

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

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In the Matter of	)	
LUMINANT GENERATION COMPANY LLC	)	Docket Nos. 52-034-COL
(Comanche Peak Nuclear Power Plant Units 3 and 4)	)	52-035-COL
	)	December 14, 2009

**LUMINANT’S MOTION TO DISMISS CONTENTION 18 AS MOOT**

**I. INTRODUCTION**

In accordance with 10 C.F.R. § 2.323(a), Luminant Generation Company LLC and Comanche Peak Nuclear Power Company LLC, Applicants in the above-captioned matter (jointly, “Luminant”), hereby submit this Motion requesting that the Atomic Safety and Licensing Board (“Board”) dismiss Contention 18 as moot. As admitted by the Board, Contention 18 alleges that Luminant’s Environmental Report (“ER”) failed to consider alternatives to proposed Comanche Peak Units 3 and 4 consisting of combinations of renewable energy sources, energy storage, and natural gas power generation. As discussed below, Luminant recently identified revisions to its ER that include this information, thus rendering Contention 18 moot. Accordingly, Contention 18 should be dismissed.

**II. PROCEDURAL BACKGROUND**

On September 19, 2008, Luminant submitted an Application to the NRC for combined licenses (“COLs”) for Comanche Peak Units 3 and 4 (“COLA”).<sup>1</sup> The Sustainable Energy and Economic Development Coalition, Public Citizen, True Cost of Nukes, and Lon Burnam (jointly,

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<sup>1</sup> Receipt and Availability of Application for a Combined License, 73 Fed. Reg. 66,276 (Nov. 7, 2008).

“Intervenors”) filed a “Petition for Intervention and Request for Hearing” (“Petition”) on April 6, 2009, alleging 19 separate contentions. The Petition included Contention 18, which claimed that the ER did not make reasonable assumptions about alternatives to proposed Comanche Peak Units 3 and 4.<sup>2</sup> Specifically, the Intervenors argued that ER Chapter 9 was deficient because it did not evaluate “alternative sources of generating capacity based on the current data available regarding capacity factors, technological advances that overcome intermittency objections regarding wind and solar power, and historical operational experience.”<sup>3</sup>

The Board found that Contention 18 provided an adequate “fact-based argument” indicating that the combination of wind, solar, and storage options, as supplemented by natural gas, would be able to produce viable baseload power.<sup>4</sup> Thus, the Board restated and admitted Contention 18 as follows:

The Comanche Peak Environmental Report is inadequate because it fails to include consideration of alternatives to the proposed Comanche Peak Units 3 and 4, consisting of combinations of renewable energy sources such as wind and solar power, with technological advances in storage methods and supplemental use of natural gas, to create baseload power.<sup>5</sup>

On December 8, 2009, Luminant submitted a notification to the Board regarding Contention 18.<sup>6</sup> That notification informed the Board that Luminant submitted a letter to the NRC identifying revisions to the ER augmenting the original ER’s discussion of alternatives

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<sup>2</sup> Petition at 42.

<sup>3</sup> *Id.*

<sup>4</sup> *Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 & 4), LBP-09-17, 70 NRC \_\_\_, slip op. at 82 (Aug. 6, 2009).

<sup>5</sup> LBP-09-17, slip op. at 82, 85.

<sup>6</sup> See Letter from J. Rund, Counsel for Luminant, to the Board, Notification of Filing Related to Contention 18 (Dec. 8, 2009) (“Notification Letter”).

requiring new generation capacity.<sup>7</sup> Specifically, the amendment creates a new ER Section 9.2.2.11 that evaluates alternative generation sources consisting of combinations of renewable energy sources, energy storage, and natural gas power generation.<sup>8</sup>

### **III. LEGAL STANDARDS**

The Commission has held that “where a contention is ‘superseded by the subsequent issuance of licensing-related documents’—whether a draft EIS or an applicant’s response to a request for additional information—the contention must be disposed of or modified.”<sup>9</sup> 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 or considered by the Staff in a draft EIS, the contention is moot.”<sup>10</sup> As explained below, Luminant’s ER amendment provides the information that the Board determined to be omitted from the ER, thus rendering Contention 18 moot.

### **IV. CONTENTION 18 IS MOOT**

As restated and admitted by the Board, Contention 18 is a contention of omission alleging that Luminant should have evaluated alternative energy sources consisting of combinations of renewable energy sources, energy storage, and natural gas power generation. Specifically, the Board reformulated Contention 18 to allege that the ER “*fails to include consideration of alternatives . . . consisting of combinations of renewable energy sources such as*

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<sup>7</sup> Attachment to Notification Letter, Letter from Rafael Flores, Luminant, to NRC Document Control Desk, (Dec. 8, 2009) (“ER Letter”).

<sup>8</sup> ER Letter, Attachment at 9.2-30 to 9.2-50.

<sup>9</sup> *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-28, 56 NRC 373, 382 (2002) (citing *Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), CLI-83-19, 17 NRC 1041, 1050 (1983)).

