

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

Ann Marshall Young, Chair  
Dr. Gary S. Arnold  
Dr. Alice C. Mignerey

In the Matter of

LUMINANT GENERATION COMPANY LLC  
(Comanche Peak Nuclear Power Plant,  
Units 3 and 4)

Docket Nos. 52-034-COL and 52-035-COL

ASLBP No. 09-886-09-COL-BD01

May 27, 2009

MEMORANDUM  
(Regarding Oral Argument)

In preparation for oral argument to be held June 10-11, 2009, in the above-referenced proceeding, the parties are advised as follows:

(A) Counsel for the parties should be prepared to provide oral argument on (1) the admissibility of Petitioners' contentions; and (2) Luminant's Motion to Strike Portions of Petitioners' Reply, which will be taken up prior to argument on the contentions. Counsel should not merely repeat what has already been submitted in the parties' written filings, but should focus their arguments on responding to the final filings of the opposing parties, to the extent not already addressed, and on directly and concisely addressing certain questions listed below. Counsel for each party should plan to argue no more than ten (10) minutes on Luminant's motion and on each contention, and the Licensing Board may shorten or extend this time in individual instances as required and appropriate, based on, among other things, responses to the questions below and other questions posed verbally by the Board at oral argument.

(B) Counsel should be prepared to respond to the following questions, to the extent relevant with regard to the party each represents:

(1) How could the Licensing Board find Contention 1 to be admissible under the criteria of 10 C.F.R. § 2.309(f)(1)(i)-(vi), in light of (a) the Commission's April 27, 2009, Order Denying

Petitioners' Motion to Stay this proceeding; and (b) the Commission's May 18, 2009, Memorandum and Order in *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-09-08, 69 NRC \_\_\_\_ (May 18, 2009)?

(2) How could the Board admit Contention 2 or 3 in light of the currently pending proposed revision of the "waste confidence rule" at 10 C.F.R. § 51.23? See 73 Fed. Reg. 59,551 (Oct. 9, 2008); 73 Fed. Reg. 72,370 (Nov. 28, 2008).

(3) In what light, regarding Contentions 2 and 3, should the Board consider (a) Secretary of Energy Chu's March 2009 statement that the proposed Yucca Mountain Repository is not an option; and (b) former NRC Chairman Dale Klein's May 12, 2009, statement that proposed amendments to the waste confidence rule and related finding updates "assume that Yucca Mountain may not become available for a repository," anticipate that "a spent fuel repository [will] be available within 50-60 years beyond the period of licensed operation for any reactor," and "expand the period of confidence in safe on-site or off-site storage to 60 years beyond the licensed life of the reactor"? See <http://www.nrc.gov/reading-rm/doc-collections/commission/speeches/2009/s-09-012.html>.

(3)(c) How should the Board treat the terrorism-related aspect of Contention 3 (or Contention 19) in light of the Commission's decisions in *Amergen Energy Company, LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124 (2007), *aff'd*, *New Jersey Dep't of Env'tl. Protection v. U.S. Nuclear Regulatory Comm'n*, 561 F.3d 132 (2009); *Nuclear Management Company, LLC* (Palisades Nuclear Plant), CLI-07-9, 65 NRC 139 (2007); *System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-07-10, 65 NRC 144 (2007)? See also licensing board decisions in *South Carolina Electric & Gas Company* (Virgil C. Summer Nuclear Station, Units 2 and 3), LBP-09-2, 69 NRC \_\_ (2009); *Tennessee Valley Authority* (Bellefonte Nuclear Power Plant Units 3 and 4), LBP-08-16, 68 NRC \_\_ (2008); *Duke Energy Carolinas, LLC* (Combined License Application for William States Lee III Nuclear

Station, Units 1 and 2), LBP-08-17, 68 NRC \_\_ (2008); *Progress Energy Carolinas, Inc.*

(Shearon Harris Nuclear Power Plant, Units 2 and 3), LBP-08-21, 68 NRC \_\_ (2008).

(4) Do Petitioners, by providing no reply concerning Contentions 4, 5, 6, 10, and 12-19, concede that these contentions are not admissible?

(5) If not, (a) to what extent is the statement at 10 C.F.R. § 51.51(a), that “Table S-3 . . . may be supplemented by a discussion of the environmental significance of the data set forth in the table as weighed in the analysis for the proposed facility,” relevant in considering the admissibility of Contentions 4, 5, 12, and 14 under the requirements of 10 C.F.R. § 2.309(f)(1) (i)-(vi); and (b) what is there to support any argument that this COL case is a proper proceeding to consider the challenges, as stated in Contention 4, to an NRC rule based on EPA regulations and DOE predictions regarding radioactivity releases from a Yucca Mountain repository?

(6) Do Petitioners dispute that, under relevant NRC rules at 10 C.F.R. § 52.110, “decommissioning of a nuclear power plant is not complete, and a license will not be terminated, until the facility is completely dismantled and residual radiation at the site meets the limits [of] 10 C.F.R. Part 20, Subpart E,” which “cannot be met while spent fuel or HLW remains on the site”? NRC Staff’s Answer to Petition for Intervention and Request for Hearing (May 1, 2009) at 23.

(7) Address the impact of Applicant’s letters submitted May 26, 2009, on Contention 7.

(8) What regulatory provisions are relevant in consideration of Contention 8?

(9)(a) For contention 9, Petitioners should be prepared to clarify Dr. Makhijani’s reference to the Savannah River Study.

(9)(b) The parties should be prepared to address and clarify in greater detail the extent of any actual and genuine dispute raised in Contention 9 with parts of the Application that concern dose conversion factors as described in the NRC Staff’s and Applicant’s responses.

(10) What are the regulatory provisions and other legal authorities relevant to each contention alleging any omission(s) from the COLA?

(11) Do Petitioners dispute Applicant's statement that it will not be using MOX fuel? See Luminant's Answer Opposing Petition for Intervention and Request for Hearing (May 1, 2009) at 52.

(12) What environmental regulations relate to matters that might be taken into account in any considerations of global warming and climate change?

(13) Regarding Contention 13, does the Application address the radiological effects of potential accidents at Unit 1 and 2, and if so, what are those effects and in what part(s) of the Application are they, and should they, be reported or addressed?

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

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Ann Marshall Young, Chair  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
May 27, 2009<sup>1</sup>

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<sup>1</sup> Copies of this Order were sent this date by the agency's E-Filing system to counsel for all parties in the above-referenced proceedings.

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NUCLEAR REGULATORY COMMISSION

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(Comanche Peak Nuclear Power Plant, )  
Units 3 and 4) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM (REGARDING ORAL ARGUMENT) have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Nancy Greathead]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 27<sup>th</sup> day of May 2009