

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of) EXELON NUCLEAR TEXAS HOLDINGS, LLC) (Early Site Permit for Victoria County Station Site))))))))))	Docket No. 52-042-ESP July 11, 2011
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EXELON NUCLEAR TEXAS HOLDINGS, LLC’S MOTION FOR CLARIFICATION

I. INTRODUCTION

On June 30, 2011, the Atomic Safety and Licensing Board (“Board”) issued a Memorandum and Order ruling on the admissibility of the contentions proposed by Texans for Sound Energy Policy (“TSEP”).¹ The Board admitted eight of those contentions, including Contentions TSEP-SAFETY-1 and -2 relating to growth faults, and Contention TSEP-ENV-16 relating to alternative sites. Pursuant to 10 C.F.R. § 2.323, Exelon Nuclear Texas Holdings, LLC (“Exelon”) respectfully requests that the Board clarify the scope of those admitted contentions.²

II. DISCUSSION

A. Contentions TSEP-SAFETY-1 and -2

Contention TSEP-SAFETY-1 alleges that Exelon’s Site Safety Analysis Report (“SSAR”) for the Victoria County Station (“VCS”) site “does not provide sufficient geological

¹ *Exelon Nuclear Tex. Holdings, LLC* (Victoria County Station Site), LBP-11-16, 74 NRC ___, slip op. (June 30, 2011) (“LBP-11-16”).

² Exelon contacted counsel for the NRC Staff and TSEP to determine whether they would agree with this motion. TSEP is not opposed to Exelon seeking clarification of the Board’s ruling on the contentions, but is opposed to narrowing the admitted contentions. The NRC staff stated that it does not oppose the motion for clarification.

data regarding growth faults or present an adequate evaluation of the potential for subsurface deformation” and thus, “Exelon underestimates the risk of surface deformation.”³ Contention TSEP-SAFETY-2 also raises claims relating to growth faults and alleges that “the SSAR greatly understates the rate of recent surface movement of the growth faults.”⁴ The Board admitted these contentions, based upon the allegation that there is a dispute between Exelon and TSEP regarding the number, location, and rate of movement of the growth faults under the VCS cooling basin.⁵ In admitting these contentions, the Board found that although the proposed VCS cooling basin is not a “safety feature,” 10 C.F.R. Part 100 nonetheless requires investigation of growth faults under the cooling basin given the impact that growth faults “may have on design and operation of the entire plant.”⁶

In addition to admitting issues related to the characteristics of the growth faults, the Board’s decision appears to admit an issue on whether growth faults can affect the cooling basin and if so, whether such impact to the cooling basin can affect the safe operation of the plant. Exelon believes this to be a reasonable and appropriate interpretation of the Board’s order, and is not seeking clarification of that part of the order.

However, it is unclear from the Board’s decision whether the Board was also ruling that Exelon must design the cooling basin to withstand growth faults, even if failure of the cooling basin due to growth faults would have no impact on plant safety but might impact the ability of

³ Texans for Sound Energy Policy’s Petition to Intervene at 10 (Jan. 24, 2011) (“Petition”).

⁴ *Id.* at 14.

⁵ *See* LBP-11-16, slip op. at 12-16, 19-20.

⁶ *Id.* at 19; *see also id.* at 14 (noting that “even though the cooling pond is not a safety-related structure, Appendix A requires knowledge of the faulting under the pool and the impact this faulting might have on the pool’s operation”), 15 (“we conclude that SAFETY-1 is admissible because, while the cooling pond is not a ‘safety feature,’ faulting in the footprint of the cooling pond is nonetheless subject to the regulations in 10 C.F.R. Part 100 and Appendix A thereto, which govern the analysis in Exelon’s SSAR”), 16 (admitting “SAFETY-1 in full, recognizing that, while the cooling pond is not a safety structure, system or component, it is a part of the nuclear power plant that is required for plant operation”).

the plant to continue to operate at full power. Exelon believes that such an interpretation would not be consistent with the provisions in 10 C.F.R. Part 100, and that such an interpretation was not intended by the Board. However, given the uncertainty, Exelon is seeking clarification from the Board.

Additionally, the Board's decision on Contentions TSEP-SAFETY-1 and -2 frequently refers to Appendix A to 10 C.F.R. Part 100, in addition to 10 C.F.R. § 100.23.⁷ However, as indicated in 10 C.F.R. § 100.23(a), Appendix A only applies to licensees whose construction permits were issued prior to January 10, 1997, and not to early site permit ("ESP") applications. Therefore, we interpret the Board's discussion of Appendix A as providing background information, rather than a ruling that the VCS ESP application must comply with Appendix A. However, given the language of the decision, there is some uncertainty on that point.

