

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

In the Matter of	§	
	§	
EXELON NUCLEAR TEXAS HOLDINGS, LLC	§	Docket No. 52-042
	§	
EARLY SITE PERMIT FOR VICTORIA COUNTY STATION	§	
	§	

**JOINT MOTION TO DISMISS TEXANS FOR A SOUND ENERGY POLICY'S
MOTION TO REINSTATE CONTENTIONS AND
FOR LEAVE TO FILE A NEW CONTENTION, AND
TO ESTABLISH A SCHEDULE FOR FUTURE SUBMISSIONS**

On July 9, 2012, Texans for a Sound Energy Policy (“TSEP”) filed a Motion to reinstate two previously rejected contentions, TSEP-ENV-17 and TSEP-ENV-18, related to the U.S. Nuclear Regulatory Commission’s (“NRC’s”) Temporary Storage Rule (“TSR”).¹ In the alternative, TSEP sought leave to file a new contention also related to the TSR. The Motion was based on the D.C. Circuit’s June 8, 2012 decision in *New York v. NRC*, No. 11-1045, vacating and remanding the NRC’s Waste Confidence Decision Update and TSR.

Because the D.C. Circuit’s mandate has not yet issued, the parties recognize that this issue may be premature for Atomic Safety and Licensing Board (“Board”) consideration. Accordingly, to conserve the parties’ and Board’s resources and avoid potentially unnecessary briefing (and perhaps re-briefing) associated with this evolving situation, TSEP agrees to voluntarily dismiss without prejudice its Motion on the condition that the Board establishes a

¹ Texans for a Sound Energy Policy’s Amended Motion to Reinstate Contentions TSEP-ENV-17 and TSEP-ENV-18, or in the Alternative for Leave to File a New Contention (originally filed July 9, 2012; amended July 10, 2012) (“Motion”).

deadline for the submission of motions following the mandate's issuance. Specifically, the parties agree that assuming the mandate from the *New York* decision is issued, and subject to further instruction from the Commission concerning how motions or contentions based on the decision are to be addressed in individual NRC proceedings, any future motion and/or proposed new contention triggered by the decision would be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) if it is filed within 30 days of the mandate's issuance.

The Parties therefore request that the Board issue a single Order setting a deadline for TSEP to file a motion for leave to reinstate old contentions or submit new contentions, and simultaneously dismissing TSEP's pending Motion without prejudice. In the event that the Board is unable to set a deadline as described above, TSEP withdraws its conditional participation in this Joint Motion and requests that its pending Amended Motion to Reinstate Contentions TSEP-ENV-17 and TSEP-ENV-18, or in the Alternative for Leave to File a New Contention not be dismissed.

Pursuant to 10 C.F.R. § 2.323(b), TSEP, Exelon, and NRC Staff have consulted on this Joint Motion. All parties have indicated they support this Joint Motion.

Respectfully submitted,

BLACKBURN CARTER, P.C.

by: *s/ James B. Blackburn, Jr.*

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Executed in Accord with 10 C.F.R. § 2.304(d)

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of July, 2012, copies of the foregoing JOINT MOTION TO DISMISS TEXANS FOR A SOUND ENERGY POLICY'S MOTION TO REINSTATE CONTENTIONS AND FOR LEAVE TO FILE A NEW CONTENTION, AND TO ESTABLISH A SCHEDULE FOR FUTURE SUBMISSIONS has been served upon the following persons by Electronic Information Exchange.

s/ James B. Blackburn, Jr.

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