

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of)	
)	Docket Nos. 50-237-EA
EXELON GENERATION COMPANY, LLC)	50-249-EA
)	
(Dresden Nuclear Power Station)	ASLBP No. 14-930-01-EA-BD01
Confirmatory Order Modifying License))	

**LOCAL 15'S BRIEF IN RESPONSE TO THE COMMISSION'S
JUNE 11, 2015 MEMORANDUM AND ORDER**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
I. INTRODUCTION.....	1
II. THE LEGAL STANDARD FOR MOOTNESS.....	1
III. DISCUSSION	1
A. The Settlement of Local 15’s Unfair Labor Practice Charge and the Subsequent Relaxation of a Portion of the Confirmatory Order Did Not Provide Local 15 the Substantive Relief it Seeks.....	2
B. The Settlement of the ULP Charge Does Not Resolve Whether 10 C.F.R. § 2.202(a)(3) Entitles Local 15 to Demand a Hearing as of Right.	6
C. Even if the Commission Were to Conclude the NLRB Settlement Resolved the Issues Presented By Local 15, This Matter Falls Within an Exception to the Mootness Doctrine.....	7
IV. CONCLUSION	9

TABLE OF AUTHORITIES

JUDICIAL DECISIONS

Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc., 528 U.S. 167 (2000) 9

COMMISSION

S. Cal. Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), CLI 13-09, 78 NRC 551 (2013)..... 1, 7, 8

Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 2) CLI-93-10, 37 NRC 192 (1993)..... 1

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Toledo Edison Co. and Cleveland Electric Illuminating Co. (Davis-Besse Nuclear Power Station, Units 1, 2, and 3) and *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), ALAB-560, 10 NRC 265 (1979) 8

REGULATIONS

10 C.F.R. § 2.202(a)(3)..... 2, 3, 6, 7, 8, 9

10 C.F.R. § 2.309(d) 9

10 C.F.R. § 2.309(f)..... 9

10 C.F.R. § 56(f)(1)-(3) 3

FEDERAL REGISTER

Exelon Generation Co. (Dresden Nuclear Power Station), 78 Fed. Reg. 66,965 (Nov. 7, 2013) .. 2

MISCELLANEOUS

Dresden Nuclear Power Station—Request for Relaxation of Confirmatory Order” (May 4, 2015) (ML15125A103)..... 5

Nuclear Energy Institute, *Unions Drive Training Programs For Nuclear Work Force*, March 2011, <http://www.nei.org/News-Media/News/News-Archives/Unions-Drive-Training-Programs-For-Nuclear-Work-Fo> 6

I. INTRODUCTION

On June 11, 2015, the Commission entered an order directing the litigants in this matter to address the question, either through joint stipulation or briefing, of whether Local 15's appeal of the Licensing Board decision in LBP-14-4, 79 NRC 319 (2014), should be dismissed as moot. Because the approval of Exelon's request for relaxation of a portion of the October 28, 2013 Confirmatory Order does not afford Local 15 the relief it sought in its Petition to Intervene and thus does not resolve the issues pending in this appeal, the appeal is not moot and Local 15 renews its request to the Commission to render a decision reversing the decision of the Licensing Board and granting Local 15 a hearing.

II. THE LEGAL STANDARD FOR MOOTNESS

Although the Commission has observed that it is not "strictly bound" by Article III's "case or controversy" requirement, "the same analysis the federal courts use to determine whether a case is moot can be applied" to Commission cases. *See, e.g., S. Cal. Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), CLI 13-09, 78 NRC 551, 557 n.22 (2013). Citing to federal court cases, the Commission has explained that "[u]nless there is a substantial controversy admitting of specific relief through a decree of a conclusive character" a case is moot. *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2) CLI-93-10, 37 NRC 192, 200 (1993) (citations omitted). As noted in *Comanche Peak*, "a test for mootness is whether the relief sought would, if granted, make a difference to the legal interests of the parties." *Id.*

III. DISCUSSION

As recited in the Commission's June 11, 2015 Order, Exelon sought and on May 4, 2015 the Regional Administrator approved temporary relaxation of a portion of the October 28, 2013

