

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of)	
)	
EXELON GENERATION COMPANY, LLC)	Docket Nos. 50-237-EA
)	50-249-EA
(Dresden Nuclear Power Station)	
Confirmatory Order Modifying License))	

**LOCAL 15'S REPLY TO NRC STAFF AND EXELON BRIEFS
IN RESPONSE TO CLI-15-16**

Both NRC Staff and Exelon mischaracterize the relief sought by Local 15 in this proceeding as simply the right to bargain with Exelon concerning Exelon's Behavioral Observation Program. It is true that Local 15 has alleged (before the NRC and in its successful unfair labor practice charge) that Exelon unlawfully failed to bargain with the Union concerning modifications to its Behavioral Observation Program. More importantly, however, Local 15 has also alleged that the October 28, 2013 Confirmatory Order itself, independent of actions undertaken by Exelon, imposes obligations on employees that, without justification in the record, exceed the requirements of NRC regulations and further that those obligations are vague, over-broad and not carefully tailored to address the NRC's stated health and safety concerns such that the Order undermines safety. As explained in Local 15's initial Brief in response to CLI-15-16, it is these allegations Local 15 pursues and these harms Local 15 seeks to remedy in this proceeding. Because the Commission has the ability to grant effective relief concerning these allegations that will make a difference to the legal rights of Local 15 and its members, this appeal is not moot.

Exelon frankly misstates the record when it asserts, citing not to any submission of Local 15's but rather to Exelon's own brief on appeal, that Local 15 mooted its own appeal when it "conceded that the NRC access authorization regulations do reach off-site, off-duty conduct."¹ Drilling past Exelon's self-referential citation to Local 15's actual alleged "concession" tells a much different story. Far from "conceding" the propriety of the obligations imposed by the Confirmatory Order on employees' off-duty, off-site conduct, Local 15, in its Reply to NRC Staff and Exelon Answers Opposing Local 15's Petition to Intervene, actually stressed the limits of the NRC regulations' control of such conduct and distinguished the limited off-duty conduct reached by the regulations from that the Confirmatory Order sought to control:

To be clear, Local 15 is not alleging that the NRC regulations do not reach and allow consideration of certain off-duty conduct, including criminal background checks and required self-reporting of legal actions. However, to the extent the regulations reach off-duty conduct, they clearly limit that reach to conduct which "may adversely affect the safety or security of the licensee's facility" or "may constitute an unreasonable risk to the public health and safety or the common defense and security, including a potential threat to commit radiological sabotage." 10 C.F.R. §73.56(f)(2). Local 15 respectfully submits that federal regulations requiring employees to self-report their own legal actions where the regulation further spells out precisely what types of legal actions are and are not required to be reported (*see* 10 C.F.R. §73.56(g)) are qualitatively different from a confirmatory order requiring employees to observe and report off-duty illegal, unusual and aberrant conduct of co-workers especially where, as here, the order contains no limiting language concerning either the precise conduct that is required to be reported or any required nexus with nuclear safety.²

As the above makes perfectly clear, Local 15 has not conceded that the Confirmatory Order imposes no new obligations on Local 15 members and Exelon's attempt to paint the record otherwise is both misleading and unavailing.

¹ See Exelon June 26, 2015 Brief in Response to CLI-15-16 at 5 n.20 ("Exelon Mootness Brief"), citing Exelon's Answer Opposing Local Union No. 15, International Brotherhood of Electrical Workers, AFL-CIO's Appeal of LBP-14-04 (June 6, 2014) at 10.

² 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 12 (Feb. 14, 2014) (emphasis original).

Exelon focuses too narrowly on the wrong occurrence when it asserts that the Confirmatory Order here was precipitated by an extraordinary, isolated incident and that there is therefore “no reasonable expectation that Local 15 will be subject to the same action again.”³ While Local 15 agrees that neither “planning by union members to commit serious crimes” nor “silent tolerance of criminal behavior” are widespread or likely to be repeated,⁴ it is reasonably likely that the NRC will engage in enforcement actions with Exelon which have an effect on the terms and conditions of bargaining unit members’ employment. This will be so for as long as Exelon and Local 15 maintain their long-standing collective bargaining relationship and Exelon remains in the business of nuclear power. Nor is the apparent dearth of NRC cases involving labor unions reflective of the extent to which unions have an interest in the nuclear industry and the extent to which labor unions (including Local 15) and their members are now affected by enforcement orders of the NRC and likely to be affected in the future.⁵ Based upon its own experience in this proceeding, Local 15 respectfully suggests that labor unions’ underrepresentation in NRC jurisprudence is more likely a manifestation of the substantial and arcane formal and procedural requisites to participation that tend to act as a bar to entry for those unfamiliar with NRC practice.

³ Exelon Mootness Brief at 7.

⁴ In fact, there was never any allegation even in this case that union members planned to commit serious crimes. The criminal planning in the incident that led to the Confirmatory Order was undertaken by a Senior Reactor Operator (SRO) who tried to enlist another SRO in his plan; SROs are not bargaining unit members and are not represented by Local 15. The only bargaining unit member alleged to have been involved was an Equipment Operator who was alleged to have known about the SROs’ plans and failed to report them. *See* Exelon Answer Opposing the Petition to Intervene and Hearing Request of Local Union No. 15, International Brotherhood of Electrical Workers, AFL-CIO at 2-3 (January 24, 2014).

⁵ As Local 15 noted in its initial Brief on Mootness, as of 2011, over 17,500 workers at 51 nuclear sites were represented by labor unions. 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).

For the reasons discussed herein and in Local 15's earlier brief in response to CLI-15-16, 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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Dated in St. Louis, Missouri
this 6th day of July, 2015

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CERTIFICATE OF SERVICE

Pursuant to 10 CFR § 2.305 (as revised), I certify that on this date, July 6, 2015, copies of the “Local 15’s Reply to NRC Staff and Exelon Briefs in Response to CLI-15-16” were served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned proceeding.

Signed (electronically) by Rochelle G. Skolnick

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