

June 24, 2013

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF ANSWER TO THE NATURAL RESOURCES DEFENSE COUNCIL'S
RESUBMISSION OF CONTENTIONS IN RESPONSE TO STAFF'S
SUPPLEMENTAL DRAFT ENVIRONMENTAL IMPACT STATEMENT

Pursuant to 10 C.F.R. § 2.309(i)(1), the staff of the Nuclear Regulatory Commission (Staff) files its answer to the Natural Resources Defense Council's [NRDC] Resubmission of Contentions in Response to Staff's Supplemental Draft Environmental Impact Statement (Resubmission).¹ The Resubmission updates three sets of previously submitted contentions to challenge Staff's Draft Supplemental Environmental Impact Statement (DSEIS)² instead of Exelon's Environmental Report (ER) and asks that the Board "accept" the revisions.³

Specifically, NRDC resubmits (1) the three severe accident mitigation alternatives (SAMA) contentions and no-action alternative contention submitted in NRDC's November 22,

¹ Natural Resources Defense Council's Resubmission of Contentions in Response to Staff's Supplemental Draft Environmental Impact Statement (May 30, 2013) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML13150A420) (Resubmission).

² NUREG-1437, Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants, Supplement 49, Regarding Limerick Generating Station, Units 1 and 2, Draft Report for Comment (April 2013) (ADAMS Accession No. ML13120A078).

³ See Resubmission at 9. See *id.* at 2 (noting that update is provided simply to preserve the contentions for consideration).

2011 Petition to Intervene,⁴ (2) the three SAMA contentions submitted with NRDC's November 21, 2012 waiver petition,⁵ and (3) its Waste Confidence contention.⁶ NRDC does not offer any new facts or evidence in support of its contentions or seek to modify the bases of its contentions.⁷ NRDC simply asks the Board to "accept" these contentions, which substitute the Staff's DSEIS for Exelon's ER as the challenged document,⁸ and claims that the DSEIS and ER contain "the same fundamental analytical flaws" and "deficiencies."⁹

The Board should not accept or admit any of NRDC's resubmitted contentions because NRDC has not demonstrated that its contentions meet the requirements of both 10 C.F.R. §§ 2.309(c) and 2.309(f)(1).¹⁰ Instead, guided by its own rulings in LBP-12-8 and LBP-13-1 and the Commission's rulings in CLI-12-19 and CLI-12-16, the Board should: find NRDC's no-action alternative contention inadmissible;¹¹ find NRDC's SAMA contentions

⁴ Natural Resources Defense Council Petition to Intervene and Notice of Intention to Participate (Nov. 22, 2011) (ADAMS Accession No. ML11326A320) (Petition to Intervene). Resubmission at 1-2.

⁵ 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) (ADAMS Accession No. ML12326A976) (Waiver Petition). Resubmission at 2.

⁶ NRDC's Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Limerick (July 9, 2012) (ADAMS Accession No. ML12191A408) and NRDC's Waste Confidence Contention (July 9, 2012) (ADAMS Accession No. ML12191A409). Resubmission at 2-3.

⁷ Resubmission at 2, 3, 4, 5, 6 (stating that bases for contentions have not changed).

⁸ *Id.* at 9.

⁹ *Id.* at 2, 3, 4.

¹⁰ Pursuant to 10 C.F.R. § 2.309, contentions may be initially submitted in accordance with § 2.309(b). New or amended contentions may be filed after the deadline defined by § 2.309(b) in accordance with § 2.309(c). Regardless of when they are submitted, new or amended contentions must meet the requirements of 10 C.F.R. § 2.309(f)(1). *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station) (*Oyster Creek*), CLI-09-7, 69 NRC 235, 261 (2009).

¹¹ See *Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), LBP-12-8, 75 NRC __, __ (Apr. 4, 2012) (slip op. at 40).

inadmissible as impermissible challenges to the Commission's regulations;¹² and hold NRDC's Waste Confidence contention in abeyance.¹³

Specifically, in LBP-12-8, the Board ruled that NRDC's no-action alternative contention and SAMA contentions, with the exception of specific portions of SAMA contention 1-E, were inadmissible.¹⁴ NRDC's no-action alternative contention challenged the ER's discussion of the no-action alternative.¹⁵ The Board rejected this contention for lacking sufficient factual or expert support.¹⁶ NRDC's Resubmission does not add any basis to its no-action alternative contention;¹⁷ instead, NRDC only "direct[s] the original Contentions to the DSEIS rather than the [ER]."¹⁸ Therefore, NRDC's no-action alternative contention still does not meet the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1) and should be denied.¹⁹