Confirmatory Order¹ that is the subject of these proceedings. Exelon sought such relaxation pursuant to a settlement of an Unfair Labor Practice (“ULP”) Charge that was filed by Local 15 with Region 13 of the National Labor Relations Board (NLRB) on December 4, 2013. The temporary relaxation of a portion of the Confirmatory Order does not afford Local 15 the substantive relief it sought in its initial Petition and continues to seek in the pending appeal. Nor does it resolve important legal questions concerning the interpretation and application of NRC regulations regarding the right of persons adversely affected by an enforcement order to demand a hearing pursuant to 10 C.F.R. § 2.202(a)(3). For these reasons, the appeal is clearly not moot within the application of the Commission’s mootness doctrine. To the extent the Commission were to determine the appeal was in any way moot, it should nonetheless issue a ruling on the appeal as falling within an exception to the mootness doctrine, presenting issues “capable of repetition, yet evading review.”

A. The Settlement of Local 15’s Unfair Labor Practice Charge and the Subsequent Relaxation of a Portion of the Confirmatory Order Did Not Provide Local 15 the Substantive Relief it Seeks

The settlement of Local 15’s Unfair Labor Practice charge and the resulting temporary relaxation of one portion of the Confirmatory Order provides Local 15 with only a small portion of the relief it originally sought, leaving the great bulk of the injury to Local 15 unremedied and unaddressed. Thus, there remains a “substantial controversy admitting of specific relief through a decree of a conclusive character” and the appeal for that reason is not moot. In its initial request for hearing on the Confirmatory Order, Local 15 proffered three contentions as follows:

1. The Confirmatory Order should not be sustained because, without sufficient justification in the record, it imposes obligations on the off-duty employees of Exelon not otherwise required by the NRC in Title 10 of the Code of Federal

¹ *Exelon Generation Co. (Dresden Nuclear Power Station)*, 78 Fed. Reg. 66,965 (Nov. 7, 2013) (“Confirmatory Order” herein).

Regulations, Part 73, Sections 56(f)(1)-(3) to observe and report the offsite, off-duty “unusual,” “illegal” and “aberrant” conduct of fellow offsite, off-duty employees.

2. The Confirmatory Order should not be sustained because it imposes on the employees of Exelon behavioral observation and reporting obligations that are vague, over-broad and not carefully tailored to address the NRC’s stated health and safety concerns and improperly delegates to Exelon the discretion to interpret and implement NRC standards concerning behavioral observation without the input of Local 15, the public or the NRC.

3. The Confirmatory Order should not be sustained because it improperly endorses and confirms unlawful actions undertaken by Exelon in derogation of its duty to bargain with Local 15 about the employees’ terms and conditions of employment and in violation of the legally protected rights of Local 15 and its members.

Of the claims asserted and relief sought by these three contentions,² the resolution of Local 15’s Unfair Labor Practice charge touches only on Contention 3, leaving Contentions 1 and 2 unresolved. The Commission rightly notes that Local 15 no longer pursues Contention 3 in its appeal. To the extent that contention complained of the Confirmatory Order’s endorsement of Exelon’s failure to bargain with Local 15, the relaxation of a portion of the order to allow for bargaining concerning Revision 10 of the Behavioral Observation Program does, in part, address Local 15’s complaint. However Local 15’s two remaining contentions complain of infirmities in the Confirmatory Order itself and the obligations it (not Exelon) imposes on Exelon employees. Those infirmities can only be remedied by rescission of the Confirmatory Order and not by any actions undertaken by Exelon as part of settlement of a ULP charge.

Local 15’s argument that Exelon failed to comply with its obligations pursuant to federal labor law when it unilaterally modified its Behavioral Observation Program in anticipation of and pursuant to the Confirmatory Order (and the NRC settlement that order memorialized)

² Local 15’s position regarding its right to demand a hearing pursuant to 10 C.F.R. § 2.202(a)(3) and the application of the Commission’s mootness doctrine to that claim will be discussed further in Section IIIB *infra*.

enjoyed success with Region 13 of the NLRB. The Region issued a complaint after conducting an investigation and finding merit in the Union's charge that Exelon had violated its bargaining duties under federal labor law by failing and refusing to bargain with the Union 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." *See* November 28, 2014 Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, Case No. 13-CA-118294, attached hereto as Exhibit 1. On its face, the NLRB complaint dealt *only* with the *effects* of the Confirmatory Order and not at all with the contents of or obligations imposed by the Order itself.

