

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

William J. Froehlich, Chairman
Dr. Michael F. Kennedy
Dr. William E. Kastenber

In the Matter of
EXELON GENERATION COMPANY, LLC
(Limerick Generating Station, Units 1 and 2)

Docket Nos. 50-352-LR, 50-353-LR

ASLBP No. 12-916-04-LR-BD01

January 31, 2012

NOTICE AND ORDER
(Scheduling Oral Argument)

The Board will hear oral argument on the admissibility of the four proposed contentions presented by the Natural Resources Defense Council (NRDC) in its November 22, 2011 petition for leave to intervene and notice of intention to participate.¹

This proceeding arises from an application, dated June 22, 2011, filed by Exelon Generation Company, LLC (Exelon) to renew its operating licenses for the Limerick Generating Station, Units 1 and 2 (Limerick) for an additional twenty years (*i.e.*, until midnight on October 26, 2044 for Unit 1, and midnight on June 22, 2049 for Unit 2).² The NRC accepted the application for docketing and published a Hearing Notice in the *Federal Register* on August 24, 2011.³ The Hearing Notice stated that any person whose interest may be affected by this

¹ Natural Resources Defense Council Petition to Intervene and Notice of Intention to Participate (Nov. 22, 2011) (hereinafter Petition).

² See Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License Nos. NPF-39 and NPF-85 for an Additional 20-Year Period; Exelon Generation Co., LLC, Limerick Generating Station, 76 Fed. Reg. 52,992, 52,992 (Aug. 24, 2011).

³ See *id.* at 52,992-94.

proceeding, and who wishes to participate as a party, must file a petition for leave to intervene within 60 days of the Hearing Notice (*i.e.*, by October 24, 2011) in accordance with 10 C.F.R. § 2.309.⁴ On September 22, 2011, NRDC requested an extension of time for filing a Petition to Intervene until November 22, 2011.⁵ By Order dated October 17, 2011, the Secretary for the Commission granted this request.⁶ On November 22, 2011, NRDC timely filed the Petition. On December 20, 2011, Exelon filed an answer opposing NRDC's petition to intervene.⁷ On December 21, 2011, the NRC Staff filed an answer opposing the Petition.⁸ NRDC filed a combined reply to Exelon and the NRC Staff on January 6, 2012.⁹

Limerick is a dual unit facility that is located on the east bank of the Schuylkill River in Limerick Township of Montgomery County, Pennsylvania, approximately 4 river miles downriver from Pottstown, 35 river miles upriver from Philadelphia, and 49 river miles above the confluence of the Schuylkill with the Delaware River.¹⁰

⁴ *Id.* at 52,993.

⁵ NRDC Request for Extension of Time to Request a Hearing and Petition for Leave to Intervene in the NRC's Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License Nos. NPF-39 and NPF-85 Limerick Station for Additional 20-Year Period (Sept. 22, 2011) (ADAMS Accession No. ML11266A083).

⁶ Commission Order (Granting Extension of Time) (Oct. 17, 2011) (unpublished) (ADAMS Accession No. ML11290A233).

⁷ Exelon Answer Opposing NRDC's Petition to Intervene (Dec. 20, 2011).

⁸ NRC Staff's Answer to Natural Resources Defense Council's Petition to Intervene and Notice of Intention to Participate (Dec. 21, 2011).

⁹ Natural Resources Defense Council ("NRDC") Combined Reply to Exelon and NRC Staff Answers to Petition to Intervene (Jan. 6, 2012).

¹⁰ Applicant's Environmental Report – Operating License Renewal Stage, Limerick Generating Station, Units 1 and 2, at page 2-3.

The nuclear reactor system for each unit includes a single-cycle, forced circulation, General Electric boiling-water reactor (GE BWR Type 4),¹¹ housed within a GE Mark II (wet) containment.¹²

NRDC has proposed four (4) contentions which challenge the Limerick relicensing, specifically Exelon's Environmental Report (ER), and allege violations of the National Environmental Policy Act (NEPA), as amended,¹³ as well as NRC regulations set forth in 10 C.F.R Part 51.