<sup>10</sup> *Id.* at 383.

wind and solar power, with technological advances in storage methods and supplemental use of natural gas, to create baseload power.”<sup>11</sup>

Luminant’s recent amendment supplementing the existing alternatives evaluation renders Contention 18 moot. As discussed above, these revisions create a new ER Section 9.2.2.11 that discusses a number of potential energy storage options that might be combined with renewable energy sources.<sup>12</sup> The new ER section considers in detail the two most promising combinations of renewable energy sources and storage technologies—wind power generation in combination with compressed air energy storage, and solar power generation in combination with molten salt storage.<sup>13</sup> Importantly, this section also evaluates combinations of renewable energy sources, energy storage, and natural gas power generation.<sup>14</sup> Accordingly, Contention 18 is now moot because Luminant has specifically addressed and included an evaluation of combinations of renewable energy sources, energy storage, and natural gas power generation.

In summary, the omission that is the subject of Contention 18 as admitted by the Board (*i.e.*, the failure to evaluate renewable energy sources with technological advances in storage methods and supplemental use of natural gas) has been fully addressed by new ER Section 9.2.2.11. As the Commission has held, when a contention alleges the omission of a specific issue from an application and the information is later supplied by the applicant, the contention is moot.<sup>15</sup> In the instant case, Contention 18 has been mooted by Luminant’s new ER section and should be dismissed.

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<sup>11</sup> LBP-09-17, slip op. at 82, 85 (emphasis added).

<sup>12</sup> See ER Letter, Attachment at ER at 9.2-32 to 9.2-37.

<sup>13</sup> *Id.* at ER at 9.2-37 to 9.2-44.

<sup>14</sup> *Id.* at ER at 9.2-44 to 9.2-50.

<sup>15</sup> *McGuire-Catawba*, CLI-02-28, 56 NRC at 383.

V. CONCLUSION

For the foregoing reasons, Contention 18 as admitted by the Board is moot and the Board should grant Luminant's request to dismiss this contention.

Respectfully submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)

*/s/ Steven P. Frantz*

Steven P. Frantz

Timothy P. Matthews

Jonathan M. Rund

Morgan, Lewis & Bockius LLP

1111 Pennsylvania Avenue, NW

Washington, DC 20004

Phone: 202-739-3000

Fax: 202-739-3001

E-mail: sfrantz@morganlewis.com

*Counsel for Luminant*

Dated in Washington, D.C.  
this 14th day of December 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 does not oppose this motion because the staff believes that Contention 18 is moot and that the staff does not plan on filing a response to Luminant's motion.

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 Contention 18 is moot and should be dismissed.

Executed in Accord with 10 C.F.R. § 2.304(d)

/s/ Steven P. Frantz

Steven P. Frantz

Morgan, Lewis & Bockius LLP

1111 Pennsylvania Avenue, NW

Washington, DC 20004

Phone: 202-739-3000

Fax: 202-739-3001

E-mail: sfrantz@morganlewis.com

*Counsel for Luminant*

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 14, 2009 a copy of “Luminant’s Motion to Dismiss Contention 18 as Moot” was served by the Electronic Information Exchange on the following recipients:

Administrative Judge  
Ann Marshall Young, Chair  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Mail Stop T-3F23  
Washington, D.C. 20555-0001  
E-mail: [ann.young@nrc.gov](mailto:ann.young@nrc.gov)

Administrative Judge  
Dr. Gary S. Arnold  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Mail Stop T-3F23  
Washington, D.C. 20555-0001  
E-mail: [gxa1@nrc.gov](mailto:gxa1@nrc.gov)

Administrative Judge  
Dr. Alice C. Mignerey  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Mail Stop T-3F23  
Washington, D.C. 20555-0001  
E-mail: [acm3@nrc.gov](mailto:acm3@nrc.gov)

Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Rulemakings and Adjudications Staff  
Washington, D.C. 20555-0001  
E-mail: [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)

James Biggins, Esq.  
Susan H. Vrahoretis, Esq.  
Anthony Wilson, Esq.  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Mail Stop O-15D21  
Washington, D.C. 20555-0001  
E-mail: [James.Biggins@nrc.gov](mailto:James.Biggins@nrc.gov);  
[Susan.Vrahoretis@nrc.gov](mailto:Susan.Vrahoretis@nrc.gov);  
[Anthony.Wilson@nrc.gov](mailto:Anthony.Wilson@nrc.gov)

Office of Commission Appellate Adjudication  
U.S. Nuclear Regulatory Commission  
Mail Stop: O-16C1  
Washington, DC 20555-0001  
E-mail: [ocaamail@nrc.gov](mailto:ocaamail@nrc.gov)

Robert V. Eye, Esq.  
Counsel for the Intervenors  
Kauffman & Eye  
112 SW 6th Ave., Suite 202  
Topeka, K.S. 66603  
E-mail: [bob@kauffmaneye.com](mailto:bob@kauffmaneye.com)

*Signed (electronically) by Jonathan M. Rund*

Jonathan M. Rund  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004  
Phone: 202-739-3000  
Fax: 202-739-3001  
E-mail: [jrund@morganlewis.com](mailto:jrund@morganlewis.com)

*Counsel for Luminant*