

December 9, 2010

Mr. Charles W. Irvine  
Blackburn Carter, P.C.  
4709 Austin Street  
Houston, TX 77004  
(Via E-Mail: [charles@blackburncarter.com](mailto:charles@blackburncarter.com))

SUBJECT: December 2, 2010, Request for Sensitive Unclassified Non-Safeguards Information  
Exelon Nuclear Texas Holdings, LLC, Early Site Permit Application for the Victoria County Station Site  
Docket No. 52-042

Dear Mr. Irvine:

The U.S. Nuclear Regulatory Commission Staff (NRC Staff) is responding to your and your clients' requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) contained in the docket for the Early Site Permit (ESP) application for the Victoria County Station site. In your letter dated December 2, 2010, you and your clients request access to SUNSI information, which Exelon ("Applicant") has designated as SUNSI under 10 C.F.R. § 2.390 because it contains proprietary information.

You request access to the information filed by the Applicant as Part 6 of its ESP Application, withheld from the public per 10 C.F.R. § 2.390. Your letter specifically requests access for Texans for a Sound Energy Policy ("TSEP").

For the reasons stated below, the NRC Staff has determined that the request by TSEP for access to the information should be granted. As legal counsel for TSEP, you should be granted access as well.

Pursuant to the "Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation" (SUNSI/SGI Order)", 75 Fed. Reg. 71467, 71470, the NRC Staff evaluated your request to determine whether (1) there is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding, and (2) there is a legitimate need for access to SUNSI.

#### Standing

The Declaration of Ralph R. Gilster, III establishes that Ralph R. Gilster, III is a member in good standing of TSEP and authorizes TSEP to represent him in any licensing proceeding concerning the proposed site for which the Applicant has submitted an ESP application. Mr. Gilster also

declares under penalty of perjury that he is the sole owner and manager of RRG3 SM Land LLC, the general partner of KOC Land, LP, which is the owner of a tract of land, parts of which are situated within 5 miles of the proposed site. Mr. Gilster maintains a residence on that property and derives income from his business operations located there. Mr. Gilster would likely qualify for standing to intervene in his own right under 10 C.F.R. § 2.309(d). TSEP would likely meet the standard for representational standing to participate as the representative for Mr. Gilster, because his interest in the environmental effects of the Applicant's proposed project on the site aligns with the interests that TSEP wishes to protect, regarding energy alternatives and their environmental, social, and economic impacts. Thus, there is a reasonable basis to believe that TSEP is likely to establish standing to participate in this NRC proceeding.

#### Need for SUNSI

A potential party seeking access to SUNSI information must also show how the requested information is necessary for meaningful participation in the proceeding by providing the following: (1) an explanation of the importance of the requested information to the proceeding, i.e., how the information relates to the [ESP] application or to NRC requirements or guidance, and how it will assist the requester in seeking intervention; and (2) an explanation of why existing publicly-available versions of the application would not be sufficient. See *South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), CLI-10-24, 71 NRC \_\_\_ (Sep. 29, 2010) (slip op.).

Your request specifically identifies information submitted by the Applicant that was accepted for docketing on June 7, 2010 (75 FR 22434), namely, Part 6 of the ESP Application, which contains proprietary information withheld from public review in accordance with 10 C.F.R. § 2.390.

Your request meets the requirements of the SUNSI/SGI Order because you articulate why the requested information will assist you in seeking intervention and in formulating contentions. In your letter, you state that the withheld information consists of geophysical data and information that was licensed to Exelon, and that this information is referenced in part 2.5.1 of the Site Safety Analysis Report and is relied upon for the analysis of the subsurface growth faults and surface deformation on and near the site. Additionally, your request articulates that TSEP is currently investigating the issues related to growth faults and may submit contentions related to the number, extent, location, depth, and rate of slippage of the growth faults. The requested information is needed in order for TSEP's counsel and experts to evaluate all technical information and analyses that have been prepared by Exelon regarding that issue to meaningfully evaluate the seismic suitability of the proposed site. You have explained why existing publicly-available versions of the Application would not be sufficient. Thus, your request meets the requirements for showing a need for access to SUNSI information by explaining how the withheld information will assist in seeking intervention and developing contentions.

In conclusion, the NRC Staff has determined that TSEP has demonstrated that there is a reasonable basis to believe that it is likely to establish standing to intervene and that it has a legitimate need to access the SUNSI contained in the Applicant's ESP Application in order to meaningfully participate in the adjudication.

Pursuant to requirements of the SUNSI/SGI Order, the terms and conditions for access to SUNSI will be set forth in a protective order and affidavit of non-disclosure. Access to the information will be granted once Mr. Gilster and you have executed non-disclosure affidavits and agree to be bound by the terms of the protective order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosures of SUNSI.

I am enclosing a proposed Protective Order and an Affidavit of Non-Disclosure for your consideration. I will be in contact to discuss filing a Joint Motion for entry of the proposed Protective Order. If you have any questions concerning this matter, please contact me at 301-415-2472 or via e-mail at [stephanie.liaw@nrc.gov](mailto:stephanie.liaw@nrc.gov).

Sincerely,

**/Signed (electronically) by/**

Stephanie N. Liaw  
Counsel for NRC Staff  
U.S. Nuclear Regulatory Commission  
Mail Stop O-15 D21  
Washington, DC 20555-0001  
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[Stephanie.Liaw@nrc.gov](mailto:Stephanie.Liaw@nrc.gov)

CC: See Attached List

Enclosures: Proposed Protective Order and Affidavit of Non-Disclosure  
Notice of NRC Staff Granting of Request for Sensitive Unclassified Non-Safeguards Information (December 9, 2010)

Docket No.: 52-042

CC Via E-mail:

Steven P. Frantz  
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J. Bradley Fewell  
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Sincerely,

**/Signed (electronically) by/**

Stephanie N. Liaw  
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J. Bradley Fewell  
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