

March 12, 2009

Mr. Robert Eye, Attorney  
Kaufman Eye  
112 SW 6<sup>th</sup> Avenue, Suite 202  
Topeka, Kansas 66603

DOCKETED  
USNRC

March 18, 2009 (4:55 pm)  
OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF  
DOCKET NOS. 52-012  
AND 52-013-COL

RE: Request for Sensitive Unclassified Non-Safeguards Information  
South Texas Project Nuclear Operating Company, South Texas Project  
Units 3 and 4, Docket Nos. 52-012 and 52-013

Dear Mr. Eye:

The Nuclear Regulatory Commission Staff (NRC Staff) is responding to your and your clients' requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) contained in the application for combined licenses for two additional units to be located at the South Texas Project in Matagorda County, Texas (Application). In your letter dated March 2, 2009, you and your clients request access to SUNSI information which South Texas Nuclear Operating Company and its co-applicants (collectively "STPNOC") requested be withheld pursuant to one or more proprietary claims under 10 CFR 2.390.

You request access to the information in Tables 1.3-1 "NINA Summary of Total Project Costs for STP Units 3 and 4 (Proprietary)" and 1.3-3 "CPS Energy Summary of Estimated Total Project Costs for STP Units 3 and 4 (Proprietary)" contained in STPNOC's Application, Revision 2, Part 1 "General and Financial Information" (September 24, 2008).

For the reasons stated below, the NRC Staff has determined that the requests by Susan Dancer, Bill Wagner, Robert Eye, Eliza Brown, Karen Hadden, Matthew Johnson, the SEED Coalition, and Public Citizen are not supported.

Pursuant to the "Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation" (SUNSI/SGI Order), the NRC Staff evaluated your requests to determine whether (1) there is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding, and (2) there is a legitimate need for access to SUNSI.

#### Standing

Both Ms. Dancer and Mr. Wagner provided information sufficient to determine that they each live in a location within 50 miles of the proposed plant. There is a reasonable basis to believe that they are likely to establish standing in this proceeding pursuant to 10 CFR § 2.309(d) and Commission precedent. Ms. Brown, Ms. Hadden, and Mr. Johnson, have not provided enough information to determine that a reasonable basis exists to believe that they personally, are likely to establish standing in this proceeding. Neither Ms. Brown, Ms. Hadden, nor Mr. Johnson reside within 50 miles of the proposed plant in order to benefit from the standing proximity presumption established in Commission precedent. Your request does not provide any

information to determine that Ms. Brown, Ms. Hadden, or Mr. Johnson are likely to establish standing independent of the 50 mile proximity presumption.

Your request letter also does not provide a reasonable basis to believe that either the SEED Coalition or Public Citizen are likely to establish standing. An organization may establish its standing to intervene based upon a theory of organizational standing (showing that its own organizational interests could be adversely affected by the proceeding), or representational standing (based upon the standing of its members). Organizations seeking to intervene in their own right must satisfy the same standing requirements as individuals seeking to intervene. Your letter does not indicate that you seek to establish organizational standing for the SEED Coalition or Public Citizen, and it provides no information to establish a reasonable basis to believe that either the SEED Coalition or Public Citizen will likely establish organizational standing. Where an organization seeks to establish representational standing, it must show that at least one of its members may be affected by the proceeding, it must identify that member by name and address and it must show that the member has authorized the organization to represent him or her and to request a hearing on his or her behalf. Further, for the organization to establish representational standing, the member seeking representation must qualify for standing in his or her own right, the interests that the organization seeks to protect must be germane to its own purpose, and neither the asserted claim nor the requested relief may require an individual member to participate in the organization's legal action.

The SEED Coalition information in your letter indicates that it has, "...members who expect to gain standing in the intervention, including those individuals listed here previously and others who are within 50 miles of the proposed reactors." However, neither of the two individuals listed previously in the letter, Susan Dancer or Bill Wagner, are indicated to be members of the SEED Coalition. Ms. Dancer is actually identified as a member of the "South Texas Association for Responsible Energy". Without identifying a member likely to have standing and establishing the additional elements to demonstrate representational standing, there is no reasonable basis to believe that the SEED Coalition will likely demonstrate standing.

