



appeal, the Commission concluded that the exception to performing an analysis of severe accident mitigation alternatives (SAMAs) contained in 10 C.F.R. § 51.53(c)(3)(ii)(L) “operates as the functional equivalent of a Category 1 issue, removing SAMAs from litigation in this, as well as certain other, case-by-case license renewal adjudications.”<sup>5</sup> However, the Commission “remand[ed] the proceeding to the Board for the limited purpose of considering a waiver petition in accordance with 10 C.F.R. § 2.335(b) through (d), which NRDC may submit by Tuesday, November 27, 2012.”<sup>6</sup> NRDC filed a timely waiver petition on November 21, 2012,<sup>7</sup> and the NRC Staff and Exelon filed timely responses on December 14, 2012.<sup>8</sup> NRDC filed a timely reply a week later.<sup>9</sup>

On February 6, 2013, the Board issued LBP-13-1, denying NRDC’s waiver petition but referring its decision to the Commission under 10 C.F.R. § 2.323(f)(1). Among other things, the Board concluded that there was an apparent “Catch-22 situation” with the interplay of 10 C.F.R. § 51.53(c)(3)(ii)(L) and 10 C.F.R. § 2.335(b), and referred the issue to the Commission to “shed light” on that interplay.<sup>10</sup> The Board referred its decision under Section 2.323(f)(1) because the

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<sup>4</sup> *Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-12-19, slip op. at 1 (Oct. 23, 2012).

<sup>5</sup> *Id.*, slip op. at 13.

<sup>6</sup> *Id.*, slip op. at 17.

<sup>7</sup> “NRDC 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).

<sup>8</sup> “NRC Staff Answer to [NRDC] Petition for Waiver of 10 C.F.R. § 51.53(c)(3)(ii)(L); Exelon Response Opposing NRDC’s Petition for Waiver of 10 C.F.R. § 51.53(c)(3)(ii)(L)” (Dec. 14, 2012).

<sup>9</sup> “Reply of [NRDC] in Support of 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” (Dec. 21, 2012).

<sup>10</sup> LBP-13-1, slip op. at 13.

“legal issue presented by NRDC’s petition is novel and worthy of the Commission’s immediate attention . . .”<sup>11</sup>

The referral provisions for waiver petitions in Section 2.335(d) state that “[t]he Commission may direct further proceedings as it considers appropriate to aid its determination.” It has been the Commission’s practice to request briefing on referred waiver petitions.<sup>12</sup> However, the Board did not refer LBP-13-1 to the Commission under Section 2.335, because it denied the waiver petition. Rather, the section under which the Board referred its decision—Section 2.323(f)(1)—does not contain language similar to Section 2.335(d), nor does it require that the Commission request such briefing from the parties. Accordingly, there is uncertainty whether the Commission will request briefing.<sup>13</sup> In light of the Board’s referral under Section 2.323(f)(1) (reserved for “significant and novel legal or policy issues”), Exelon, supported by the NRC Staff, believes briefing is appropriate and will assist the Commission.

Moreover, 10 C.F.R. § 2.323(a)(2) requires that “[a]ll motions must be made no later than ten (10) days after the occurrence or circumstance from which the motion arises.” The Board issued LBP-13-1 on February 6, 2013. Accordingly, any motion based on that Order must be filed by February 19, 2013.<sup>14</sup> There is no exception to this timing deadline when a Board certifies a question to the Commission.<sup>15</sup>

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<sup>11</sup> *Id.*, slip op. at 1.

<sup>12</sup> See e.g., *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551 (2005); and *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plants, Units 1 and 2), CLI-11-11, 74 NRC \_\_ (slip op.) (Oct. 12, 2011).

<sup>13</sup> *But c.f. Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2), CLI-02-06, 55 N.R.C. 164, 166. (2002) (requesting briefing from the parties to address a certified issue related to terrorism and NEPA).

<sup>14</sup> Ten days from February 6 is Saturday, February 16. Under 10 C.F.R. § 2.306, the filing date is pushed to Tuesday, February 19, because Monday, February 18 is a federal holiday (Presidents’ Day).

<sup>15</sup> 10 C.F.R. 2.323(g) (“Unless otherwise ordered, neither the filing of a motion, the filing of a petition for certification, nor the certification of a question to the Commission stays the proceeding or extends the time for the performance of any act.”).

Thus, Exelon, with the support of the NRC Staff and with no objection from NRDC, is filing this motion within ten days of LBP-13-1 to formally request an opportunity to brief the Commission on the referred question in LBP-13-1.

Respectfully submitted,

Signed (electronically) by

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

_____	)	
In the Matter of	)	
	)	Docket Nos. 50-352-LR
EXELON GENERATION COMPANY, LLC	)	50-353-LR
	)	
(Limerick Generating Station, Units 1 and 2)	)	
_____	)	

**CERTIFICATE OF SERVICE**

Pursuant to 10 C.F.R. § 2.305, I hereby certify that on February 19, 2013, Exelon served a copy of “**UNOPPOSED MOTION REQUESTING BRIEFING**” through the NRC’s E-Filing system.

*Signed (electronically) by*  
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