UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	)	Docket Nos. 50-237-EA 50-249-EA
EXELON GENERATION COMPANY, LLC (Dresden Nuclear Power Station, Units 2 and 3)	)	February 28, 2014

EXELON'S MEMORANDUM RESPONDING TO THE QUESTIONS IN THE BOARD'S FEBRUARY 5, 2014 ORDER

I. INTRODUCTION AND SUMMARY

In accordance with the Atomic Safety and Licensing Board's ("Board's") February 5, 2014 Order (Concerning Instructions for Oral Argument) ("Order"), Exelon Generation Company, LLC ("Exelon") submits this response to the nine questions asked by the Board.

II. RESPONSES TO BOARD QUESTIONS

1. Does 10 C.F.R. § 2.202(a)(3) apply to the October 28, 2013 Confirmatory Order?

Yes. The Region III Administrator issued the Confirmatory Order to Exelon in this matter pursuant to her authority under 10 C.F.R. § 2.202.[1] Thus, the Confirmatory Order properly falls under the provisions of Section 2.202.

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[1] *See* Letter from C. Pederson, NRC Region III Administrator, to M. Pacilio, Exelon, Confirmatory Order; NRC Report Nos. 05000237/2013407(DRS); 05000249/2013407(DRS) and Investigation Report No. 3-2012- 020; Dresden Nuclear Power Station, Units 2 and 3, encl. at 6 (Oct. 28, 2013) ("Accordingly, pursuant to . . . the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, IT IS HEREBY ORDERED . . .") (emphasis in original) ("Confirmatory Order"), *available at* ADAMS Accession No. ML13298A144, published in the *Federal Register* as In the Matter of Exelon Generation Company, LLC; Dresden Nuclear Power

By its plain language, 10 C.F.R. § 2.202, "Orders," applies generally to orders issued by the Nuclear Regulatory Commission ("NRC" or "Commission"). The regulation does not specifically exclude confirmatory orders from the generally applicable rule. Had the Commission intended to exclude confirmatory orders from Section 2.202(a)(3), it could have. Rather than excluding confirmatory orders, Section 2.202(a)(3) specifically contemplates confirmatory orders by limiting the right to demand a hearing only to licensees or persons who have not consented to the order.[2] Similarly, Section 2.202(b) specifies different requirements for responses to orders to which a licensee or person subject to the Commission's jurisdiction has consented—thereby confirming that confirmatory orders are included within the generally applicable requirements of Section 2.202. Accordingly, Section 2.202(a)(3) applies to confirmatory orders, including this one.

Nothing in the regulatory history suggests a different conclusion.[3] Decisions interpreting Section 2.202 in the context of confirmatory orders reach this same logical result. For example, a 2004 Commission decision denying a hearing request challenging a confirmatory order—also in the enforcement context—specifically stated that the

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Station Confirmatory Order Modifying License, 78 Fed. Reg. 66,965, 66,966 (Nov. 7, 2013) ("Notice").

2 *See* 10 C.F.R. § 2.202(a)(3) (the order shall "[i]nform the licensee or any other person adversely affected by the order of his or her right . . . to demand a hearing on all or part of the order, *except in a case where the licensee or other person has consented in writing to the order*") (emphasis added).

3 *See*, *e.g.*, Final Rule, Revisions to Procedures to Issue Orders; Deliberate Misconduct by Unlicensed Persons, 56 Fed. Reg. 40,664, 40,678 (Aug. 15, 1991) (discussing the applicability of Section 2.202 to confirmatory orders).

requirement for notice under 10 C.F.R. § 2.202 (*i.e.*, Section 2.202(a)(3)) applies to confirmatory orders.[4]

For all these reasons, it is clear that 10 C.F.R. § 2.202(a)(3) applies to the October 28, 2013 Confirmatory Order issued in this proceeding.

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)?

Yes. Publication in the *Federal Register* is by law adequate notice to any person other than the specific party to whom the order is issued (who must receive actual service). "Publication in the *Federal Register* is legally sufficient notice to all interested or affected persons regardless of actual knowledge or hardship resulting from ignorance, except those who are legally entitled to personal notice."[5] Thus, by publishing the Confirmatory Order in the *Federal Register* on November 7, 2013, the NRC adequately informed "any person adversely affected by this Confirmatory Order" of their right to demand a hearing.

Section 2.202(a) requires actual service of an order only upon the licensee or other person subject to the order. Here, Exelon, as the licensee charged with a violation, was legally entitled to personal notice. Local Union No. 15, International Brotherhood of Electrical Workers, AFL-CIO ("Local 15" or "the Local") was not, because it was not charged with any violation. Accordingly, publication in the *Federal Register* was adequate notice to Local 15.

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4 *See FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-04-23, 60 NRC 154, 157 (2004) ("Pursuant to 10 C.F.R. § 2.202, the Commission invited any person adversely affected by the Confirmatory Order to request a hearing within 20 days.").

5 *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-05-24, 62 NRC 551, 565 n.60 (2005) (quoting *Cal. v. FERC*, 329 F.3d 700, 707 (9th Cir. 2003)).

Regardless, there is no dispute here that Local 15 received actual notice. The Local does not allege any deficiency of notice. Local 15 explained that it obtained a copy of the Confirmatory Order and, based on it, filed a Petition to Intervene.[6] No party objects to the timeliness of the Local's Petition.[7] Therefore, any question that may exist regarding the adequacy of notice in this case is moot.

As to any question about the significance of the phrase "right . . . to demand a hearing"—as applied to third parties who may seek to challenge NRC enforcement actions—as further explained in response to the following questions, the Commission has repeatedly held that this right remains subject to the requirements for standing and contention admissibility.[8]

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)?

Yes. 10 C.F.R. § 2.300 makes clear that the provisions of Subpart C (which includes Section 2.309) "apply to *all adjudications* conducted under the authority of the Atomic Energy Act of 1954, as amended [AEA], the Energy Reorganization Act of 1974 [ERA], and 10 C.F.R. Part 2, unless specifically stated otherwise in this subpart" (emphasis added). Although both regulations apply, the showing of adverse effect under Section 2.202(a)(3) is effectively equivalent to one element of the standing requirement under 10 C.F.R. § 2.309(d): demonstration of injury-in-fact. The plain text of Section

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6 *See* Petition to Intervene and Request for Hearing (Dec. 12, 2013) ("Petition").

