November 28, 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
EXELON MOTION TO STRIKE UNAUTHORIZED RESPONSES

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 Exelon Motion to Strike Unauthorized Responses, filed with the Commission on November 20, 2008.[1] The AP1000 Oversight Group offers the following:

1. In its Motion to Strike, Exelon argues that the AP1000 Oversight Group is not a party to this proceeding as the Commission in an unpublished Order on November 12,

[1] The AP1000 Oversight Group has not received any filing from the NRC Staff opposing its response supporting the Texas Petition either by direct email or through the EIE system, although the EIE system apparently has been having difficulties and several NRC Staff members were out for the holiday. If the NRC Staff has filed anything further, the AP1000 respectfully request that it be allowed to respond further.

2008, decided to treat the Petition to Hold Docketing Decision and/or Hearing Notice by the Texans for a Sound Energy Policy (the "Texas Petition") as a "motion under 10 C.F.R. § 2.323." Exelon then argues that only parties to the proceeding may file an answer, yet does not address who parties may be in this situation. Exelon's argument fails in that at this point there are no parties to the proceeding as there would be if a full application with the final reactor design had been the subject of a proper hearing notice. The Commission rules simply do not envision early dispositive motions, especially ones that go to the fundamental issues of lawfulness and fairness raised in the Texas Petition.

2. Exelon further argues that the AP1000 Oversight Group has not shown an adequate interest in this proceeding, as the interests of the members of the AP1000 Oversight Group rest solely in the AP1000 design. This argument fails in that the same issue raised in the Texas Petition on the ESBWR affects similar proceedings for proposed reactors using the AP1000 design, that being that the licensing process being followed by the NRC is unlawful and unfair. Neither the ESBWR and AP1000 reactors are finalized so the combined operating licenses applications ("COLAs") that adopt either of the designs by reference are incomplete.[2]

3. Exelon has subsequently notified the Commission by letter of November 25, 2008, that it is no longer considering the ESBWR for its proposed Victoria County Station reactors, but will use some still nondesignated "alternate reactor technology."

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[2] The joint response by the national groups supporting the Texas Petition raise the same issues about the lawfulness and fairness for licensing the EPR design, also in a certification process in which the reactor design is not finalized even as COLAs are reviewed.

Nevertheless, Exelon urged the Commission to rule on the Texas Petition "because it involves a matter that may recur in this proceeding." At this point, the interests of the AP1000 Oversight Group are quite clear as any decision reached on the Texas Petition will have some precedential value in the licensing review process for the reactors with the AP1000 design. Exelon cannot even show what alternate reactor technology it may use at the Victoria County site, let alone whether that design is certified or that there is a final design that can be reviewed.

THEREFORE, the AP1000 Oversight Group prays that the Commission deny Exelon's Motion to Strike and grant the Texas Petition.

_____/s/jr_____

John D. Runkle
Attorney at Law
Post Office Box 3793
Chapel Hill, North Carolina 27515
919-942-0600 (o&f)
jrunkle@pricecreek.com

CERTIFICATE OF SERVICE

I hereby certify that copies of this AP1000 OVERSIGHT GROUP'S RESPONSE TO EXELON MOTION TO STRIKE UNAUTHORIZED RESPONSES was served on the following via the EIE system and by email:

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

NRC Commissioners
c/o Office of the Secretary
Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Kathryn Winsberg
Office of the General Counsel
Mail Stop O-15 D21
US Nuclear Regulatory Commission
Washington, DC 20555-0001

Diane Curran
Harmon Curran Spielberg &
Eisenberg L.L.P.
1726 M Street N.W., Suite 600
Washington, D.C. 20036

Steven P. Frantz, Esq.
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Ave. N.W.
Washington, D.C. 20004

James Blackburn, Jr.
Blackburn Carter, P.C.
4709 Austin St.
Houston, Texas 77004

This is the 28th day of November 2008.

_____/s/jr_____
John D. Runkle, Attorney at Law