assuming we
4 get site access, I don't know if we will, but if we
5 did, it would be much more appropriate I think to
6 ask if the "may" could transfer into a "could this
7 truly happen."
8 I think at this point that we have
9 raised what we think is a very realistic
10 possibility. Probability is a little stronger than
11 where we are right now.
12 We just -- we know these issues exist
13 with these wells, we have an engineer that supports
14 that assessment, we have geologists that have looked
15 at the data. The gaps are there. We think the
16 issue is there, and I don't think the issue is
17 speculative at all.
18 JUDGE BARATTA: Your primary issue at
19 this time, getting back to what we discussed
20 earlier, is the data gaps.
21 MR. BLACKBURN: Well, absolutely,
22 significant data gaps.
23 JUDGE BARATTA: And the importance of
24 the data gaps is because if there is a well that's
25 leaking, or if there is that sort of thing, there is

1 that that could create a problem.

2 MR. BLACKBURN: That's correct.

3 JUDGE BARATTA: Okay. Thank you.

4 MR. FRANTZ: Judge Baratta, if I may

5 clarify, the data gaps are not data gaps in the

6 application; they're data gaps in the records of the

7 Texas Railroad Commission.

8 I'm not sure they've identified any data

9 gaps in our application, and we don't -- as I said,

10 we don't rely totally upon those Railroad Commission

11 records. We've gone out and done our own, you know,

12 walk-downs of the site, and we've looked at other

13 records.

14 So to the extent they're saying there

15 are gaps in those Railroad Commission records, I'm

16 not sure that's very material to what we're doing

17 here. I mean some of those gaps are minor things,

18 like the well number, the depth of the well. How is

19 that material to the hazards posed by the wells? I

20 don't believe it is.

21 JUDGE BARATTA: No, I think the issue is

22 the location --

23 MR. FRANTZ: Yes.

24 JUDGE BARATTA: -- and whether or not

25 all the wells have been located, as opposed to --

1 MR. FRANTZ: Yes. And to the extent
2 they contend that we -- our figure 2.2.5 does not
3 identify the wells, they haven't shown any well that
4 they believe exists that we have not shown on that
5 figure, and that includes the inactive or the
6 abandoned wells.
7 JUDGE GIBSON: Well, I believe that
8 concludes the questions that we had for you all. I
9 don't know if you all feel, you know, moved by the
10 spirit to have to give some sort of a closing
11 statement.
12 It's certainly not anything we're
13 demanding of you. But at the same time, if you
14 stayed up all night writing something, I don't want
15 you all to be disappointed.
16 (General laughter.)
17 JUDGE GIBSON: So is there anything
18 further that you all need to say to us, or can we
19 adjourn?
20 MR. BLACKBURN: I am happy to allow --
21 at least from my standpoint, for us to adjourn.
22 JUDGE GIBSON: Okay.
23 Staff?
24 MS. PRICE: The staff has nothing
25 further to add.

1 JUDGE GIBSON: Mr. Frantz?

2 MR. FRANTZ: And I did not spend up all

3 night writing a closing statement, so I have nothing

4 to say.

5 (General laughter.)

6 JUDGE BARNETT: Did you want to deal

7 with this last issue?

8 JUDGE GIBSON: Oh, yes.

9 One other thing, Mr. Blackburn: I just

10 want to make sure there was nothing at all in your

11 petition indicating that you were hoping to pursue

12 this under Subpart G rather than under Subpart L.

13 And I just wanted to be sure that you

14 weren't expecting to have some formal cross-

15 examination of all the witnesses by you, as opposed

16 to examination by the judges.

17 MR. BLACKBURN: I won't even go there.

18 (General laughter.)

19 MR. BLACKBURN: I'm very happy to go

20 forward as contemplated, but I am not asking for

21 anything --

22 JUDGE GIBSON: Okay.

23 MR. BLACKBURN: -- under Subchapter G.

24 JUDGE GIBSON: Okay. That's fine.

25 Well, hopefully that'll be fine if we end up having

1 the need to go to trial.

2 With that, we stand adjourned. And I

3 thank you all for doing a fine job and for reaching

4 this agreement. You all are to be commended for

5 that. Thank you.

6 MR. BLACKBURN: Thank you.

7 MS. PRICE: Thank you.

8 (Whereupon, at 9:45 a.m., the proceeding

9 was concluded.)

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CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of: Exelon Nuclear Texas Holdings Victoria Co. Site Station

Name of Proceeding: Oral Arguments

Docket Number: 52-02-042

ASLBP Number: 11-908-01-ESP-BD01

Location: Victoria, Texas

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

Penny Bynum
Official Reporter
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