7 *See* 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) ("Exelon's Answer"); NRC Staff Answer to Petition to Intervene and Request for Hearing (Jan. 24, 2014) ("NRC Staff Answer").

8 *See*, *e.g.*, *Davis-Besse*, CLI-04-23, 60 NRC at 157 ("Pursuant to 10 C.F.R. § 2.202, the Commission invited any person adversely affected by the Confirmatory Order to *request* a hearing within 20 days.") (emphasis added); *id*. ("To obtain a hearing, a petitioner must demonstrate standing and proffer at least one admissible contention").

2.309(d)(2) establishes this principle: "[i]n ruling on a request for hearing or petition for leave to intervene, . . . the [Board] designated to rule on such requests must determine, among other things, whether the petitioner has an *interest affected by the proceeding* . . ." (emphasis added). In other words, although the requirements are independent, the showing of adverse effect required by Section 2.202(a)(3) is one part—but only one part—of the multi-part requirement to demonstrate standing.[9]

The Commission noted this similarity, in the context of challenges to confirmatory orders by third-party intervenors: "[t]o obtain a hearing, a petitioner must demonstrate 'an interest affected by the proceeding'— i.e., standing . . . ."[10] In upholding the Licensing Board's denial of another hearing request on a confirmatory order, the Commission again clearly held, "[t]o obtain a hearing, a petitioner must demonstrate standing and proffer at least one admissible contention."[11] Based on this requirement, the Commission found that the petitioners failed to establish injury-in-fact, one of the elements of the standing analysis.[12]

Consistent with the NRC's longstanding, standard practice,[13] this principle is clearly specified in the Confirmatory Order in this proceeding, which states that "[i]f a

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9 The additional aspects of the standing analysis, such as the zone of interest test, causation, and redressability, go beyond the basic showing of an affected interest, and must be satisfied independently. *See generally* Exelon's Answer at 7-24.

10 *Alaska Dep't of Transp.*, CLI-04-26, 60 NRC 399, 405 (2004) ("Alaska DOT") (citation omitted); *see also Sequoyah Fuels Corp. and Gen. Atomics* (Gore, Okla. Site), CLI-94-12, 40 NRC 64, 71 (1994) (stating, in the context of an enforcement proceeding, "In order for NACE to be admitted as a party in this enforcement proceeding it must first demonstrate that it has an interest that may be affected by the proceeding; i.e., it has standing to participate.").

11 *Davis-Besse*, CLI-04-23, 60 NRC at 157.

12 *See id*. at 158.

13 *See, e.g.*, Consumers Power Co. (Palisades Nuclear Power Facility); Order Confirming Licensee Actions to Upgrade Facility Performance, 46 Fed. Reg. 17,688, 17,690 (Mar. 19, 1981) ("If a hearing is requested by a person other than the licensee, that person shall describe in accordance with 10 CFR 2.714(a)(2) the nature of the person's interest and the manner in which that person's interest is

person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order *and* shall address the criteria set forth in 10 CFR 2.309(d) and (f)."[14]

Thus, under 10 C.F.R. § 2.202(a)(3), to challenge a confirmatory order, a petitioner such as the Local must show that it is adversely affected by the order. It also must demonstrate that it has standing under section 2.309(d). The harm, whether characterized as injury-in-fact or adverse effect, must be within the NRC's zone of interest to support standing, and the petitioner must further demonstrate causation and redressability.

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)?

Yes. The requirement of filing an admissible contention under 10 C.F.R. § 2.309(f)(1) is a clear prerequisite to obtaining a hearing challenging an order, including proceedings on confirmatory orders. Section 2.202(a)(4) establishes this requirement, without exclusion of confirmatory orders. It states that any person requesting a hearing on a Commission order must "[s]pecify the issues for hearing." And, as noted above, the requirements in Subpart C, including 2.309, apply to "all adjudications" under the AEA, ERA, and 10 C.F.R. Part 2.[15]

An admissible contention is a requirement for any petitioner to obtain a hearing challenging a confirmatory order—just as in other NRC proceedings.[16] The admissible

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adversely affected"). Section 2.714 was the predecessor of Section 2.309. *See* Final Rule, Changes to the Adjudicatory Process, 69 Fed. Reg. 2182, 2218, 2220 (Jan 14, 2004).

14 Notice, 78 Fed. Reg. at 66,967 (emphasis added).

15 10 C.F.R. § 2.300.

16 10 C.F.R. § 2.309(a) ("For *all other proceedings* [other than Section 52.103 proceedings—which this is not], except as provided in paragraph (e) of this section, . . . the [Board] designated to rule on the

contention requirement is essential to "focus[ing] litigation on concrete issues and result[s] in a clearer more focused record for decision."[17] This requirement is intended "to support an early NRC determination whether there are issues that are appropriate for and susceptible to NRC resolution with respect to an NRC regulatory/licensing action."[18]

The Commission has repeatedly and unambiguously instructed Boards that a petitioner must propose an admissible contention to obtain a hearing—including on a confirmatory order. For example, in the 2004 *Davis-Besse* confirmatory order proceeding, the Commission held: "[t]o obtain a hearing, a petitioner must demonstrate standing *and proffer at least one admissible contention*."[19] In addition to the petitioners' lack of standing there, the Commission denied the hearing request for the independent and additional reason that they failed to proffer an admissible contention.[20]

As with standing, the requirement to proffer an admissible contention is clearly specified in the Confirmatory Order in this proceeding.[21] In sum, under 10 C.F.R. §§ 2.202(a)(4) and 2.309(f)(1), to obtain a hearing in this proceeding, Local 15 must proffer at least one admissible contention.

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request for hearing and/or petition for leave to intervene, will grant the request/petition if it determines that the requestor/petitioner has standing under the provisions of paragraph (d) of this section *and has proposed at least one admissible contention the meets the requirements of paragraph (f) of this section*.") (emphasis added). Exelon and the NRC Staff have demonstrated that the Local cannot be granted a hearing under paragraph (e) of Section 2.309. *See* Exelon's Answer at 24-27; NRC Staff Answer at 10.

17 Final Rule, Changes to the Adjudicatory Process, 69 Fed. Reg. at 2202.

18 *Id*.

19 *Davis-Besse*, CLI-04-23, 60 NRC at 157 (emphasis added).

