

December 19, 2008

**UNITED STATES OF AMERICA
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 ANSWERS TO MOTION TO
REVOKE DOCKETING DECISION AND DISMISS LICENSING
PROCEEDING FOR VICTORIA COMBINED LICENSE APPLICATION**

Texans for a Sound Energy Policy (“TSEP”) hereby moves for leave to reply to the responses by Exelon Nuclear Texas Holdings, L.L.C. (“Exelon”) and the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) Staff to TSEP’s motion to revoke the docketing decision and dismiss the licensing proceeding for Exelon’s combined license application (“COLA”) for a new nuclear power plant in Victoria, Texas (“Motion to Revoke”).¹ 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 “compelling circumstances” exist which warrant the consideration of TSEP’s Reply pursuant to 10 C.F.R. § 2.323(c). Exelon and the NRC Staff

¹ Answer of Exelon Opposing Motion to Revoke Docketing Decision and Dismiss Licensing Proceeding (December 15, 2008) (“Exelon Answer”); Answer to Texans for a Sound Energy Policy’s Motion to Revoke Docketing Decision and Dismiss Licensing Proceeding for Exelon’s Victoria Combined License Application (December 12, 2008) (“Staff Answer”).

raise new arguments in the answers that TSEP could not reasonably have anticipated when it submitted its Motion to Revoke.

First, the NRC Staff and Exelon argue that the Motion to Revoke is not properly before the Commission because the Commission has no jurisdiction over a proceeding for which a notice of hearing has not been issued. Staff Answer at 3; Exelon Answer at 5-6. In addition, they argue that the docketing decision and subsequent handling of combined license applications are solely within the discretion of the Staff. Staff Answer at 3; Exelon Answer at 4. These arguments could not have been anticipated by TSEP because they overlook the Commission's inherent supervisory authority over all NRC proceedings. *Pacific Gas & Elec. Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-02-23, 56 NRC 230, 237 (2002).

Second, Exelon argues that a "balancing of interests" favors retaining the Victoria COLA on the NRC's docket because dismissal of the COLA would significantly affect Exelon's ability to receive a loan guarantee from the U.S. Department of Energy ("DOE"). Exelon Answer at 9-10. This argument could not have been anticipated because it is entirely without merit. There is no authority or rational justification for the NRC to give any consideration to an applicant's position in another agency's unrelated proceeding when engaging in the simple interpretation of its procedural regulations. In addition, Exelon's request that the Commission retain the Victoria COLA on the NRC's docket in order to protect Exelon's business interests raises serious policy concerns that the Commission should consider before making a ruling.

Third, Exelon argues that there is no legal basis for the Commission to dismiss the Victoria proceeding because applicants are permitted to revise their applications after submittal and because Exelon has not yet revised its application. Exelon Answer at 6. This argument could

not reasonably have been anticipated because Exelon's concept of the term "revise" is so far afield of NRC precedents and common sense.

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

Respectfully submitted,

/s/_____
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CERTIFICATE OF COUNSEL PURSUANT TO 10 C.F.R. § 3.323(a)

I certify that on December 17, 2008, I spoke with counsel for Exelon and the NRC Staff in a sincere attempt to obtain their consent to TSEP's filing of a reply to their answers to TSEP's motion to revoke the Victoria docketing decision and dismiss the licensing proceeding. Counsel for Exelon stated that Exelon would oppose the motion. Counsel for the NRC Staff said that the Staff would oppose the motion because they do not believe that this matter is properly before the Commission. The Staff does not oppose the motion on its merits.

/s/
Diane Curran