

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of)	
)	Docket Nos. 52-012-COL
STP NUCLEAR OPERATING COMPANY)	52-013-COL
)	
(South Texas Project Units 3 and 4))	September 2, 2009
)	

**STP NUCLEAR OPERATING COMPANY’S UNOPPOSED
REQUEST FOR AN EXTENSION TO APPEAL LBP-09-21**

In accordance with 10 C.F.R. §§ 2.307 and 2.323, STP Nuclear Operating Company (“STPNOC”), applicant in the above-captioned proceeding, hereby requests that the Commission extend the deadline for STPNOC to appeal the Atomic Safety and Licensing Board (“Board”) decision in LBP-09-21.

On September 20, 2007, STPNOC submitted an application to the Nuclear Regulatory Commission (“NRC”) for combined licenses for STP Units 3 and 4.¹ The Sustainable Energy and Economic Development Coalition, Susan Dancer, the South Texas Association for Responsible Energy, Daniel A. Hickl, Public Citizen, and Bill Wagner (“Intervenors”) filed a “Petition for Intervention and Request for Hearing” (“Petition”) on April 21, 2009, alleging 28 separate contentions. Additionally, on August 14, 2009, the Intervenors submitted seven late-filed contentions related to the Mitigative Strategies Report that STPNOC submitted to comply with the requirements of 10 C.F.R. §§ 52.80(d) and 50.54(hh)(2).²

¹ South Texas Project Nuclear Operating Company; Notice of Receipt and Availability of Application for a Combined License, 72 Fed. Reg. 60,394 (Oct. 24, 2007).

² Intervenors’ Contentions Regarding Applicant’s Submittal Under 10 C.F.R. § 52.80 and 10 C.F.R. § 50.54(hh)(2) and Request for Subpart G Hearing (Aug. 14, 2009).

On August 27, 2009, the Board, in LBP-09-21, granted the Intervenor's request for a hearing.³ The Board concluded that each of the Intervenor's had demonstrated standing and that Contention 21 regarding accidents at co-located units is admissible.⁴ However, the Board did not address the admissibility of nine of the contentions from the Petition, stating that it intends to issue a subsequent order in September 2009 that addresses their admissibility.⁵ The Board stated that any appeal of LBP-09-21 is due within 10 days from the date of service of the decision, *i.e.*, September 8, 2009.⁶ Additionally, the Board has not ruled on the seven late-filed contentions.

The Board's decision to delay ruling on nine contentions from the original Petition and the existence of the seven pending late-filed contentions place STPNOC in an unusual procedural posture regarding an appeal of LBP-09-21.⁷ The NRC regulations, 10 C.F.R. § 2.311(d), state that an order granting a request for a hearing, such as LBP-09-21, "is appealable by a party other than the requestor/petitioner on the question as to: (1) Whether the request for hearing or petition to intervene should have been wholly denied." Therefore, if STPNOC now appeals LBP-09-21, then Section 2.311(d) appears to force STPNOC to also appeal any future Board decision admitting any of the remaining contentions or to withdraw the initial appeal. Conversely, if STPNOC chooses not to appeal LBP-09-21, then Section 2.311(d) could prevent STPNOC from appealing the later admission of any of the remaining contentions, because it would not be able to argue that the request for hearing should have been "wholly denied."

³ *South Texas Project Nuclear Operating Co.* (South Texas Project Units 3 and 4), LBP-09-21, 70 NRC ___, slip op. at 60 (Aug. 27, 2009).

⁴ *Id.* at 4-5, 36-39.

⁵ *Id.* at 1-2.

⁶ *Id.* at 61 (referencing 10 C.F.R. § 2.311).

⁷ *See Shieldalloy Metallurgical Corp.* (Newfield, New Jersey Facility), CLI-07-20, 65 NRC 499, 501 (2007) (stating that deferring consideration of some contentions is not the usual NRC practice).

To prevent this confusion, STPNOC requests that the Commission extend the time limit for STPNOC to appeal, under Section 2.311, LBP-09-21 and any subsequent Board decisions on pending contentions to correspond with the time limit to appeal the future Board decision ruling on the last of the currently pending contentions, *i.e.*, within 10 days from the last Board decision ruling on the admissibility of the pending contentions. As stated in 10 C.F.R. § 2.307(a), the standard for such an extension is “good cause.” STPNOC has good cause for the extension, because the extension would improve judicial efficiency, reduce cost and burden, and not harm any of the parties.

First, the extension would improve judicial efficiency because no unnecessary appeals would be filed. STPNOC would be able to evaluate the Board’s decisions on all of the contentions submitted by the Intervenors at the same time and then determine whether an appeal is appropriate because the request for a hearing should have been “wholly denied.” This will ensure an efficient adjudicatory process.

Second, the extension would reduce the cost and burden on all parties. If the extension is not granted, then STPNOC may be required to incur the cost and burden of appealing LBP-09-21 now, even if the appeal would later be withdrawn based on the Board’s decision on any pending contentions. Similarly, an appeal of LBP-09-21 now would require the Intervenors and the NRC staff to evaluate the appeal and determine how to respond. In this regard, the Intervenors may be required to prepare a response to the appeal that would become unnecessary if STPNOC determines not to appeal any later Board decision admitting other contentions. The extension would also reduce the potential burden on the Commission to evaluate any unnecessary appeals.

Finally, the extension would not harm any of the parties. The extension would not delay the proceeding because the new appeal deadline would correspond with the appeal deadline for a

future Board decision on the remaining contentions. Additionally, the extension will not require additional filings by any of the parties, but would reduce the potential future filings.

Furthermore, STPNOC, pursuant to 10 C.F.R. § 2.323(b), contacted counsel for the Intervenors and counsel for the NRC staff regarding this request for an extension. Counsel for the Intervenors and the NRC staff stated that they do not oppose the extension requested herein.

An extension also is consistent with the Commission's decision in *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-11, 59 NRC 203 (2004). In *Catawba*, the applicant for a license amendment appealed a licensing board decision admitting various contentions.⁸ The Commission dismissed the appeal as premature because the *Catawba* licensing board had not yet ruled on all pending contentions.⁹ The Commission stated that “for a license applicant . . . to take an appeal under . . . section 2.714a(c) [now Section 2.311(d)], the applicant must contend that, after considering *all pending contentions*, the Board has erroneously granted a hearing to the petitioner.”¹⁰ Thus, in *Catawba*, the Commission would not consider an appeal of a licensing board decision until the licensing board had ruled on the admissibility of all pending contentions. Similarly, STPNOC's extension request would postpone an appeal until the Board has ruled on all pending contentions.

For the foregoing reasons, STPNOC has good cause for extension of the deadline for appealing LBP-09-21. Given the approaching deadline specified by the Board for filing an

⁸ *Catawba*, CLI-04-11, 59 NRC at 206.

⁹ *Id.* at 207.

¹⁰ *Id.* at 208 (emphasis added).

appeal of LBP-09-21, STPNOC respectfully requests prompt consideration of this extension request.

Respectfully submitted,

Signed (electronically) by Alvin H. Gutterman

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Dated in Washington, D.C.
this 2nd day of September 2009

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CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2009 a copy of “STP Nuclear Operating Company’s Unopposed Request for an Extension to Appeal LBP-09-21” was served by the Electronic Information Exchange on the following recipients:

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