20 *See id*.; *see also*, *e.g.*, *Alaska DOT*, CLI-04-26, 60 NRC at 405 ("To obtain a hearing, a petitioner must demonstrate "an interest affected by the proceeding" — i.e., standing — *and submit at least one admissible contention.*") (emphasis added) (citations omitted).

21 Notice, 78 Fed. Reg. at 66,967 ("If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) *and (f)*.") (emphasis added).

5. Both Petitioner and Exelon extensively discuss decisions in the Consumers Power Co. (Palisades Nuclear Power Facility) case from 1981 and 1982. Of what significance, if any, are the subsequent 1991 regulatory amendments, 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)?

The 1991 regulatory amendments noted by the Board do not bear on the applicability of the *Palisades* cases.[22] The 1991 amendments accomplished three main purposes: (1) to revise procedures for issuing orders to unlicensed individuals who are otherwise subject to the Commission's jurisdiction; (2) to identify the types of orders to which hearing rights attach; and (3) to put licensed and unlicensed persons on notice that they may be subject to enforcement for certain types of deliberate misconduct.[23] As discussed above in response to question 3, the NRC's practice of publishing confirmatory orders in the *Federal Register*—for the purpose of providing an opportunity for persons who were adversely affected to request a hearing—predates the 1991 rulemaking. The rulemaking does not in any way alter the requirement to show adverse effect within the zone of interest for NRC proceedings and otherwise meet the generally applicable requirements for standing and to proffer an admissible contention. For example, both before and after this rulemaking, hearing requests on such matters have been properly evaluated by presiding officers by first determining whether a petitioner has shown an adverse effect and demonstrated standing.[24]

The rulemaking codified the Commission's longstanding practices. The 1991 statements of consideration show that the NRC did not intend to substantively change its

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[22] *Consumers Power Co.* (Palisades Nuclear Power Facility), LBP-81-26, 14 NRC 247 (1981), *rev'd*, ALAB-670, 15 NRC 493 (1982), *vacated as moot*, CLI-82-18, 16 NRC 50 (1982).

[23] Final Rule, Revisions to Procedures to Issue Orders; Deliberate Misconduct by Unlicensed Persons, 56 Fed. Reg. at 40,664.

[24] *See*, *e.g.*, *Palisades*, LBP-81-26, 14 NRC at 249; *Davis-Besse*, CLI-04-23, 60 NRC at 157.

hearing standards or modify the scope of a petitioner's opportunity to request a hearing on an enforcement order, or the NRC's notice publication practices. The revised Section 2.202(a)(3) was intended to afford an unlicensed person who was the subject of NRC enforcement "the same type of adjudication process" provided for licensees.[25] With respect to third-party petitioners seeking a hearing on an order, the Commission specifically stated that under both the *existing and revised* "§ 2.202(a)(3), a licensee or any other person adversely affected by an order has the right to demand a hearing."[26] In other words, the right of "any other person adversely affected by an order" to "demand a hearing" existed at the time of the *Palisades* decisions. The Commission specifically explained that this provision applies equally to confirmatory orders and other types of orders, stating that "[w]hether or not a licensee or other person consents to an order, other persons adversely affected by an order issued under § 2.202 . . . will be offered an opportunity for a hearing *consistent with current practice* . . . ."[27]

Thus, the 1991 rulemaking does not alter the applicability of the standing analysis in the Licensing Board's decision in *Palisades* (LBP-81-26).[28]

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?

No. There is no disagreement as to whether the Confirmatory Order imposes new obligations. Local 15 now admits that the NRC's regulations apply to off duty, off site

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25 Final Rule, Revisions to Procedures to Issue Orders; Deliberate Misconduct by Unlicensed Persons, 56 Fed. Reg. at 40,671.

26 *Id*. at 40,673.

27 *Id*. at 40,678 (emphasis added).

28 The opportunity for discretionary intervention absent an established proceeding was eliminated in a separate rulemaking in 2004. *See* Final Rule, Changes to the Adjudicatory Process, 69 Fed. Reg. at 2201.

conduct, including the conduct engaged in by the SROs which the Equipment Operator failed to report to Exelon.[29] Moreover, the question of the scope of the NRC's access authorization regulations is an uncomplicated and pure question of law that should be resolved by the Board now, at the contention admissibility stage. As the Commission recently did in the *Limerick* license renewal proceeding, the Board should carefully consider and resolve this threshold legal issue before granting a hearing.[30] The scope of the underlying rule that was the subject of the violation is critical to the evaluation of the Local's hearing request at this stage of the proceeding. Specifically, the scope of the access authorization rule bears directly on the Local's standing and the admissibility of its proposed contentions.[31]

These matters must be resolved now, because the Commission should not expend its hearing resources unless a petitioner has *demonstrated* standing and proffered an *admissible* contention—*i.e.*, a contention that, among other things, does not challenge an NRC rule.[32] The contention admissibility rules, in particular, are "strict by design,"[33] and

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[29] Reply at 12 ("Local 15 is not alleging that the NRC regulations do not reach and allow consideration of certain off-duty conduct . . .") (emphasis in original).

[30] *See Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 & 2), CLI-12-19, 76 NRC 377, 385-86 (2012).

[31] *See* Exelon's Answer at 8-24, 30-32; NRC Staff Answer at 8-9, 13-14, 17. More generally, all three of the Local's contentions raise purely legal issues, specifically: (1) whether NRC Staff has exceeded the scope of its discretion in that the Confirmatory Order imposes requirements beyond the scope of NRC's regulations; (2) whether the Confirmatory Order is vague, overbroad, not carefully tailored, and fails to "cabin" Exelon's future discretion; and (3) whether the Confirmatory Order endorses alleged violations of the National Labor Relations Act. *See* Exelon's Answer at 29-39.

[32] *See Alaska DOT*, CLI-04-26, 60 NRC at 405 (requiring petitioner to "demonstrate" standing at the admissibility stage); 10 C.F.R. § 2.335(a) (prohibiting contentions challenging NRC regulations); Final Rule, Changes to the Adjudicatory Process, 69 Fed. Reg. at 2202 (explaining that the contention admissibility requirement is intended "to support an early NRC determination whether there are issues that are appropriate for and susceptible to NRC resolution with respect to an NRC regulatory/licensing action.").

