

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

August 7, 2009

ORDER

(Regarding Briefing on Handling SUNSI in Board Orders and Oral Argument)

The parties have recently filed briefs on the mootness of Contention 7, and three of the briefs were filed as non-public documents because they contain “sensitive unclassified non-safeguards information” (SUNSI), pursuant to a Protective Order previously issued in this proceeding.¹ The Licensing Board has also, in response to proposals by the parties, set deadlines for the submission of “SUNSI contentions” and responses thereto.² It is possible that the Board may, in orders ruling on the issues addressed in the preceding filings, have to refer to SUNSI in some manner, and that, in any oral argument that may be held on any SUNSI contentions, SUNSI may as well arise.

In view of the preceding circumstances, the Board hereby directs all parties to brief the following issues:

What law (including statutes, rules, and/or caselaw) addresses (1) how the Licensing Board should treat any SUNSI in any Memoranda or Orders it may issue; (2) how SUNSI should be handled in any proceedings such as oral argument or a hearing; (3) how SUNSI should be treated in any transcripts of hearings; and (4) how SUNSI should be handled in any other contexts that may arise in this proceeding.

¹ Licensing Board Memorandum and Order (Protective Order Governing the Disclosure of Protected Information) (July 1, 2009) at 3-4 (unpublished).

² *Id.* at 4-5; Order (Amending Protective Order and Extending Time for Filing New Contentions Based on SUNSI Information) (July 16, 2009) at 2 (unpublished).

All parties shall file simultaneous briefs on these questions and any related matters on August 27, 2009; all parties shall file responses by September 3, 2009; and any replies shall be filed by September 10, 2009. Briefs shall state in detail what any and all such law provides (including as compared, for example, to the provisions of 10 C.F.R. Part 73 relating to Safeguards Information, and the provisions of 10 C.F.R. Part 95 relating to Classified National Security Information and Restricted data) and address how such law should appropriately be applied to the conduct of this proceeding, as specified in (1) through (4) of the above-stated issues.

In addition, the parties shall add the Licensing Board's law clerk, Matthew Rotman, to the list of persons authorized to receive non-public filings, as he will be assisting the Board in addressing matters contained in such filings (and will observe appropriate procedures for their protection).

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Ann Marshall Young, Chair
ADMINISTRATIVE JUDGE

/RA/

Dr. Gary S. Arnold
ADMINISTRATIVE JUDGE

/RA by Edward R. Hawkens for/

Dr. Alice C. Mignerey
ADMINISTRATIVE JUDGE

Rockville, Maryland
August 7, 2009³

³ Copies of this Order were filed this date with the agency's E-filing system for service to all parties.

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (REGARDING BRIEFING ON HANDLING SUNSI IN BOARD ORDERS AND ORAL ARGUMENT) have been served upon the following persons by Electronic Information Exchange.

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Docket Nos. 52-034-COL and 52-035-COL
LB ORDER (REGARDING BRIEFING ON HANDLING SUNSI IN BOARD ORDERS
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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 7th day of August 2009