

**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

February 16, 2010

**INTERVENORS' PROPOSED CONTENTIONS REGARDING APPLICANT'S
ENVIRONMENTAL REPORT REVISIONS AND REQUEST FOR HEARING**

Introduction¹

The proposed contentions herein are related to the Applicant's Environmental Report (ER) revisions² that purport to address the issues raised in the Intervenors' Contention 13 that was admitted by the Panel on August 6, 2009.³ Contention 13 raised issues related to the impacts of a severe accident at one unit on other collocated units.⁴ Intervenors have also addressed Applicant's ER revisions on co-location accidents in their response to the motion to dismiss the co-location contention.⁵

Summary of Contentions

CL-1 The Applicant's failure to address externally initiated accident scenarios is a material omission from the Environmental Report.

¹ These proposed contentions are submitted in conjunction with a separately filed motion for leave to file new contentions under 10 C.F.R. § 2.309(f)(2) and the Initial Scheduling Order, October 29, 2009, Section D.

² 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 Revisions)

³ Panel's Memorandum and Order, Aug. 6, 2009, pp. 63-68

⁴ As admitted, Contention 13 states "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." Panel Aug. 6, 2009 Order, p. 6.

⁵ Intervenors' Response to Applicant's Motion to Dismiss Contention 13 as Moot, February 4, 2010

CL-2 The Applicant fails to consider and evaluate the impacts of severe accident scenarios, regardless of probability, with release times shorter than the duration needed to achieve cold shutdown.

CL-3 The Applicant fails to evaluate the impact of a severe accident at one CP unit on the other units when the initiating event of the accident is an external event, such as an earthquake, that could result in common-cause failures of systems at one or more of the other units, potentially extending the time necessary for operators to put the units into stable long-term decay heat removal configurations.

CL-4 The Applicant fails to address the radiological impacts of a severe accident at a CP unit during shutdown, when the primary containment head is removed, on the other CP units.

CL-5 The Applicant fails to fully evaluate the impact of a chain-reaction that leads to more than one unit experiencing a severe accident.

Contentions

Contention CL-1⁶

The Applicant's failure to address externally initiated accident scenarios is a material omission from the Environmental Report.

The ER revisions consider only internally initiated events in the severe accident scenarios.⁷ The failure to address externally initiated events is a material omission in the context of dealing with emergencies. 10 C.F.R. § 52.79(a)(29)(ii). (10 C.F.R. § 2.309(f)(1)(i))

This omission contention raises the question whether the ER revisions are adequate because they consider only internally initiated event accident scenarios and exclude externally initiated events (*e.g.* aircraft impacts). (10 C.F.R. § 2.309(f)(1)(ii))⁸

⁶ In order to differentiate from previously filed contentions, the new co-location contentions are designated as CL-1, etc.

⁷ ER Revisions, Sec.7.5.2, p. 7.5-2

This contention is within the scope of the proceeding because the Board's order admitting Contention 13 recognized that accident impacts at one unit may materially affect other units.⁹ Additionally, this contention bears on the requirements of 10 C.F.R. § 52.79(a)(29)(ii)¹⁰ and the Atomic Energy Act, 42 USC 2133(d). (10 C.F.R. § 2.309(f)(1)(iii))

This contention is material to findings the NRC must make in this proceeding related to the adequacy of Applicant's capacity to safely shut down reactors and its ability to deal with accidents. 10 C.F.R. § 52.79(a)(29)(ii), 42 USC 2133(d). (10 C.F.R. § 2.309(f)(1)(iv)).

Apparently, the Applicant's purpose in developing accident scenarios in its ER revisions was to demonstrate that even a major release of radiation from one unit would not have any material impact on the capacity of other co-located units to achieve safe shutdown.¹¹ The US-APWR requires 12 hours to reach cold shutdown after reactor trip and the W-PWR requires 10 hours to reach cold shutdown.¹² Applicant's ER revisions do not evaluate externally initiated, rapid onset, catastrophic events that would cause large releases of radiation before the 10/12 hours required to bring co-located units into cold shutdown status. Applicant's ER revisions did not consider external events because it assumed that release frequencies for external events are "negligible" compared to internal events.¹³ The failure to consider externally initiated events such as aircraft impacts excludes an entire set of accident scenarios that form the basis for the NRC's adoption of 10 C.F.R. § 50.150 regarding aircraft impact design

⁸ 10 C.F.R. § 2.309(f)(1)(v) requires the Intervenors 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 Intervenors' 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).

⁹ See footnote 4.

¹⁰ This regulation requires applications to include "[P]lans for coping with emergencies, other than the plans required by § 52.79(a)(21)."

