

November 15, 2004

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

|  |   |                         |
|--|---|-------------------------|
| In the Matter of                         | ) |                         |
|  | ) |                         |
| EXELON GENERATION COMPANY, LLC.          | ) | Docket No. 52-007-ESP   |
|  | ) |                         |
| (Early Site Permit for Clinton ESP Site) | ) | ASLBP No. 04-821-01-ESP |

NRC STAFF ANSWER OPPOSING INTERVENORS' MOTION TO  
SUSPEND PROCEEDING PENDING REINSTATEMENT OF AGENCYWIDE  
DOCUMENTS ACCESS AND MANAGEMENT SYSTEM (ADAMS)

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c), the staff of the Nuclear Regulatory Commission ("Staff") herein answers the motion of intervenors Environmental Law and Policy Center, Blue Ridge Environmental Defense League, Nuclear Information and Resource Service, and Public Citizen (collectively, "Intervenors") to suspend this proceeding in view of NRC's temporary suspension of access to the Agencywide Documents Access and Management System ("ADAMS").<sup>1</sup> For the reasons set forth below, the Staff submits that the Motion should be denied.

BACKGROUND

On October 25, 2004, the NRC initiated an additional security review of publicly available documents to ensure that potentially sensitive information is removed from public access on the agency Web site.<sup>2</sup> As a result, during this review, ADAMS is, and will continue to be, temporarily unavailable to the public. The review, when complete, is intended to ensure that documents that might be useful to terrorists will be inaccessible, while maintaining public access to information regarding NRC activities. The agency has not announced when public access to ADAMS can be

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<sup>1</sup> See "Intervenors' Motion to Suspend Proceeding Pending Reinstatement of Agencywide Document [sic] Access and Management System" dated November 4, 2004 ("Motion").

<sup>2</sup> See Letter from Ann P. Hodgdon to Administrative Judges, dated October 25, 2004.

restored.<sup>3</sup> However, documents pertaining to the Clinton early site permit application that were publicly available prior to October 25, 2004, are currently available by contacting the NRC public document room. The Intervenor filed the instant Motion on November 4, 2004.

#### DISCUSSION

In their Motion, the Intervenor fundamentally argue that to proceed with this early site permit ("ESP") proceeding while the Intervenor are unable to access the ADAMS system would deprive them of a meaningful opportunity for a hearing.<sup>4</sup> Motion at 3. In particular, they state that they have no access to either generic NRC documents regarding advanced reactor siting and design issues, or to documents related to other ESP applications, both of which could pertain to admitted contentions or provide a basis for late-filed contentions. *Id.* Intervenor argue that if they are unable to present their case in an effective manner in this ESP proceeding they "are likely to be foreclosed" from raising those issues later in a construction permit proceeding. *Id.* at 4. For these reasons, Intervenor request that the Licensing Board suspend this proceeding until 30 days

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<sup>3</sup> On November 4, 2004, the NRC issued a press release in which it stated that public access to certain documents pertaining to the Licensing Support Network (in connection with a possible application for a high-level waste repository) had been restored. See Press Release, "NRC Restores Various Documents Removed from Web Site for Security Review," dated November 4, 2004. In that press release, the NRC also stated that the agency expects to restore the remaining documents, in the following order, over the next few weeks: (1) additional hearing-related documents (*i.e.*, non-high-level waste); (2) time-sensitive documents related to opportunities for hearing or needed for public review and comment, including license amendment applications; and (3) other nuclear reactor documents, and other documents not related to specific facilities, in ADAMS. As stated in our October 25, 2004, letter to the Administrative Judges, the Staff will update the Licensing Board and the parties to this proceeding as this effort progresses.

<sup>4</sup> Intervenor also note that the unavailability of ADAMS would prejudice members of the public who seek to become informed about the ESP proceeding, and who may seek to use licensing information to comment on NRC safety or environmental documents. Motion at 4. The Intervenor do not have standing to represent the general public's interest in this proceeding. See *Chemetron Corp.* (Bert Avenue, Harvard Avenue, and McGean-Rohco Sites, Newburgh Heights and Cuyahoga Heights, Ohio), LBP-94-20, 40 NRC 17, 19 (1994) ("[N]othing in the Commission's regulations authorizes requestors to undertake to represent the general public as if they were private attorneys general"); see also *Babcock & Wilcox Co.* (Pennsylvania Nuclear Services Operations, Parks Township, Pennsylvania), LBP-94-4, 39 NRC 47, 50 (1994); *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-77-11, 5 NRC 481, 484 (1977).

after the ADAMS system is restored in its entirety. *Id.* at 5. As discussed below, this request is unnecessary, and should be denied.

The provisions of 10 C.F.R. § 2.309(c) and (f)(2) with respect to the submission of late-filed contentions take into account the unavailability of information upon which a new or amended contention is based. Provided that Intervenorors are able to make the requisite showing under those provisions, they will have an opportunity to pursue issues based on previously unavailable information. An additional stay of the proceeding is, however, not warranted. As stated above, information that was previously available via ADAMS regarding the Clinton ESP application can be obtained from the public document room pending restoration of access to the ADAMS system. If new information comes to Intervenorors' attention after the re-opening of ADAMS, § 2.309 provides sufficient procedural safeguards to prevent prejudice to their interests.<sup>5</sup> Furthermore, there are no impending procedural deadlines in this proceeding that need to be extended in order to allow full participation by all parties.

