

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

In the Matter of

Exelon Generation Company, LLC

Docket Nos. 50-454, 50-455, 50-456, 50-
457; 2013-0169

(Braidwood Nuclear Station, Units 1 and 2
and Byron Nuclear Station, Units 1 and 2)

ASLBP No. 13-929-02-LR-BD01

December 16, 2013

**APPEAL OF ASLB DENIAL OF ELPC'S PETITION FOR INTERVENTION AND
HEARING REQUEST AS REQUEST FOR PROTECTIVE STAY**

Petitioner Environmental Law & Policy Center ("ELPC") hereby files this appeal of the Atomic Safety and Licensing Board's ("ASLB") order denying ELPC's hearing request and petition to intervene. The ASLB's November 19, 2013 Order stated that ELPC's "sole remedy to challenge the wisdom or lawfulness of 10. C.F.R. § 51.53(c)(2) is to file a petition for rulemaking with the Commission itself."¹ Based on this Order, ELPC intends to file a petition for rulemaking that will seek to require a need for power analysis for license renewals of merchant plants such as Byron 1 & 2 and Braidwood 1 & 2. Therefore, ELPC requests that the Nuclear Regulatory Commission ("NRC") issue a protective stay of this proceeding that is done in a manner that preserves ELPC's ability to have a decision on its forthcoming petition rulemaking applied before the final consideration and determination of the Byron 1 & 2 and Braidwood 1 & 2 license renewal applications.

ELPC filed a timely Hearing Request and Petition to Intervene in the above-docketed proceeding involving the NRC's consideration of Exelon's application to renew the operating

¹ ASLB Memorandum and Order, November 19, 2013 at 4.

licenses of the Byron 1 & 2 and Braidwood 1 & 2 nuclear stations.² On November 19, 2013, the ASLB issued an Order denying ELPC's hearing request and petition to intervene. The ASLB held that ELPC can only challenge the Commission rule exempting the Byron 1 & 2 and Braidwood 1 & 2 plants from a need for power analysis through a rulemaking proceeding.³ Therefore, ELPC intends to file a petition for rulemaking for the Commission to consider concurrently with its review of Exelon's Byron 1 & 2 and Braidwood 1 & 2 license renewal applications.

ELPC's petition for rulemaking will request that the NRC revise its license renewal regulations in order to comply with the National Environmental Policy Act's ("NEPA") cost/benefit analysis requirement. The Commission's current regulations do not require a cost/benefit need for power analysis for license renewals because the NRC apparently believes that state regulators will conduct a need for power on their own.⁴ This reasoning, however, does not apply to "merchant plants" such as Byron 1 & 2 and Braidwood 1 & 2 that do not fall within the jurisdiction of a state utilities regulatory commission that issues certificates of public necessity and convenience after conducting a need for power analysis. Here, Exelon did not seek, and the Illinois Commerce Commission is not conducting, a need for power analysis.

Therefore, the NRC's current regulations violate NEPA because there is no regulator analyzing the need for power from the Byron 1 & 2 and Braidwood 1 & 2 plants.⁵ ELPC intends to petition the Commission to comply with NEPA by issuing a rule that requires a need for

² *Id.* at 2.

³ *Id.* at 4.

⁴ 10 C.F.R. § 51.53(c)(2); Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 28,467, 28,471-72 (June 5, 1996).

⁵ *See* Nuclear Energy Institute; Denial of Petition for Rulemaking, 68 Fed. Reg. 55,905, 55909-10 (Sept. 29, 2003); *see* Exelon's Answer Opposing the Hearing Request and Petition to Intervene Filed by the Environmental Law and Policy Center, Oct. 28, 2013 at 12.

power analysis for merchant plants in order to determine whether there is a need for particular plants such as Byron 1 & 2 and Braidwood 1 & 2.

ELPC files this appeal as a petition for a protective stay in order to preserve ELPC's right to intervene in the Byron 1 & 2 and Braidwood 1 & 2 license renewal proceeding while it pursues the ASLB's recommended course of filing a petition for rulemaking. The Byron 1 & 2 and Braidwood 1 & 2 draft SEISs are scheduled for completion in October 2014, the final SEISs are scheduled for May and June, 2015, and the final Commission decision is scheduled for sometime after August 2015.⁶ The NRC should move forward on its consideration ELPC's petition for rulemaking in time for ELPC to engage in the license renewal proceeding. ELPC is not requesting that the NRC stop work on the license renewal, but rather is preserving its ability to have its legitimate issue regarding NEPA's requirement for a need for power analysis raised for the Byron 1 & 2 and Braidwood 1 & 2 plants before the NRC makes its final determination on Exelon's requests for these largest-ever license renewals.

ELPC respectfully requests that the U.S. Nuclear Regulatory Commission: (1) Grant a protective stay that preserves ELPC's ability to seek a stay under 10 C.F.R. § 2.802(d) and have a decision on its forthcoming petition for rulemaking applied to the Byron 1 & 2 and Braidwood 1 & 2 license renewal applications; and (2) Not make a determination on the pending license renewals of Byron 1 & 2 and Braidwood 1 & 2 until the Commission makes a final ruling on ELPC's forthcoming rulemaking and allows sufficient time for ELPC to raise its Contention 1 that Exelon has not conducted the need for power analysis necessary under NEPA. The protective stay would also allow ELPC to renew its hearing request and petition to intervene in this case if the Commission issues rules requiring a need for power for license renewals of

⁶ Byron and Braidwood Nuclear Stations, Units 1 and 2: License Renewal Application, *available at* <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/byron-braidwood.html>.

merchant plants, including the Byron 1 & 2 and Braidwood 1 & 2 plants, thereby ensuring that the largest-ever license renewals do not move forward without a proper need analysis.

Respectfully Submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)

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Dated in Chicago, IL
this 16th day of December, 2013

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

_____)	
In the Matter of:)	Docket Nos. 50-454-LR
)	50-455-LR
EXELON GENERATION COMPANY, LLC)	50-456-LR
)	50-457-LR
(Byron Nuclear Station, Units 1 and 2;)	
Braidwood Nuclear Station, Units 1 and 2))	December 16, 2013
_____)	

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305 (as revised), I certify that on this date, a copy of “Appeal of ASLB Denial of ELPC’s Petition for Intervention and Hearing Request as Request for Protective Stay” was served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned proceeding.

Signed (electronically) by Justin Vickers
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