The information in your letter provided to support standing for Public Citizen states, "Public Citizen also has members within 50 miles of the proposed reactors and expects to gain standing in the intervention on their behalf." Without identifying a member likely to have standing and establishing the additional elements to demonstrate representational standing, there is no reasonable basis to believe that Public Citizen will likely demonstrate standing.

#### Need for SUNSI

The SUNSI/SGI Order provides that a potential party seeking access to SUNSI information must identify the, "... requester's need for the information in order to meaningfully participate in this adjudicatory proceeding, particularly why publically available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention."

Your request specifically identifies Tables 1.3-1 and 1.3-3 as necessary information where you state,

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. If ratepayers in at least one municipal 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.

This does not meet the requirements of the SUNSI/SGI Order because you do not describe how you need this information to meaningfully participate in this adjudicatory proceeding. Particularly, you do not describe why publicly available versions of the Application would not be sufficient to provide the basis and specificity for a proffered contention. Without referencing the publicly available information in the Application and describing the basis for a proffered contention, you have not shown that you need access to the SUNSI information. Your statement that, "[a]ccess to this information is critically needed for us to fully review the license application" does not meet the requirements of the SUNSI/SGI Order to demonstrate a need for the SUNSI information.

Your request also states that, "...there are literally hundreds of instances in the Environmental Report..." of SUNSI information that has been withheld from the public. However, you only specifically identify Tables 1.3-1 and 1.3-3. To the extent that you did not specifically identify any other information to which you were seeking access, your request did not include the necessary information to determine that you have demonstrated a need for SUNSI access.

In conclusion, the NRC Staff has determined that Ms. Dancer and Mr. Wagner have demonstrated that there is a reasonable basis to believe that they are likely to establish standing to intervene, but that none of the requestors have demonstrated a need for access to SUNSI information. Therefore, your request for access to SUNSI information is denied. Pursuant to the SUNSI/SGI Order, you and/or your clients may challenge an adverse determination with respect to access to SUNSI or with respect to standing within 5 days after receiving this response. If you elect to file such a challenge, it should be directed to the Chief Administrative Judge, Atomic Safety and Licensing Board. In the event that a challenge document contains sufficient information to establish that your clients meet the requirements of the SUNSI/SGI Order, the NRC Staff will not oppose providing them access to pertinent material consistent with the SUNSI/SGI Order. If you have any questions concerning this matter, please contact me at 301-415-6305 or via e-mail at [james.biggin@nrc.gov](mailto:james.biggin@nrc.gov).

Sincerely,

/RA/

Counsel for the Staff  
James P. Biggins, Senior Attorney  
Office of the General Counsel  
Mail Stop O 15 D-21  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

CC: See Attached List

Docket Nos.: 52-012 and 52-013

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

This does not meet the requirements of the SUNSI/SGI Order because you do not describe how you need this information to meaningfully participate in this adjudicatory proceeding. Particularly, you do not describe why publicly available versions of the Application would not be sufficient to provide the basis and specificity for a proffered contention. Without referencing the publicly available information in the Application and describing the basis for a proffered contention, you have not shown that you need access to the SUNSI information. Your statement that, "[a]ccess to this information is critically needed for us to fully review the license application" does not meet the requirements of the SUNSI/SGI Order to demonstrate a need for the SUNSI information.

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In conclusion, The NRC Staff has determined that Ms. Dancer and Mr. Wagner have demonstrated that there is a reasonable basis to believe that they are likely to establish standing to intervene, but that none of the requestors have demonstrated a need for access to SUNSI information. Therefore, your request for access to SUNSI information is denied. Pursuant to the SUNSI/SGI Order, you and/or your clients may challenge an adverse determination with respect to access to SUNSI or with respect to standing within 5 days after receiving this response. If you elect to file such a challenge, it should be directed to the Chief Administrative Judge, Atomic Safety and Licensing Board. In the event that a challenge document contains sufficient information to establish that your clients meet the requirements of the SUNSI/SGI Order, the NRC Staff will not oppose providing them access to pertinent material consistent with the SUNSI/SGI Order. If you have any questions concerning this matter, please contact me at 301-415-6305 or via e-mail at [james.biggin@nrc.gov](mailto:james.biggin@nrc.gov).