For the information of the Licensing Board and the parties, the next scheduled staff action is issuance of the Staff's draft environmental impact statement ("DEIS") prepared in connection with the Clinton ESP application. The Staff intends to provide hard copies of the DEIS to all parties in this proceeding and, in addition, make the DEIS electronically available via the NRC Web site.<sup>6</sup> In this way, the parties to this proceeding – as well as interested members of the public – will be able to review and comment upon the DEIS.

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<sup>5</sup> Intervenorors did not, in their Motion, identify a need for any particular document that they have been unable to obtain; rather, the Motion makes only a sweeping, general complaint.

<sup>6</sup> To be clear, although the Staff will place the DEIS in ADAMS, it also intends to make the DEIS available via a stand-alone link on the NRC Web site, such that ADAMS need not be available to access the document. The applicant's environmental report continues to be available via a stand-alone link on the NRC Web site. See <<http://www.nrc.gov/reactors/new-licensing/esp/clinton.html>>, accessed November 15, 2004.

CONCLUSION

For the reasons set forth above, the Motion should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Shana Zipkin', with a long horizontal line extending to the right.

Shana Zipkin  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 15th day of November, 2004

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF ANSWER TO INTERVENORS' MOTION TO SUSPEND PROCEEDING PENDING REINSTATEMENT OF AGENCYWIDE DOCUMENTS ACCESS AND MANAGEMENT SYSTEM (ADAMS)" in the captioned proceeding have been served on the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service, as indicated by double asterisk, with copies by electronic mail this 15<sup>th</sup> day of November, 2004:

Administrative Judge\*  
Paul B. Abramson, Chair  
Atomic Safety and Licensing Board Panel  
Mail Stop: T-3F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(E-mail: PBA@nrc.gov)

Office of the Secretary\*  
ATTN: Docketing and Service  
Mail Stop: 0-16C1  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
(E-mail: HEARINGDOCKET@nrc.gov)

Administrative Judge\*  
Anthony J. Baratta  
Atomic Safety and Licensing Board Panel  
Mail Stop: T-3F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(E-mail: AJB5@nrc.gov)

Office of Commission Appellate  
Adjudication\*  
Mail Stop 0-16C1  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Administrative Judge\*\*  
David L. Hetrick  
8740 East Dexter Drive  
Tucson, AZ 85715  
(E-mail: dlmwh@dakotacom.net)

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

Thomas S. O'Neill\*\*  
Associate General Counsel  
Exelon Nuclear  
4300 Winfield Road  
Warrenville, IL 60555  
(E-mail: thomas.oneill@exeloncorp.com)

Howard A. Learner\*\*  
Ann Alexander  
Shannon Fisk  
Environmental Law and Policy Center  
35 East Wacker Drive, Suite 1300  
Chicago, Illinois 60601  
(E-mail: hlearner@elpc.org,  
aalexander@elpc.org, sfisk@elpc.org)

Diane Curran\*\*  
Harmon, Curran, Spielberg  
& Eisenberg LLP  
1726 M. Street N.W., Suite 600  
Washington, D.C. 20036  
(E-mail: dcurran@harmoncurran.com)

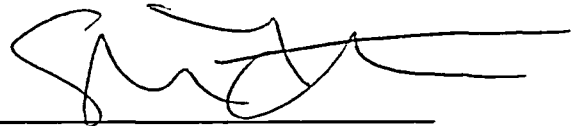
Dave Kraft\*\*  
Executive Director, Nuclear Energy  
Information Service  
PO Box 1637  
Evanston, IL 60204-1637  
(E-mail: neis@neis.org)

Paul Gunter\*\*  
Director, Reactor Watchdog Project  
Nuclear Information and Resource Service  
1424 16<sup>th</sup> Street, N.W. #404  
Washington, D.C. 20036  
(E-mail: nirsnet@nirs.org)

Michele Boyd\*\*  
Legislative Representative, Public Citizen  
215 Pennsylvania Avenue, SE  
Washington, D.C. 20003  
(E-mail: mboyd@citizen.org)

Stephen P. Frantz\*\*  
Paul M. Bessette  
Alex S. Polonsky  
Morgan, Lewis & Bockius, LLP  
1111 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
(E-mail: sfrantz@morganlewis.com,  
pbessette@morganlewis.com,  
apolonsky@morganlewis.com)

Janet Marsh Zeller, Executive Director\*\*  
Blue Ridge Environmental Defense League  
P.O. Box 88  
Glendale Springs, NC 28629  
(Email: bredl@skybest.com)

A handwritten signature in black ink, appearing to read 'Shana Zipkin', written over a horizontal line.

Shana Zipkin  
Counsel for NRC Staff