

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

In the Matter Of	)	
	)	
EXELON GENERATION COMPANY, LLC,	)	Docket No. 50-352-LR
	)	Docket No. 50-353-LR
(Limerick Generating Station)	)	

(License Renewal Application)

**DECLARATION OF GEOFFREY H. FETTUS, COUNSEL FOR  
THE NATURAL RESOURCES DEFENSE COUNCIL (NRDC),  
REGARDING WAIVER OF 10 C.F.R. § 51.53(c)(3)(ii)(L) AS APPLIED TO  
APPLICATION FOR RENEWAL OF LICENSES FOR LIMERICK UNITS 1 AND 2**

I, Geoffrey H. Fettus, counsel for NRDC in this matter, declare that the following statements are true and correct to the best of my knowledge.

1. For NRDC’s contention 1E-1 (that Exelon has omitted from its Environmental Report a required analysis of new and significant information regarding potential new severe accident mitigation alternatives previously considered for other Boiling Water Reactor (BWR) Mark II Containment), the strict application of 10 C.F.R. § 51.53(c)(3)(ii)(L) would not serve the purposes for which the regulation was enacted. The purpose of the regulation was to preclude the need for an applicant to reconsider a specific mitigation alternative that had been considered in a prior severe accident mitigation design alternatives (“SAMDA”) analysis. Where, as here, there is new and significant information concerning additional severe accident mitigation alternatives not previously considered, it would be contrary to the purposes of the regulation to conclude that the

new information need not be considered simply because an analysis was conducted in 1989 that addressed other mitigation alternatives.

2. For NRDC's Contention 1E-2 (Exelon's reliance on data from Three Mile Island ("TMI") in its analysis of the significance of new information regarding off-site economic costs constitutes an inadequate analysis of new and significant information), the strict application of 10 C.F.R. § 51.53(c)(3)(ii)(L) also would not serve the purposes for which the regulation was enacted. Again, the Contention does not seek to require Exelon to reconsider a specific mitigation alternative that was considered in 1989. Rather, the Contention, building on Contention 1E-1, challenges the Environmental Report's reliance on economic data from TMI (a reactor in a vastly different geographic setting) as a substitute for doing a site-specific analysis of the offsite economic impacts of a severe accident at Limerick and of the use of the TMI data to evaluate any new mitigation alternatives. It would be contrary to the purposes of the regulation to preclude consideration of the appropriate and site-specific economic analysis for newly identified potential mitigation alternatives simply because a severe accident analysis was conducted in 1989 that did not include any analysis of offsite economic consequences and did not consider any of the newly identified severe accident mitigation alternatives for Boiling Water Reactors (BWR).
3. For NRDC's Contention 3E (a legally sufficient analysis of newly identified severe accident mitigation alternatives for Limerick must utilize modern techniques for assessing whether alternatives are cost-beneficial), the strict application of 10 C.F.R. § 51.53(c)(3)(ii)(L) would not serve the purposes for which the regulation was enacted. This Contention contends that the 1989 SAMDA was legally deficient because it failed to

use a probabilistic safety assessment severe accident consequences code system comparable to the MELCOR Accident Consequence Codes Systems (“MACCS”) 2.

Through this Contention NRDC seeks to require Exelon and NRC Staff to use the more accurate and reliable methods available today for assessing the consequences of a severe accident, including economic consequences, and assessing the costs and benefits of the additional mitigation alternatives that are appropriate for BWRs – which has never been done for Limerick. Since the Contention does not seek to require Exelon to reconsider specific mitigation alternatives considered in 1989, it would also be contrary to the purposes of the regulation to preclude consideration of this issue.

4. There are also circumstances not considered in enacting 10 C.F.R. § 51.53(c)(3)(ii)(L), unique to Limerick, that warrant a waiver for the three contentions. Every other BWR nuclear power plant in the country that has undergone relicensing has conducted a SAMA analysis that has looked at a wide range of potential mitigation alternatives, evaluated offsite economic consequences and used the most up-to-date methodology for assessing the costs and benefits of potential mitigation alternatives. Absent the waiver sought here, the Limerick plant will be the only BWR that will be relicensed without the operator or NRC considering the most recent techniques, technologies, and economic considerations regarding severe accident mitigation alternatives. This was not contemplated when 10 C.F.R. § 51.53(c)(3)(ii)(L) was enacted. In addition, Exelon essentially acknowledged that new and significant information, including particularly new mitigation alternatives and new economic impacts analyses, need to be considered for purposes of relicensing. Thus, what is unique here is that the issue is not whether this new and significant information should be considered but whether Exelon has considered it properly. Finally,

of the three plants arguably covered by 10 C.F.R. § 51.53(c)(3)(ii)(L), only Limerick is a BWR, which further makes this application unique.

5. Finally, waiver of the regulation to allow consideration of these three Contentions is necessary to address a significant environmental issue. NRDC's Contentions concern how to best mitigate for "severe" accidents. During the life of a relicensed Limerick plant the surrounding population within 50 miles will grow to over 9 million people, including more than 400,000 people living within 10 miles of the site. It is vital that appropriate mitigation alternatives be considered to ameliorate the risks to these residents. NRC regulations require that, as part of the NEPA process, NRC must "[s]tate whether the Commission has taken all practicable measures within its jurisdiction to avoid or minimize environmental harm from the alternative selected, and if not, to explain why those measures were not adopted." 10 C.F.R. § 51.103(a)(4). Moreover, the alternatives NRDC contends Exelon must consider are all designed to address these risks, which is why they have been considered for other BWR plants.

s/electronic signature

Geoffrey H. Fettus

Signed this 21<sup>st</sup> day of November, 2012