

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 30, 2008



SECRETARY

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

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

Re: Exelon Nuclear Texas Holdings, LLC (Victoria County Station,
Units 1 and 2), Docket Nos. 52-031-COL and 52-032-COL

Dear Ms. Curran and Mr. Blackburn,

This letter responds to the petition by Texans for a Sound Energy Policy (TSEP), dated November 3, 2008, as supplemented on November 4, 2008, asking the Commission to hold in abeyance the anticipated hearing notice resulting from the combined construction permit and operating license application submitted by Exelon Nuclear Texas Holdings, L.L.C. on November 3, 2008 for two Economic Simplified Boiling Water Reactors located in Victoria County, Texas, designated Victoria County Station, Units 1 and 2.

TSEP requests that the NRC's notice of hearing and opportunity to request intervention on this application afforded by Section 189a of the Atomic Energy Act, 42 U.S.C. § 2289(a), and our regulations be withheld until completion of the design certification rulemaking on the ESBWR design under Part 52 of our regulations.

By letter dated November 24, 2008, Exelon notified the Staff that it expects to designate an alternative reactor technology for the Victoria County project. As a result, the Staff has suspended NRC review of the application, except for off-site emergency planning review, which is largely conducted by the Federal Emergency Management Agency. See Letter from David B. Matthews, Director, Division of New Reactor Licensing, Office of New Reactors, to Mr. Thomas S. O'Neill, Vice-President – New Plant Development, Exelon Generation, dated December 18, 2008.

Because the Staff has suspended its review of the principal portion of the application, no notice of hearing and opportunity to petition for leave to intervene is expected to be issued in connection with the application in its current form. Moreover, the Commission has explained, in an adjudicatory context, that there is no basis to hold in abeyance a notice of hearing pending completion of the design certification rulemaking for the

referenced design. *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-08-15, 67 NRC ____ (slip op. July 23, 2008).

TSEP has more recently moved to revoke the Staff's docketing decision for the Victoria County application. A decision to docket an application for a utilization facility is made under 10 C.F.R. § 2.101(a)(3) without an opportunity for public comment or participation and before a notice of opportunity to request a hearing and intervention is published in the *Federal Register*. Such docketing decisions are therefore a matter of Staff discretion. Even after a notice of opportunity to request a hearing and intervention has been issued, the Staff's docketing decision is outside the scope of our adjudicatory proceedings. See *U.S. Department of Energy* (High Level Waste Repository: Pre-Application Matters), CLI-08-20, 67 NRC ____ (slip op. Aug. 22, 2008). If such a notice is issued, however, TSEP and others may seek to intervene and proffer contentions regarding the application, consistent with the notice and NRC's rules of practice in 10 C.F.R. Part 2.

Sincerely,

/RA/

Andrew L. Bates
Acting Secretary of the Commission

cc: Stephen Burdick, Esq.
Kathryn Winsberg, Esq.
Jerry Bonanno, Esq.
Michael Mariotte, Executive Director, NIRS
John D. Runkle, Esq.