

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

)	
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
)	January 25, 2010

LUMINANT’S MOTION TO DISMISS CONTENTION 13 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”), submit this Motion requesting that the Atomic Safety and Licensing Board (“Board”) dismiss Contention 13 as moot. As admitted by the Board, Contention 13 alleges that Luminant’s Environmental Report (“ER”) failed to evaluate the potential impacts from a severe accident at one of the Comanche Peak units on the other units at the Comanche Peak site. As discussed below, Luminant recently identified revisions to its ER that include this information, thus rendering Contention 13 moot. Accordingly, Contention 13 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”).¹ The Sustainable Energy and Economic Development Coalition, Public Citizen, True Cost of Nukes, and Lon Burnam (jointly,

¹ Notice of Receipt and Availability of Application for a Combined License, 73 Fed. Reg. 66,276, 66,276-77 (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 13, which claimed: “Impacts from severe radiological accident scenarios on operation of other units at the Comanche Peak site have not been considered in the Environmental Report.”² Specifically, the Intervenors argued that ER Chapter 7 was deficient because it did not evaluate “how operations at undamaged units would be continued in the event that the entire site becomes seriously contaminated.”³ In addition, the Intervenors argued that the ER was inadequate because it did not “consider disruptions in operations due to an accident or radiological release from one unit and the collateral impacts on undamaged units.”⁴

The Board concluded that Contention 13 met the requirements in 10 C.F.R. § 2.309(f)(1) by presenting a “fact-based argument” based on the “co-location and resulting close proximity” of the proposed and existing reactors.⁵ Thus, the Board admitted Contention 13 and restated it as follows:

Impacts from a severe radiological accident at any one unit on operation of other units at the Comanche Peak site have not been, and should be, considered in the Environmental Report.⁶

On January 15, 2010, Luminant submitted a notification to the Board regarding Contention 13.⁷ That notification informed the Board that Luminant submitted a letter to the

² Petition at 7-8 & 34.

³ *Id.* at 35.

⁴ *Id.*

⁵ *Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 & 4), LBP-09-17, slip op. at 68 (Aug. 6, 2009).

⁶ *Id.* at 68 & 85.

⁷ See Letter from J. Rund, Counsel for Luminant, to the Board, Notification of Filing Related to Contention 13 (Jan. 15, 2010), available at ADAMS Accession No. ML100151702. On January 19, 2010, Luminant submitted a minor revision to the information in the ER Letter for ER Section 7.5, but this revision did not change any of the conclusions in this ER section. See Letter from J. Rund, Counsel for Luminant, to the

NRC identifying revisions to the ER augmenting the original ER’s discussion of severe accidents.⁸ The amendment creates a new ER Section 7.5 that evaluates the impacts that a severe accident at one of the new or existing units at the Comanche Peak site would have on the other units at the site.⁹ Specifically, this evaluation considers whether post-accident radiation releases could interrupt the safe shutdown of an unaffected unit either by interfering with necessary operator actions or by damaging equipment required to perform a post-accident safety function.¹⁰ In addition, this evaluation considers the economic impact of a service disruption due to potential delays in returning the unaffected units to service and the environmental impacts of simultaneous severe accidents at all four Comanche Peak units.¹¹

III. LEGAL STANDARDS

The Commission has held that “[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 or considered by the Staff in a draft EIS, the contention is moot.”¹² Similarly, the Commission has stated 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.”¹³ In other words, once an

Board, Notification of Filing Related to Contention 13 (Jan. 19, 2010), *available at* ADAMS Accession No. ML100192101 (“Notification Letter”).

⁸ Notification Letter, Attachment, Letter from Rafael Flores, Luminant, to NRC Document Control Desk, (Jan. 19, 2010) (“ER Update”).

⁹ ER Update at 7.5-1 to 7.5-14.

¹⁰ *Id.* at 7.5-9.

¹¹ *Id.* at 7.5-9 to 7.5-12.

¹² *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-28, 56 NRC 373, 383 (2002) (citing *Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), LBP-01-26, 54 NRC 199, 207-09; LBP-01-23, 54 NRC 163, 171-72 (2001); LBP-02-2, 55 NRC 20, 29-30 (2002)).

¹³ *Id.* at 382.

applicant supplies information alleged to be missing from an application, the contention becomes moot and the “Intervenors *must* timely file a new or amended contention” addressing the relevant factors in 10 C.F.R. § 2.309(c) or (f)(2).¹⁴

As explained below, Luminant’s ER amendment provides the information that the Board determined to be omitted from the ER, thus rendering Contention 13 moot.

