

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

---

**In the Matter of  
South Texas Project Nuclear Operating Co.  
Application for the South Texas Project  
Units 3 and 4  
Combined Operating License**

**Docket Nos. 52-012, 52-013**

---

**INTERVENORS' RESPONSE TO APPLICANT'S  
MOTION TO DISMISS CONTENTION 21 AS MOOT**

**Contention 21 should be modified, as suggested below, to address the assertions in the  
Applicant's proposed amendment to Section 7 of the Environmental Report.**

Contention 21 was admitted by the Panel as follows:

**Impacts from severe radiological accident scenarios on the operation of other units at the  
STP site have not been considered in the Environmental Report.<sup>1</sup>**

In admitting this contention the panel stated “[P]etitioners contend that the co-location of STP Units 3 and 4 with STP Units 1 and 2 has potentially significant implications in the event a major accident were to occur at any one of the 4 operating units.”<sup>2</sup> The argument in support of Contention 21 acknowledged that the Applicant's Environmental Report addressed severe accidents but failed to discuss “the impact of a severe radiological accident at any one of the four units as it would impact the other remaining three units or how operations at undamaged units would be continued in the event that the entire site becomes seriously contaminated.”<sup>3</sup>

In support of the motion to dismiss the Applicant relies on its submittal of November 11, 2009, that proposes to revise the Environmental Report by adding section 7.5S, Design Basis Accident or

---

<sup>1</sup> Petition for Intervention, p.46; Panel's Memorandum and Order, Aug. 27, 2009, p. 36

<sup>2</sup> Panel's Memorandum and Order, Aug. 27, 2009, p. 36

<sup>3</sup> Id.

Severe Accident Impact on Other STP Units. This submittal purports to discuss 1) impacts from a design basis accident or severe accident at either Units 3 or 4 would have on the other three units and 2) impacts from a design basis accident or severe accident at units 1 or 2 on units 3 or 4.<sup>4</sup> The submittal assumes that plant operators would have “sufficient warning” of an accident at an affected unit to safely shutdown an unaffected unit.<sup>5</sup> The submittal also states that “[A]bsent a large release, there would be no impact on safe shutdown of the unaffected units.”<sup>6</sup> Stated otherwise, a large release would have an impact on safe shutdown of the unaffected units.

The submittal does not discuss the impacts on safe shutdown in the absence of “sufficient warning” nor the implications for safe shutdown in the event of a large release. The absence of discussion of these two issues in the submittal is the basis for Contention 21 to be modified<sup>7</sup> as follows:

A.) The Environmental Report is deficient because it fails to discuss how a large release of radiation from an affected unit(s) will impact safe shutdown at an unaffected unit(s).

B.) The Environmental Report is deficient because it assumes there will be sufficient warning of an accident at an affected unit to allow an unaffected unit(s) to complete safe shutdown.

C.) The Environmental Report is deficient because it assumes that a separation distance of 1500 feet is adequate to preclude impacts from fires and explosions originating from an affected unit on other co-located units.

The apparent justification for omitting a discussion of the impacts on safe shutdown in the event of large radiation releases is based on the relatively low frequency of large releases.<sup>8</sup> However, this is not part of the contention. The consideration of the relative probabilities/frequencies of large releases is qualitatively different from consideration of their impacts. The Applicant's reframing of the issue is an attempt to avoid dealing with the question of impacts. Its argument is premised on the notion that relative

---

<sup>4</sup> Notification Letter to Panel from Stephen J. Burdick, Nov. 11, 2009, Submittal Attachment, p. 1

<sup>5</sup> Attachment, pp.1-2, 4

<sup>6</sup> Attachment, p.4

<sup>7</sup> Modification of a contention is anticipated in NRC case law. If 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.” 56 N.R.C. 373 at 382 (2002). This proposed modification of Contention 21 does not constitute a waiver by Intervenors of their opportunity to file new contentions related to the subject submittal.

<sup>8</sup> Attachment, p. 4

infrequency of large releases obviates the requirement to consider their effects. Contention 21 does not raise questions of frequency of large releases but rather calls on the Applicant to analyze their impacts.

Contention 21 is premised on the assumption that a release of radiation would be large enough to seriously contaminate the entire site.<sup>9</sup> The Applicant's implicit admission that a large radiation release could complicate, delay and/or preclude the safe shutdown of an unaffected unit contradicts its assertion that a severe accident at an affected unit “would not prevent the unaffected units from safely shutting down.”<sup>10</sup> The proposed modifications to the ER do not address how large releases would interfere with safe shutdown or how large releases would affect the environmental/economic impacts of such on the co-located units. Rather, the Applicant simply assumes a release large enough to frustrate safe shutdown will not occur.

This assumption, in light of the premise of the regulatory requirements of 10 C.F.R. § 50.54(hh)(2) and 10 C.F.R. § 50.150 is, at best, dubious. These two regulatory requirements postulate accident scenarios that would likely include large radiation releases. Hence, for the Applicant to unilaterally determine there is no necessity to describe the impacts on safe shutdown caused by a large radiation release is unreasonable.<sup>11</sup> This failure also is contrary to 42 U.S.C. § 2133(d) that requires the health and safety of the public be protected in the context of nuclear plant licensing. Further, failure to consider the large release scenario on safe shutdown ignores an obvious factor that bears on impacts on co-located units. *Druid Hills Civic Association, Inc., v. Federal Highway Administration*, 772 F. 2nd 700, 709 11th Cir. (1985); *Ohio River Valley Environmental Coalition, Inc. v. Kempthorne*, 473 F.3d 94,102