¹² *Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2) (*Limerick*), CLI-12-19, 76 NRC __, __ (Oct. 23, 2012) (slip op. at 1, 3, 17) (reversing the Board's decision in LBP-12-8 to admit portions of NRDC's SAMA contention 1-E in the absence of a waiver because the contention was an impermissible challenge to § 51.53(c)(3)(ii)(L)). *Id.* at 8 (noting that Board considered NRDC's challenges to Exelon's 1989 SAMDA analysis an impermissible challenge to § 51.53(c)(3)(ii)(L)). *See also Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), LBP-13-1, 76 NRC at __ (Feb. 6, 2013) (slip op. at 1) (denying NRDC's Waiver Petition but referring the decision to the Commission).

¹³ *Calvert Cliffs Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 2) (*Calvert Cliffs*), CLI-12-16, 76 NRC __, __ (Aug. 7, 2012) (slip op. at 6) (directing that Waste Confidence contentions submitted, including NRDC's Waste Confidence contention, *id.* at 5 n.10, be held in abeyance pending the Commission's further order).

¹⁴ LPB-12-8, 75 NRC at __ (slip op. at 27).

¹⁵ Petition to Intervene at 23-24, 31.

¹⁶ LBP-12-8, 75 NRC at __ (slip op. at 37-39).

¹⁷ *See also* Resubmission at 2 (accepting the Board's ruling on the admissibility of the contention as binding on the contention as applied to the DSEIS).

¹⁸ Resubmission at 1-2, 9. Contrary to NRDC's assertion that all four contentions in its Petition to Intervene challenged the adequacy of the ER's consideration of SAMAs, *id.* at 1, only three of its initial contentions concerned SAMAs. The fourth contention concerned the ER's analysis of the no-action alternative. *See* Petition to Intervene at 23.

¹⁹ *See Oyster Creek*, CLI-09-7, 69 NRC at 261 (contentions must meet the requirements of (footnote continued...))

NRDC's SAMA contentions likewise should be denied. In CLI-12-19, the Commission held that the Board erred in admitting portions of NRDC's SAMA contention 1-E²⁰ because the contention was an impermissible challenge to the regulations.²¹ Specifically, the Commission held that because the Commission's "rules expressly provide that a supplemental SAMA analysis need not be performed [for Limerick], the proper procedural avenue for NRDC to raise its concerns is to seek a waiver of the relevant provision in section 51.53(c)(3)(ii)(L)."²² Accordingly, the Commission remanded the proceeding to the Board for the limited purpose of considering a waiver petition.²³ The Board denied NRDC's Waiver Petition in LBP-13-1, but referred its decision to the Commission.²⁴ As NRDC recognizes, the Commission has not ruled on its Waiver Petition.²⁵ Moreover, NRDC's Resubmission does not add any basis or evidence in support of its SAMA contentions or seek a waiver of 10 C.F.R. § 51.53(c)(3)(ii)(L).²⁶ Therefore, NRDC's SAMA contentions remain impermissible challenges to the regulations.

Finally, the Board should not admit NRDC's resubmitted Waste Confidence contention given the Commission's directions in CLI-12-16. As NRDC notes, in CLI-12-16, the

(...footnote continued)

10 C.F.R. § 2.309(f)(1)).

²⁰ *Limerick*, CLI-12-19, 76 NRC __ (slip op. at 1, 3, 14, 17).

²¹ *Id.* at 17.

²² *Id.* at 13.

²³ *Id.* at 17. The Commission did not suggest that NRDC could resubmit its no-action alternative contention, which the Board found inadmissible. *Id.* at 2 n.7.

²⁴ See *Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), LBP-13-1, 76 NRC at __ (Feb. 6, 2013) (slip op. at 1).

²⁵ Resubmission at 6 (noting that Nov. 21, 2012 Waiver Petition was pending before the Commission). Notably, NRDC recognizes that the Commission must grant its pending Waiver Petition in order to litigate its SAMA contentions. *Id.* at 4.

²⁶ Resubmission at 2.

