

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 & 4)

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

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

July 1, 2009

MEMORANDUM AND ORDER
(Protective Order Governing the Disclosure of Protected Information)

Upon consideration of the Joint Motion for Entry of a Protective Order of the Nuclear Regulatory Commission Staff (NRC Staff), the SEED Coalition through Ms. Karen Hadden and Ms. Eliza Brown (Petitioners), represented by Mr. Robert Eye with the law firm of Kauffman and Eye, and Luminant Generation Co. LLC (Applicant), represented by Mr. Steven Frantz of Morgan, Lewis & Bockius LLP, the Licensing Board hereby GRANTS the motion and issues this Protective Order, the terms of which are as follows:

1. This Protective Order shall govern the Petitioners access to and use of protected information in the correspondence from Applicant to the NRC Staff dated May 22, 2009, regarding the requirements under 10 C.F.R. § 52.80(d) and 10 C.F.R. § 50.54(hh)(2) and any related documents (Protected Information). This Protective Order shall remain in effect until specifically terminated by the Licensing Board or the Commission.
2. Ms. Karen Hadden, Ms. Eliza Brown, and their designated legal counsel, Mr. Robert Eye, shall each execute and file the attached Non-Disclosure Affidavit in order to gain access to the information in the correspondence from Applicant to the NRC Staff dated

May 22, 2009, regarding the requirements under 10 C.F.R. 52.80(d) and 10 C.F.R. 50.54(hh)(2) and any related documents. Petitioners who do not execute and file the Non-Disclosure Affidavit will not receive access to the Protected Information.

3. Other than filing deadlines set forth in this Order, the terms of this Protective Order do not apply to the NRC Staff, contractors, or NRC legal counsel. The NRC Staff's use of Protected Information is governed by NRC regulations and policies as well as other applicable law.

4. Protected Information shall be treated as confidential by Petitioners. Protected Information shall not be used except as necessary for the conduct of a proceeding on the Application. Petitioners may make copies of and take notes of Protected Information, but such copies and notes become Protected Information subject to the terms of this Order. Petitioners shall take reasonable precautions to ensure that Protected Information is not distributed to unauthorized persons.

5. The Petitioners shall maintain all Protected Information in a secure location, and shall not provide the Protected Information to anyone not authorized to receive it pursuant to this Order.

6. As legal counsel for the Petitioners, Mr. Eye may allow legal staff under his supervision access to the Protected Information as necessary in the course of his representation. Mr. Eye shall be responsible for ensuring that his staff complies with the terms of the Order and the Non-Disclosure Affidavit and will be subject to sanctions for any violations by his staff.

7. The Petitioners shall maintain a log of all copies or materials that contain the Protected Information within their possession or control. Upon the termination of the proceeding on the Application or upon order of the Licensing Board or Commission, the Petitioners shall return all materials containing Protected Information to the Applicant or destroy the materials,

except that copies of filings, official transcripts, exhibits, and notes may be redacted so that only those portions containing Protected Information are destroyed. Petitioners shall execute a Non-Disclosure Affidavit stating that the Protected Information within their possession or control has been returned or destroyed, and shall serve a copy of the executed Non-Disclosure Affidavit upon the Applicant and NRC Staff within fifteen (15) days.

8. Petitioners who have reason to suspect that Protected Information may have been lost or misplaced, or that Protected Information has otherwise become available to unauthorized persons shall promptly notify the Licensing Board of those suspicions and the reason for them.

9. The Board may alter or amend this Protective Order and resolve disputes. The Petitioners, Applicant, or NRC Staff may seek amendments to this Order or the Non-Disclosure Affidavits by filing a motion for amendment. Petitioners may have an additional or substitute person(s) necessary for the preparation of her or his case be authorized to receive Protected Information either by written agreement with the Applicant and the NRC Staff or by filing a motion for amendment. Any additional or substitute person shall be subject to the terms of this Order and must execute and file a Non-Disclosure Affidavit in order to be authorized to receive Protected Information.