Nor did the subsequent settlement of the ULP charge address the substantive obligations imposed by the Confirmatory Order on Exelon employees; it merely required Exelon to seek temporary relaxation of a portion of the order to allow it to fulfill bargaining obligations with Local 15 concerning the *effects* of the order's imposition of those obligations on Exelon and its employees. Thus, in the settlement, Exelon promised it would not "fail and refuse to provide [the Union] with notice and an opportunity to bargain...over the *effects of our decision* to implement changes in the terms and conditions of your employment that we made *pursuant to the Nuclear Regulatory Commission Confirmatory Order dated October 28 2014*." *See* January 2, 2015 letter from Region 13 Compliance Officer Thomas Porter to Exelon Asst. General Counsel Todd Steenson and attached Settlement Agreement and Notice to Employees, Case No. 13-CA-118294, attached hereto as Exhibit 2 (emphasis added). In that settlement, Exelon further promised it would:

file with the Nuclear Regulatory Commission a request to amend the NRC Order to permit a temporary rescission of the additional guidance to employees concerning your reporting obligations provided in Section 3.2 of Behavioral Observation Program Revision 10 ("BOP 10") *that was adopted pursuant to the NRC Order*, and if the NRC grants our request, WE WILL, upon request, bargain in good faith with the Union for 90 days concerning any changes to any portion of the BOP 10, including but not limited to the additional guidance to employees concerning your

reporting obligations *that was adopted pursuant to the NRC Order*, that apply to the Unit (excluding changes that apply to management) and which we intend to include in a revision to the BOP 10 *to comply with the NRC Order*. If any agreement is reached between the parties concerning changes to the Behavior Observation Plan and if required by the NRC, we will submit any written agreement resulting from such bargaining to the NRC for their approval or review.

Id. (emphasis added).

In order to meet this condition of the settlement Exelon requested that the Confirmatory Order be relaxed to allow Exelon to rescind Revision 10 of its Behavioral Observation Program, the revision put into place to comply with the Confirmatory Order, and to allow it to develop and implement a replacement Revision within 6 months. As Staff observed in its May 6, 2015 letter advising the Commission of the relaxation, “staff’s approval of Exelon’s relaxation request permits the procedure to revert to its previous revision until Exelon and Local 15 can bargain on a new revision *that complies with the Confirmatory Order*.”³ As this statement perfectly illustrates, while Exelon and Local 15 may engage in bargaining pursuant to the relaxation of a portion of the Confirmatory Order, that bargaining will remain fully circumscribed by the entirety of the Confirmatory Order itself. The obligations imposed by the Confirmatory Order—as a separate matter from those imposed by Exelon—remain every bit as objectionable as they were when Local 15 first filed its Petition to Intervene. Simply involving Local 15 in the revision of the Behavioral Observation Program to meet the requirements of the Confirmatory Order does nothing to alter the fact that the order itself imposes, without justification in the record, obligations on Exelon employees which are not otherwise required by NRC regulations and which are vague, over-broad and not carefully tailored to address the NRC’s stated health and safety concerns, undermining compliance and thus safety and security. These infirmities

³ Hair, Christopher C., Counsel for the Staff, Memorandum to the Commissioners (May 6, 2015), attaching Pederson, Cynthia D., Regional Administrator, NRC, letter to Bryan C. Hanson, Exelon Generation Company, LLC, and Exelon Nuclear, “Dresden Nuclear Power Station—Request for Relaxation of Confirmatory Order” (May 4, 2015) (ML15125A103).

cannot be remedied in bargaining; Local 15 maintains that they require rescission of the Confirmatory Order itself.

B. The Settlement of the ULP Charge Does Not Resolve Whether 10 C.F.R. § 2.202(a)(3) Entitles Local 15 to Demand a Hearing as of Right.

