

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Paul S. Ryerson, Chairman
Alex S. Karlin
Dr. Jeffrey D.E. Jeffries

In the Matter of

EXELON GENERATION COMPANY, LLC

(Dresden Nuclear Power Station, Units 2 & 3)

Docket Nos. 50-237-EA and 50-249-EA

ASLBP No. 14-930-01-EA-BD01

February 5, 2014

ORDER
(Concerning Instructions for Oral Argument)

As previously directed, the Board will hear oral argument concerning standing and the sufficiency of the hearing request at 9:30 a.m. Central Standard Time on Thursday, March 6, 2014 at the Grundy County Court House, located at 111 East Washington Street in Morris, Illinois.¹

As also previously directed, Petitioner's reply is due February 14, 2014.² If deemed necessary, motions to strike some or all of Petitioner's reply may be made orally on March 6. The Board does not wish to receive written motions to strike.

At the argument, each of the three participants will be allowed the opportunity to make a brief opening statement, not to exceed ten minutes. The Board expects, however, that the argument will consist primarily of responses to the Board's questions. Additionally, in order to facilitate the proceeding and to make it more efficient, the Board wishes to receive written responses to certain questions in advance. On or before February 28, 2014, each participant

¹ See Order (Setting Prehearing Conference) (Jan. 15, 2014) (unpublished).

² See Order (Granting Unopposed Motion for Extension of Time) (Jan. 31, 2014) (unpublished).

shall submit a memorandum that addresses the following questions:

1. Does 10 C.F.R. § 2.202(a)(3) apply to the October 28, 2013 Confirmatory Order?
2. If section 2.202(a)(3) applies, did the Confirmatory Order adequately inform “any other person affected by the order” of the right to “demand” a hearing pursuant to section 2.202(a)(3)?
3. If section 2.202(a)(3) applies, must a “licensee or any other person adversely affected” also demonstrate standing under 10 C.F.R. § 2.309(d)?
4. If section 2.202(a)(3) applies, must a “licensee or any other person adversely affected” also satisfy the requirements of 10 C.F.R. § 2.309(f)(1)?
5. Both Petitioner and Exelon extensively discuss decisions in the Consumers Power Co. (Palisades Nuclear Power Facility) case from 1981 and 1982.³ Of what significance, if any, are the subsequent 1991 regulatory amendments,⁴ which established for the first time the duty of the NRC to inform “any other person adversely affected by the order of his or her right . . . to demand a hearing” under 10 C.F.R. § 2.202(a)(3)?
6. The participants appear to disagree as to whether the Confirmatory Order imposes new obligations on individual employees beyond those already imposed by NRC regulations or otherwise. Is this a fact issue that warrants or requires the Board’s consideration of evidence?
7. What is the status of the unfair labor practice charge that Petitioner filed with Region 13 of the National Labor Relations Board on December 4, 2013?

³ See, e.g., Petition to Intervene and Request for Hearing (Dec. 12, 2013) at 8 n.6 (citing In re Consumers Power Co. (Palisades Nuclear Power Facility), 14 NRC 247, 1981 NRC LEXIS 85 at *18–20 (1981), rev’d on other grounds, 15 NRC 493, 1982 NRC LEXIS 197 (1982)); Exelon’s Answer Opposing the Petition to Intervene and Hearing Request Filed By Local Union No. 15, International Brotherhood of Electrical Workers, AFL-CIO (Jan. 24, 2014) at 16 (citing Consumers Power Co. (Palisades Nuclear Power Facility), LBP-81-26, 14 NRC 247 (1981)).

⁴ See Revisions to Procedures to Issue Orders; Deliberate Misconduct by Unlicensed Persons, 56 Fed. Reg. 40,684 (Aug. 15, 1991).

8. What is the status of Exelon's implementation of the Confirmatory Order, including dates by which the various required actions were, or will be, performed?
9. If the Board were to order a hearing, would such a hearing more appropriately be conducted under the formal procedures set forth in 10 C.F.R. Part 2 Subpart G or under the simplified procedures set forth in Subpart L?⁵

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Paul S. Ryerson, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
February 5, 2014

⁵ See 10 C.F.R. § 2.310(b).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
EXELON GENERATION COMPANY, LLC)	Docket Nos. 50-237-EA and 50-249-EA
)	
(Dresden Nuclear Power Station))	ASLBP No. 13-930-01-EA-BD01
)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **LB ORDER (CONCERNING INSTRUCTIONS FOR ORAL ARGUMENT)** have been served upon the following persons by the Electronic Information Exchange.

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
Washington, DC 20555-0001

Paul S. Ryerson, Chair
Administrative Judge
E-mail: paul.ryerson@nrc.gov

Alex S. Karlin
Administrative Judge
E-mail: alex.karlin@nrc.gov

Dr. Jeffrey D.E. Jeffries
Administrative Judge
E-mail: jeffrey.jeffries@nrc.gov

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop: O-16C1
Washington, DC 20555-0001
OCAA Mail Center
E-mail: ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-15D21
Washington, DC 20555-0001

Catherine Scott, Esq.
E-mail: catherine.scott@nrc.gov

Mauri Lemoncelli, Esq.
E-mail: mauri.lemoncelli@nrc.gov

Christopher Hair, Esq.
E-mail: christopher.hair@nrc.gov

Sabrina Allen, Paralegal
E-mail: sabrina.allen@nrc.gov

OGC Mail Center
E-mail: OGCMailCenter@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the
Commission
Mail Stop: O-16C1
Washington, DC 20555-0001
Hearing Docket
E-mail: hearingdocket@nrc.gov

Dresden Nuclear Power Station - Docket Nos. 50-237-EA and 50-249-EA
LB ORDER (CONCERNING INSTRUCTIONS FOR ORAL ARGUMENT)

U.S. Nuclear Regulatory Commission
Office of Enforcement
Washington, DC 20555-0001

Roy Zimmerman, Director
E-mail: roy.zimmerman@nrc.gov

Counsel for Exelon Generation
Power Company
200 Exelon Way, KSA-3N
Kennett Square, PA 19348

Donald P. Ferraro, Esq.
E-mail:
Donald.Ferraro@exeloncorp.com

Counsel for Local Union No. 15
Schuchat, Cook & Werner
1221 Locust Street
2nd Floor
St. Louis, MO 63103

Marilyn S. Teitelbaum, Esq.
E-mail: mst@schuchatcw.com

Rochelle G. Skolnick, Esq.
E-mail: rgs@schuchatcw.com

Sandra Perry, Paralegal
E-mail: sp@schuchatcw.com

Counsel for Exelon Generation
Power Company
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue NW
Washington, DC 20004

Timothy P. Matthews, Esq.
E-mail: tmatthews@morganlewis.com

Raphael P. Kuyler, Esq.
E-mail: rkuyler@morganlewis.com

[Original signed by R. Giitter]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 5th day of February, 2014