To be granted a hearing in this proceeding, NRDC must demonstrate standing and submit at least one admissible contention. NRDC alleges that Exelon has failed to conduct a legally adequate environmental analysis because 1) it fails to properly identify and evaluate all new information and ignores or distorts the significance of this new information; 2) the 1989 Supplemental FES upon which it relies to meet its obligation to evaluate severe accident mitigation alternatives is deficient in several significant ways; 3) the 1989 Supplemental FES does not qualify as a legally sufficient severe accident mitigation alternatives analysis within the meaning of 10 C.F.R. § 51.53(c)(3)(ii)(L); and, 4) it fails to properly evaluate the alternatives of "No Action" and compare its consequences with those of the proposed action.¹⁴

The oral argument will be held in the Montgomery County (PA) Courthouse,¹⁵ Courtroom

¹¹ *Id.* at 3-3.

¹² *Id.* at 3-4.

¹³ See 42 U.S.C. § 4321 *et seq.* (2006).

¹⁴ Petition at 2.

¹⁵ Montgomery County is the 38th Judicial District of the Unified Judicial System of Pennsylvania.

A, 2 East Airy Street, Norristown, PA 19404-0311.¹⁶ Argument will begin at 9:00 am on Tuesday, February 21, 2012 and will end no later than 4:30 pm that day.

Only counsel for NRDC, Exelon, and the staff of the Nuclear Regulatory Commission who have entered an appearance pursuant to 10 C.F.R. § 2.314(b) will be entitled to participate. The oral argument will proceed as follows. First, we will hear short opening statements, limited to ten minutes each, from NRDC, Exelon, and the NRC Staff. Second, we will pose questions to the participants on each of the proffered contentions.¹⁷ Third, we will hear argument on the motions to strike filed on January 17, 2012 by Exelon and the NRC Staff. Fourth, we will hear closing statements, limited to ten minutes each, from NRDC, Exelon, and the NRC Staff.

Except for the opening and closing statements, the sole purpose of the oral argument is to allow the Board to ask questions and receive answers, to clarify the Board's understanding of legal issues and factual points and assist it in deciding the contention admissibility issues presented by the pleadings. Unless otherwise specified, no presentations or submission of additional materials by the parties will be entertained. Counsel are encouraged to be familiar with the relevant law on contention admissibility, and 10 C.F.R. Parts 2 and 51, and should keep in mind that the Board has read their pleadings. In preparing for the oral argument, counsel should focus on the critical points in controversy, as they have emerged in the pleadings.

No witnesses, other representatives of the parties, or members of the public will be heard at this time. However, members of the public and representatives of the media are

¹⁶ For directions to the Courthouse and information regarding parking facilities, see <http://www.courts.montcopa.org/courts/cwp/view,a,3,q,17053.asp>.

¹⁷ A preliminary list of the areas in which the Board has questions is attached as Appendix A to this Notice, and we may specify, in a subsequent order or at the commencement of oral argument on February 21, 2012, additional areas and specific questions upon which we will want the participants to focus. Nonetheless, the participants should be prepared to answer questions concerning all issues raised in the pleadings.

welcome to attend and observe this proceeding. Please note that the Montgomery County Courthouse does not allow cell phones in the Courthouse, and does not allow cameras in the courtroom (but does permit them elsewhere in the Courthouse). This is an adjudicatory proceeding and the Board intends to conduct an orderly oral argument, focused solely on contention admissibility questions. Signs, banners, posters, and displays are prohibited in accordance with NRC policy.¹⁸ All interested persons should arrive at least fifteen minutes early so as to allow sufficient time to pass through any security screening.

Limited appearance statements, pursuant to 10 C.F.R. § 2.315(a), will not be entertained at this time. If contentions are ultimately admitted, then the Board will accept written limited appearance statements and, at a later date, may hear oral limited appearance statements regarding admitted contentions.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

/RA/

William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
January 31, 2012

¹⁸ See Procedures for Providing Security Support for NRC Public Meetings/Hearings, 66 Fed. Reg. 31,719 (June 12, 2001).

Appendix A

Preliminary List of Topics to be discussed at the February 21, 2012 Oral Argument

Contention 1: *Applicant's environmental report (§ 5.3) erroneously concludes that new information related to its severe accident mitigation design alternatives ("SAMDA") analysis is not significant, in violation of 10 C.F.R. § 51.53(c)(3)(iv), and thus the ER fails to present a legally sufficient analysis of severe accident mitigation alternatives.*

Considering that 10 C.F.R. § 51.53(c)(3)(iv) requires an Environmental Report (ER) to contain any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware, and that 10 C.F.R. § 51.53(c)(3)(ii)(L) requires an ER to consider alternatives to mitigate severe accidents if the Staff has not previously considered severe accident mitigation alternatives for the applicant's plant, please discuss how these two sections of the Commission's regulations should be applied in the Limerick license renewal ER.