In addition to leaving unresolved Local 15's challenge to the substance of the Confirmatory Order itself, a dismissal of Local 15's appeal now would fail to resolve the important legal question of whether Local 15, as the union representing Exelon bargaining unit employees, may demand a hearing as of right pursuant to 10 C.F.R. § 2.202(a)(3) seeking rescission of an order that adversely affects those employees and their union. This is a question Commission jurisprudence has thus far avoided answering but one that has a substantial effect on the rights of Local 15 and its members both in this particular case and in the future. It is also worth noting that a ruling regarding the interpretation and application of 10 C.F.R. § 2.202(a)(3) to Local 15 in this matter would offer clarity and guidance not only to Local 15 but also to the other unions that represent licensee employees regarding what they might be expected to establish in order to challenge orders of the NRC that have an adverse effect on the employees they represent.⁴ Such clarity and direction may also be helpful or even necessary to those responsible for drafting Confirmatory Orders like the one at issue here; as Judge Karlin observed in his dissent from the decision of the Licensing Board, "Orders issued by the NRC Enforcement Office consistently fail to 'inform . . . any other person adversely affected by the order of his or her . . . right to demand a hearing' and thus fail to comply with 10 C.F.R. § 2.202(a)(3)."⁵ The

⁴ A 2011 publication of the Nuclear Energy Institute reported that the IBEW, Utility Workers Union of America (UWUA), and International Union of Operating Engineers (IUOE) together represent well over 17,500 workers at 51 nuclear sites. Nuclear Energy Institute, *Unions Drive Training Programs For Nuclear Work Force*, March 2011, <http://www.nei.org/News-Media/News/News-Archives/Unions-Drive-Training-Programs-For-Nuclear-Work-Fo> (last visited June 25, 2015).

⁵ LBP-14-04 at 66 (Karlin, J., dissenting) (noting that only one of the hundreds of enforcement orders issued in the past ten years even mentions the "right to demand a hearing" and that the NRC Enforcement

omission of any reference to a right to demand a hearing in the Confirmatory Order at issue here certainly misled Local 15 about its rights; based on Judge Karlin's review of the cases it would appear likely that Local 15 is hardly alone in that regard. This important legal question affects many current and potential litigants and has been fully briefed in this matter by adversaries with a genuine stake in the issue's resolution. Therefore, even if the Commission were to find the substantive questions posed by Local 15 rendered moot (which it should not), it should nonetheless take this opportunity to issue a ruling that will provide certainty regarding the rights of litigants under 10 C.F.R. § 2.202(a)(3), including Local 15. To do otherwise would be to squander without justification the Commission and private resources already expended on getting the issue to the point of a decision here.

C. Even if the Commission Were to Conclude the NLRB Settlement Resolved the Issues Presented By Local 15, This Matter Falls Within an Exception to the Mootness Doctrine

The Commission recognizes an exception to the mootness doctrine where a case is "capable of repetition, yet evading review i.e., if the challenged action were too short in duration to be litigated and there is a reasonable expectation that the same party will be subjected to the same action again."⁶ Here, even if the Commission were somehow to conclude that the matter has been rendered moot by the resolution of the ULP charge and temporary relaxation of a portion of the Confirmatory Order (which it should not), it should nonetheless decide the issues presented to it pursuant to this exception to the mootness doctrine. Because Exelon continues to operate its nuclear facilities and Local 15 continues to represent Exelon bargaining unit employees who work at those facilities, it is entirely likely that there will be future enforcement

Policy and Enforcement Manual "conveniently omit any reference to the legal requirement that NRC orders must inform the adversely affected persons of their 'right to demand a hearing.'")

⁶ *S. Calif. Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), 78 NRC at 558 n.26 (citing *Advanced Medical Systems, Inc.* (Geneva, Ohio), CLI-93-8, 37 NRC 181, 185 (1993)).

actions involving Exelon that have an adverse effect on its employees. In contrast to the facts of *Southern California Edison* (San Onofre Units 2 and 3), it is quite likely Local 15 will suffer similar injuries in the future and “the same litigants will be subject to similar future action.”⁷ Without a ruling on both the procedural and the substantive questions presented in this appeal, it is likely those issues could go unremedied or incompletely remedied because of the relative timelines of such enforcement actions (and licensee response to them) vis-à-vis the timelines for obtaining review of such an enforcement action under NRC procedures.