¹¹ ER Revisions, Sec.7.5.2, p. 7.5-2

¹² *Id.*

¹³ *Id.*

requirements and the mitigation requirements of 10 C.F.R. § 50.54(hh) to deal with loss of large areas of nuclear plant(s) due to events such as aircraft impact(s).¹⁴

The Applicant has arbitrarily concluded that there is no need to consider the co-location accident implications that would result from aircraft impacts.¹⁵ Applicant argues that the FSAR excuses this analysis because it concluded “unintentional aircraft accidents” are not credible events.¹⁶ This argument ignores the requirement that nuclear plants be designed to anticipate intentional aircraft attacks and adopt mitigative strategies in anticipation of such attacks. Significantly, the relative improbability of an aircraft impact provision in the FSAR did not exempt the Applicant from meeting the requirements of the aircraft impact design rule and the mitigative strategies rule. Likewise, in this context, relative improbability of aircraft impact(s) still requires consideration of this scenario in the ER regarding co-location accident impacts.

Regulatory assumptions about probability of severe accidents have been altered since the attacks of September 11, 2001. The requirements of 10 C.F.R. § 50.150 (aircraft impact design rule) and 10 C.F.R. §50.54(hh) (mitigation of loss of large areas of plant due to fires/explosions) are recognitions that the risk profile has changed. The probabilities that on any given day a nuclear plant will be struck by a large commercial aircraft are low; but that statistical consideration did not deter the Commission from adopting the new regulatory requirements intended to address risks once thought too remote and speculative to justify consideration of design changes and the requirement of more robust mitigation strategies. The logic is the same for co-location accident analysis.

¹⁴ Intervenor contend that categorically excluding external events such as aircraft impacts from accident scenarios 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 (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.)

¹⁵ ER amendments, sec. 7.5.1.

¹⁶ *Id.* Applicant does not discuss the probability of intentional aircraft attacks.

In *Limerick Ecology Action v. N.R.C.*, 869 F 2d 719 (3rd Cir. 1989) the court confronted a similar problem in the context of whether the location of a nuclear plant in a densely populated area allowed adoption of generic risk factors and a SAMDA decision supported by a policy statement rather than a rulemaking.¹⁷ The court rejected the NRC's argument that its policy statement addressing SAMDAs satisfied NEPA. The court noted that “(1) after Three Mile Island, it would be irrational for the NRC to maintain that severe accident risks are too remote to require consideration; (2) the NRC itself has devoted \$50 million to studying such risks, not to mention the expenditures for evacuation plans; and (3) the NRC's own interpretation of its NEPA requirements requires consideration of such risks.”¹⁸ Similarly in this case, categorical exclusion of aircraft impact initiating event scenarios that could cause a large radiation release before an unaffected unit could reach safe shutdown is a reasonable basis to consider whether a license should issue. (10 C.F.R. § 2.309(f)(1)(v)). The *Limerick* court's observation that disregarding serious accident scenarios after TMI would be “irrational” is also pertinent here. After the aircraft attacks of September 11, 2001, it would be irrational to conclude similar attacks on nuclear plants are too remote for inclusion in the ER. And the use of NRC resources to study aircraft attacks/impacts on nuclear plants is similar to the regulatory response to TMI referenced in *Limerick*. Finally, the NRC's recognition that aircraft impacts are to be analyzed for some regulatory purposes (impact design and mitigation strategies) is an interpretation of the NRC's requirements that the risks are not remote. (10 C.F.R. § 2.309(f)(1)(v)).

A genuine dispute exists with the Applicant based on its decision to exclude accident scenarios that are characterized by rapid onset of externally initiated events that result in large uncontrolled/unmitigated releases of radiation caused by, for example, explosions and fires from impact(s) of a large commercial airliner(s). (10 C.F.R. § 2.309(f)(1)(vi)).

¹⁷ *Limerick Ecology Action v. N.R.C.*, 869 F 2d 719 (3rd Cir. 1989) at 739

¹⁸ *Id.* at 740

Contention CL-2

The Applicant fails to consider and evaluate the impacts of severe accident scenarios, regardless of probability, with release times shorter than the duration needed to achieve cold shutdown.