[33] *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001), *petition for recons. denied*, CLI-02-1, 55 NRC 1 (2002).

require careful consideration of petitioner's legal and factual claims before a hearing is granted.[34] And "the initial burden of showing whether the contention meets our admissibility standards" lies with the petitioner.[35] These threshold determinations must be made before a hearing is granted and further resources are expended by the Board, the NRC Staff, and the other parties.[36] Thus, contrary to the Local's suggestion, the Board certainly must not accept all the *legal* allegations in a petitioner's contention to be true.[37]

Exelon and the NRC Staff have demonstrated that the regulations in 10 C.F.R. § 73.56 are properly understood to require persons subject to the behavioral observation program ("BOP") to report any behavior reflecting on the trustworthiness and reliability of personnel with unescorted access—whether the behavior occurs on-site or off, or relates to conduct on-site, or off.[38] Exelon and the NRC Staff demonstrate this conclusively through the text of the regulations, the statements of consideration, and the

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34 *See*, *e.g.*, *Limerick*, CLI-12-19, 76 NRC at 385-86 (finding legal error and reversing the Board's admission of a contention following the Commission's own "careful analysis of the regulatory history" of the relevant rules).

35 *Progress Energy Carolinas, Inc.* (Shearon Harris, Units 2 & 3), CLI-09-8, 69 NRC 317, 325 (2009).

36 *See* Final Rule, Changes to the Adjudicatory Process, 69 Fed. Reg. at 2202. In Reply, the Local argues that that these matters are "jurisdictional facts," the resolution of which should be deferred until the time of trial. *See* Reply of Local Union No. 15, International Brotherhood of Electrical Workers, AFL-CIO to NRC Staff and Exelon Answers Opposing Local 15's Petition to Intervene and Request for Hearing at 2-3 (Feb. 14, 2014) ("Reply") (citing *Valentin v. Hosp. Bella Vista*, 254 F.3d 358, 364 n.3, 365 (1st Cir. 2001)). The authorities the Local relies upon, however, are inapposite to the NRC's Rules of Practice, which require the resolution of standing and contention admissibility before further resources are expended by the parties. Moreover, even in federal court practice, the case the Local relies upon explains that the deferral of the resolution of "jurisdictional facts" until the trial stage is an optional exception to standard civil procedure practices. *See Valentin*, 254 F.3d at 364 n.3.

37 *See* Reply at 2 (citing cases).

38 *See* Exelon's Answer at 10-16; *see also* NRC Staff Answer at 8 ("The reporting of off-site, off-duty conduct has always been within NRC's regulatory purview so long as the observed conduct has a nexus to public health and safety or the common defense and security.").

relevant adjudicatory and enforcement precedent.[39] The answer to this threshold question requires no evaluation of the particular facts of this case.

In contrast, the Local cites no authority for its self-serving position that the scope of the rule is somehow more limited. In its initial Petition, the Local simply states the conclusion.[40] In reply, it claims that Exelon "admitted" that the changes it made to the BOP after the investigation of the armed robbery "imposed on bargaining unit employees new reporting obligations that had never before been the subject of Exelon policy."[41] The Local has mischaracterized Exelon's statements.[42] But, even if true, Exelon's prior alleged opinions are irrelevant to the question of what the regulations require. As Exelon and the Staff have shown, nothing in the Confirmatory Order expands the scope of reportable behavior.[43]

Ultimately, the Local's unsupported argument that the Commission could not have intended the broad applicability that the plain language connotes ignores the reality that nuclear employment is different. The privilege of using nuclear technology for commercial purposes carries with it the responsibility for all employees to protect the

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39 *See* Exelon's Answer at 10-16; *see also* NRC Staff Answer at 8-9.

40 *See*, *e.g.*, Petition at 16.

41 Reply at 14.

42 *See* Letter from T. Domeyer, Exelon, to M. Teitelbaum, Schuchat, Cook, and Werner, Local 15's Request for Information (Dec. 20, 2013), Attachment 1 to this Memorandum ("At no time did I say or confirm, as you write in your letter, that the Company had unilaterally implemented, 'for the first time, a requirement that employees report their off duty offsite observations of other employees' off duty offsite activity . . .'"); Letter from T. Domeyer, Exelon, to M. Teitelbaum, Schuchat, Cook, and Werner, Local 15's Request for Information (Feb. 4, 2014), a redacted version of which is Attachment 2 to this Memorandum ("Even before the Confirmatory Order, the BOP applied to off-site and off duty conduct, and I did not say at the November 21 meeting that the BOP previously did not apply to such conduct.").

43 In addition, Exelon revoked access and terminated the Equipment Operator who failed to report the plot, *see* Confirmatory Order, encl. at 2, because of violations of the then-extant BOP based on failure to report off-site and off-duty conduct. The Local did not pursue any challenge to that decision. *See* Exelon's Answer at 5.

safety and security of the public. The Commission deliberately imposed requirements for the trustworthiness and reliability of workers at civilian nuclear power plants, and those requirements apply whether or not the employees happen to belong to a union.

The NRC Staff's identical conclusion should be given deference by the Board.[44] The safety and security of civilian nuclear power, including requirements for plant access and behavioral observation of all workers with unescorted access, is a subject committed to its special expertise. Thus, when the NRC Staff states that "off-site, off-duty conduct has always been within NRC's regulatory purview so long as the observed conduct has a nexus to public health and safety or the common defense and security,"[45] the Board should defer to the Staff's reasonable interpretation of the regulations it administers.

The question of whether particular off-site or off-duty conduct other than that involved in the underlying investigation would be reportable under the regulations and Exelon's BOP is irrelevant to the evaluation of the Local's Petition, both with respect to standing and contention admissibility.[46] The Local concedes that the conduct underlying the Confirmatory Order issued in this proceeding is within the scope of the access authorization rule, because, as the Local admits, the robbery plot at issue here would "naturally" raise questions "concerning the trustworthiness of the individuals involved . . . ."[47] Despite the Local's effort to generate one, there are no material facts in dispute

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44 *See New England Power Co.* (NEP Units 1 &2), ALAB-390, 5 NRC 733, 746 n.26 (1977) (according greater weight to the Staff's interpretation of a regulation).

