

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

November 27, 2012

ORDER

(Establishing Deadlines for Responses to NRDC Waiver Petition)

On November 21, 2012, the Natural Resources Defense Council (NRDC) filed a petition for waiver of 10 C.F.R. § 51.53(c)(3)(ii)(L)<sup>1</sup> pursuant to CLI-12-19<sup>2</sup> and 10 C.F.R. § 2.335(b). Anticipating this filing, Exelon Generation Company, LLC (Exelon), filed a motion on November 16, 2012 seeking the establishment of deadlines for responses to the Waiver Petition.<sup>3</sup> NRDC filed an answer to this motion on November 26, 2012.<sup>4</sup>

Exelon explained that the parties consulted in an attempt to establish an agreeable schedule for responding to the Waiver Petition, but that those efforts were to no avail. Exelon is

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<sup>1</sup> Natural Resources Defense Council's Petition, by Way of Motion for 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 (Nov. 21, 2012) [hereinafter "Waiver Petition"].

<sup>2</sup> CLI-12-19, 76 NRC \_\_, \_\_ (slip op. at 17) (Oct. 23, 2012).

<sup>3</sup> Exelon Motion for Order Establishing Deadline to File Responses to NRDC's Anticipated November 27, 2012 Waiver Petition (Nov. 16, 2012) [hereinafter "Exelon Motion"].

<sup>4</sup> NRDC's Response to Exelon's Motion for Order Establishing Deadline for Response to NRDC's Request for Waiver Pursuant to 10 C.F.R. § 51.53(c)(3)(ii)(L) (Nov. 26, 2012) [hereinafter "NRDC Response"].

seeking a 30-day deadline for responding to the Waiver Petition.<sup>5</sup> NRDC would agree to a 15-day deadline, but would only agree to the proposed 30-day deadline if NRDC were permitted to file a reply.<sup>6</sup> Exelon contends that this request for a reply is premature and that the Board should therefore deny it.<sup>7</sup> NRDC states that the NRC Staff “has no objection to a fifteen-day response period for answering any waiver petition NRDC elects to file.”<sup>8</sup> Exelon represents that the NRC Staff would accept a response time of either 15 or 30 days.<sup>9</sup>

NRDC argues that its petition for waiver is more akin to a petition to intervene than a motion, and thus the rules regarding filing of replies found in 10 C.F.R. § 2.309(h) should apply, rather than those found in 10 C.F.R. § 2.323(c).<sup>10</sup> NRDC makes a number of arguments in support of this claim. First, NRDC notes that the Commission, in CLI-12-19, gave NRDC more than 30 days to file its Waiver Petition,<sup>11</sup> when motions under 10 C.F.R. § 2.323(a) are due within ten days of the occurrence giving rise to it.<sup>12</sup> Second, NRDC points out that the Commission, again in CLI-12-19, noted that the waiver process is available to petitioners, not just “parties” to a proceeding, as 10 C.F.R. § 2.335(b) would imply.<sup>13</sup> Because of this, NRDC

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<sup>5</sup> Id. at 2.

<sup>6</sup> Id. at 2-3.

<sup>7</sup> Id. at 4.

<sup>8</sup> NRDC Response at 4.

<sup>9</sup> Exelon Motion at 4.

<sup>10</sup> NRDC Response at 6.

<sup>11</sup> Id.

<sup>12</sup> 10 C.F.R. § 2.323(a).

<sup>13</sup> NRDC Response at 6.

contends that “the Commission appears to view the Waiver Request as akin to an initial hearing request, filed by any petitioner, rather than a motion, filed by a party.”<sup>14</sup> Third, NRDC argues that while Section 2.335(b) is indeed silent regarding the right to reply, it is also silent regarding deadlines for filing answers, and thus the Board “plainly has the flexibility to tailor any particular waiver proceeding in the manner it deems most appropriate and fair.”<sup>15</sup> Finally, NRDC contends that Exelon’s own request for a 30-day deadline to file a response demonstrates that the Waiver Petition is more akin to a petition to intervene than a motion,<sup>16</sup> for answers to standard motions are subject to a 10-day deadline,<sup>17</sup> while answers to intervention petitions are subject to a 25-day deadline.<sup>18</sup>

We agree with NRDC that its Waiver Petition is more akin to a petition to intervene than to a standard motion. Indeed, had NRDC included this waiver request in its initial petition to intervene, as it should have (and would have, had it not committed the understandable mistake of taking 10 C.F.R. § 2.335(b) seriously when it says it applies to “parties”)<sup>19</sup>, it would have been permitted a reply pursuant to 10 C.F.R. § 2.309(h)(2). In addition, the fact that Exelon has requested 30 days to respond, rather than the 10 days found in 10 C.F.R. § 2.323(c) or the 25 days found in 10 C.F.R. § 2.309(h)(1) suggests to us that Exelon intends to devote significant resources to its response. For these reasons, we believe that fairness dictates that NRDC be

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<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> 10 C.F.R. § 2.323(c).

<sup>18</sup> 10 C.F.R. § 2.309(h).

<sup>19</sup> See [NRDC] Petition to Intervene and Notice of Intention to Participate (Nov. 22, 2011) at 25, n.7.

permitted a reply in line with 10 C.F.R. § 2.309(h)(2).

We hereby order that Exelon and the NRC Staff shall file their responses to the Waiver Petition no later than December 16, 2012, or 25 days after NRDC filed its petition.<sup>20</sup> NRDC shall file its reply no later than 14 days<sup>21</sup> after Exelon and the NRC Staff have filed their responses. If Exelon and the NRC Staff file their responses on different dates, NRDC should file its reply 14 days after the latter of these filings.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD  
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William J. Froehlich, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
November 27, 2012

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<sup>20</sup> This deadline is consistent with 10 C.F.R. § 2.309(h)(1) and approximates the deadlines for responses to waiver petitions imposed by other Boards. See, e.g., Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Units 2 & 3), Licensing Board Order (Authorizing FUSE to Submit a Section 2.335 Petition) at 3 (Nov. 21, 2007) (unpublished).

<sup>21</sup> We note that 10 C.F.R. § 2.309(h)(2) contemplates a seven-day deadline for this filing, but we extended it to 14 days because of the intervening holidays.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
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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 **ORDER (Establishing Deadlines for Responses to NRDC Waiver Petition)** have been served upon the following persons by Electronic Information Exchange and by electronic mail as indicated by an asterisk\*.

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Limerick Generating Station, Units 1 and 2, Docket Nos. 50-362-LR and 50-363-LR  
**ORDER (Establishing Deadlines for Responses to NRDC Waiver Petition)**

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[Original signed by Herald Speiser ] \_\_\_\_\_  
Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 27<sup>th</sup> day of November, 2012