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July 6, 2011

Michael M. Gibson, Chair  
Dr. Anthony J. Baratta  
Dr. Mark O. Barnett  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Docket:           Exelon Nuclear Texas Holdings, LLC, Early Site Permit for Victoria County  
Station Site, Docket No. 52-042

Re:                Agreement of the Parties Regarding Mandatory Discovery Disclosures

Dear Licensing Board Members:

The purpose of this letter is to inform you of the agreement among Exelon Nuclear Texas Holdings, LLC (Exelon), Texans for a Sound Energy Policy (TSEP), and the U.S. Nuclear Regulatory Commission (NRC) Staff regarding the mandatory discovery disclosures under 10 C.F.R. § 2.336 and the hearing file under 10 C.F.R. § 2.1203.

The parties have agreed to the following protocol:

1. The parties may limit the mandatory discovery disclosures to final documents that they and their contractors develop, and need not include drafts (including comments on drafts, transmittals of drafts, resolution of comments on drafts, and similar documents). However, if a party has legal possession, custody, or control of a document that it or its contractors did not generate or that is already publicly available, and which is otherwise subject to mandatory disclosure (*e.g.*, relevant to a contention), then the party must disclose that document (even if it is labeled “draft”).
2. If the same relevant e-mail exists in multiple locations, each party may produce only one copy of that e-mail. If the e-mail exists in both sender and recipient e-mail folders, the party will produce the sender’s copy of the e-mail. If a chain or string of e-mails exists,

the party need only produce the last e-mail in the chain or string provided that it includes all of the previous e-mails and recipients of the chain or string.

3. To the extent reasonably practicable, each party will provide electronic copies of the requested documents. If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. Except for spreadsheets, multimedia files, and other files that would not be reasonably usable in PDF format, a party may produce a document electronically in PDF format, rather than in its original format (whether hard copy or electronic). If a document is produced in PDF format, the party will use best efforts to produce the document in a word searchable format. A party need not produce the same electronically stored information in more than one form.
4. The parties have agreed to waive the requirement in 10 C.F.R. §§ 2.336(a)(3) and 2.336(b)(5) to produce privilege logs. For example, the parties agree not to produce a log identifying attorney-client privileged material, attorney work product, or information subject to the deliberative process privilege. However, the parties shall produce a log of the documents withheld as containing proprietary, confidential commercial, and security-related information. The parties agree to preserve and maintain all discoverable privileged documents during the pendency of this proceeding.
5. A party need not identify or produce any document that has been served on the other parties to this proceeding.
6. The parties need not identify or produce press clippings.
7. The parties need not identify or produce documents that contain only administrative information related to a contention, such as notices of upcoming meetings or telephone calls, records of time and expenses, billing statements, and similar documents.
8. In connection with the NRC Staff's submittal of the hearing file, the Staff will identify all relevant documents available via the NRC's website or ADAMS, as required by 10 C.F.R. §§ 2.336(b) and 2.1203. The parties shall not otherwise be required to identify or produce docketed correspondence or other documents available via the NRC's website or ADAMS.
9. The parties need not produce documents that are publicly available, but the parties shall produce a log of such documents and where they can be obtained such as ADAMS, webpages, libraries, or publishing houses.
10. In accordance with the provisions of 10 C.F.R. § 2.336(a)(1), each of the parties shall identify any person on which it may rely upon as a witness as soon as the identity of that

person becomes known. Depending on the testimony eventually filed by the parties, the parties reserve the right to present rebuttal witnesses not previously identified in these mandatory disclosures.

11. The parties shall submit their initial mandatory discovery disclosures, and the NRC Staff shall submit its initial hearing file index, within 30 days of the issuance of the order granting TSEP's petition to intervene. The continuing obligation of the parties under 10 C.F.R. § 2.336(d) to update their respective disclosures is modified so that any information or documents subsequently developed or obtained must be disclosed in a periodic update transmitted on the 15th day of each month (subject to 10 C.F.R. § 2.306(a)) beginning the month following that in which the initial disclosures are made. To account for necessary time delay (*e.g.*, reviewing documents, preparing update) between identifying information or documents and transmitting the update, the update need only include information or documents that were identified on or before the 1st day of the month prior to transmission of the periodic update. Following issuance of the FSER or FEIS, as applicable, the continuing obligation of the parties to disclose information or documents will revert to the fourteen-day update period required by 10 C.F.R. § 2.336(d).
12. The duty to update mandatory disclosures and the hearing file shall terminate at the close of the evidentiary hearing. If a contention has been dismissed through summary disposition or for other reasons (*e.g.*, mootness), the duty to update mandatory disclosures shall terminate with respect to that contention upon issuance of the Board order dismissing that contention.
13. All the parties may, at their option, update their disclosures under 10 C.F.R. § 2.336(d) through the use of e-mail alone. The Staff, however, will make the Hearing File available via the Electronic Hearing Docket.

The parties request that the Board endorse this agreement as part of its initial scheduling order.

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Morgan Lewis  
C O U N S E L O R S   A T   L A W

Respectfully submitted,

*Signed (electronically) by Steven P. Frantz*

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cc: Service List

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of	)	
	)	
EXELON NUCLEAR TEXAS HOLDINGS, LLC	)	Docket No. 52-042-ESP
	)	
(Early Site Permit for Victoria County Station Site)	)	July 6, 2011
	)	

**CERTIFICATE OF SERVICE**

I certify that on July 6, 2011 a copy of the “Agreement of the Parties Regarding Mandatory Discovery Disclosures” was served by the Electronic Information Exchange on the following recipients:

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