45 NRC Staff Answer at 8.

46 See *Sequoyah Fuels Corp.*, CLI-94-12, 40 NRC at 72 (stating that a showing of standing cannot be based on an "conjectural" or hypothetical" injury) (quoting *O'Shea v. Littleton*, 414 U.S. 488, 494 (1974)) ; *Crow Butte Res., Inc.* (North Trend Expansion Area), CLI-09-12, 69 NRC 535, 570 (2009) (reversing the admission of a contention that was based on "postulated" and "hypothetical" concerns); *U.S. Dep't of Energy* (High-Level Waste Repository), CLI-08-21, 68 NRC 351, 353 (2008) (reaffirming the Commission's policy disfavoring advisory opinions).

47 Petition at 17 n.11.

regarding whether there was a violation of the NRC's access authorization rules, and there is no fact-finding that could resolve any issue presented by the Local. The crucial dispute between the parties is a threshold legal dispute between the NRC Staff and Exelon, on the one hand, and the Local, on the other, over the simple question of whether the NRC's access authorization rules for behavioral observation reach off-site and off-duty conduct. Local 15 has already admitted that it does. Moreover, this simple and purely legal question is dispositive of the Local's standing and the admissibility of its contentions. The Board should resolve this legal dispute now, and reject the Petition.

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?

Local 15's charge has not been finally resolved. Contrary to the suggestion in Local 15's Reply, Region 13 of the National Labor Relations Board ("NLRB") has not concluded that the "Company's refusal to bargain concerning the implementation of sweeping changes to its BOP amounts to a violation of the National Labor Relations Act [NLRA] . . . ."[48] Rather, Region 13 has made only the narrow determination that there is reason to believe Exelon may have violated an obligation to bargain with Local 15 regarding the *effects* of its decision to implement changes to the BOP pursuant to the Confirmatory Order (*e.g.*, methods of training), and issued a Complaint solely on that basis.[49] Region 13 did not issue a Complaint based on Local 15's contention that Exelon was obligated to, or somehow violated the NLRA or its collective bargaining agreement when it refused to, bargain with Local 15 regarding its decision to enter the Settlement

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[48] *See* Reply at 6; *see also* Reply at 14 n.25.

[49] *See Exelon Generation Company, LLC and International Brotherhood of Electrical Workers, Local 15*, Case 13-CA-118294 (Region 13 NLRB) § VI(a) (Feb. 14, 2014), Attachment 3 to this Memorandum.

Agreement with the NRC, to agree to the Confirmatory Order, and to make the changes to the BOP or take the other actions required by the Confirmatory Order.[50] In other words, NLRB Region 13 did not find that Exelon had any obligation to bargain over the decision to enter into the Confirmatory Order, or to bargain over changes to the BOP that are required by the public health and safety. Absent settlement, the NLRB will proceed to a hearing before an administrative law judge regarding alleged failure to engage in bargaining over the effects of the Confirmatory Order. That hearing is currently scheduled for April 9 and 10, 2014, but may be moved. Exelon will decide by the hearing date whether to settle or contest the Complaint.

Although the NLRB's determinations to date appear to confirm that neither Exelon nor the NRC had any obligation even to consult with petitioners regarding alternative dispute resolution or the Confirmatory Order, the status of the Local's unfair labor practice charge is not directly relevant to any issue before this Board. The status of the charge has no impact on any prong of the standing analysis, whether discretionary intervention is available to the Local, or whether its contentions impermissibly attack NRC rules, raise issues beyond the scope of the NRC's regulatory purview, or are otherwise admissible.

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[50] *Compare* NLRB, Charge Against Employer (Dec. 4, 2013), Attachment 4 to this Memorandum (alleging various NLRA violations, including Exelon's failure to bargain over *entering into* a "settlement agreement" with the NRC) *with* Attachment 3 § VI(a) (identifying only one alleged violation of the NLRA, that Exelon declined to bargain with Local 15 over the "*effects* of its decision to implement changes in the terms and conditions of employment that were implemented pursuant to" the Confirmatory Order) (emphasis added).

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?

Prior to entering the Confirmatory Order, Exelon had already taken a number of actions, as identified in Section III.A of the Confirmatory Order. Sections V.A, B, and C of the Confirmatory Order required Exelon to take actions in the future (after the effective date of the Confirmatory Order). Exelon has completed the requirements identified in Sections V.A(A.1) and B of the Confirmatory Order. Specifically:

- Exelon implemented revisions to the BOP to "provide additional guidance on the types of offsite activities, if observed, or credible information that should be reported to reviewing officials" and to ensure that the requirement to pass information forward without delay is clearly communicated.[51] The revised BOP was implemented at the Exelon nuclear plants on or before January 24, 2014.

- On December 4, 2013, Exelon presented the facts and lessons learned from the events that gave rise to the Confirmatory Order to representatives of the Nuclear Energy Institute and the Institute of Nuclear Power Operations. The materials were made available to the NRC Resident Inspector at Dresden. In addition, on January 30, 2014, Exelon submitted a formal operating experience summary to the Institute of Nuclear Power Operations.

Exelon is currently in the process of satisfying the requirements identified in Section V.A(A.2) of the Confirmatory Order. Training materials have been prepared and issued, and Exelon expects to complete all training by April 15, 2014.

The remaining two requirements of the Confirmatory Order: an initial notification to the NRC on the status of compliance with the Confirmatory Order (V.C) and an effectiveness assessment (V.A(A.3)) – will not be completed until October 2014 and early to mid-2015, respectively.

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[51] *See* Reply, Exhibit 3, Exelon Nuclear, "Behavior Observation Program," Policy No. SY-AA-103-513, Rev. 10 (2014).

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?

For the reasons described above, no hearing is appropriate in this proceeding. If the Board were to hold a hearing in this case, where no relevant factual inquiry is necessary, then it would be more appropriately conducted under the simplified procedures in 10 C.F.R. Part 2, Subpart L. If all of the parties agree, then a hearing in this proceeding may be held under Subpart L or Subpart N (Expedited Proceedings with Oral Hearings).[52] Exelon respectfully suggests that if a hearing is held in this proceeding, then it would more appropriately be conducted under Subpart L because there are no disputes regarding the occurrence of a past activity in this proceeding, and no issues of credibility, motive, or intent of an eyewitness or any party that would suggest the need for more formal hearing procedures.