---

<sup>9</sup> Petition, p. 46

<sup>10</sup> Attachment, p. 8

<sup>11</sup> 10 C.F.R. § 2.309(f)(1)(v) requires the Intervenor to provide a concise statement of the facts that support their positions and upon which they intend to rely at the hearing. However, the requirements of 10 C.F.R. § 2.309(f)(1)(v), that generally call for a specification of facts or expert opinion supporting the issue raised, are not applicable to a contention of omission beyond identifying the omitted information required under the regulation in question. *North Anna*, LBP-08-15, 68 NRC (slip op. at 27) (quoting *Pa'ina Hawaii, LLC (Materials License Application)*, LBP-06-12, 63 NRC 403, 414 (2006)). Thus, for a contention of omission, the Intervenor's burden is only to show the facts necessary to establish that the application omits information that should have been included. The facts relied on need not show that the facility cannot be safely operated, but rather that the application is incomplete. *Catawba Nuclear Station, Units 1 and 2*, CLI-02-28, 56 NRC 373, 383 (2002).

(4th Cir., 2006) (Administrative Procedure Act directs review of agency action to determine if decision is product of consideration of relevant factors and whether a clear error of judgment has occurred.)

Likewise, there is no explanation in the subject submittal to justify the assumption that any particular duration of time will be available to complete safe shutdown. Contention 21 does not deal with warning times; it deals with environmental impacts. Nevertheless, the Applicant appears to assume that unaffected units will uniformly have adequate time to complete safe shutdown. There is no discussion in the submittal of the implications for safe shutdown in the event operators do not have “sufficient warning of an accident.” The Applicant's assumption is unreasonable and appears tailored to avoid the necessity of consideration of impacts that would occur when operators do not have sufficient time to complete safe shutdown. Moreover, the Applicant's unilateral adoption of this arbitrary assumption does nothing to analyze the environmental impacts of accidents on co-located units; in fact, this assumption is apparently intended to avoid consideration of any such impacts. As such, it fails to address the merits of the contention. *Druid Hills Civic Association, Inc.; Ohio River Valley Environmental Coalition, Inc., supra.* This failure also is contrary to 42 U.S.C. § 2133(d) because the health and safety of the public is not adequately considered.

Finally, the submittal does not consider the impacts on safe shutdown under the full spectrum of damage states. Intervenors contend that the Applicant's unilateral decision to consider only design basis accidents and severe accidents covers only a fraction of the damage spectrum. And the assertion by the Applicant that a separation distance of 1500 feet obviates the need for consideration of fire and explosion impacts is arbitrary and unsupported in the record.<sup>12</sup> But as the Panel noted, “...the 1500 feet between proposed and preexisting units is not so great, by itself, as to preclude the effects of a severe accident affecting safety at other units.”<sup>13</sup> The Applicant makes no attempt to describe the damage state that underpins its assumption that the separation distance of 1500 feet will be adequate to preclude damage

---

<sup>12</sup> Tr. of June 10, 2009 Oral Arguments, pp. 341-43; Attachment, p.1

<sup>13</sup> Memorandum and Order, Aug. 27, 2009, p. 39, fn.228

effects on co-located units. 42 U.S.C. § 2133(d); *Druid Hills Civic Association, Inc.*; *Ohio River Valley Environmental Coalition, Inc.*, *supra*.<sup>14</sup>

Accordingly, Intervenors urge this Panel to deny the Applicant's Motion to Dismiss Contention 21 As Moot and allow the modified version of the contention to proceed to adjudication.

Respectfully submitted,

/s/ Robert V. Eye  
Robert V. Eye, Kan. Sup. Ct. No.10689  
Kauffman & Eye  
Suite 202  
112 SW6th Ave.  
Topeka, Kansas 66603  
785-234-4040  
bob@kauffmaneye.com

December 14, 2009

---

<sup>14</sup> Intervenors incorporate by reference their arguments and authorities related to the MS Contentions related to compliance with 10 C.F.R. § 50.54(hh)(2).

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

---

**In the Matter of  
South Texas Project Nuclear Operating Co.  
Application for the South Texas Project  
Units 3 and 4  
Combined Operating License**

**Docket Nos. 52-012, 52-013**

---

**CERTIFICATE OF SERVICE**

I hereby certify that on December 14, 2009 a copy of “Intervenors’ Response to Applicant’s Motion to Dismiss Contention 21 as Moot” was served by the Electronic Information Exchange on the following recipients:

Administrative Judge  
Michael M. Gibson, Chair  
Atomic Safety and Licensing Board Panel  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: mmg3@nrc.gov

Administrative Judge  
Dr. Randall J. Charbeneau  
Atomic Safety and Licensing Board Panel  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: Randall.Charbeneau@nrc.gov

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

Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Mail Stop O-15D21  
Washington, DC 20555-0001  
Michael Spencer, Sara Brock,  
Jessica Bielecki  
E-mail: Michael.Spencer@nrc.gov  
Sara.Brock@nrc.gov  
Jessica.Bielecki@nrc.gov

Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Rulemakings and Adjudications Staff  
Washington, DC 20555-0001  
E-mail: hearingdocket@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

Steven P. Frantz  
Counsel for STP Nuclear Operating Company  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
Phone: 202-739-3000  
Fax: 202-739-3001  
E-mail: sfrantz@morganlewis.com

*Signed (electronically) by Robert V. Eye*  
Robert V. Eye  
Counsel for the Petitioners  
Kauffman & Eye  
112 SW 6<sup>th</sup> Ave., Suite 202  
Topeka, KS 66603  
Email: bob@kauffmaneye.com