

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. Kastenberg

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

April 16, 2012

NOTICE AND ORDER

(Setting Telephonic Initial Scheduling Conference)

On April 4, 2012, the Licensing Board issued a memorandum and order granting the request for a hearing and admitting one contention filed by the Natural Resources Defense Council (NRDC or Petitioner).<sup>1</sup> NRDC challenges the application filed by Exelon Generation Company, LLC (Exelon or Applicant) to renew its nuclear power reactor operating licenses for the Limerick Generating Station, Units 1 and 2 (Limerick) for an additional twenty years.<sup>2</sup> NRDC's Contention 1-E was admitted in part, as limited and reworded by the Board as follows:

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 in that:

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<sup>1</sup> LBP-12-08, 75 NRC \_\_\_ (slip op.) (Apr. 4, 2012).

<sup>2</sup> 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).

1. Exelon has omitted from its ER a required analysis of new and significant information regarding potential new severe accident mitigation alternatives previously considered for other BWR Mark II Containment reactors.

2. Exelon's reliance on data from TMI in its analysis of the significance of new information regarding economic cost risk constitutes an inadequate analysis of new and significant information.<sup>3</sup>

The Board determined that the procedures of 10 C.F.R. Part 2, Subpart L, will govern the hearing to be held on the admitted contention.<sup>4</sup>

In accordance with 10 C.F.R. §§ 2.329 and 2.332, the Board will hold an initial scheduling conference call on Thursday, April 26, 2012, at 1:30 PM EDT for the purpose of developing a scheduling order to govern the conduct of this proceeding. Prior to the conference call, the parties should familiarize themselves with the relevant procedural rules of 10 C.F.R. Part 2, including the model milestones set forth in Appendix B.

Pursuant to 10 C.F.R. § 2.332(d), the Board will consider the NRC Staff's projected schedule for completion of its safety and environmental evaluations in developing the hearing schedule. According to the currently posted schedule, the NRC Staff will issue the Final Safety Evaluation Report in January 2013 and the Final Supplemental Environmental Impact Statement in February 2013.<sup>5</sup> On or before April 26, 2012, the NRC Staff shall confirm its current best good faith estimate of the schedule for completing the safety and environmental reviews of the Limerick license renewal application.

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<sup>3</sup> LBP-12-08, 75 NRC at \_\_\_ (slip op. at 40).

<sup>4</sup> Id.

<sup>5</sup> See License Renewal Review Schedule (Mar. 29, 2012), <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/limerick.html>.

Among other matters, the parties and the NRC Staff should be prepared to address the following subjects during the April 26 conference call:

1. Suggested regularized time frames for the updating of mandatory disclosures under 10 C.F.R. § 2.336(d) and for the updating of the hearing file under 10 C.F.R. § 2.1203(c);

2. Establishment of an agreement concerning which electronically stored information will be considered reasonably accessible and thus subject to mandatory disclosure under 10 C.F.R. § 2.336 or production under 10 C.F.R. § 2.1203 (e.g., an agreement between the parties and the NRC Staff as to the nature and extent of their respective duties to conduct a reasonable search for their electronically stored information);<sup>6</sup>

3. Establishment of an agreement as to the form of the mandatory disclosure or production of electronically stored information (if no agreement can be reached, and the Board does not otherwise instruct, then electronically stored information shall be disclosed and produced in an electronic form that is readily searchable by commonly available computer programs);<sup>7</sup>

4. Whether any party expects to assert a privilege or protected status for any information or documents otherwise required to be disclosed in this proceeding and, if so, proposals for procedures and time limits for challenges to such assertions, and whether development of a protective order and non-disclosure agreement is necessary or appropriate;

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<sup>6</sup> See Fed. R. Civ. P. 16(b)(3)(B)(iii) (Scheduling order may “provide for disclosure or discovery of electronically stored information”); 26(b)(2)(B) (“A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for discovery.”)

<sup>7</sup> See Fed. R. Civ. P. 34 (regarding the formats for the production of electronically stored information).

5. Suggested time limits for filing “timely” motions for leave to file new or amended contentions under 10 C.F.R. § 2.309(f)(2)(iii) and for defining “nontimely” filings under 10 C.F.R. § 2.309(c);

6. Specification of pleading rules for motions for leave to file new or amended contentions that reconcile 10 C.F.R. §§ 2.309(c), 2.309(f)(2), and 2.323 (motions and answers to motions) with 10 C.F.R. § 2.309(h) (answers and replies to contentions);

7. Opportunities for the settlement of issues or contentions, including the utility of appointing a settlement judge pursuant to 10 C.F.R. § 2.338;

8. Suggested time limit for filing of the final list of potential witnesses for the admitted contention pursuant to 10 C.F.R. § 2.336(a)(1);

9. Whether a site visit would be helpful to the Board in the resolution of the admitted contention;

10. The degree to which the Board’s consideration of summary disposition motions will expedite the proceeding and, if so, suggestions for modifying the time limits set in 10 C.F.R. § 2.1205(a) to prevent motions for summary disposition from conflicting with preparation for the evidentiary hearing;

11. Suggested venues for holding the evidentiary hearing;

12. Whether the parties should be required to file their respective initial written statements of position and written testimony with supporting affidavits pursuant to 10 C.F.R. § 2.1207(a)(1) simultaneously or sequentially and, if sequentially, in what order;

13. Suggested time limits for the filing of motions for cross-examination under 10 C.F.R. § 2.1204(b);

14. The necessity or desirability of amending the pleadings in accordance with 10 C.F.R. § 2.329(c)(2);

15. Opportunities to develop stipulations or admissions of fact in accordance with 10 C.F.R. § 2.329(c)(3); and

16. Any other procedural or scheduling matters that the Board may deem appropriate.

Before the conference call, the parties shall confer in good faith with one another the purpose of discussing the foregoing procedural matters and, where possible, developing agreement, joint positions, or proposals. It would be helpful if, for the purpose of the conference call, the parties and the Staff agreed upon a lead spokesperson for areas where they are in agreement. If disagreement occurs on a significant issue, the Board may call for the submission of briefs or separate written proposals after the prehearing conference call.

On or before April 24, 2012, representatives of each of the parties should contact the Board's Law Clerk, Matthew Flyntz, at 301-415-5243 to obtain the telephone number and pass code for the prehearing conference call. Members of the public or media who wish to listen to this conference call may do so, and should contact Mr. Flyntz at the above number for the requisite information.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

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William J. Froehlich, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
April 16, 2012

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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 (Setting Telephonic Initial Scheduling Conference) 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 (Setting Telephonic Initial Scheduling Conference)

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Limerick Generating Station, Units 1 and 2, Docket Nos. 50-362-LR and 50-363-LR  
NOTICE AND ORDER (Setting Telephonic Initial Scheduling Conference)

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

Dated at Rockville, Maryland  
this 16<sup>th</sup> day of April 2012