

**UNITED STATES NUCLEAR REGULATORY COMMISSION  
BEFORE THE COMMISSION**

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

**TEXANS FOR A SOUND ENERGY POLICY’S MOTION FOR LEAVE TO  
REPLY TO EXELON’S AND NRC STAFF’S  
OPPOSITION TO PETITION TO HOLD HEARING NOTICE  
FOR VICTORIA COMBINED LICENSE APPLICATION IN ABEYANCE**

Texans for a Sound Energy Policy (“TSEP”) hereby moves for leave to reply to the oppositions by Exelon Corporation and the Staff of the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) to TSEP’s Petition to Hold Docketing Decision and/or Hearing Notice for Victoria Combined License Application in Abeyance Pending Completion of Rulemaking on Design Certification for Economically Simplified Boiling Water Reactor (November 3, 2008) (“TSEP Petition”).<sup>1</sup> A copy of TSEP’s Reply is attached. As discussed in the attached Certificate of Counsel Pursuant to 10 C.F.R. § 2.323(a), counsel for TSEP was unable to obtain the consent of opposing counsel to the filing of this motion.

TSEP respectfully submits that a number of “compelling circumstances” exist which warrant the consideration of TSEP’s Reply pursuant to 10 C.F.R. § 2.323(c). First, the issues raised by TSEP’s Petition regarding the relationship between the Part 52 regulatory scheme and a

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<sup>1</sup> Answer of Exelon Opposing Petition to Hold Hearing Notice for Victoria County Station in Abeyance (November 18, 2008) (“Exelon Answer”); Answer 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 for Economically Simplified Boiling Water Reactor (November 18, 2008) (“NRC Staff Answer”).

more recent policy statement interpreting those regulations are novel and have not previously been addressed in any detail by the NRC Commissioners. In order to ensure that the Commission has a complete record on which to base its decision, the Commission should allow a fully briefing by the parties that includes a Reply by TSEP. Second, both Exelon and the NRC Staff offer arguments that TSEP could not have anticipated regarding the proper interpretation of 10 C.F.R. Part 52, the legal force of the Policy Statement, the relevance of the NRC's historical practice with respect to the appropriate use of adjudications and rulemakings to resolve licensing issues, whether TSEP has made an improper attack on the NRC's regulations, and whether the conduct of a parallel rulemaking and adjudication in this proceeding will prejudice TSEP. Finally, TSEP seeks leave to address a recent development that provides significant support for its Petition: Exelon's recent announcement that it is considering abandoning the Economic Simplified Boiling Water Reactor design and substituting an entirely new design in its combined license application.

For these reasons, the Commission should permit TSEP to reply to Exelon and the NRC

Staff.

Respectfully submitted,

/s/ \_\_\_\_\_

Diane Curran

Harmon, Curran, Spielberg, & Eisenberg, L.L.P.

1726 M Street N.W., Suite 600

Washington, D.C. 20036

202/328-3500

FAX 202/328-6918

[dcurran@harmoncurran.com](mailto:dcurran@harmoncurran.com)

/s/ \_\_\_\_\_

James Blackburn, Jr.

Blackburn Carter, P.C.

4709 Austin St.

Houston, Texas 77004

713/524-1012

713/524-5165 (*fax*)

[jbb@blackburncarter.com](mailto:jbb@blackburncarter.com)

November 25, 2008

**CERTIFICATE OF COUNSEL PURSUANT TO 10 C.F.R. § 3.323(a)**

I certify that on November 21, 2008, I spoke with counsel for Exelon and on November 24, 2008, I spoke with counsel for the NRC Staff, in a sincere attempt to obtain their consent to TSEP's filing of a reply to their oppositions to TSEP's Petition. Counsel for Exelon stated that Exelon would oppose the motion. Counsel for the NRC Staff said that the Staff would reserve its decision regarding whether to oppose the motion until after it is filed.

/s/  
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Diane Curran