Under 10 C.F.R. § 2.310(d), hearings in most NRC proceedings are held under the informal procedures in Subpart L.[53] Unlike many other enforcement proceedings, none of the circumstances necessitating Subpart G procedures are present here. As shown in response to question 6, the Local's contentions raise solely legal issues. The Local presents no relevant basis for any dispute regarding the occurrence of any past activity.

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[52] *See* 10 C.F.R. § 2.310(b).

[53] The exceptions to this preference apply where the presiding officer finds that resolution of the contention or contested matter either necessitates resolution of either: (a) issues of material fact relating to the occurrence of a past activity, where the credibility of an eyewitness may reasonably be expected to be at issue; or (b) issues of motive or intent of the party or eyewitness material to the resolution of the contested matter. *See Entergy Nuclear Vt. Yankee, L.L.C.* (Vt. Yankee Nuclear Power Station), LBP-04-31, 60 NRC 686, 694 (2004) (concluding that "10 C.F.R. § 2.310(d) provides only two criteria entitling a petitioner to a Subpart G process"); *see also AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), Licensing Board Memorandum and Order, Docket No. 50-0219 (Denying NIRS's Motion to Apply Subpart G Procedures) at 2-3 (June 5, 2006) (unpublished), *aff'd* CLI-09-07, 69 NRC 235, 242-43, 278-79 (2009). Notably, this rule focuses on eyewitnesses, not expert witnesses. Disputes over expert witness credibility would not lead to the application of Subpart G procedures. *See Oyster Creek*, CLI-09-07, 69 NRC at 279.

Thus, if the Board were to grant a hearing on one or more of the Local's contentions, then the hearing would be most appropriately and efficiently conducted under Subpart L.

III. CONCLUSION

For the reasons set forth in Exelon's and the NRC Staff's Answers to the Local's Petition, and as further explained in this Memorandum, the Board should deny the Local's Petition in its entirety.

Respectfully submitted,

Signed (electronically) by Raphael P. Kuyler

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Counsel for Exelon Generation Company, LLC

Dated in Washington, DC
this 28th day of February 2014

Attachment 1

4300 Winfield Road
Warrenville, Illinois 60555
Writer's Direct Dial: 630/657-3753
Tamra.Domeyer@exeloncorp.com

Via E-Mail (MST@schuchatcw.com)
And Regular Mail

December 20, 2013

Ms. Marilyn S. Teitelbaum
Schuchat, Cook & Werner
The Shell Building, Second Floor
1221 Locust Street
St. Louis, MO 63103-2364

Re: ***Local 15's Request for Information***

Dear Marilyn:

This letter is provided in partial response to your November 26, 2013 letter to me.

Your letter provides your summary of comments I allegedly made during our November 21, 2013 meeting to discuss, among other things, the NRC's October 28, 2013 Confirmatory Order, a copy of which the Company provided to Local 15 as a courtesy prior to the meeting. Your summary of what I said is not accurate. At that meeting, I explained that, following the Company's discovery in May 2012 that a Local 15 bargaining unit member had knowledge of ongoing discussions between two of his co-workers about plans to engage in criminal activities that he learned off duty, but failed to report his knowledge to the Company in violation of its Behavioral Observation Program ("BOP"), the Company discharged that bargaining unit member based on, among other things, his failure to report the information which he learned off duty. I further told you that the Company also updated its BOP to make clear that the BOP includes a requirement that employees report offsite illegal activity.

At no time did I say or confirm, as you write in your letter, that the Company had unilaterally implemented "for the first time, a requirement that employees report their off duty offsite observations of other employees' off duty offsite activity to the extent the activity is 'illegal,' 'unusual,' and/or 'aberrant.'" To the contrary, I told you that the BOP and Company through its access authorization and other programs to comply with its regulatory requirements has required and expected that employees report the unusual and/or aberrant behavior of their co-workers, including illegal activities, even if learned of while off duty (as confirmed by the discharge of the employee referenced above). I explained that the revision to the BOP (as referenced in Section III(A) of the Confirmatory Order) merely expanded the examples of the types of aberrant behavior that must be reported to include a reference to illegal activity and clarified that the obligation

extends to information that an employee acquires off duty as well as on duty. I noted that the Company terminated the Local 15 bargaining member (Equipment Operator) referenced in the Confirmatory Order for, among other reasons, failing to disclose his knowledge of the discussions and activities of his co-workers in violation of the BOP requirements and that Local 15 dropped its grievance on behalf of that individual. We also discussed the long-standing obligation of employees to report "legal actions," which includes arrests and criminal activities (all of which typically occur off duty), and the fact that employees are well aware of this obligation. I also advised that the Company will comply with the requirements of the NRC Confirmatory Order, including the requirement in Section III(B)(1) which requires the Company to revise the BOP to "provide additional guidance on the types of offsite activities, if observed, or credible information that should be reported to reviewing officials."

In response to Local 15's request to bargain, I declined on behalf of the Company to bargain the revision already made to the BOP as referenced in Section III(A) of the Confirmatory Order or the revisions required by Section III(B)(1) of the Confirmatory Order. I reminded Local 15 that the Company did not bargain with the Union regarding implementation of the BOP or any of the subsequent changes to the BOP since inception of the program. I did, however, offer to meet with Local 15 to discuss and obtain Local 15's input regarding the revisions to the BOP. Local 15 has not accepted that offer.

As I communicated to you at the November 21 meeting, the Company disagrees with Local 15's assertion that the Company had a duty to request Local 15's participation in the ADR, or to bargain with Local 15 before it entered into a settlement agreement with the NRC to resolve the NRC identified apparent violations of the regulatory requirements and the BOP, or to bargain with Local 15 over the content and implementation of the requirements in Section III(B)(1) of the Confirmatory Order. The Company's position will be provided in more detail in response to the unfair labor practice Local 15 filed on or around December 4, 2013. However, I want to briefly address the reference in your letter to *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757 (1983). That case has no application here. *W.R. Grace* involved a settlement agreement that directly implicated and, indeed, eliminated an express provision of a collective bargaining agreement. The CBA here contains no provision regarding or reference to behavioral observation or the Behavioral Observation Program or any other provision that limits the Company's right to establish policies and procedures, including those implemented to comply with its regulatory obligations.

The remainder of your November 21 letter requests information. I have pulled together the bulk of the documentation responsive to your requests. The written responses and documents will be sent on Monday, December 23, 2013.

