

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

THE ATOMIC SAFETY AND LICENSING BOARD

Before the Chief Administrative Judge:

In the Matter of

EXELON NUCLEAR TEXAS HOLDINGS, LLC

(Early Site Permit for Victoria County Station
Site)

Docket No. 52-042

MEMORANDUM AND ORDER

(Protective Order Governing the Disclosure of Protected Information)

Upon Consideration of the Joint Motion for Entry of a Protective Order of the Nuclear Regulatory Commission Staff (NRC Staff), Texans for a Sound Energy Policy (TSEP or Petitioner), represented by Mr. Charles W. Irvine with the law firm of Blackburn Carter, P.C., and Exelon Nuclear Texas Holdings, LLC (Applicant), represented by Mr. J. Bradley Fewell, of Exelon Corporation, and by Mr. Steven P. Frantz, of Morgan, Lewis & Bockius, LLP, I GRANT the Joint Motion and issue this Protective Order, the terms of which are as follows:

1. This Protective Order shall govern the use of all Protected Information produced by, or on behalf of, the Applicant and/or NRC Staff in this proceeding. Protected Information consists of information designated by the Applicant or NRC Staff as sensitive unclassified non-safeguards information (SUNSI), i.e., information whose disclosure could “reasonably be foreseen to harm the public interest, the commercial or financial interests of the entity or individual to whom the information pertains, the conduct of NRC and Federal programs, or the

personal privacy of individuals.”¹ This Protective Order shall remain in effect until specifically amended or terminated by a subsequent order issued by the Chief Administrative Judge, the designated Atomic Safety and Licensing Board (“Licensing Board”), or the Commission.

2. The following individuals shall be entitled to have access to the Protected Information in the Early Site Permit Application for the Victoria County Site if they execute and file the attached Affidavit of Non-Disclosure: Board members and officers of TSEP; TSEP’s designated legal counsel, Mr. Charles W. Irvine, and the legal staff under his supervision; any experts or consultants engaged or retained by or on behalf of TSEP or its legal counsel, whether or not for a fee. Any individual who does not execute and file the Affidavit of Non-Disclosure is not authorized to receive access to the Protected Information.

3. Other than the filing deadlines set forth in this Order, the terms of this Protective Order do not apply to the NRC Staff, NRC contractors, NRC legal counsel, or NRC adjudicative personnel, whose use of Protected Information is governed by NRC regulations and policies as well as other applicable law.

4. Protected Information shall be treated as confidential by the Petitioner. Protected Information shall not be used except as necessary for the conduct of a proceeding on the Application. The Petitioner shall take reasonable precautions to ensure that Protected Information is not distributed to unauthorized persons.

5. The Petitioner shall maintain all Protected Information in a secure location, and shall not provide the Protected Information to anyone not authorized to receive it pursuant to this Order.

¹ COMSECY-05-0054, Attachment 2, NRC Policy for Handling, Marking, and Protecting Sensitive Unclassified Non-Safeguards Information at 1 (Oct. 26, 2005). See also NRC Management Directive 12.6, NRC Sensitive Unclassified Information Security Program (Dec. 20, 1999); NRC Regulatory Issue Summary 2005-31, Control of Security-Related Sensitive Unclassified Non-Safeguards Information Handled by Individuals, Firms, and Entities Subject to NRC Regulation of the Use of Source, Byproduct, and Special Nuclear Material (Dec. 22, 2005).

6. As legal counsel for the Petitioner, Mr. Irvine may allow legal staff under his supervision access to the Protected Information as necessary in the course of his representation. Mr. Irvine shall be responsible for ensuring his staff complies with the terms of this Order and the Affidavit of Non-Disclosure, and he will be subject to sanctions for any violations by his staff.

7. The Petitioner shall maintain within its possession or control a log of all copies of materials that contain the Protected Information. Upon the termination of a proceeding on the Application or upon order by the Licensing Board or Commission, the Petitioner shall return all materials containing Protected Information to the Applicant or destroy the materials, except that copies of filings, official transcripts, exhibits, and notes may be redacted so that only those portions containing Protected Information are destroyed. Each recipient of Protected Information shall execute an affidavit stating that the Protected Information within its possession or control has been returned or destroyed, and shall serve a copy of the executed affidavit upon the Applicant and NRC Staff within 15 days.

8. The Petitioner or other recipient who has reason to suspect that Protected Information may have been lost or misplaced, or that Protected Information has otherwise become available to unauthorized persons, shall promptly notify the Licensing Board of those suspicions and the reason for them.

9. The Licensing Board may alter or amend this Protective Order and resolve disputes arising from it. The Petitioner, Applicant, or NRC Staff may seek amendments to this Order or the Non-Disclosure Affidavits by filing a motion for amendment. The Petitioner may have an additional or substitute person(s) necessary for the preparation of her or his case be authorized to receive Protected Information either by written agreement with the Applicant and the NRC Staff or by filing a motion for amendment of this Protective Order. Any additional or substitute person(s) shall be subject to the terms of this Order and must execute and file a Non-Disclosure Affidavit to be authorized to receive Protected Information.