Please provide the legal authority (cases or regulations) which defines what constitutes new and significant information for the Limerick License Renewal Application. Clarify in this context how the scope of new information should be determined, and how its significance should be assessed.

Contention 2: *Applicant's Environmental Report (§ 5.3) in relying on a SAMDA analysis from 1989 fails to comply with 10 C.F.R. §§ 51.45, 51.53(c)(2) and 51.53(c)(3)(iii) because it does not include an accurate or complete analysis of "alternatives available for reducing or avoiding adverse environmental effects," does not "contain sufficient data to aid the commission in its development of an independent analysis" of alternatives and does not contain an adequate "consideration of alternatives for reducing adverse impacts . . . for all Category 2 license renewal issues."*

This contention refers to the 1989 SAMDA analysis for Limerick. Please provide the legal authority for challenging this analysis. Be sure to address the issue that this analysis does not appear to be a part of the Limerick License Renewal Application. How does 10 C.F.R. § 51.53(c)(3)(ii)(L) apply to the Limerick proceeding?

Is there an obligation on the part of the Agency or its staff to perform a SAMA analysis as part of the Limerick license renewal proceeding?

Contention 3: *Applicant's Environmental Report erroneously concludes that the SAMDA analysis conducted in 1989 is a SAMA analysis within the meaning of 10 C.F.R. § 51.53(c)(3)(ii)(L) and thus the ER is deficient for its failure to include a SAMA analysis.*

Please discuss how Contention 3 is fundamentally different than Contention 2. Where in the regulations does the Commission provide a definition of the phrase "severe accident mitigation alternatives" as it is used in 10 C.F.R. 51.53(c)(3)(ii)(L)? Or, in other words, on what legal authority does NRDC rely when it claims that the 1989 SAMDA is not "a SAMA?"

The Commission has stated, "NRC staff considerations of severe accident mitigation alternatives have already been completed and included in an EIS or supplemental EIS for Limerick, Comanche Peak, and Watts Bar. Therefore, severe accident mitigation alternatives need not be reconsidered for these plants in license renewal."¹⁹ What deference, if any, do we owe this statement?

Contention 4: *Applicant's Environmental Report (§ 7.2) fails to adequately consider the No Action alternative in violation of 10 C.F.R. §§ 51.45 (c), 51.53(c)(2) and 51.53(c)(iii).*

Does the ER address the impacts of denial of the proposed license renewal? If so, where?

Please discuss in light of the material provided in Table 8.0-1 of the Limerick ER and the accompanying text whether or not the ER contains sufficient information to support the No Action alternatives analysis and address specifically the premise that the "Decommissioning Only" option could be considered the No Action alternative to renewing the Limerick Generating Station operating licenses.

Is the No Action alternative the same as denial of the license renewal?

Is this a contention of omission or a contention that challenges the adequacy of the ER?

Motions to Strike:

The Board will have questions as to what arguments, if any, are new arguments or raise new issues, and which are merely responses to arguments or issues raised in the answers.

¹⁹ Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 28,467, 28,481 (June 5, 1996).

UNITED STATES OF AMERICA
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In the Matter of)
)
Exelon Generation Company, LLC) Docket Nos. 50-352-LR and 50-353-LR
(Limerick Generating Station, Units 1 and 2))
) ASLBP No. 12-916-04-LR-BD01
(License Renewal))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing NOTICE AND ORDER (Scheduling Oral Argument) have been served upon the following persons by Electronic Information Exchange.

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Limerick Generating Station, Units 1 and 2, Docket Nos. 50-362-LR and 50-363-LR
NOTICE AND ORDER (Scheduling Oral Argument)

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Limerick Generating Station, Units 1 and 2, Docket Nos. 50-362-LR and 50-363-LR
NOTICE AND ORDER (Scheduling Oral Argument)

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[Original signed by Christine M. Pierpoint]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 31st day of January, 2012