

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

August 16, 2011

## DB1/ 67892661.1

Respectfully submitted,

*Signed (electronically) by Jonathan M. Rund*

Steven P. Frantz

Jonathan M. Rund

Morgan, Lewis & Bockius LLP

1111 Pennsylvania Avenue, NW

Washington, DC 20004

Phone: 202-739-3000

Fax: 202-739-3001

E-mail: [sfrantz@morganlewis.com](mailto:sfrantz@morganlewis.com);

[jrund@morganlewis.com](mailto:jrund@morganlewis.com)

*Counsel for Exelon Nuclear Texas Holdings, LLC*

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Michael M. Gibson, Chairman  
Dr. Anthony J. Baratta  
Dr. Mark O. Barnett

In the Matter of

EXELON NUCLEAR TEXAS HOLDINGS,  
LLC

(Victoria County Station Site)

Docket No. 52-042

ASLBP No. 11-908-01-ESP-BD01

August \_\_, 2011

MEMORANDUM AND ORDER

(Amended Protective Order Governing the Disclosure of Protected Information)

Upon Consideration of the Joint Motion for Entry of an Amended Protective Order by Exelon Nuclear Texas Holdings, LLC (Exelon), Texans for a Sound Energy Policy (TSEP), and the U.S. Nuclear Regulatory Commission Staff (NRC Staff), we grant the parties' request and issue this Amended Protective Order, the terms of which are as follows:

1. This Protective Order amends and supersedes the Protective Order issued in this proceeding by the Chief Administrative Judge of the Atomic and Safety Licensing Board Panel on December 21, 2010, and shall govern the use of all Protected Information produced by, or on behalf of, Exelon, TSEP, and/or NRC Staff in this proceeding. Protected Information consists of information designated by Exelon, TSEP, or NRC Staff as sensitive unclassified security 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.”<sup>1</sup> This Protective Order shall remain in effect until specifically amended or terminated by a subsequent order issued by the 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, the parties’ mandatory disclosures pursuant to 10 C.F.R. § 2.336, and the NRC Staff’s hearing file pursuant to 10 C.F.R. § 2.1203 if they execute and file the attached Affidavit of Non-Disclosure: Board members and officers of TSEP; Exelon’s and TSEP’s designated legal counsel that have entered a notice of appearance in this proceeding and legal staff under their supervision; any employees, experts, or consultants engaged or retained by or on behalf of Exelon or TSEP, whether or not for a fee. Any individual that does not execute and file the Affidavit of Non-Disclosure is not authorized to receive access to the Protected Information. Affidavits of Non-Disclosure executed and filed pursuant to the December 21, 2010 Protective Order remain binding and effective, and thus individuals that have previously executed and filed any such Affidavit of Non-Disclosure need not execute and file an Affidavit of Non-Disclosure pursuant to this Amended Protective Order.

3. The terms of this Amended Protective Order do not apply to the NRC Staff, contractors, or NRC legal counsel. The NRC Staff’s 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 Exelon and TSEP. Protected Information shall not be used except as necessary for the conduct of a proceeding on

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<sup>1</sup> 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).

the Application. Exelon and TSEP shall take reasonable precautions to ensure that Protected Information is not distributed to unauthorized persons.

5. Exelon and TSEP 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.

6. As designated legal counsel for Exelon and TSEP, legal counsel that have entered a notice of appearance may allow their legal staff under their supervision access to the Protected Information as necessary in the course of their representation. Counsel shall be responsible for ensuring that their staff complies with the terms of this Order and the Affidavit of Non-Disclosure, and will be subject to sanctions for any violations by their staff.

7. Exelon and TSEP shall maintain within their possession or control a log of all copies of materials that contain Protected Information. Upon the termination of this proceeding or upon order by the Licensing Board or Commission, Exelon and TSEP shall return all materials containing Protected Information to the party from which it received the Protected Information 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 other parties to this proceeding within 15 days.

8. Any recipient of Protected Information 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. Exelon, TSEP, or NRC Staff may seek amendments to this Order or the Non-Disclosure Affidavits by filing a motion for amendment. Exelon and TSEP may have an

additional or substitute person(s) necessary for the preparation of their case be authorized to receive Protected Information either by written agreement with the other parties 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, and other authorized persons should be "checked" as recipients on the electronic service list. Nothing in this Order shall preclude a party to this proceeding 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 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 to be appropriate. Nothing in this Order restricts or waives Exelon's, TSEP'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.

It is so ORDERED.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Michael M. Gibson, Chairman  
Dr. Anthony J. Baratta  
Dr. Mark O. Barnett

In the Matter of

EXELON NUCLEAR TEXAS HOLDINGS,  
LLC

(Victoria County Station Site)

Docket No. 52-042

ASLBP No. 11-908-01-ESP-BD01

**NON-DISCLOSURE AFFIDAVIT**

I, \_\_\_\_\_, being duly sworn, states:  
(Print Name)

1. I have read the August \_\_, 2011 Atomic Safety and Licensing Board Amended 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 that 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 that 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 Licensing Board's Protective Order, which incorporates the terms and conditions of this affidavit, may result in the imposition of such sanctions on me that the Licensing Board 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.

\_\_\_\_\_  
(Name)

Subscribed to and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

Notary Public

My commission expires: \_\_\_\_\_

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

_____	)	
In the Matter of	)	
	)	Docket No. 52-042-ESP
EXELON NUCLEAR TEXAS HOLDINGS, LLC	)	
	)	
(Early Site Permit for Victoria County Station Site)	)	August 16, 2011
_____	)	

**CERTIFICATE OF SERVICE**

I certify that on August 16, 2011 a copy of the “Joint Motion for Entry of an Amended Protective Order” was served by the Electronic Information Exchange on the following recipients:

Michael M. Gibson, Chair  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: [michael.gibson@nrc.gov](mailto:michael.gibson@nrc.gov)

Dr. Mark O. Barnett  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: [mark.barnett@nrc.gov](mailto:mark.barnett@nrc.gov)

Dr. Anthony J. Baratta  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: [anthony.baratta@nrc.gov](mailto:anthony.baratta@nrc.gov)

Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Rulemakings and Adjudications Staff  
Washington, DC 20555-0001  
E-mail: [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)

Sarah W. Price, Esq.  
Laura Goldin, Esq.  
Kevin C. Roach, Esq.  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Mail Stop O-15D21  
Washington, DC 20555-0001  
E-mail: [sarah.price@nrc.gov](mailto:sarah.price@nrc.gov);  
[laura.goldin@nrc.gov](mailto:laura.goldin@nrc.gov);  
[kevin.roach@nrc.gov](mailto:kevin.roach@nrc.gov)

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Mail Stop: O-16C1  
Washington, DC 20555-0001  
E-mail: [ocaamail@nrc.gov](mailto:ocaamail@nrc.gov)

James B. Blackburn, Jr., Esq.  
Charles W. Irvine, Esq.  
Mary B. Conner, Esq.  
Blackburn Carter, P.C.  
4709 Austin Street  
Houston, TX 77004  
E-mail: [jbbblaw@blackburncarter.com](mailto:jbbblaw@blackburncarter.com);  
[charles@blackburncarter.com](mailto:charles@blackburncarter.com);  
[maryconner@blackburncarter.com](mailto:maryconner@blackburncarter.com)

*Signed (electronically) by Jonathan M. Rund*  
Jonathan M. Rund  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004  
Phone: 202-739-3000  
Fax: 202-739-3001  
E-mail: [jrund@morganlewis.com](mailto:jrund@morganlewis.com)

*Counsel for Exelon Nuclear Texas Holdings, LLC*