

**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, Units 1 and 2))	
)	July 31, 2013
(License Renewal Application))	

**NATURAL RESOURCES DEFENSE COUNCIL’S OPPOSITION TO EXELON’S
MOTION FOR CLARIFICATION, OR, IN THE ALTERNATIVE, FOR LEAVE TO
REQUEST PARTIAL RECONSIDERATION OF THE BOARD’ JULY 12 ORDER**

I. INTRODUCTION

Looking for ambiguity where none exists, or alternatively seeking to relitigate an issue the Board has already decided, Exelon has filed a motion for clarification or reconsideration of the Board’s July 12, 2013 Order. *See* Exelon Motion of July 22, 2013 (“Exelon Mot.”). Because the motion does not meet the standards for either clarification or reconsideration, and is otherwise without merit, it should be denied.

II. BACKGROUND

In light of issuance of the DSEIS, on May 30, 2013 NRDC filed a motion to resubmit its Contentions against the DSEIS. NRDC Mot. of May 30, 2013 (“NRDC Mot.”). However, given the inefficiencies associated with addressing those Contentions while the Waiver Petition is pending before the Commission, NRDC requested that the Board simply accept the Contentions as timely submitted, to preclude any timeliness argument from Staff or Exelon. *Id.* Exelon and the Staff opposed the motion.

In resolving NRDC's motion the Board recognized that Exelon and Staff's opposition was based on the "strawman" that NRDC was asking the Board to *admit* these Contentions at this time, and that it was entirely appropriate for NRDC to simply preserve its rights to present DSEIS Contentions at the appropriate juncture. ASLBP No. 12-916-04-LR-BD01 (July 12, 2013) (hereafter "Mem. Order"). Thus, although the Board declined to accept NRDC's DSEIS Contentions at this time, it "toll[ed] the deadline for NRDC to resubmit these contentions after the Commission rules on the pending waiver petition, should NRDC deem it appropriate to do so." *Id.* at 5; *see also id.* at 6 ("we hereby toll the deadline for NRDC to re-file these DSEIS-related contentions"). Moreover, the Board also tolled the deadline to update "these contentions" against the FSEIS should that also be issued before the Waiver petition is resolved. *Id.* at 6 n.22.

Dissatisfied with this result, Exelon has filed a motion for clarification or reconsideration. Exelon Mot. Although Exelon does not object to the tolling for the SAMA-related Contentions, it claims that there is no basis for tolling any other Contention. *Id.*

III. ARGUMENT

A. There Is No Basis For Exelon's Request For Clarification.

Exelon's request for clarification is based on a false premise – that the Board's ruling is somehow ambiguous. Indeed, it is well-established that where there is "no ambiguity," clarification is not appropriate. *Duke Power Company* (Catawba Nuclear Station, Units 1 and 2), ALAB-155, 6 A.E.C. 829 (Oct. 25, 1973); *see also, e.g., Kennecott Cooper Corp. v. FTC*, 542 F.2d 801 (10th Cir. 1976) ("clarification could be appropriate only if the order were ambiguous or unclear").

At the outset of the Memorandum Opinion, the Board recognized that NRDC sought to resubmit “a number of contentions [that] are identical to contentions previously proffered in this proceeding,” which included both SAMA and non-SAMA related Contentions. Mem. Op. at 1. After considering NRDC’s request and Exelon and Staff’s objections, the Board resolved the issue by stating in no uncertain terms that “*we hereby toll the deadline for NRDC to re-file these DSEIS-related contentions [and] NRDC may re-submit these contentions within 30 days of the issuance of any Commission order granting the currently pending waiver petition.*” Mem. Op. at 6 (emphasis added). Thus, because the Board authorized the re-submission of all the Contentions contained in NRDC’s motion – which included both the SAMA Contentions and the two others about which Exelon is now complaining – there is no ambiguity for the Board to resolve through clarification.

Exelon’s claim that NRDC did not seek the right to resubmit *all* of its Contentions, Exelon Opp. at 5, is false. NRDC’s opening motion specifically identified *all* of the Contentions it sought the opportunity to resubmit, including the SAMA Contentions, NRDC Mot. at 5-6, the no-action Contention, *id.* at 5 (Contention 4-E), and the Waste Confidence Contention. *Id.* at 8. NRDC’s reply also made that absolutely clear. NRDC Reply at 6. Accordingly, Exelon’s effort to glean ambiguity based on NRDC’s request must also fail.

To be sure, in issuing its ruling the Board did refer to the NRC Staff’s suggestion regarding extending deadlines, Mem. Op. at 5, but in doing so the Board made it clear that, in its view, the tolling should apply to *all* “DSEIS-related contentions,” *id.*, not simply those related to the SAMA issue. Accordingly, there is nothing for the Board to clarify.