If the Commission declines to rule on this appeal, it is entirely foreseeable that a future enforcement order could require Exelon to make, within a similar 90-day period to that imposed here, changes to its BOP that have an adverse effect on employees, imposing on them obligations arguably as problematic as the ones complained of here and in the same ways (*e.g.*, imposing obligations not otherwise required by NRC regulations or obligations that are vague, over-broad and not carefully tailored to address the NRC’s stated health and safety concerns). It would appear to be procedurally impossible that Local 15 would obtain a Licensing Board ruling, let alone a final Commission decision, on the propriety of the enforcement order before the expiration of that 90-day period. Further, to the extent the Commission declines to rule on the question of whether Local 15 is entitled by 10 C.F.R. § 2.202(a)(3) to demand a hearing as of right, future litigation could be needlessly bogged down by the relitigation of that issue as well as any substantive issues then arising.

⁷ *S. Calif. Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), 78 NRC at 557. *See also Toledo Edison Co. and Cleveland Electric Illuminating Co.* (Davis-Besse Nuclear Power Station, Units 1, 2, and 3) and *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), ALAB-560, 10 NRC 265, 400 (1979) (finding the likelihood of similar conduct in the future not so remote that the case before the tribunal was moot).

Finally, to the extent Exelon argues this matter is moot because of the actions it took voluntarily as part of settlement of Local 15's ULP charge, that argument is unavailing. "It is well settled that 'a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice.'" *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 189 (2000) (internal quotations omitted). "If it did, the courts would be compelled to leave the defendant . . . free to return to his old ways." *Id.* (internal quotations omitted). That is why the Supreme Court has imposed on the party asserting mootness a "heavy burden of persuading the court that the challenged conduct cannot reasonably be expected to start up again." *Id.* (internal quotations omitted). The Commission should hold Exelon to that burden, especially given the voluntary nature of the actions which allegedly render the dispute moot.

IV. CONCLUSION

For all of the foregoing reasons, Local 15 respectfully requests that the Commission find the appeal is not moot and proceed to the issuance of a decision on the appeal which reverses the decision of the Board majority and grants Local 15's request for hearing pursuant to 10 C.F.R. § 2.202(a)(3) or, in the alternative, reverses the Board's findings with regard to Local 15's standing pursuant to 10 C.F.R. § 2.309(d) and the admissibility of its Contentions 1 and 2 pursuant to 10 C.F.R. § 2.309(f) and grants a hearing on those contentions.

Respectfully submitted,

Signed (electronically) by Rochelle G. Skolnick

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EXHIBIT 1

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

EXELON GENERATION COMPANY, LLC

and

**Case 13-CA-118294
13-CA-132028**

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 15**

**ORDER CONSOLIDATING CASES, CONSOLIDATED
COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board), and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 13-CA-118294 filed by International Brotherhood of Electrical Workers, Local 15 (Union or Charging Party) against Exelon Generation Company, LLC (Respondent), in which a Complaint and Notice of Hearing issued on February 14, 2014, is consolidated with Case 13-CA-132028 filed by the Charging Party against Respondent.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below:

I

(a) Charge 13-CA-118294 in was filed by the Charging Party on December 4, 2013, and a copy was served by regular mail on Respondent on December 4, 2013.

(b) Charge 13-CA-132028 in this proceeding was filed by the Charging Party on June 30, 2014, and a copy was served on Respondent by regular mail on July 2, 2014.

II

(a) At all material times, 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) In conducting its operations annually, Respondent derived gross revenues in excess of \$250,000.

(c) During the period of time described above in paragraph II(b), Respondent purchased and received for use at its Illinois facilities products, goods, and materials valued in excess of \$5,000 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 material times, the following individuals 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	-	Manager – Employee and Labor Relations
Jim Meister	-	Vice President – Operations Support

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

(a) About the following dates, the Union requested, in writing, that Respondent furnish the Union with the following information:

i. Within the last six months preceding the filing and service of the charge in Case 13-CA-132028– Written notes and summaries from interviews conducted by certified abuse counselors or other service providers with grievants prior to those counselors making their determinations and treatment recommendations.

ii. January 28, 2014 – separately by year, the number of non-bargaining unit and bargaining unit employees since January 1, 2003, who were referred for evaluation for possible alcohol issues and the number of those employees who received a permanent alcohol abstinence letter.

