

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 Nos. 52-042

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

August 15, 2012

ORDER

(Concerning Revisions to the Rules of Practice)

On August 3, 2012, the Commission announced changes to 10 C.F.R. Part 2, effective September 4, 2012 (New Part 2 Rules).<sup>1</sup> Section II, entitled Effectiveness of the Final Rule, states that in open proceedings, “if there is a dispute over an adjudicatory obligation or situation arising prior to the effective date of the new rule, the former rule provisions would be used. However, the new or amended requirements will be effective and govern all obligations and disputes that arise after [September 4, 2012].”<sup>2</sup> Moreover, “[t]he new and amended requirements in the final rule will not be retroactively applied to presiding officer determinations and decisions issued prior to the effective date of the final rule.”<sup>3</sup> The Commission also instructed that “Licensing Boards should be aware of the effective date of the final rule and take the necessary steps to notify parties of their obligations once the final rule becomes effective.”<sup>4</sup>

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<sup>1</sup> Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562 (Aug. 3, 2012).

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

Thus, to the extent that any deadline in the Board's August 10, 2011 Initial Scheduling Order conflicts with the New Part 2 Rules, the New Part 2 Rules shall apply, effective September 4, 2012.<sup>5</sup> For example, the Initial Scheduling Order discusses the filing of new and amended contentions under both 10 C.F.R. § 2.309(c) and (f).<sup>6</sup> The New Part 2 Rules "consolidate the requirements for filings after the deadline and . . . clarify the intention of the regulations."<sup>7</sup> New "§ 2.309(c) incorporates the current § 2.309(f)(2)(i) through (iii) factors into final § 2.309(c)(i) through (iii)."<sup>8</sup> Similarly, all 10 C.F.R. Part 2 references in the Initial Scheduling Order will hereafter be to the New Part 2 Rules, effective September 4, 2012, and not to the 10 C.F.R. Part 2 provisions that were in effect when the order was published.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

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Michael M. Gibson, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
August 15, 2012

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<sup>5</sup> See Licensing Board Initial Scheduling Order (Aug. 10, 2011) (unpublished).

<sup>6</sup> Id. at 11.

<sup>7</sup> 77 Fed. Reg. at 46,582.

<sup>8</sup> Id.

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(Early Site Permit) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Concerning Revisions to the Rules of Practice)** have been served upon the following persons by Electronic Information Exchange.

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Docket No. 52-042-ESP

**ORDER (Concerning Revisions to the Rules of Practice)**

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[Original signed by Nancy Greathead]  
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Dated at Rockville, Maryland  
this 15<sup>th</sup> day of August 2012