IV. CONTENTION 13 IS MOOT

As admitted by the Board, Contention 13 is a contention of omission regarding the environmental impacts of a severe accident at one of the Comanche Peak units on the operation of other units at the site. Specifically, the Board reformulated Contention 13 as follows:

“Impacts from a severe radiological accident at any one unit on operation of other units at the Comanche Peak site *have not been . . . considered* in the Environmental Report.”¹⁵

Luminant’s recent amendment supplementing the severe accident evaluation renders Contention 13 moot. As discussed above, these revisions create a new ER Section 7.5 that evaluates the impacts of a severe accident on co-located units at the Comanche Peak site.¹⁶ The new ER section includes information on severe accident scenarios for all four Comanche Peak units, an evaluation of potential impacts on operators and equipment operability, and an evaluation of the economic impacts of a temporary shutdown of units that did not experience an accident.

The new ER Section 7.5 concludes:

¹⁴ *Id.* at 383 (emphasis added). Compliance with this requirement is not a mere formality. As the Commission recognized, if it “did not require an amended or new contention in ‘omission’ situations, an original contention alleging simply a failure to address a subject could readily be transformed—without basis or support—into a broad series of disparate new claims.” *Id.*

¹⁵ LBP-09-17, slip op. at 68 (emphasis added).

¹⁶ *See* ER Update at 7.5-1 to 7.5-14.

[S]evere accidents with a probability of greater than $1E-6$ per reactor-year at the affected unit would not prevent the unaffected units from safely shutting down. All equipment necessary to complete a safe shutdown of the unaffected units would be able to operate as designed without any degradation to its functional capabilities for the exposure levels associated with the airborne release from the accidents evaluated. The radiation dose to equipment is below the level normally considered as a harsh environment which ensures proper equipment function. The control room habitability systems are capable of maintaining habitability of the control rooms during shutdown of the unaffected units. Operators at the unaffected units would be able to achieve and maintain safe shutdown of the units prior to a large release from the affected unit.

In summary, the consequences of a severe radiological accident at any one unit on the operation of the other units at the Comanche Peak site are of SMALL significance. The accident scenarios would not result in any incremental severe accident environmental impacts attributable to the unaffected units beyond those evaluated in Section 7.2. The environmental impact from a severe accident would remain SMALL.

Furthermore, even if it is arbitrarily postulated that severe accidents were to occur in all four units simultaneously, the cumulative environmental impacts would still be SMALL. In such a scenario, the releases of radioactivity from all four units would be approximately four times the release from an individual unit. However, even if the risk-based environmental impacts discussed in Section 7.2 for an accident originating in one of the US-APWR units were to be multiplied by a factor of four, the environmental risks would still be SMALL. For example, the cumulative dose risk from all four units would be about 1.2 person-rem/year (i.e., 4×0.3 person-rem per reactor-year), which is less than the cumulative population dose risk from normal operation (1.64 person-rem TEDE per reactor-year). Furthermore, the cancer fatality risk would be $1.2E-09$ per reactor-year (i.e., four times $3.22E-10$ per reactor-year from Subsection 7.2.4), which is well below the NRC's safety goal of $1.89E-06$ per reactor-year. This value is well below the 0.1 percent value specified in the NRC's Safety Goal Policy Statement. As discussed in Section 7.5.4, the CDF for Units 1 and 2 is approximately 18 times the CDF for Units 3 and 4. However, even if these risk-based values were to be multiplied by a factor of 18, the resulting cancer fatality risk would remain well

below the NRC's Safety Goal. Therefore, the environmental impact from such an arbitrary scenario would remain SMALL.¹⁷

Thus, the ER revisions identified by Luminant fully evaluate the environmental impacts of severe accidents at co-located units.

In summary, the omission that is the subject of Contention 13 as admitted by the Board (*i.e.*, consideration of severe accidents at co-located units) has been fully addressed by new ER Section 7.5. 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.¹⁸ As the Licensing Board recently explained in the *South Texas* COL proceeding, “the Commission has not established any prerequisite, such as assessment of the information submitted, that must be met before a finding of mootness can be made”—“[r]ather, submittal of the information is the basis for the finding of mootness.”¹⁹ In the instant case, Contention 13 has been mooted by Luminant's new ER section and should be dismissed.

¹⁷ *Id.* at ER at 7.5-11 to 7.5-12.

¹⁸ *McGuire-Catawba*, CLI-02-28, 56 NRC at 383.

¹⁹ *S. Tex. Project Nuclear Operating Co.* (S. Tex. Project Units 3 & 4), LBP-09-21, slip op. at 11 n.59 (Aug. 27, 2009).

V. CONCLUSION

For the foregoing reasons, Contention 13 as admitted by the Board is moot and the Board should grant Luminant's request to dismiss this contention.

Respectfully submitted,

Signed (electronically) by Steven P. Frantz

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Dated in Washington, D.C.
this 25th day of January 2010

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. As of the time of this filing, counsel for Intervenors has not informed me of the Intervenors' position on the 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 13 is moot and should be dismissed.

Signed (electronically) by Steven P. Frantz

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