UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	Docket Nos. 52-012-COL
	)	52-013-COL
STP NUCLEAR OPERATING COMPANY	)	
	)	
(South Texas Project Units 3 and 4)	)	November 30, 2009

APPLICANT'S MOTION TO DISMISS CONTENTIONS 8, 9, AND 14 AS MOOT

I. INTRODUCTION

In accordance with 10 C.F.R. § 2.323(a), STP Nuclear Operating Company ("STPNOC"), applicant in the above-captioned proceeding, hereby submits this Motion requesting that the Atomic Safety and Licensing Board ("Board") dismiss Contentions 8, 9, and 14 as moot. As admitted by the Board, these contentions address the omission of information from the Environmental Report ("ER") for STP Units 3 and 4 regarding the potential environmental impacts associated with any increase in radionuclide concentration in the Main Cooling Reservoir ("MCR") due to operation of STP Units 3 and 4 (Contention 8), any increased tritium concentration in groundwater due to operation of STP Units 3 and 4 (Contention 9), and seepage from the MCR into the adjacent shallow groundwater (Contention 14).

As discussed below, STPNOC recently identified revisions to its ER that include this information, thus rendering Contentions 8, 9, and 14 moot. Accordingly, Contentions 8, 9, and 14 should be dismissed.

II. PROCEDURAL BACKGROUND

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. The Petition included Contentions 8, 9, and 14, which claimed various deficiencies with the ER for STP Units 3 and 4 related to the MCR.[2]

The Board admitted Contentions 8, 9, and 14 on September 29, 2009.[3] As admitted by the Board, these contentions were limited as follows:

> Contention 8. The Environmental Report fails to address adequately the environmental impacts associated with the increase in radionuclide concentration in the MCR due to operation of STP Units 3 & 4.
>
> Contention 9. The Environmental Report fails to address the environmental impacts associated with the increase in radionuclide concentration in the MCR [specifically increased tritium in groundwater] due to operation of STP Units 3 & 4.
>
> Contention 14. The Environmental Report fails to analyze the environmental impacts of unregulated seepage from the MCR into the adjacent shallow groundwater.[4]

Thus, these contentions allege various omissions of environmental impacts from the ER for STP Units 3 and 4.

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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 Petition at 32-35, 40.

3 *South Texas Project Nuclear Operating Co.* (South Texas Project Units 3 and 4), LBP-09-25, 70 NRC __, slip op. at 2-9, 21-25 (Sept. 29, 2009).

4 *Id.* at 31.

On November 12, 2009, STPNOC submitted a notification to the Board regarding Contentions 8, 9, and 14.[5] That notification informed the Board that STPNOC submitted a letter to the NRC identifying revisions to the ER for STP Units 3 and 4 on November 11, 2009.[6] STPNOC is revising ER Sections 2.3.1, 5.2, and 5.4 to provide additional information on the potential environmental impacts associated with any increase in radionuclide concentration in the MCR due to operation of STP Units 3 and 4, any increased tritium concentration in groundwater due to operation of STP Units 3 and 4, and seepage from the MCR into the adjacent shallow groundwater.[7]

III. LEGAL STANDARDS

The Commission has held: "[W]here a contention is 'superseded by the subsequent issuance of licensing-related documents' . . . the contention must be disposed of or modified."[8] Similarly, the Commission has stated: "Where a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant . . ., the contention is moot."[9] As explained below, STPNOC identified revisions to the ER that provide the information the Board determined to be omitted, thus rendering Contentions 8, 9, and 14 moot.

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5 Letter from S. Burdick, Counsel for STPNOC, to the Board, Notification of Filing Related to Contentions 8, 9, and 14 (Nov. 12, 2009) ("Notification Letter").

6 Attachment to Notification Letter, Letter from M. McBurnett, STPNOC, to NRC, Proposed Revision to Environmental Report (Nov. 11, 2009) ("ER Letter").

7 ER Letter, Attachments 1-3. On November 23, 2009, STPNOC submitted a minor revision to the information in the ER Letter for ER Section 5.4, but this revision did not change any of the conclusions in this ER section. *See* Letter from S. Burdick, Counsel for STPNOC, to the Board, Notification of Filing Related to Contention 8 (Nov. 24, 2009).

8 *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 382 (2002) (citing *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1050 (1983)).

9 *Id.* at 383.

