

January 8, 2010

Mr. Mark A. McBurnett
Vice President, Oversight
and Regulatory Affairs
South Texas Project Nuclear Operating Company
4000 Avenue F, Suite A
Bay City, TX 77414

SUBJECT: SOUTH TEXAS PROJECT NUCLEAR POWER PLANT UNITS 3 AND 4
REQUEST FOR A LIMITED WORK AUTHORIZATION FOR INSTALLATION OF
CRANE FOUNDATION RETAINING WALLS

Dear Mr. McBurnett:

By letter dated November 16, 2009, South Texas Project Nuclear Operating Company (STPNOC) submitted to the U.S. Nuclear Regulatory Commission (NRC) an application for a Limited Work Authorization (LWA) in accordance with Title 10 of the *Code of Federal Regulations* (CFR) 50.10(d). The requested application would authorize the permanent installation of crane foundation retaining walls (CFRW) in the excavations for South Texas Project (STP) Units 3 and 4. This application also contained a preconstruction screening evaluation that explained why STPNOC does not believe that prior NRC approval is required for CFRW installation.

The NRC staff has reviewed the assessment provided in your application and has determined that the installation of the CFRW meets the definition of construction in 10 CFR 50.10(a)(1). Construction of the CFRW will, therefore, require NRC regulatory approval.

In reaching this determination, the NRC staff considered that the controlling regulation that applies to this decision is the definition of construction in 10 CFR 50.10(a)(1), which states: "Activities constituting construction are the driving of piles, subsurface preparation, placement of backfill, concrete, or permanent retaining walls within an excavation, installation of foundations, or in-place assembly, erection, fabrication, or testing, which are for...." This regulation is reinforced by 10 CFR 50.10(d)(1) that defines the type of activities that can be authorized under a LWA, which includes installation of permanent retaining walls within an excavation. The CFRW proposed for the STPNOC Units 3 and 4 sites are permanent retaining walls within an excavation for the purpose of retaining soil to facilitate the construction of the Reactor Building, which is a structure that meets the definition of construction. Furthermore, in the STPNOC preconstruction screening evaluation the applicant states the retaining walls are permanent structures, since they will be abandoned in-place. The function of the permanent CFRW after fuel loading is not part of the criteria or guidance for the definition of construction and was not considered in making this determination.

As we understand this request, STPNOC may wish to re-examine their options as it pertains to the installation of the CFRW as other options may be viable. The NRC determination that the installation of the CFRW meets the definition of construction in 10 CFR 50.10(a)(1) leaves STPNOC with three regulatory options. The first option is to file for an exemption from 10 CFR 50.10 pursuant to 10 CFR 50.12(b). Under this regulation, any person may request an exemption permitting the conduct of activities prior to the issuance of a construction permit prohibited by the requirements of 10 CFR Part 50.10.

The second option is to continue with the LWA process. The NRC will be able to provide STPNOC with a schedule for the review of the LWA once a complete LWA application is submitted in accordance with 10 CFR 50.10(d)(3). The complete application must contain an environmental report and a site redress plan. On December 7, 2009, during a preliminary telephone call with members of the STPNOC staff, the NRC staff discussed the additional information needed to complete the LWA review. Since the CFRW installation has been identified by STPNOC as a critical path activity for the construction of STP Units 3 and 4, the NRC would like to begin the acceptance review of a complete LWA application as soon as practicable. This will be followed by a meeting to discuss the NRC's schedule for the LWA process.

The third option is to delay construction of the CFRW until the COL has been issued for Units 3 and 4.

Should you have any questions regarding the LWA assessment determination, the LWA submittal process or the exemption process, please contact Frank Akstulewicz at (301) 415-1199 or Frank.Akstulewicz@nrc.gov.

Sincerely,

/RA/

Michael R. Johnson, Director
Office of New Reactors

Docket Nos.: 052-12
052-13

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/RA/

Michael R. Johnson, Director
Office of New Reactors

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