The ER revisions only consider severe accident scenarios with a probability of more than 1.0 E-6 and eliminate events with a probability less than 1.0 E-6 from further consideration as “remote and speculative.”¹⁹ The failure to consider radiological impacts of events with a release time shorter than the time needed to achieve cold shutdown is a material omission in the context of dealing with emergencies. 10 C.F.R. § 52.79(a)(29)(ii). (10 C.F.R. § 2.309(f)(1)(i))

This omission contention raises the question whether the ER revisions are adequate because they exclude an evaluation of the impacts of events with a release time shorter than the time needed to achieve cold shutdown. (10 C.F.R. § 2.309(f)(1)(ii)).²⁰

This contention is within the scope of the proceeding because the Board’s order admitting Contention 13 recognized that accident impacts at one unit may materially affect other units. Additionally, this contention bears on the requirements of 10 C.F.R. § 52.79(a)(29)(ii) and 42 USC 2133(d). (10 C.F.R. § 2.309(f)(1)(iii))

This contention is material to findings the NRC must make in this proceeding related to the adequacy of Applicant’s capacity to safely shut down reactors and its ability to deal with accidents. 10 C.F.R. § 52.79(a)(29)(ii). (10 C.F.R. § 2.309(f)(1)(iv)).

As discussed in Contention CL-1 the Applicant’s apparent purpose in developing accident scenarios was to demonstrate that even a major release of radiation from one unit would not have any material impact on the capacity of other co-located units to achieve safe shutdown.²¹ The US-APWR requires 12 hours to reach cold shutdown after reactor trip and the W-PWR requires 10 hours to reach cold shutdown.²² Applicant’s ER revisions eliminate events from further consideration based on a low

¹⁹ ER Revisions, Sec.7.5.2

²⁰ See footnote 8 related to requirements for omission contentions.

²¹ ER Revisions, Sec.7.5.2, p. 7.5-2

²² *Id.*

probability, not whether they would cause large releases of radiation before the 10/12 hours required to bring co-located units into cold shutdown status.²³ Applicant eliminates severe accident scenarios from further consideration based on the assumption that low probability release frequencies render such accidents “remote and speculative.”²⁴ However, severe accident events which have a low probability but still have a release time shorter than the time needed for co-located units to achieve safe shutdown are of particular concern and the failure to consider the impacts from such events is contrary to the Board’s Order admitting Contention 13 and 10 C.F.R. § 52.79(a)(29)(ii). (10 C.F.R. § 2.309(f)(1)(v))²⁵

Applicant concludes that under NEPA severe accident scenarios with a low probability are too remote and speculative to justify analysis in the ER.²⁶ But it is not only the statistical probability of a serious accident that bears on the determination whether, in a given circumstance, such should be anticipated and thereby considered in the context of the ER. For example, in the case of *In the Matter of Philadelphia Electric Company* (Limerick Generating Station, Units 1 and 2) 22 N.R.C. 681(1985) the issue was whether the improbability of the evacuation a nuclear plant justified allowing backup medical facilities to be located forty-five minutes from the nuclear plant. In reversing the Board’s decision that was premised on the low probability of circumstances that would ever require the need to use backup medical facilities the Atomic Safety and Licensing Appeal Board stated:

...the improbability of PMMC's evacuation and consequent unavailability to receive contaminated injured workers is beside the point. The Commission's emergency planning regulations are premised on the assumption that a serious accident might occur and that evacuation of the EPZ might well be necessary. The adequacy of a given emergency plan therefore must be adjudged with this underlying assumption in mind. As a corollary, a possible deficiency in an emergency plan cannot properly be disregarded because of the low probability that action pursuant to the plan will ever be necessary. Thus, the Licensing Board majority gave undue weight to the fact that evacuation of PMMC is remote.²⁷

²³ For example, Release Category 2-Containment Isolation, was eliminated from further consideration by the Applicant and according to the US-APWR DCD, RC2 has a 2.5 hour release time from the start of the event, much less than 10/12 hours needed for co-located units to achieve cold shutdown. It is also notable that the release rates are significantly higher than those of RC6 which was considered by the Applicant but dismissed due to a low radionuclide release rate. US-APWR DCD ER, Rev. 2 and ER Revisions pp. 7.5-3-7.5-4

²⁴ ER Revisions, Sec.7.5.2

²⁵ See also *Limerick*, 869 F 2d at 740.

²⁶ ER Revisions, Sec. 7.5.2 Applicant is sending mixed signals. In the SAMA analysis in the ER, they considered all of these events, notwithstanding their current position that it was gratuitous.

²⁷ *In the Matter of Philadelphia Electric Company* (Limerick Generating Station, Units 1 and 2) 22 N.R.C. 681(1985) at 713 (internal cite omitted).

