

June 15, 2009

Mr. Robert Eye, Esq.
Kaufman & Eye
112 SW 6th Avenue, Suite 202
Topeka, Kansas 66603
(Via E-mail: bob@kauffmaneye.com)

RE: June 5, 2009, Request for Sensitive Unclassified Non-Safeguards Information
Luminant Generation Co., L.L.C. (Comanche Peak Nuclear Power Plants, Units 3 and 4
Combined License Application), Dockets 52-034 and 52-035

Dear Mr. Eye:

The U.S. 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 the combined license (COL) for the two US-Advanced Pressurized Water Reactors (US-APWR) to be located adjacent to the existing Comanche Peak Nuclear Power Plant, Units 1 and 2 near Glen Rose in Somervell County, Texas. In your letter dated June 5, 2009, you and your clients request access to SUNSI information which Luminant Generation Co., L.L.C. and its co-applicants (collectively, "Applicant") have designated as SUNSI under 10 C.F.R. § 2.390 because it contains security related information.

You request access to the information filed by the Applicant regarding compliance with the requirements of 10 C.F.R. §§ 52.80(d) and 50.54(hh)(2) submitted to the NRC on May, 22, 2009. The Applicant provided a Notification of Filing regarding the submitted information, to which you refer in your request (ADAMS accession no. ML091460830 "Notification of Filing Related to Proposed Contention 7"). Your letter specifically requests access for "Karen Hadden, Eliza Brown and the undersigned [Robert V. Eye]." Although you identify Ms. Curran as a consultant for the SEED Coalition, you do not request access on her behalf or identify any need for her to access the SUNSI information.

For the reasons stated below, the NRC Staff has determined that the requests by Ms. Hadden and Ms. Brown, both of the SEED Coalition, for access to the information should be granted. As their legal counsel, you should be granted access as well.

Pursuant to the "Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation" ("SUNSI/SGI Order", 74 Fed. Reg. 6179), 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

As the Staff previously acknowledged in its Answer to the Petition, Petitioner, Nita O'Neal resides within 50 miles of the proposed plant, and therefore would qualify for standing to intervene in this proceeding in her own right. Staff Answer at 9; 10 CFR § 2.309(d). The SEED Coalition meets the standard for representational standing to participate as the representative of Ms. O'Neal, because her interests align with the interests that the petitioner wishes to protect. Staff Answer at 9-10; 10 CFR § 2.309. Therefore, there is a reasonable basis to believe that the

Petitioners, including the SEED Coalition, are likely to establish standing to participate in this NRC proceeding.

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 publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention."

Your request specifically identifies the information submitted by the Applicant on May 22, 2009 regarding the requirements under 10 CFR § 52.80(d) and 10 C.F.R. § 50.54(hh)(2) as necessary information. Your request references the Applicant's Notification of Filing, which identifies the information as containing:

a description and plans for implementation of the guidance and strategies intended to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities under the circumstances associated with the loss of large areas of the plant due to explosions or fire.

Your request arguably meets the requirements of the SUNSI/SGI Order because you reference your pending contention regarding compliance with the requirements in 10 CFR § 52.80(d) and 10 CFR § 50.54(hh)(2). Because the Applicant and the NRC Staff now argue that the contention is moot based on the submittal of the SUNSI information, the NRC Staff recognizes that the Petitioners need the information to determine whether the information meets a minimal threshold to either agree or refute the argument that the contention of omission is now moot. Therefore, a legitimate need exists for access to the information in order for you to meaningfully participate in the adjudication. Additionally, the NRC Staff notes that the Petitioners have 25 days from gaining access to the information to file any contentions based on the new information.

In conclusion, the NRC Staff has determined that the SEED Coalition has demonstrated that there is a reasonable basis to believe that it is likely to establish standing to intervene and that it has a legitimate need to access the SUNSI contained in the Applicant's report of May 22, 2009 in order to meaningfully participate in the adjudication.

Pursuant to requirements of the SUNSI/SGI Order, the terms and conditions for access to SUNSI will be set forth in a protective order and affidavit of non-disclosure. Access to the information will be granted once Ms. Hadden, Ms. Brown, and you have executed a non-disclosure affidavit and agree to be bound by the terms of the protective order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosures of SUNSI.

I am enclosing a proposed Protective Order and an Affidavit of Non-Disclosure for your consideration. I will be in contact to discuss filing a Joint Motion for entry of the proposed Protective 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.

Sincerely,

/Signed Electronically By/

Counsel for the Staff
James P. Biggin, 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

Enclosures: Proposed Protective Order and Affidavit of Non-Disclosure
Notice of NRC Staff Granting of Request for Sensitive Unclassified Non-Safeguards Information (June 15, 2009)

Docket Nos.: 52-034 and 52-035

CC Via E-mail:

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