IV. CONTENTIONS 8, 9, AND 14 SHOULD BE DISMISSED

Contentions 8, 9, and 14 are contentions of omission regarding various environmental impacts related to the MCR. As discussed below, the revisions to the ER identified by STPNOC provide additional information to address all of the information alleged to be omitted by these contentions.

A. The Identified ER Revisions Fully Address Contention 8

Contention 8 relates to the alleged omission of environmental impacts due to increased radionuclide concentration in the MCR following the addition of STP Units 3 and 4 to the STP site.[10] The Board explained that the "Petitioners have alleged that Applicant has failed to address the environmental impacts associated with an increase of radionuclides in the MCR attributable to the operation of STP Units 3 and 4."[11] These environmental impacts were specifically related to "increased concentrations of radionuclides in the sediment of the MCR, in the shallow groundwater adjacent to the MCR, in the watercourse that receives discharges from the MCR, the Colorado River, and in the MCR itself."[12]

The identified ER revisions fully address the topics encompassed within Contention 8. First, STPNOC created a new ER Section 2.3.1.1.2.1, "Seepage from the MCR," that consolidates information related to seepage from the MCR and provides additional information on the flow of that seepage water.[13] This section explains that seepage from the MCR has two flow paths: (1) part of the seepage is collected by the relief well system and then discharges to surface waters, including the Colorado River, Little Robbins Slough, East Fork of Little Robbins

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[10] *South Texas Project*, LBP-09-25, slip op. at 6-7.

[11] *Id.* at 6.

[12] *Id.* at 7 (citations omitted).

[13] ER Letter, Attachment 1.

Slough, and the West Branch of the Colorado River; and (2) part of the seepage bypasses the relief wells and continues in the Upper Shallow Aquifer.[14]

Second, STPNOC revised ER Section 5.2.3 to provide additional information on the environmental impacts of tritium due to operation of STP Units 3 and 4.[15] Specifically, STPNOC revised ER Section 5.2.3.1 to address the environmental impacts of tritium in surface waters, including the MCR itself, the Colorado River through discharges from the MCR, and other surface waters.[16] Because the resulting tritium concentrations would be below the Environmental Protection Agency ("EPA") drinking water standard, these impacts would be SMALL.[17] Additionally, STPNOC created a new ER Section 5.2.3.2 that addresses the environmental impacts of tritium in groundwater.[18] Here again, because the tritium concentrations in groundwater (including well water) would be below the EPA drinking water standard, the impacts would be SMALL.[19]

Finally, STPNOC revised ER Section 5.4.1 to provide additional information on the environmental impacts of radionuclides (other than tritium) due to operation of STP Units 3 and 4.[20] This section concludes:

> Based on the low concentrations of radionuclides detected in the historical monitoring of the water and sediment in the MCR, the expected minimal radionuclide contributions discharged to the MCR as a result of the addition of STP 3 & 4, and the fact that the radionuclide concentrations in the water of the MCR would be less than the limits in 10 CFR 20, impacts to the water and sediments in

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14 *Id.*, Attachment 1, at 1-2.

15 *Id.*, Attachment 2.

16 *Id.*, Attachment 2, at 4-6.

17 *Id.*, Attachment 2, at 5-6.

18 *Id.*, Attachment 2, at 6-8.

19 *Id.*, Attachment 2, at 7-8.

20 *Id.*, Attachment 3.

> the MCR, and from discharges from the MCR to groundwater and surface water, would be SMALL.[21]

In summary, these revisions to the ER fully address all of the alleged omissions within the scope of Contention 8.

B. The Identified ER Revisions Fully Address Contention 9

Contention 9 relates to the alleged omission of environmental impacts due to increased tritium in groundwater following the addition of STP Units 3 and 4 to the STP site.[22] The Board concluded that the "Petitioners' assertion that the ER must address the potential effects of increased tritium releases to groundwater establishes an admissible contention of omission."[23]

The identified ER revisions fully address the topics encompassed within Contention 9. In fact, the revisions not only address tritium in groundwater, but also address tritium in surface water.[24] As discussed above, STPNOC revised ER Section 5.2.3 to provide additional information on the environmental impacts of tritium due to operation of STP Units 3 and 4.[25] STPNOC revised ER Section 5.2.3.1 to address the environmental impacts of tritium in surface waters.[26] Additionally, STPNOC created a new ER Section 5.2.3.2 that addresses the environmental impacts of tritium in groundwater.[27] This section calculates the tritium concentration at the nearest offsite well to be approximately 1,600 pCi/L, which is well below the EPA drinking water standard for tritium of 20,000 pCi/L.[28] Because all of the tritium

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21 *Id.*, Attachment 3, at 4.

