

March 17, 2009 (5:52 pm)
OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF
DOCKET NOS. 52-012
AND 52-013-COL

Robert Eye, Attorney
Kauffman Eye
112 SW 6TH Avenue, Suite 202
Topeka, Kansas 66603

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Public Citizen's Texas Office
1303 San Antonio
Austin, Texas 78701

Karen Hadden
SEED Coalition, Executive Director
1303 San Antonio, #100
Austin, Texas 78701

Susan Dancer
South Texas Association for Responsible
Energy
P.O. Box 209
Blessing, TX 77419

Eliza Brown,
SEED Coalition, Clean Energy Advocate
1303 San Antonio, #100
Austin, Texas 78701

Bill Wagner
2203 Belegarde
Bay City, TX 77414

March 17, 2009

RE: Appeal of Denial of Request for Sensitive Unclassified Non-Safeguards Information (SUNSI) regarding Combined License Application for the South Texas Project Nuclear Power Plant Units 3 and 4

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attention: Rulemakings and Adjudications Staff
HearingDocket@nrc.gov

Associate General Counsel for Hearings
Enforcement and Administration
Office of the General Counsel
Washington, DC 20555-0001
OGCmail@nrc.gov

Dear NRC:

We are writing to appeal the denial of our request of access to Sensitive Unclassified Non-Safeguards Information (SUNSI) as potential parties who will seek to intervene in and expect to have standing in the case regarding Combined License Application for the South Texas Project Nuclear Power Plant Units 3 and 4 of South Texas Project Nuclear Operating Company (STPNOC), in accordance with 10 CFR 2.309 and the Federal Register notice of hearing and opportunity to petition for leave to intervene (Vol. 74, No. 33, Friday, February 20, 2009).

The exact requirement to demonstrate standing that you relayed as a basis for decision in your March 12 letter was not clearly laid out previously and your interpretation exceeds the requirement noted in the federal register posting dated February 20, 2009. You also have exceeded the requirements that were utilized as a basis in determining SUNSI access for Comanche Peak, another nuclear project proposed in Texas.

Nonetheless, despite the fact that we object to the changing requirements being put forth, we

submit the following:

Susan Dancer is with South Texas Association for Responsible Energy lives in Blessing, Texas receiving mail at P.O. Box 209, Blessing, Texas, 77419. Bill Wagner resides at 2203 Belegarde, Bay City, Texas, 77414. They are seeking access to SUNSI documents. As citizens living near the proposed units, their health, safety and economic well being are foremost among their particularized interests that could be harmed by the construction and operation of two additional nuclear reactors at the South Texas Project and they expect to gain party status in the intervention process for South Texas Project Units 3 and 4.

The Sustainable Energy and Economic Development (SEED) Coalition is a statewide nonprofit (501c3) organization located at 1303 San Antonio St, #100, Austin, Texas, 78701 that expects to gain standing in the case. Susan Dancer and Bill Wagner, referenced above, are members of SEED Coalition who live within 50 miles of the proposed reactors. While Susan is associated with the South Texas Association for Responsible Energy, both Susan Dancer and Bill Wagner are also members of SEED Coalition and have authorized the organization to represent them and request a hearing on their behalf. Karen Hadden, Executive Director and Eliza Brown, Clean Energy Advocate, for the SEED Coalition seek SUNSI access on behalf of these SEED Coalition members.

Both Susan Dancer and Bill Wagner are also members of Public Citizen and have authorized the organization to represent them and request a hearing on their behalf. Public Citizen expects to gain standing in the case. Matthew Johnson, 1303 San Antonio, Austin, Texas, 78701, Researcher with Public Citizen's Texas Office seeks SUNSI access on behalf of these members.

Attorney Robert Eye, of Kaufman Eye, is also seeking SUNSI access as legal counsel for the individuals and organizations referenced above. His address is 112 SW 6th Avenue, Suite 202, Topeka, Kansas 66603.

As noted in previous correspondence, all of the individuals seeking SUNSI access have the technical competence, knowledge and skills to evaluate and use the information that would be made available. If need be, we agree to be bound by the terms of a Non-Disclosure Agreement or Affidavit and protective order setting forth terms and conditions to prevent unauthorized or inadvertent disclosure of SUNSI information.

Regarding Demonstrated Need for SUNSI Access:

As noted previously, the information provided in STPNOC's Environmental Report is insufficient in order for us to meaningfully participate in the intervention process.