10. Pleadings or other documents for filing that contain information protected pursuant to this Order shall be filed electronically using the E-Filing system. The person filing the document must properly choose the option to prevent the document from being filed in the public docket. Only members of the Board, NRC Staff counsel, Applicant's counsel, and authorized persons should be "checked" as recipients on the electronic service list. The Petitioners shall take the necessary actions to obtain a digital certificate and file documents in this proceeding using the E-Filing system. If any party to a proceeding on this Application intends to submit an exhibit, testimony, or pleading containing Protected Information without

using the E-Filing system, the party shall notify the Licensing Board prior to such filing. Nothing in this Order shall preclude a party to a proceeding on the Application from objecting to the use of an exhibit, testimony, or a pleading because it contains Protected Information. The Board may issue additional orders concerning the use of Protected Information at a hearing.

11. Nothing in this Order shall preclude any person from seeking public disclosure of Protected Information in accordance with NRC regulations. Nothing in this Order shall preclude any person from seeking through discovery in any other administrative or judicial proceeding, information protected by this Order.

12. Any violation of this Protective Order or of any Non-Disclosure Affidavit executed hereunder may result in the imposition of sanctions as the Licensing Board or the Commission may deem to be appropriate. Nothing in this Order restricts or waives the Applicant's or NRC's rights to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Information.

13. The Petitioners must file executed Non-Disclosure Affidavits within three (3) days after the service of this Order. The Applicant shall provide a copy of the Protected Information contained in the May 22, 2009, correspondence within five (5) days after service of the executed Non-Disclosure Affidavits.

14. The Petitioners must file any proposed SUNSI contentions within twenty-five (25) days after receipt of or access to that information.

15. The NRC Staff and the Applicant may file Answers to the proposed SUNSI contentions within twenty-five (25) days after service of any proposed contentions.

NON-DISCLOSURE AFFIDAVIT

I, _____, being duly sworn, states:

1. I have read the July 1, 2009, Atomic Safety and Licensing Board protective order issued in this combined license proceeding for Comanche Peak Nuclear Power Plant Units 3 and 4, Docket Nos. 52-034 and 52-035, and will comply in all respects with its terms and conditions regarding the protected information produced in connection therewith. I will protect and keep confidential all Sensitive Unclassified Non-safeguards Information (SUNSI) including security related and/or proprietary information in accordance with the terms of this Non-Disclosure Affidavit.
2. I will not disclose SUNSI to anyone except an authorized person. I will protect documents containing or revealing SUNSI in written or recorded form (including any portions of transcripts of in camera hearings, filed testimony, or any other documents that contain or reveal such SUNSI), so that the SUNSI contained therein remains at all times under the control of an authorized person and is not revealed to anyone else.
3. When not under my direct control or the direct control of another authorized person, I will keep and protect all documents containing or revealing SUNSI (including, without limitation, transcripts, pleadings that I may generate, and any notes and copies that I may make) in a secure locked place such as a filing cabinet, closet, or other storage container. I will not transmit by facsimile transmission any material containing SUNSI.
4. Each document that contains or reveals SUNSI shall be marked "Contains SUNSI Information" in a conspicuous manner.
5. Neither during nor after this proceeding, will I publicly reveal any SUNSI that I receive by virtue of this proceeding as long as the information remains SUNSI and is not otherwise a matter of public record.
6. I acknowledge that any violation of the terms of this affidavit or the Atomic Safety and Licensing Board's protective order, which incorporates the terms of this affidavit, may result in the imposition of such sanctions on me that the Atomic Safety and Licensing Board or the Commission may deem to be appropriate.

WHEREFORE, I do solemnly agree to protect and keep confidential such protected information as may be disclosed to me in this proceeding, in accordance with the terms of this affidavit.

(Name)

Subscribed to and sworn before me this _____ day of _____, 2009.

Notary Public

My commission expires:

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
LUMINANT GENERATION COMPANY, LLC) Docket Nos. 52-034-COL
) and 52-035-COL
)
)
(Comanche Peak Nuclear Power Plant,)
Units 3 and 4))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM AND ORDER (PROTECTIVE ORDER GOVERNING THE DISCLOSURE OF PROTECTED INFORMATION) have been served upon the following persons by Electronic Information Exchange.

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Docket Nos. 52-034-COL and 52-035-COL
MEMORANDUM AND ORDER (PROTECTIVE ORDER GOVERNING THE
DISCLOSURE OF PROTECTED INFORMATION)

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[Original signed by Nancy Greathead]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 1st day of July 2009