Very truly yours,

Tamra Domeyer
Associate General Counsel, Exelon Nuclear

Attachment 2

4300 Winfield Road
Warrenville, Illinois 60555
Writer's Direct Dial: 630/657-3753
Tamra.Domeyer@exeloncorp.com

Via E-Mail (MST@schuchatcw.com)

February 4, 2014

Ms. Marilyn S. Teitelbaum
Schuchat, Cook & Werner
The Shell Building, Second Floor
1221 Locust Street
St. Louis, MO 63103-2364

Re: ***Local 15's Request for Information***

Dear Marilyn:

This letter is in response to your January 31, 2014 email offering an explanation of the relevance of information requested in your January 21, 2014 letter and requesting that the Company provide the requested information by this morning.

At the outset, I will correct a misstatement in your email, which asserts that "the company procedures/rules did not previously provide for" reporting of off-site or off-duty conduct involving other employees and that I told you this information at our November 21, 2013 meeting. Even before the Confirmatory Order, the BOP applied to off-site and off duty conduct, and I did not say at the November 21 meeting that the BOP previously did not apply to such conduct. In fact, I reminded Local 15 that the Company terminated [redacted] because he failed to report his knowledge of the off site, off duty behavior and conduct of his co-workers. And, in any event, the NRC regulations require reporting of any questionable behavior, regardless of where the behavior occurs, and Exelon Generation's BOP must comply with the regulatory requirements.

Your email ends with an implication that Exelon Generation is hiding something and asserts that the Company should provide the requested information if for no reason other than to promote good relations. Your email ignores the substantial amount of information the Company already provided in response to Local 15's initial request for information, including:

1. Behavioral Observation Program policy the Company implemented in 1999 and all subsequent revisions, including the current revision (Rev. 10)
2. The July 3, 2013 letter and attachment from the NRC summarizing NRC OI Report No. 3-2012-020.
3. Materials referenced in Section III(A) of the Confirmatory Order, including:
    a. Exelon-wide briefing and expectation to report unusual behavior

b. Check in Self- Assessment, LS-AA-126-1005, "Site Knowledge of the Behavioral Observation Program"
c. Training conducted at Dresden Station

4. Fact finding notes from the Company's May 16 and June 7, 2012 interviews of [redacted]

In providing this information, the Company did not concede that the requested information is reasonably related to Local 15's representative function. And, in the face of the significant information the Company has already produced, you are seeking only:

(1) the date on which the Company first notified the Union of its implementation of Revision 9 to the Behavioral Observation Program (BOP) and related documents;

(2) any other documents that the Company produced to the NRC in connection with the NRC's investigation that commenced June 6, 2012;

(3) documents reflecting the Company's interpretation or implementation of the Confirmatory Order; and

(4) documents reflecting the Company's interpretation of 10 C.F.R. § 73.56.

Notably, the Company has already produced extant, relevant and non-privileged documents relating to categories 3 and 4: all iterations of the BOP and related training regarding Revision 9 (which reflect the Company's interpretation of 10 C.F.R. § 73.56) and Revision 10 to the BOP (which reflects the Company's interpretation and implementation of the Confirmatory Order). The Union has failed to explain how any other non-privileged documents predating the Confirmatory Order (if any exist) could possibly be relevant now. Furthermore, the Union has failed to show how any non-privileged internal interpretations of the Confirmatory Order by the Company (if any exist) are relevant given that the Company has produced its interpretation of the Confirmatory Order (Rev. 10 of the BOP). The Company has already explained why restrictions on production of access information preclude it from providing additional information submitted to the NRC in its investigation, and, in any event, the Union has failed to explain how such information, which predates the Confirmatory Order, is relevant now.

More specifically, Local 15 does not have a pending grievance related to the BOP. Although your January 31 email asserts that the requested information is relevant to Local 15's evaluation of whether to file a grievance "concerning the company's unilateral changes in the procedures/policies," the Company has never bargained with Local 15 or any other union over the implementation of the BOP or subsequent changes to the BOP in the more than twenty years the program has been in place. Moreover, any grievance challenging prior "unilateral changes" to the BOP would be untimely. While a grievance challenging the revisions made in Rev. 10 may arguably be timely, the very issue Local

15 would grieve is the same issue it raised in its ULP, and the Company has no obligation to provide information so Local 15 can pursue its ULP.

Perhaps most significantly, we understand that Region 13 has preliminarily concluded that the Company has no obligation to bargain over the decision to enter the Confirmatory Order and, at most, possibly has an obligation to bargain over the effects of the Confirmatory Order. The resolution of the ULP will provide a starting point for addressing any outstanding information requested by Local 15. Until then, I propose that we agree to disagree and table the back and forth on this issue until after the ULP is finally resolved.

Very truly yours,

Tamra Domeyer

Tamra Domeyer
Associate General Counsel, Exelon Nuclear

Attachment 3

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

EXELON GENERATION COMPANY, LLC

and **Case 13-CA-118294**

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 15

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by International Brotherhood of Electrical Workers, Local 15 (Charging Party). It is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act), and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Exelon Generation Company LLC (Respondent) has violated the Act as described below:

I

The charge in this proceeding was filed by the Charging Party on December 4, 2013, and a copy was served by regular mail on Respondent on December 4, 2013.

II

(a) At all material times, the Respondent, a Pennsylvania limited liability company with an office and place of business in Warrenville, Illinois, has been a public utility company engaged in the business of operating nuclear power generating stations in the State of Illinois.

(b) During the past twelve months, a representative period, Respondent, in the conduct of its business enterprise, derived gross revenues in excess of $250,000.

(c) During the past twelve months, a representative period, Respondent, in the conduct of its business enterprise, purchased and received at its Illinois facilities goods valued in excess of $50,000 directly from points outside the State of Illinois.

(d) At all material times, the Respondent, has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

III

At all material times the Charging Party has been a labor organization within the meaning of Section 2(5) of the Act.

IV

At all materials times, the following individual held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Tony Cardenas	Labor Relations
Jim Meister	Senior Vice President

V

(a) The following employees of Respondent at constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

> The bargaining unit as described in Article 1 of the Charging Party's collective-bargaining agreement with the Charging Party effective by its terms from October 1, 2007, to April 30, 2013.

(b) Since 1946 and at all material times, Respondent has recognized the Charging Party as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from October 1, 2007, to April 30, 2013.