Therefore, Exelon requests that the Board clarify that the cooling basin does not need to be designed to withstand movements associated with growth faults if failure of the cooling basin would not impact safe operation. Exelon also requests that the Board clarify that Appendix A to 10 C.F.R. Part 100 does not apply to the VCS ESP application.

B. Contention TSEP-ENV-16

Contention TSEP-ENV-16 claims that Exelon's Environmental Report ("ER") "fails to rigorously explore and objectively evaluate all alternative sites" because a comparison of the Matagorda County site and the VCS site allegedly "shows that the Matagorda County site presents an obviously superior site for the construction and operation of a nuclear power plant."⁸

The Board admitted this contention to the extent it pertains to environmental issues and rejected

⁷ See, e.g., *id.* at 15 (stating that "we conclude that SAFETY-1 is admissible because, while the cooling pond is not a 'safety feature,' faulting in the footprint of the cooling pond is nonetheless subject to the regulations in 10 C.F.R. Part 100 and Appendix A thereto, which govern the analysis in Exelon's SSAR").

⁸ Petition at 95.

it to the extent it pertains to safety issues.⁹ The Board found that TSEP provided sufficient support for its alternative site claim relating to water availability, threatened and endangered species, downstream ecological impacts, and transmission line impacts.¹⁰ The Board, however, also made clear that Contention “ENV-16 includes independent allegations that go toward the alternatives analysis, *not the impacts analysis*, of Exelon’s ER.”¹¹

With respect to water availability at the VCS site, the Board rejected TSEP’s challenges to Exelon’s VCS impact analysis for water availability proffered in Contentions TSEP-ENV-2, -3, and -4, but admitted Contention TSEP-ENV-6 related to the impacts of climate change on water availability. On issues related to water availability at the VCS site, Contention TSEP-ENV-16 does nothing more than summarize the allegations that were used as the basis for TSEP-ENV-2, -3, -4, and -6. In particular, the basis for Contention TSEP-ENV-16 on water availability at the VCS site states:

[F]or waters of the Guadalupe River, “there will be many months in the future, as there have been in the past, in which there is not enough water available for cooling the power plant.” Additionally, the diversion of water from the Guadalupe River, which is already over-appropriated, will result in no water being available for future population growth or to provide for new industrial growth in the Guadalupe River basin using surface water. Moreover, climate models predict decreasing precipitation and less surface water in the Guadalupe River basin over the next decades.¹²

The first two sentences quoted above essentially correspond to Contentions TSEP-ENV-2, -3 and -4. In rejecting Contentions TSEP-ENV-2, -3, and -4, the Board rejected for litigation TSEP’s allegations regarding “over appropriation” of water and impacts of future population

⁹ LBP-11-16, slip op. at 69-70.

¹⁰ *Id.* at 69.

¹¹ *Id.* at 70 (emphasis added).

¹² Petition at 97-98 (footnotes and citations omitted). *See also id.* at 104.

growth.¹³ In contrast, the third sentence quoted above regarding the impacts of climate change essentially corresponds to admitted Contention TSEP-ENV-6.

Since the Board rejected Contentions TSEP-ENV-2, -3, and -4, we also assume that the Board rejected TSEP's allegations regarding "over appropriation" of water and impacts of future population growth as a basis for Contention TSEP-ENV-16, and that the only litigable issue in Contention TSEP-ENV-16 regarding water availability at the VCS site pertains to the impacts of climate change.¹⁴ Once that issue is resolved, Contention TSEP-ENV-16 would then require that such impacts be compared with the water availability impacts at the Matagorda County site.

In summary, Exelon requests that the Board clarify that Contention TSEP-ENV-16, as it pertains to water availability at the VCS site, is limited to the potential impacts of climate change on water availability (as admitted in Contention TSEP-ENV-6) and does not encompass issues related to over appropriation of water and the impacts of future population on water availability.

III. CONCLUSION

Exelon respectfully requests that the Board clarify Contentions TSEP-SAFETY- 1 and -2 and TSEP-ENV-16 to address the issues discussed above.

¹³ See, e.g., LBP-11-16, slip op. at 43-46, 47-50, 50-53.

¹⁴ In this regard, the alternative site analysis in ER Section 9.3 does not have a separate analysis of the impacts of VCS, but instead simply refers back to the impact analysis in the previous chapters of the ER. See, e.g., ER at 9.3-12.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 11, 2011 a copy of the “Exelon Nuclear Texas Holdings, LLC’s Motion for Clarification” was served by the Electronic Information Exchange on the following recipients:

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