B. There Is Also No Basis For Reconsideration.

Exelon's alternative request for reconsideration also lacks all merit. It is well-established that a reconsideration motion "is not an opportunity to present new arguments," but rather must be based on the Board's "misapprehension or disregard of a critical fact or controlling legal principle or decision." *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-04-22, 60 N.R.C. 379, 380-81 (Sep. 20, 2004); *Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), 68 N.R.C. 679 (Nov. 7, 2008) ("reconsideration should be an extraordinary action and should not be used as an opportunity to reargue facts and rationales which were (or should have been) discussed earlier"). Moreover, reconsideration can only even be considered where the movant can demonstrate that the issue over which reconsideration is sought "could not have been reasonably anticipated" *Consumers Energy Co., Nuclear Mgmt Co., LLC, Entergy Nuclear Palisades, LLC, and Entergy Nuclear Operations, Inc.* (Palisades Nuclear Power Plant), CLI-07-22, 65 N.R.C. 525 (June 28, 2007).

Exelon fails both parts of the test. It points to no critical fact or controlling principle the Board overlooked. Rather, Exelon is dissatisfied with the Board's ruling, and is simply seeking a different result by restating arguments presented in its original opposition. In opposing NRDC's original motion, Exelon specifically argued that the Board should reject the no-action alternative Contention (4-E) and the Waste Confidence Contention. Exelon Opp. at 16. It seeks to do so again here. In that same opposition Exelon also specifically argued that NRDC should not be permitted to delay submission of Updated Contentions until the Waiver Petition is resolved. *Id.* at 11 n.60. It also seeks to do so again here. Thus, because Exelon simply seeks another bite at

the apple on arguments the Board has already rejected, it cannot satisfy the extremely high standard for reconsideration.

Exelon also cannot demonstrate the issue it now raises could not have reasonably been anticipated when, as noted, it specifically argued in its original opposition that the Board should *not grant any extension of the “30 day deadline for filing new and amended contentions based on the DSEIS after its issuance on April 30, 2013.”* *Id.* (emphasis added). In short, since Exelon made these arguments before, it may not present them again.

Even assuming *arguendo* that the Board were to consider Exelon’s request, there is no logical rationale for bifurcating the DSEIS Contentions, allowing some of them to be resolved now while allowing others to await resolution of the Waiver Petition. Rather, the appropriate course is the one already taken by the Board, putting all DSEIS Contentions on hold until the SAMA Contentions – as to which Exelon no longer objects to tolling – can move forward.

The result Exelon seeks would be particularly anomalous for the Waste Confidence Contention. As Exelon recognizes, that Contention as to the ER has already been held in abeyance, and thus there is no reason to expend time and resources considering that Contention as to the DSEIS at this time. Rather, it is sufficient for present purposes to hold *all* the Updated Contentions in abeyance until the Waiver Petition is resolved – as the Board has done – at which point NRDC can determine which Contentions to seek to pursue.¹

¹ With respect to the no-action alternative Contention, NRDC simply seeks to preserve that issue for later judicial review. Because Exelon will be free to argue that the Board should reject that Contention in the event NRDC resubmits it, there is also no reason that the Board needs to address that matter at this time either.

Finally, it bears emphasizing the entirely premature exercise Exelon is urging the Board to undertake at this time. As the Board recognized, NRDC simply seeks to preserve the right to present its Updated Contentions when the Waiver Petition is resolved. Based on that ruling NRDC will be in a position to determine precisely which Contentions to pursue at that time.

At that time, Exelon and Staff will of course be free to make any arguments they see fit against the admissibility of those Contentions, including all of the arguments Exelon is asking the Board to consider at this time. Accordingly, Exelon suffers no prejudice whatsoever by the Board's current ruling, which is yet another reason that there is no basis for reconsideration.

IV. CONCLUSION

The sole purpose of NRDC's motion to resubmit its Contentions was to avoid any dispute regarding the timeliness of Contentions regarding the DSEIS. The Board has addressed that concern by postponing the deadline for those Contentions, and Exelon offers no sound basis for

disturbing that result. For the foregoing reasons, NRDC respectfully requests that the Board deny Exelon's motion for clarification or reconsideration.

Respectfully Submitted,

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Filed this 31st of July, 2013

CERTIFICATE OF SERVICE

I hereby certify that copies of the NATURAL RESOURCES DEFENSE COUNCIL’S OPPOSITION TO EXELON’S MOTION FOR CLARIFICATION OR RECONSIDERATION in the captioned proceeding was served on the 31st day of July, 2013 via the Electronic Information Exchange (EIE) on the following , which to the best of my knowledge resulted in transmittal of same to those on the EIE Service List for the captioned proceeding:

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