(c) At all times since 1946, based on Section 9(a) of the Act, the Charging Party has been the exclusive collective-bargaining representative of the Unit.

VI

(a) About November 21, 2013, the Charging Party requested that Respondent bargain collectively about the effects of its decision to implement changes in the terms and conditions of employment that were implemented pursuant to a Nuclear Regulatory Commission (NRC) Confirmatory Order dated October 28, 2013.

(b) Since about November 21, 2013, Respondent has failed and refused to bargain collectively with the Charging Party about the subject set forth above in paragraph VI(a).

(c) The subject set forth above in paragraph VI(a) relates to the wages, hours, and other terms and conditions of employment of the Unit and is a mandatory subject for the purposes of collective bargaining.

VII

By the conduct described above in paragraph VI, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

VIII

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before February 28, 2014, or postmarked on or before February 27, 2014**. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **File Case Documents,** enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **April 9, 2014, at 10:00 a.m. at 209 South LaSalle Street, Suite 900, Chicago, Illinois 60604**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: February 14, 2014

/s/ Peter Sung Ohr

Peter Sung Ohr
Regional Director
National Labor Relations Board
Region 13
209 S La Salle St Ste 900
Chicago, IL 60604-1443

Attachments

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

EXELON GENERATION COMPANY, LLC

and **Case 13-CA-118294**

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 15

AFFIDAVIT OF SERVICE OF: Complaint and Notice of Hearing (with forms NLRB-4338 and NLRB-4668 attached)

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on , I served the above-entitled document(s) by **certified or regular mail,** as noted below, upon the following persons, addressed to them at the following addresses:

Susan Kutansky , Director Labor/Employee Relations
Exelon Generation Company LLC
4300 Winfield Rd
5th Floor
Warrenville, IL 60555

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Todd D. Steenson , Attorney
Exelon Legal Services
10 South Dearborn Street, 49th Floor
Chicago, IL 60603

REGULAR MAIL

Eddie Clopton Jr.
Exelon Legal Services
10 S Dearborn St
49th Floor
Chicago, IL 60603

REGULAR MAIL

Rochelle G. Skolnick , Esq.
Shuchat, Cook & Werner
1221 Locust St Ste 250
Saint Louis, MO 63103-2364

REGULAR MAIL

Marilyn S. Teitelbaum , Attorney
Schuchat Cook & Werner
1221 Locust St Ste 250
Saint Louis, MO 63103-2364

REGULAR MAIL

Edwin D Hill , International President
International Brotherhood of Electrical Workers (IBEW), AFL-CIO
900 7th Street NW
Washington, DC 20001-4070

REGULAR MAIL

International Brotherhood of Electrical Workers, Local 15
6330 Belmont Rd
Suite 1
Downers Grove, IL 60516

CERTIFIED MAIL

February 14, 2014
Date

Denise Gatsoudis, Designated Agent of NLRB
Name

/s/ Denise Gatsoudis
Signature

FORM NLRB 4338
(6-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 13-CA-118294

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).

(2) Grounds must be set forth in ***detail***;

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and

(5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Rochelle G. Skolnick , Esq.
Shuchat, Cook & Werner
1221 Locust St Ste 250
Saint Louis, MO 63103-2364

Marilyn S. Teitelbaum , Attorney
Schuchat Cook & Werner
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Edwin D Hill , International President
International Brotherhood of Electrical
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International Brotherhood of Electrical
Workers, Local 15
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Susan Kutansky , Director Labor/Employee
Relations
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Todd D. Steenson , Attorney
Holland & Knight
131 South Dearborn Street, Suite 3000
Chicago, IL 60603-5583

Eddie Clopton Jr.
Exelon Legal Services
10 S Dearborn St
49th Floor
Chicago, IL 60603-2300

Form NLRB-4668
(4-05)

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

(OVER)

In the discretion of the administrative law judge, any party may, on request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8 1/2 by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board: No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, DC (or, in cases under the branch offices in San Francisco, California; New York, New York; and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

Attachment 4

FORM EXEMPT UNDER 44 U.S.C 3512

INTERNET FORM NLRB-501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Exelon Generation Company, LLC

b. Tel. No. (630) 657-4165

c. Cell No.

f. Fax No. (630) 657-4324

d. Address *(Street, city, state, and ZIP code)*
4300 Winfield Road, 5th Floor
Warrenville, IL 60555

e. Employer Representative
Susan Kutansky, Director
Labor/Employee Relations

g. e-Mail Susie.Kutansky@exeloncorp.com

h. Number of workers employed
approx. 5,000

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Electric Utility

j. Identify principal product or service
Electric power

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*
The above-named employer, by its officers, agents and representatives, since on or about September 18, 2013 and continuing to date, unilaterally modified the employees' terms and conditions of employment and/or failed and refused to bargain in good faith with the union concerning the employees' terms and conditions of employment in that it entered into a settlement agreement with the National Regulatory Commission that affected the employees' terms and conditions of employment and the company unilaterally promulgated and/or implemented, without bargaining, new disciplinary rules requiring employees, for the first time, to report off duty observations of other off duty employees and by other acts and conduct.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
International Brotherhood of Electrical Workers, Local 15

4a. Address *(Street and number, city, state, and ZIP code)*
6330 Belmont Road
Suite 1
Downers Grove, IL 60516

4b. Tel. No. (630) 515-0381

4c. Cell No.

4d. Fax No. (630) 515-0835

4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*
International Brotherhood of Electrical Workers

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By _____ Marilyn S. Teitelbaum, Attorney and
(signature of representative or person making charge) *(Print/type name and title or office, if any)*
Rochelle G. Skolnick, Attorney

Address 1221 Locust St., 2nd Floor, St. Louis, MO 63103

12/4/13
(date)

Tel. No. (314) 621-2626

Office, if any, Cell No. (314) 440-4229

Fax No. (314) 621-2378

e-Mail mst@schuchatcw.com and rgs@schuchatcw.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	)	Docket Nos. 50-237-EA 50-249-EA
EXELON GENERATION COMPANY, LLC (Dresden Nuclear Power Station, Units 2 and 3)	)	February 28, 2014

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305 (as revised), I certify that on this date, copies of "Exelon's Memorandum Responding to the Questions in the Board's February 5, 2014 Order" and its attachments were served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above-captioned proceeding.

Signed (electronically) by Raphael P. Kuyler

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