

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

July 24, 2012

ORDER

(Granting Joint Motion to Dismiss and Setting Schedule)

On July 9, 2012, Texans for a Sound Energy Policy (TSEP) moved to reinstate two contentions, or in the alternative, for leave to file a new contention.<sup>1</sup> On July 10, 2012, this motion was amended (Amended Motion).<sup>2</sup> Both pleadings were based on a June 8, 2012 decision of the United States Court of Appeals for the District of Columbia Circuit in New York v. NRC.<sup>3</sup> On July 13, 2012, TSEP, the NRC Staff, and Exelon Texas Nuclear Holdings LLC filed a Joint Motion to Dismiss the Amended Motion (Joint Motion to Dismiss).<sup>4</sup> In the Joint Motion to Dismiss, the parties agreed, inter alia, that “[b]ecause the D.C.’s Circuit’s mandate has not yet

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<sup>1</sup> 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 (July 9, 2012).

<sup>2</sup> 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 (July 10, 2012).

<sup>3</sup> Id. See also New York v. NRC, No. 11-1045, slip. op. (D.C. Cir. June 8, 2012).

<sup>4</sup> 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 (July 13, 2012).

issued . . . [the Amended Motion] may be premature.”<sup>5</sup> The parties agreed that the Amended Motion should be dismissed without prejudice “on the condition that the Board establishes a deadline for the submission of motions following the mandate’s issuance.”<sup>6</sup> The parties also agreed that “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.”<sup>7</sup>

Loathe to upset an agreement among the parties, the Board GRANTS the Joint Motion to Dismiss without making a determination on the prematurity or timeliness of the Amended Motion. The Amended Motion is DISMISSED WITHOUT PREJUDICE. In this case, a motion for leave to file a new contention or a motion to reinstate concerning the issues raised in New York v. NRC will be timely under 10 C.F.R. § 2.309(f)(2)(iii) if it is filed within thirty days of the mandate’s issuance. The deadlines for any responsive pleadings on any such filing shall follow the responsive schedule outlined in the Board’s Initial Scheduling Order.<sup>8</sup>

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

/RA/

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Michael M. Gibson, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
July 24, 2012

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<sup>5</sup> Id. at 1.

<sup>6</sup> Id. at 1-2. The parties also agreed that this would be “subject to further instruction from the Commission concerning how motions or contentions based on the decision are to be addressed in individual NRC proceedings.” Id. at 2.

<sup>7</sup> Id.

<sup>8</sup> Licensing Board Initial Scheduling Order (August 10, 2011) at 11 (unpublished).

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 Licensing Board **ORDER (Granting Joint Motion to Dismiss and Setting Schedule)** have been served upon the following persons by Electronic Information Exchange.

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Docket No. 52-042-ESP

**ORDER (Granting Joint Motion to Dismiss and Setting Schedule)**

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

Dated at Rockville, Maryland  
this 24<sup>th</sup> day of July 2012