There are literally hundreds of instances in the COLA where information was excluded for proprietary reasons, citing "commercial and financial" or "competitive advantage." Without viewing them, there is no way to determine if the information withheld could have significant bearing on our contentions and there appears to be no index to the information and all other SUNSI. We believe our case could be harmed without access to this information and all other SUNSI.

We utilized the following example, for purposes of illustration only. Tables 1.3-1 and 1.3-3 estimating the total project costs is one example of necessary information left out of the environmental report. There are no current estimates publicly available from the COLA applicants. If ratepayers in at least one utility market have the costs of nuclear power from STP

incorporated into their electricity rates, they have the right to know the expected costs of the project, as they will be affected financially by the project.

Access to this information is critically needed for us to fully review the license application. We are trustworthy and reliable leaders in our community.

Specific topics of SUNSI information that we are seeking include:

- Information related to proliferation resistant fuel recycling and transmutation technologies that minimize environmental or public health and safety effects. Proliferation resistant fuel recycling and transmutation technologies may have the effect of managing spent fuel in a way that minimizes adverse impacts to the public's health and the environment.
- Information regarding the doses that evacuees could be exposed to even if the evacuees are moved 25 miles beyond the South Texas Project site.
- Methodology for design basis accidents and should assume a worst-case scenario that includes a complete release of all radiation from both Units 3 and 4.
- A side-by-side comparison of nuclear fuels versus energy efficiency and renewable fuels, related to the effects of catastrophic accidents. Such a side-by-side comparison would no doubt indicate that a catastrophic loss of, for example, a wind generating accident or capacity loss would be negligible compared to a major loss of cooling accident at South Texas Units 3 and 4.
- Analysis of the wide variety of attack scenarios, including aircraft, breach of perimeter security and forced entry into the control room and other critical areas of the plant and the full range consequential impacts of radiological releases which would result.
- Design history and operational history reports and analysis for the ABWR.
- Analysis of the number of early deaths which would result within 25 miles if there were a serious accident at the South Texas project site, involving one or more reactors, the number of injuries within a 35 mile radius, and the financial consequences of all associated damage, using today's dollars. The only publicly available data on the subject as it relates to the South Texas Project is from 1980.

We are seeking SUNSI information in regard to all of these issues, beyond that which is publicly available in the license application and related materials.

Our comments, submitted at the Environmental Scoping meeting, detailed numerous additional questions and concerns. SUNSI regarding the COLA for Units 3 and 4 is necessary in order for us to fully understand and effectively research the many issues of concern that we have identified and in order to effectively participate in the intervention process.

CC: U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Hearing Docket

From: Eliza Brown [eliza.seedcoalition@gmail.com]
Sent: Tuesday, March 17, 2009 5:52 PM
To: Hearing Docket; OGCmail@nrc.gov; James Biggins
Cc: Karen Hadden; Bob Eye; Matthew Johnson; Susan Dancer
Subject: Re: Appeal in response to Request for SUNSI access-Disregard previous
Attachments: SUNSI Denial Appeal .pdf

Please disregard the draft word document that Karen Hadden just sent. Attached is our PDF appeal.

Regards,
Eliza Brown

--
Eliza Brown
Sustainable Energy & Economic Development (SEED) Coalition
1303 San Antonio #100
Austin, Texas 78701
512.637.9482 (office)
512.696.4914 (cell)

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Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
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CC: U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Received: from mail2.nrc.gov (148.184.176.43) by OWMS01.nrc.gov
(148.184.100.43) with Microsoft SMTP Server id 8.1.291.1; Tue, 17 Mar 2009
17:51:55 -0400

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Mar 2009 14:51:52 -0700 (PDT)

Date: Tue, 17 Mar 2009 16:51:52 -0500

Message-ID: <107f08810903171451j93188e6g2cd90afb15ec34ad@mail.gmail.com>

Subject: Re: Appeal in response to Request for SUNSI access-Disregard previous

From: Eliza Brown <eliza.seedcoalition@gmail.com>

To: <HearingDocket@nrc.gov>, <OGCmail@nrc.gov>, <james.biggin@nrc.gov>

CC: Karen Hadden <karen@seedcoalition.org>, Bob Eye <bob@kauffmaneye.com>,
Matthew Johnson <mjohnson@citizen.org>, Susan Dancer

<texasblessings@yahoo.com>

Content-Type: multipart/mixed; boundary="000e0cd13bc22a1f5304655793c4"
Return-Path: eliza.seedcoalition@gmail.com