iii. January 28, 2014 – all communications to and from those who interviewed, evaluated, or otherwise had some sort of role relating to the assessment/evaluation and work related treatment recommendations of those employees referred for possible alcohol abuse since January 1, 2008.

iv. March 18, 2014 – all documents related to a January 21, 1997, letter previously provided by employer from Patrick Laird to grievant Robert Tate confirming the continuation of Tate's unescorted access within Respondent's facilities.

v. March 18, 2014 – readable copies of nine (9) documents the employer previously provided, consisting of an employee entrance checklist of Michael Jaborek, January 16, 1986, notes regarding an "Incident of sexual harassment", a December letter from Peter Karaba to Charles Reader, the Dresden accident report regarding Arthur Kleinfeldt, the June 6, 1998, handwritten notes regarding Arthur Kleinfeldt, the March 19, 2012, report from Connie Vaisvilas-Taylor regarding Dustin Keenan, the March 24, 2013, report form Connie Vaisvilas-Taylor regarding Charles Reader, the December 12, 2012, psychological assessment/SAE review form regarding Michael Jaborek, the June 28, 1993, report regarding four occurrences of Code 22 of Christopher Smith including attachments, and several missing "bates stamped" documents.

vi. June 4, 2014 – the name and resume of the independent consultant used by Respondent, copies of everything provided to the consultant prior to receiving his or her recommendations, and all other notes, documents, reports provided by the independent consultant that were used by Respondent in its review of each grievant's EAP file and in support of recommendations as to whether those grievants were to maintain total alcohol abstinence.

vii. August 12, 2014 – request for the Respondent to provide the titles and job descriptions for seventeen (17) named individuals and their role in identifying alcohol abusers and alcohol dependent employees.

viii. September 23, 2014 - specific criteria applied and diagnostic documents, including assessment guides, used by the MRO and EAP to determine whether or how long to require an employee's abstinence from alcohol.

(b) The information requested by the Union, as described above in paragraph VII(a)(i)-(viii) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(c) Since about the following dates, Respondent, has failed and refused to furnish the Union with the information requested by it as described above in paragraph VII(a)(i)-(viii).

- i. Within the last six months preceding the filing and service of the charge in Case 13-CA-132028.
- ii. February 27, 2014.
- iii. February 27, 2014.
- iv. June 6, 2014.
- v. June 25, 2014.
- vi. June 25, 2014.
- vii. September 19, 2014
- viii. September 23, 2014.

VIII

(a) By the conduct described above in paragraphs VI and VII, 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.

(b) 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 December 12, 2014, or postmarked on or before December 11, 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.nlr.gov, click on **E-File 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 **January 27, 2015 at 10:00 a.m. at 209 South LaSalle Street, Suite 900, Chicago, Illinois** 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: November 28, 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 GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 13-CA-132028

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.

Eddie Clopton JR., Assistant General Counsel
Exelon Generation Company, LLC
10 S Dearborn St
Fl 49
Chicago, IL 60603-2300

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

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

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

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlr.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.

- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.
- **Transcripts:** An official court 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 ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are 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. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting 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 provided to the parties with the order transferring the matter to the Board.

EXHIBIT 2



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 13
209 S La Salle St Ste 900
Chicago, IL 60604-1443

Agency Website: www.nlrb.gov
Telephone: (312)353-7570
Fax: (312)886-1341

Agent's Direct Dial: (312)353-7170

January 2, 2015

Todd D. Steenson, Esq.,
Assistant General Counsel
Exelon Generation Company, LLC
10 S Dearborn St., Fl 49
Chicago, IL 60603-2300

Re: Exelon Generation Company, LLC
Case 13-CA-118294

Dear Mr. Steenson:

Post Notice: Enclosed are 10 copies of the Notice to Employees. In compliance with the Agreement, a responsible official of the Employer, not the Employer's attorney, must sign and date the Notices before posting them. The Notices should be posted in *the cafeterias and break rooms located in Braidwood, Byron, Dresden, LaSalle and Quad Cities nuclear facilities* for 60 consecutive days at the Employer's place of business. The Employer must take reasonable steps to ensure that the Notices are not altered, defaced or covered by other material. If additional Notices are required, please let me know. During the posting period, a member of the Regional Office staff may visit the Employer to inspect the Notices.

