

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

**In the Matter of
Luminant Generation Company, LLC
Comanche Peak Nuclear Power Plant
Units 3 and 4
Combined License Adjudication**

Docket Nos. 52-034 and 52-035

**INTERVENORS' RESPONSE TO APPLICANT'S
MOTION TO DISMISS CONTENTION 13 AS MOOT**

The Applicant filed its motion to dismiss Contention 13 as moot on January 25, 2010. Intervenors contend that Contention 13 is not moot and that the Applicant's ER Revision avoids addressing the impacts of a severe accident at one unit on co-located units and assumes operators would have sufficient warning to complete safe shutdown of unaffected units.

Contention 13 was admitted by the Panel 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.¹

In admitting this contention the panel stated, “[p]etitioners argue that co-location of Comanche Peak Units 3 and 4 with Units 1 and 2 has potentially significant implications in the event that a major accident were to occur at any one of the four operating units.”² The argument in support of Contention 13 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,” including how operations could continue if the site becomes seriously contaminated, or how other units would be protected if there were a major fire or explosion at one unit.”³

¹ Panel's Memorandum and Order, August 6, 2009, p. 68

² Id, p.63

³ Id. quoting Petition to Intervene, April 6, 2009, p.35

In support of the motion to dismiss the Applicant relies on its submittal of January 14 and 19, 2010 that proposes to revise the Environmental Report by adding section 7.5, Severe Accident Impacts on Other CPNPP Units. This submittal purports to discuss 1) impacts from a severe accident at either Units 3 or 4 would have on the other three units and 2) impacts from a severe accident at Units 1 or 2 on Units 3 or 4.⁴ The submittal assumes that plant operators would have sufficient warning of an accident at an affected unit to safely shutdown an unaffected unit.⁵ The submittal does not discuss the impacts on safe shutdown in the absence of sufficient warning or environmental impacts if there is inadequate time to complete safe shutdown.

The assumption that adequate time will be available to complete safe shutdown is based on Applicant's severe accident scenarios and release frequencies.⁶ However, Contention 13 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 or time to complete safe shutdown. The Applicant's assumption is unreasonable in light of accident scenarios such as impacts from large commercial aircraft and appears tailored to avoid the necessity of consideration of environmental impacts that would occur when operators do not have sufficient time to complete safe shutdown. By assuming safe shutdown on unaffected units under all circumstances Applicant avoids analysis of 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., 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 (4th Cir., 2006) (Administrative Procedure Act directs review of agency action to determine if decision is product of consideration of relevant factors and

⁴ Letter to NRC from Luminant, Rafael Flores, Correction for COL Application Part 3, ER, Update Tracking Report, January 19, 2010, p.7.5-1 (ER Revision)

⁵ ER Revision, p.7.5-2

⁶ ER Revision, Sec. 7.5.2

whether a clear error of judgment has occurred.) This failure also is contrary to 42 U.S.C. § 2133(d) because the health and safety of the public is not adequately considered.

The Applicant eliminates five out of the six accident scenarios for the US-APWR design “from further consideration because of their low probability; those events are remote and speculative.”⁷ The Applicant also does not consider the majority of the release categories for Units 1 and 2 due to low probability.⁸ The 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.⁹ 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. Contention 13 does not raise questions of frequency of large releases but rather calls on the Applicant to analyze their impacts.

The Applicant contends that many of the accident scenarios are “remote and speculative” and their “frequencies are too low to warrant further consideration.”¹⁰ But this argument overlooks the requirement that even remote and speculative events require analysis in some circumstances.¹¹

Similarly, in oral arguments, counsel for the Applicant dismissed the need for analysis of beyond-design-basis accidents saying, “[i]t simply is not credible.”¹² “[C]oncerning the question of the level of credibility of impacts,” the Panel discusses NUREG-1555 and concludes that the factors included therein “suggest that Petitioners’ argument that the ER should address the impact of a severe accident at Unit 1 or 2 on Units 2 and/or 4 is reasonable, relevant, and material in this proceeding.”¹³ For this contention to be rendered moot, the Applicant should evaluate impacts of severe accident scenarios notwithstanding the

⁷ ER Revision, p.7.5-3,4

⁸ ER Revision, p.7.5-5

⁹ ER Revision pp.7.5-3-6

¹⁰ ER Revision, p.7.5-5

¹¹ *In the Matter of Philadelphia Electric Company* (Limerick Generating Station, Units 1 and 2) 22 N.R.C. 681(1985) at 713

¹² June 11, 2009, Comanche Peak Oral Arguments Transcript, p.318.

¹³ Order, August 6, 2009, pp.66-7

Core Damage Frequency.¹⁴ Moreover, the failure to consider co-location impacts under the full spectrum of damage states ignores accident scenarios anticipated under 10 C.F.R. § 50.150 and § 50.54(hh). This omission is contrary to the requirements of 42 U.S.C. § 2133(d). *Druid Hills Civic Association, Inc., v. Federal Highway Administration, supra, Ohio River Valley Environmental Coalition, Inc.v. Kempthorne, supra* .¹⁵

Accordingly, Intervenors urge this Panel to deny the Applicant's Motion to Dismiss Contention 13 As Moot.

Respectfully submitted,

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¹⁴ In addition to the accident scenarios the Applicant has disregarded as remote and speculative, the ER Revision does not address accident scenarios involving the spent fuel pool.

¹⁵ Intervenors incorporate by reference their arguments and authorities related to the Mitigative Strategies (MS) Contentions related to compliance with 10 C.F.R. § 50.54(hh)(2), August 10, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2010 a copy of “Intervenors’ Response to Applicant’s Motion to Dismiss Contention 13 as Moot” was served by the Electronic Information Exchange on the following recipients:

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