Sincerely,

Counsel for the Staff  
James P. Biggins, Senior Attorney  
Office of the General Counsel  
Mail Stop O 15 D-21  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

CC: See Attached List

Docket Nos.: 52-012 and 52-013

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OFFICE	SA/AGCNR/OGC	AGCNR/OGC	NRO/DNRL
NAME	J Biggins	K Winsberg	G Wunder via email
DATE	3-12-09	3-12-09	3-12-09

OFFICIAL RECORD COPY

CC List:

Ms. Karen Hadden  
SEED Coalition, Executive Director  
1303 San Antonio, #100  
Austin, TX 78701

Mr. Matthew Johnson  
Public Citizen's Texas Office  
1303 San Antonio  
Austin, TX 78701

Ms. Susan Dancer  
South TX Association for Responsible  
Energy  
P.O. Box 209  
Blossing, TX 77419

Mr. Bill Wagner  
2203 Bolfbarde  
Bay City, TX 77414

Ms. Eliza Brown  
SEED Coalition, Clean Energy Advocate  
1303 San Antonio, #100  
Austin, TX 78701

Steven P. Frantz  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004

Mr. Michael K. Kotara, Executive Vice  
President  
CPS Energy  
145 Navarro Street  
P.O. Box 1771  
San Antonio, TX 78296

Mr. Steven Winn, President  
Nuclear Innovation North America, LLC  
521 Fifth Avenue, 30th Floor  
New York, NY 10175

Mr. Mark McBurnett, Vice President  
Regulatory Affairs  
South Texas Project Nuclear Operating  
Company  
P.O. Box 289  
Wadsworth, TX 77483

Mr. Scott Head, Manager  
Regulatory Affairs  
STP Nuclear Operating Company  
P. O. Box 289  
Wadsworth, TX 77483

Mr. Steve Winn  
NRG Texas LLC  
1301 McKinney, Suite 2300  
Houston, TX 77010

CC Via E-mail:

hearingdocket@nrc.gov  
bob@kauffmaneye.com (Robert V. Eye)  
karen@seedcoalition.org (Karen Hadden)  
eliza.seedcoalition@gmail.com (Eliza  
Brown)  
mjohnson@citizen.org (Matthew Johnson)

## Hearing Docket

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**From:** James Biggins  
**Sent:** Thursday, March 12, 2009 4:55 PM  
**To:** Hearing Docket; Robert V. Eye; Karen Hadden; Eliza Brown; mjohnson@citizen.org  
**Cc:** STPCOL  
**Subject:** Request for Sensitive Unclassified Non-Safeguards Information  
**Attachments:** sunsi response.pdf

**Expires:** Monday, May 11, 2009 12:00 AM

Please find attached, the NRC Staff's response to your request for access to SUNSI information related to the application for combined licenses for two additional units to be located at the South Texas Project in Matagorda County, Texas.

James Biggins, Senior Attorney  
Office of the General Counsel  
Mail Stop O 15 D-21  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
301-415-6305  
301-415-3725 (FAX)  
[james.biggins@nrc.gov](mailto:james.biggins@nrc.gov)

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Content-Type: application/ms-tnef; name="winmail.dat"  
Content-Transfer-Encoding: binary  
From: James Biggins <James.Biggins@nrc.gov>  
To: Hearing Docket <Hearing.Docket@nrc.gov>, "Robert V. Eye"  
<bob@kauffmaneye.com>, Karen Hadden <karen@seedcoalition.org>, Eliza Brown  
<eliza.seedcoalition@gmail.com>, "mjohnson@citizen.org"  
<mjohnson@citizen.org>  
CC: STPCOL <STP.COL@nrc.gov>  
Date: Thu, 12 Mar 2009 16:55:03 -0400  
Subject: Request for Sensitive Unclassified Non-Safeguards Information  
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