Commission directed licensing boards in receipt of Waste Confidence contentions to hold those contentions in abeyance pending further order.²⁷ Consistent with the Commission's directive, this Board issued an order holding NRDC's Waste Confidence contention in abeyance.²⁸ Because the Commission has issued no further order,²⁹ the Board should hold NRDC's resubmitted Waste Confidence contention in abeyance.³⁰

While the Board should not admit any of NRDC's resubmitted contentions, the Staff is not opposed to tolling the deadline for NRDC to file updated SAMA contentions based on the Staff's DSEIS until the Commission rules on NRDC's pending Waiver Petition.³¹ If the Commission grants NRDC's Waiver Petition, the parties to this proceeding could then respond to any updated SAMA contentions filed³² and the Board could rule on whether NRDC's updated contentions raise a genuine material dispute with the Staff's DSEIS, which contains a different analysis than Exelon's ER.

²⁷ Resubmission at 7 (discussing *Calvert Cliffs*, CLI-12-16, 76 NRC __ (slip op.)).

²⁸ Memorandum and Order (Suspending Procedural Date Related to Waste Confidence Contention) (Aug. 8, 2012) (unpublished) (ADAMS Accession No. ML12221A277).

²⁹ Instead, the Commission directed the Staff to complete a revised Waste Confidence rule. Resubmission at 7.

³⁰ As stated in the Staff's August 2, 2012 answer to NRDC's Motion and Waste Confidence Contention, the portions of the contention based upon the D.C. Circuit's decision in *New York et al. v. NRC*, 681 F.3d 471 (D.C. Cir. 2012), would be admissible. NRC Staff's Response to NRDC's Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Limerick and NRDC's Waste Confidence Contention (Aug. 2, 2012) (ADAMS Accession No. ML12215A457). To the extent that NRDC's resubmitted Waste Confidence contention, like its predecessor, goes beyond *New York et al. v. NRC*, the Staff maintains its position that these claims are outside the scope of this proceeding and lack adequate basis. *Id.* at 7-11.

³¹ See 10 C.F.R. § 2.309(f)(2); See Resubmission at 1 (noting that filing was triggered by May 1, 2013 notification of availability of the DSEIS).

³² If the deadline for filing was tolled, the trigger for filing new SAMA contentions based on the DSEIS would be the date on which the Commission ruled on NRDC's Waiver Petition, not the date the DSEIS was published.

In short, Exelon's ER analyzed whether potentially new and significant information would change the results of its 1989 SAMDA. In contrast, the Staff's DSEIS evaluates whether any new and significant information would change the generic conclusion codified in the Commission's regulations that Exelon need not reassess SAMAs at Limerick Generating Station (LGS) for license renewal³³ and the Staff need not reconsider SAMAs at license renewal.³⁴ The purpose of the Staff's evaluation of new and significant information is "to determine whether any new and significant information exists that provides a 'seriously different picture of the environmental impacts than what was previously envisioned' regarding the determination in 10 C.F.R. 51.53(c)(3)(ii)(L), Table B-1 [of 10 C.F.R. Part 51, Subpart A, Appendix B], and the clarifications in the statement of considerations."³⁵ The Staff considered Exelon's evaluation, as well as public comments, and other information.³⁶ After completing its independent assessment of new information, the Staff concluded that there was no new and significant information with respect to the NRC's determination not to conduct a second SAMA analysis at LGS for license renewal and the studies and assumptions underlying that determination. DSEIS at 5-14.

For the reasons stated above, the Board should deny NRDC's resubmitted no-action alternative and SAMA contentions and should hold NRDC's Waste Confidence contention in abeyance. The Staff is not opposed to tolling the deadline for NRDC to file updated SAMA

³³ 10 C.F.R. § 51.53(c)(3)(ii)(L). See DSEIS at 5-7.

³⁴ Table B-1 of 10 C.F.R. Part 51, Subpart A, Appendix B. See DSEIS at 5-7. Contrary to NRDC's claim, Resubmission at 3, it has never been the Staff's position that new and significant information concerning SAMAs need not be considered as part of the Limerick relicensing process. The Staff has always maintained that both Exelon and the Staff must consider new and significant information. See, e.g., DSEIS at 5-7 (noting that both Exelon and the Staff must and did consider new and significant information).

³⁵ DSEIS at 5-7.

³⁶ *Id.* at 5-7-5-14.

contentions based on the Staff's DSEIS until the Commission rules on NRDC's pending Waiver Petition, but requests the opportunity to respond to any contentions submitted.

Respectfully submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 24th day of June, 2013

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF ANSWER TO NATURAL RESOURCES DEFENSE COUNCIL'S RESUBMISSION OF CONTENTIONS IN RESPONSE TO STAFF'S SUPPELMENTAL DRAFT ENVIRONMENTAL IMPACT STATEMENT" have been submitted through the E-filing System this 24th day of June, 2013.

/Signed (electronically) by/

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