

November 18, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

_____)	
In the Matter of)	
)	
Exelon Nuclear Texas Holdings, LLC)	Docket Nos.
)	52-031 COL
(Victoria County Station, Units 1 and 2))	and 52-032 COL
_____)	

AP1000 OVERSIGHT GROUP'S RESPONSE TO
TEXANS FOR A SOUND ENERGY POLICY'S PETITION TO
HOLD DOCKETING DECISION AND/OR HEARING NOTICE FOR VICTORIA
COMBINED LICENSE APPLICATION IN ABEYANCE
PENDING COMPLETION OF RULEMAKING ON
DESIGN CERTIFICATION APPLICATION FOR
ECONOMICALLY SIMPLIFIED BOILING WATER REACTOR

Now comes the AP1000 Oversight Group, consisting of the Bellefonte Efficiency & Sustainability Team, Beyond Nuclear, the Blue Ridge Environmental Defense League, Environmental Alliance of North Florida, Florida League of Conservation Voters, Help Our Polluted Environment (FL), the North Carolina Waste Awareness and Reduction Network, the Nuclear Information and Resource Service, and the Southern Alliance for Safe Energy with a Response to the Texans for a Sound Energy Policy's Petition to Hold Docketing Decision And/or Hearing Notice for Victoria Combined License Application in Abeyance Pending Completion of Rulemaking on Design Certification Application for Economically Simplified Boiling Water Reactor (the "Petition"), filed with the Commission on November 3, 2008.

The AP1000 Oversight Group supports the Petition and offers the following:

1. The members of the AP1000 Oversight Group are petitioners, intervenors or prospective intervenors in the applications for early site permits and/or combined operating license applications (“COLAs”) for the following proposed nuclear reactors: Tennessee Valley Authority’s Bellefonte, Duke Energy’s Lee Station, South Carolina Electric and Gas’s Summer; Progress Energy’s Harris, Southern’s Vogtle, Progress Energy’s Levy County, and Florida Power & Light’s Turkey Point. Each of these proposed reactors has incorporated the Westinghouse AP1000 reactors by reference, and each has incorporated by reference the Design Control Document (“DCD”) Revision 16.

2. In its Petition, the Texans for a Sound Energy Policy compellingly argues that the manner in which the NRC Staff proposes to conduct the licensing proceeding for the proposed Victoria nuclear power plant violates the Atomic Energy Act, the NRC Part 52 Regulations and the Administrative Procedures Act requirements for fair hearing. These same arguments go beyond the proposed Victoria nuclear power plant, and beyond all of the other General Electric Economically Simplified Boiling Water Reactor (“ESBWRs”), to include other uncertified reactors, such as the Westinghouse AP1000 reactors. The licensing proceedings for all of the current nuclear power plants appear to be premised on an unworkable policy that the COLAs for proposed reactors can be reviewed without a final, certified design.¹

3. Similar to the ESBWRs proposed at Exelon’s Victoria nuclear power plant, the final design for the AP1000 reactors has not been completed and reviewed by the NRC

¹ www.nrc.gov/reactors/new-reactors/new-licensing-files/new-rx-licensing-app-legend.pdf (October 22, 2008).

staff, and neither the ESBWR nor the AP1000 designs have been finally certified. As a result, the most significant elements of the proposed reactors, i.e., the design and operational practices, are lacking in the COLA.

4. For the AP1000 reactors, Westinghouse submitted its AP1000 DCD Revision 15 to the NRC in March 2002, and although the NRC issued a final rule certifying the design in January 2006, Westinghouse then submitted Revision 16 in 2007, with an estimated completion date for certification that was extended until at least mid-2011.² The DCD for the AP1000 Revision 16 has been adopted by reference for each of the above-listed reactors and is, as such, part of their COLAs.³

5. On September 22, 2008, Westinghouse submitted its AP1000 DCD Revision 17 in NRC Docket No. 52-006. Revision 17 contains the unresolved issues in Revision 16, the Westinghouse Technical Report 134 and new changes, but it has not been readily available to members of the AP1000 Oversight Group or for that matter, any member of the public. With the submittal of Revision 17, there is now no estimated completion date for the certification of the AP1000 reactors and all of the above-listed reactors remain tied to Revision 16.

6. Members of the AP1000 Oversight Group, and members of the public, have not been able to adequately review the various COLAs that have referenced the AP1000 DCD. Unresolved issues in the AP1000 reactors – in both Revision 16 and Revision 17 – include containment, control room set up, seismic qualifications, fire

² www.nrc.gov/reactors/new-reactors/design-cert/amended-ap1000.html.

³ Appendix D to 10 C.F.R. Part 52 and the AP1000 DCD Revision 16.

areas, heat removal, human factors engineering design, plant personnel requirements, operator decision-making, alarms and piping, adverse weather conditions, radiation protection measures, technical specifications for valves and piping, accident analyses, and aircraft impact. These are all significant safety-related items that must be resolved prior to even the initial determination that an application is complete and ready to be docketed, let alone the final granting of a license.

7. What is at the heart of the certification problem is that members of the public, the petitioners in license proceedings, are given sixty days to review the voluminous site permit applications or COLAs, and then are required to raise valid contentions about inadequacies in the applications without having a final design in place. For several of the COLAs, the AP1000 reactors will have changed after that sixty-day time period has run, and for all of the above-listed reactors, the final design is still unknown. Design-related issues cannot be removed from COLA adjudications.

8. In conclusion, this response by the AP1000 Oversight Group explicitly requests that the Petition by the Texans for a Sound Energy Policy is granted, and that the precedent in that Petition be carried over to the licensing proceedings for which the AP1000 are the reference design.⁴

⁴ It should be noted that one of the members of the AP1000 Oversight Group, NC WARN, had requested a stay of its proceeding for the proposed Harris nuclear reactors in Docket 52-022 & 023 COL. The Commission denied this request in CLI-08-15, although the present Petition presents a far fuller and significantly different legal and constitutional arguments. NC WARN's motion was also made before Revision 17 was filed.

This is the 18th day of November 2008.

_____/s/jr_____
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CERTIFICATE OF SERVICE

I hereby certify that copies of this AP1000 OVERSIGHT GROUP'S RESPONSE TO TEXANS FOR A SOUND ENERGY POLICY'S PETITION TO HOLD DOCKETING DECISION AND/OR HEARING NOTICE FOR VICTORIA COMBINED LICENSE APPLICATION IN ABEYANCE PENDING COMPLETION OF RULEMAKING ON DESIGN CERTIFICATION APPLICATION FOR ECONOMICALLY SIMPLIFIED BOILING WATER REACTOR was served on the following via the EIE system:

Office of the Secretary
ATTN: Docketing and Service
Mail Stop 0-16C1
US Nuclear Regulatory Commission
Washington, DC 20555-0001

NRC Commissioners
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Rulemakings and Adjudications Staff
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This is the 18th day of November 2008.

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