10. Pleadings or other documents for filing that contain information protected pursuant to this Order shall be filed electronically using the E-Filing system. The person filing the document must properly choose the option to prevent the document from being filed in the public docket. Only members of the Licensing Board, NRC Staff counsel, Applicant's counsel, and authorized persons should be "checked" as recipients on the electronic service list. The Petitioner shall take the necessary actions to obtain a digital certificate and file documents in this proceeding using the E-Filing system. If any party to a proceeding on this Application intends to submit an exhibit, testimony, or pleading containing Protected Information without using the E-Filing system, the party shall notify the Licensing Board prior to such filing. Nothing in this Order shall preclude a party to a proceeding on the Application from objecting to the use of an exhibit, testimony, or a pleading because it contains Protected Information. The Licensing Board may issue additional orders concerning the use of Protected Information at any hearing-related proceeding.

11. Nothing in this Order shall preclude any person from seeking public disclosure of Protected Information in accordance with NRC regulations. Nothing in this Order shall preclude any person from seeking through discovery in any other administrative or judicial proceeding information protected by this Order.

12. Any violation of this Protective Order or of any Non-Disclosure Affidavit executed hereunder may result in the imposition of sanctions as the Licensing Board or the Commission may deem appropriate. Nothing in this Order restricts or waives the Applicant's or NRC's rights to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Information.

13. The Petitioner must file executed Non-Disclosure Affidavits within three days after service of this Order. The Applicant shall provide a copy of the Protected Information

contained in the Application within five days after service of the executed Non-Disclosure Affidavits.

14. The Petitioner must file any proposed SUNSI contentions within twenty-five days after receipt of or access to that information, or by January 24, 2011, whichever is later.

15. The Applicant and the NRC Staff may file Answers to the proposed SUNSI contentions within twenty-five days after service of any proposed contentions.

16. The Petitioner may file a Reply to any Answers within seven days after service of any Answer.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD PANEL

/RA/

E. Roy Hawkens
Chief Administrative Judge

Rockville, Maryland
December 21, 2010

NON-DISCLOSURE AFFIDAVIT

I, _____, being duly sworn, state:
(Print Name)

- 1. I have read the December 21, 2010 Atomic Safety and Licensing Board Panel (ASLBP) Protective Order issued in this proceeding and will comply in all respects with its terms and conditions regarding the Protected Information produced in connection therewith. I will protect and keep confidential all Sensitive Unclassified Non-Safeguards Information (SUNSI), including security related and/or proprietary information in accordance with the terms of this Non-Disclosure Affidavit.
- 2. I will not disclose SUNSI to anyone except an authorized person. I will protect documents containing or revealing SUNSI in written or recorded form (including any portions of transcripts of in camera hearings, filed testimony, or any other documents that contain or reveal such SUNSI), so the SUNSI contained therein remains at all times under the control of an authorized person and is not revealed to anyone else.
- 3. When not under my direct control or the direct control of another authorized person, I will keep and protect all documents containing or revealing SUNSI (including, without limitation, transcripts, pleadings I may generate, and any notes and copies that I may make) in a secure locked place such as a filing cabinet, closet, or other storage container. I will not transmit by facsimile transmission any material containing SUNSI.
- 4. Each document that contains or reveals SUNSI shall be marked "Contains SUNSI Information" in a conspicuous manner.
- 5. Neither during nor after this proceeding will I publicly reveal any SUNSI that I receive by virtue of this proceeding as long as the information remains SUNSI and is not otherwise a matter of public record.
- 6. I acknowledge that any violation of the terms of this affidavit or the ASLBP's Protective Order, which establishes the terms and conditions of this affidavit, may result in the imposition of such sanctions on me that the presiding officer or the Commission deems to be appropriate.

WHEREFORE, I do solemnly agree to protect and keep confidential such Protected Information as may be disclosed to me in this proceeding, in accordance with the terms of this affidavit.

(Signature)

Subscribed to and sworn before me this _____ day of _____, 201__.

Notary Public

My commission expires: _____

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
EXELON NUCLEAR TEXAS HOLDINGS, LLC) Docket No. 52-042-ESP
(Victoria County Station))
)
)
(Early Site Permit))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM AND ORDER (PROTECTIVE ORDER GOVERNING THE DISCLOSURE OF PROTECTED INFORMATION) have been served upon the following persons by Electronic Information Exchange.

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Docket No. 52-042-ESP
MEMORANDUM AND ORDER (PROTECTIVE ORDER GOVERNING THE
DISCLOSURE OF PROTECTED INFORMATION)

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[Original signed by Nancy Greathead]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 21st day of December 2010