22 *South Texas Project*, LBP-09-25, slip op. at 7-9.

23 *Id.* at 9.

24 *See* ER Letter, Attachment 2.

25 *Id.*

26 *Id.*, Attachment 2, at 4-6.

27 *Id.*, Attachment 2, at 6-8.

28 *Id.*, Attachment 2, at 8.

concentrations in these surface waters and groundwater would be below the EPA drinking water standard, the impacts would be SMALL.[29]

In summary, these revisions to the ER fully address all of the alleged omissions within the scope of Contention 9.

C. The Identified ER Revisions Fully Address Contention 14

Contention 14 relates to the alleged omission of environmental impacts due to seepage from the MCR to the adjacent groundwater.[30] The Board concluded that "Contention 14 is admitted insofar as it complains that the ER fails to analyze adequately the environmental impacts of unregulated seepage from the MCR into the adjacent shallow groundwater."[31]

The identified ER revisions fully address the topics encompassed within Contention 14. As discussed above, the revisions fully account for the transport of radionuclides (including tritium) through seepage from the MCR.[32]

Aside from the radionuclides, the ER also explains: "[B]ecause the seepage rate is affected by the water level of the MCR and the MCR water level with STP 3 & 4 would remain within original design levels, the addition of STP 3 & 4 would have an insignificant impact on the current MCR seepage rate."[33]

The ER further evaluates the environmental impacts of other constituents in the MCR, such as total dissolved solids, metals, salts, and other chemicals.[34] Because the addition of STP Units 3 and 4 would result in only small increases in the concentration of these constituents and

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29 *Id.*, Attachment 2, at 5-8.

30 *South Texas Project*, LBP-09-25, slip op. at 21-25.

31 *Id.* at 24-25.

32 *See* ER Letter, Attachments 2 and 3.

33 *Id.*, Attachment 1, at 2.

34 *See id.*, Attachment 2.

STPNOC would comply with any permit requirements, the water quality of the MCR, other surface waters, and groundwater would remain high and the impacts would be SMALL.[35]

In summary, these revisions to the ER fully address all of the alleged omissions within the scope of Contention 14.

D. Contentions 8, 9, and 14 Are Moot and Should Be Dismissed

As demonstrated above, the omissions that are the subject of Contentions 8, 9, and 14 as admitted by the Board (*i.e.*, potential environmental impacts due to any increase in radionuclide concentration in the MCR, any increased tritium concentration in groundwater, and seepage from the MCR) have been fully addressed by the revisions identified by STPNOC to the ER for STP Units 3 and 4. As the Commission has held, "[w]here a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant . . ., the contention is moot."[36] In the instant case, Contentions 8, 9, and 14 have been mooted by the revisions to the ER identified by STPNOC and should be dismissed.

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[35] *Id.*, Attachment 2, at 2-4, 6-7.

[36] *McGuire-Catawba*, CLI-02-28, 56 NRC at 383.

V. CONCLUSION

For the foregoing reasons, Contentions 8, 9, and 14 as admitted by the Board are moot and the Board should grant STPNOC's request to dismiss these contentions.

Respectfully submitted,

Executed in Accord With 10 CFR § 2.304(d)

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Counsel for STP Nuclear Operating Company

Dated in Washington, D.C.
this 30th day of November 2009

CERTIFICATIONS

I certify that I have made a sincere effort to contact the other parties in this proceeding, to explain to them the factual and legal issues raised in this motion, and to resolve those issues, and I certify that my efforts have been unsuccessful with respect to the Intervenors. Counsel for the NRC staff has informed me that the staff believes that Contentions 8, 9, and 14 are moot.

I also certify that this motion is not interposed for delay, prohibited discovery, or any other improper purpose, and that I believe in good faith that Contentions 8, 9, and 14 are moot and should be dismissed.

I also certify that I commenced sincere efforts to contact and consult all other parties within ten days of the occurrence or circumstance giving rise to this motion.

Executed in Accord With 10 CFR § 2.304(d)

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CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2009 a copy of "Applicant's Motion to Dismiss Contentions 8, 9, and 14 as Moot" was served by the Electronic Information Exchange on the following recipients:

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