Electronic Posting: The Agreement provides that the Employer will post a copy of the Notice on its intranet and keep it continuously posted there for 60 consecutive days. The Employer will furnish the Regional Office with a paper copy of the intranet or website posting along with the attached completed Certification of Posting and dated screen shots demonstrating the date of posting.

Electronic Mailing: The Agreement provides that the Employer will email to employees a copy of the signed Notice. The message of the e-mail transmitted with the Notice will state: "We are distributing the Attached Notice to Employees to you pursuant to a Settlement Agreement approved by the Regional Director of Region 13 of the National Labor Relations Board in Case 13-CA-118294." The Employer will forward to the undersigned, at the time that it is sent, the e-mail transmitting the Notice to employees, with all of the recipient's e-mail addresses to thomas.porter@nlrb.gov.

Certification of Posting: A Certification of Posting form is also enclosed. This form should be completed and returned by not later than January 9, 2014 **with one signed and dated original Notice**. If the Certification of Posting and signed Notice is returned via e-file or e-mail, no hard copies of the Certification of Posting or Notice are required.

Remedial Actions:

Other Remedies: The Agreement also provides that the Employer will file with the Nuclear Regulatory Commission a request to amend the NRC Order to permit a temporary rescission of the additional guidance to employees concerning your reporting obligations provided in Section 3.2 of Behavioral Observation Program Revision 10 ("BOP 10"). If the request is granted, please submit a copy of the notice from the NRC granting rescission.

Please read all the terms of the Settlement Agreement and Notice carefully, as you will be expected to comply with all such provisions. If you have any questions or I can assist you, please let me know.

Closing the Case: When all the affirmative terms of the Settlement Agreement have been fully complied with and there are no reported violations of its negative terms, you will be notified that the case has been closed on compliance. Timely receipt of the signed and dated Notice to Employees and the Certification of Posting will assist us in closing the case in a timely manner.

Very truly yours,

/s/ Thomas B. Porter

THOMAS B. PORTER
Compliance Officer

Enclosures: Copy of Conformed Settlement Agreement
Notices to Employees
Certification of Posting

cc: Steven L. Gillman, Attorney
Holland & Knight LLP
131 South Dearborn Street, 30th Floor
Chicago, IL 60603-5583

Eddie Clopton Jr.,
Assistant General Counsel
Exelon Generation Company, LLC
10 S Dearborn St., Fl 49
Chicago, IL 60603-2300

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

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

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

IN THE MATTER OF

Exelon Generation Company, LLC

Case 13-CA-118294

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

POSTING OF NOTICE — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notice to the Charged Party in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them in its cafeterias and break rooms located at their Braidwood; Byron; Dresden; LaSalle; and Quad Cities nuclear facilities. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting.

INTRANET POSTING - The Charged Party will also post a copy of the Notice in English and in additional languages if the Regional Director decides that it is appropriate to do so, on its intranet and keep it continuously posted there for 60 consecutive days from the date it was originally posted. The Charged Party will submit a paper copy of the intranet or website posting to the Region's Compliance Officer when it submits the Certification of Posting and will provide additional dated screenshots from its intranet site in the event it is necessary to check the electronic posting.

E-MAILING NOTICE - The Charged Party will email a copy of the signed Notice in English and in additional languages if the Regional Director decides that it is appropriate to do so, to all employees who work at the facility located at the Dresden Nuclear Generating Station at their Exelon e-mail addresses. The message of the e-mail transmitted with the Notice will state: "We are distributing the Attached Notice to Employees to you pursuant to a Settlement Agreement approved by the Regional Director of Region 13 of the National Labor Relations Board in Case 13-CA-118294." The Charged Party will forward a copy of that e-mail, with all of the recipients' e-mail addresses, to the Region's Compliance Officer at thomas.porter@nrlrb.gov.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice.

Non-Admission Clause — By entering into this Settlement Agreement, the Charged Party does not admit that it has violated the National Labor Relations Act.

