

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

Exelon Generation Company, LLC

Docket Nos. 50–454, 50–455, 50–456, 50–457

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

January 23, 2014

ELPC’S ANSWER OPPOSING EXELON’S MOTION TO STRIKE ELPC’S REPLY

Petitioner Environmental Law and Policy Center (“ELPC”) hereby answers to Exelon Generation’s Motion to Strike ELPC’s Atomic Safety and Licensing Board Appeal Reply, filed on January 13, 2014. The Nuclear Regulatory Commission should not strike ELPC’s Reply, but should instead grant ELPC’s Motion for Leave to File Its Reply and consider the Reply itself. The Board should also reject Exelon’s request to strike portions of ELPC’s Reply because ELPC does not raise a new argument regarding waiver of its Contention 1 argument, but is clarifying ELPC’s position in direct response to Exelon’s and the Commission Staff’s arguments in their Answers to ELPC’s appeal.

I. THE COMMISSION SHOULD ALLOW ELPC’S REPLY.

The Commission should grant ELPC’s attached Motion for Leave to File Its Reply. The ASLB’s November 19, 2013 Order at page 4 states that ELPC’s “sole remedy to challenge the wisdom or lawfulness of 10 C.F.R. § 51.53(c)(2) is to file a petition for rulemaking with the Commission itself.” ELPC’s request for protective stay is a necessary, fair and reasonable approach to make sure that ELPC will be able to have its position regarding the “wisdom or lawfulness of 10 C.F.R. § 51.53(c)(2)” considered in the Byron 1 & 2 and Braidwood 1 & 2 license renewals. This is a way to follow the ASLB’s prescribed course while ensuring that

ELPC is able to raise its contention in this proceeding involving the realities of today's merchant generating plants that are not specifically contemplated in the Commission's regulations.

ELPC's request for protective stay with its appeal of the ASLB's rejection of ELPC's petition for hearing and intervention (10 C.F.R. § 2.311) is a sensible and straightforward way to seek assurance from the Commission that ELPC would retain its ability to raise its Contention 1 argument while it pursues a petition for rulemaking as prescribed by the ASLB. Because Commission regulations are silent as to whether a reply is allowed under these circumstances, and Exelon's and Staff's Answers demonstrated misunderstandings regarding ELPC's request for protective stay, ELPC filed a Reply pursuant to 10 C.F.R. § 2.341.

ELPC now moves for the Commission's leave to file its reply. The Commission permits replies "where necessity and fairness dictates." *U.S. Department of Energy* (High-Level Waste Repository), 67 N.R.C. 386, 393 (2008). Here, it is necessary for ELPC to reply to Exelon's and Staff's Answers in order to clear up misunderstandings as to ELPC's stay request and it is fair because ELPC's request is driven by its good-faith effort to follow the ASLB's prescribed procedure. Therefore, the Commission should grant ELPC leave to file its Reply.

II. ELPC'S REPLY DOES NOT RAISE A NEW ARGUMENT.

The Commission should not strike Part II of ELPC's Reply, which clarifies that ELPC is not permanently waiving the merits of its Contention 1 argument. Exelon argues that ELPC "raises one new claim" when it responds to Staff's claim in its Answer that ELPC has waived "its right to appeal" the merits of its Contention 1 argument. Exelon Motion at 4; Staff Answer at 7. ELPC is not raising a new claim, but is plainly clarifying its position and the scope of its request for protective stay in direct response to Staff's Answer.

Staff's Answer has a section arguing that "ELPC's Protective Stay Request Waives an Appeal of LBP-13-12." Staff Answer at 7. ELPC's Reply does not raise a new claim, but responds directly and narrowly to Staff's argument that ELPC has somehow waived its right to appeal. ELPC clarifies that while it is not directly appealing its intervention denial in LBP-13-12, ELPC is seeking in this proceeding, and with its forthcoming petition for rulemaking, to have ELPC's Contention 1 issue addressed in the context of the Byron 1 & 2 and Braidwood 1 & 2 license renewals. ELPC's reply on this point is simply to make sure its position is clear, not to introduce a new claim. The Commission should reject Exelon's motion to strike Part II of ELPC's Reply because it is not a new claim, but rather is in direct response to an argument raised by Staff and is plainly clarifying ELPC's position on its existing Contention 1 claim.

III. CONCLUSION

For the foregoing reasons, the Commission should reject Exelon's Motion to Strike ELPC's Reply and grant ELPC's Motion for Leave to File Its Reply.

Respectfully Submitted,

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

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Dated in Chicago, IL
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