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned case(s), and does not settle any other case(s) or matters, including but not limited to NLRB Case 13-CA-132028. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to that evidence. By approving this Agreement the Regional Director withdraws any Complaint(s) and Notice(s) of Hearing previously issued in the above case(s), and the Charged Party withdraws any answer(s) filed in response.

PARTIES TO THE AGREEMENT — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the

undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes _____
 Initials

No _____
 Initials

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the complaint previously issued on November 28, 2014 in the instant case. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that the allegations of the aforementioned complaint will be deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.

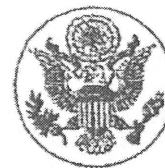
NOTIFICATION OF COMPLIANCE — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

Charged Party		Charging Party	
Exelon Generation Company LLC		International Brotherhood of Electrical Workers, Local 15	
By: Name and Title	Date	By: Name and Title	Date
/s/ <i>James R. Meister</i> VP Operations Support	12/18/2014	/s/ <i>Dean F. Apple</i> President/Business Manager	12/22/2014

Recommended By:	Date	Approved By:	Date
<i>/s/ Lisa Friedheim-Weis,</i> Board Attorney	12/29/2014	<i>/s/ Peter Sung Ohr</i> Regional Director, Region 13	12/31/2014



NOTICE TO EMPLOYEES



POSTED PURSUANT TO A SETTLEMENT AGREEMENT APPROVED BY A REGIONAL DIRECTOR OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

EXELON GENERATION COMPANY, LLC
Case 13-CA-118294

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to provide International Brotherhood of Electrical Workers, Local 15 ("Union") with notice and an opportunity to bargain as the exclusive collective-bargaining representative of our employees in the unit described in our collective-bargaining agreement with the Union ("Unit"), effective by its terms from October 1, 2007 to April 30, 2013, over the effects of our decision to implement changes in the terms and conditions of your employment that we made pursuant to the Nuclear Regulatory Commission Confirmatory Order dated October 28, 2014 ("NRC Order").

WE WILL NOT fail and refuse to bargain in good faith with the Union as the exclusive collective-bargaining representative of our employees in the Unit.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL file with the Nuclear Regulatory Commission a request to amend the NRC Order to permit a temporary rescission of the additional guidance to employees concerning your reporting obligations provided in Section 3.2 of Behavioral Observation Program Revision 10 ("BOP 10") that was adopted pursuant to the NRC Order, and if the NRC grants our request, **WE WILL**, upon request, bargain in good faith with the Union for 90 days concerning any changes to any portion of the BOP 10, including but not limited to the additional guidance to employees concerning your reporting obligations that was adopted pursuant to the NRC Order, that apply to the Unit (excluding changes that apply to management) and which we intend to include in a revision to the BOP 10 to comply with the NRC Order. If any agreement is reached between the parties concerning changes to the Behavior Observation Plan and if required by the NRC, we will submit any written agreement resulting from such bargaining to the NRC for their approval or review.

EXELON GENERATION COMPANY, LLC

(Employer)

Dated: _____ By: _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov and the toll-free number (866)867-NLRB (6572).

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

Thomas Porter at (312) 353-7170
209 South LaSalle Street, 9th Floor, Chicago, Illinois 60604-1219
Telephone: (312) 353-7571 Hours of Operation: 8:30 a.m. to 5:00 p.m.

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of)	
)	Docket Nos. 50-237-EA
EXELON GENERATION COMPANY, LLC)	50-249-EA
)	
(Dresden Nuclear Power Station)	ASLBP No. 14-930-01-EA-BD01
Confirmatory Order Modifying License))	

CERTIFICATE OF SERVICE

Pursuant to 10 CFR § 2.305 (as revised), I certify that on this date, June 26, 2015, copies of the “Local 15’s Brief in Response to the Commission’s June 11, 2015 Memorandum and Order” were served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned proceeding.

Signed (electronically) by Rochelle G. Skolnick

Rochelle G. Skolnick

Marilyn S. Teitelbaum

Schuchat, Cook & Werner

1221 Locust Street, Second Floor

St. Louis, Missouri 63103

(314) 621-2626

Fax: (314) 621-2378

Email: rgs@schuchatecw.com

Email: mst@schuchatecw.com

Counsel for Local Union No. 15, IBEW

Dated in St. Louis, Missouri
this 26th day of June, 2015