Similar reasoning applies here. Notwithstanding the low probability of a severe accident, Applicant has on-site emergency response capabilities, separation distances between units and independent safety systems. The Applicant has made design decisions and preparations for severe accidents that it claims are so remote and speculative that there is actually no need to anticipate such in the context of severe co-location accident effects. However, evidently, the accidents are not so remote and speculative to obviate the need to account for such in design (10 C.F.R. § 50.150) and accident mitigation responses (10 C.F.R. § 50.54(hh)). As pointed out by the ASLB in *In the Matter of Philadelphia Electric Company* (Limerick Generating Station, Units 1 and 2) emergency planning assumes that a serious accident might occur.²⁸ (10 C.F.R. § 2.309(f)(1)(v)).

A genuine dispute exists with the Applicant based on its decision to exclude severe accident event scenarios that may prevent safe shutdown and/or require additional time to bring co-located units to safe shutdown status. (10 C.F.R. § 2.309(f)(1)(vi)).

Contention CL-3

The Applicant fails to evaluate the impact of a severe accident at one CP unit on the other units when the initiating event of the accident is an external event, such as an earthquake, that could result in common-cause failures of systems at one or more of the other units, potentially extending the time necessary for operators to put the units into stable long-term decay heat removal configurations.

The failure to address externally initiated events and common-cause failures that could delay times necessary to bring unaffected units into cold shutdown is a material omission in the context of dealing with emergencies. 10 C.F.R. § 52.79(a)(29)(ii). (10 C.F.R. § 2.309(f)(1)(i)).

²⁸ *In the Matter of Philadelphia Electric Company* (Limerick Generating Station, Units 1 and 2) 22 N.R.C. at 713

This omission contention raises the question whether the ER amendments are adequate because they consider only internally initiated event accident scenarios and exclude externally initiated events that result in common cause failures (*e.g.* earthquakes). (10 C.F.R. § 2.309(f)(1)(ii))²⁹

This contention is within the scope of the proceeding because the Board's order admitting Contention 13 recognized that accident impacts at one unit may materially affect other units. Additionally, this contention bears on the requirements of 10 C.F.R. § 52.79(a)(29)(ii) and 42 USC 2133(d). (10 C.F.R. § 2.309(f)(1)(iii))

This issue is material to findings the NRC must make in this proceeding related to the adequacy of Applicant's capacity to safely shut down reactors and its ability to deal with accidents. 10 C.F.R. § 52.79(a)(29)(ii). 42 USC 2133(d). (10 C.F.R. § 2.309(f)(1)(iv)).

In the ER revisions, the Applicant only considers severe accidents associated with internally initiated events and also assumes that such accidents would only initially involve one of the co-located units.³⁰ All other units are assumed to be unaffected and hence would have all systems available in the event that operators need to put them in stable long-term configurations.³¹ However, this analysis fails to consider severe accidents caused by external events, such as earthquakes, that could also result in common-cause failures of safety systems at one or more co-located units. In such scenarios, additional time may be required to restore operability of safety systems and achieve stable long-term configurations, increasing the risk that stable shutdown will not be achieved and core-melt may occur at one of the other units. (10 C.F.R. § 2.309(f)(1)(v)).³²

²⁹ See footnote 8 related to requirements for omission contentions.

³⁰ ER, section 7.5

³¹ *Id.*

³² Intervenors contend that categorically excluding external events such as earthquakes from accident scenarios 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 (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.)

A genuine dispute exists with the Applicant based on its decision to exclude common cause accident scenarios that may prevent safe shutdown and/or require additional time to bring co-located units to safe shutdown status of externally initiated events that result in large uncontrolled/unmitigated releases of radiation caused by, for example, earthquakes. (10 C.F.R. § 2.309(f)(1)(vi)).

Contention CL-4

The Applicant fails to address the radiological impacts of a severe accident at a CP unit during shutdown, when the primary containment head is removed, on the other CP units.

The failure to address radiological impacts that result during accidents during shutdown while the primary containment head is removed on other Comanche Peak units is a material omission in the context of dealing with emergencies.³³ 10 C.F.R. § 52.79(a)(29)(ii). (10 C.F.R. § 2.309(f)(1)(i)).

This omission contention raises the question whether the ER revisions are adequate because they exclude any accident scenarios that occur during shutdown. (10 C.F.R. § 2.309(f)(1)(ii)).³⁴

This contention is within the scope of the proceeding because the Board's order admitting Contention 13 recognized that accident impacts at one unit may materially affect other units. Additionally, this contention bears on the requirements of 10 C.F.R. § 52.79(a)(29)(ii) and 42 USC 2133(d). (10 C.F.R. § 2.309(f)(1)(iii)).

This issue is material to findings the NRC must make in this proceeding related to the adequacy of Applicant's capacity to safely shut down reactors and its ability to deal with accidents. 10 C.F.R. § 52.79(a)(29)(ii). (10 C.F.R. § 2.309(f)(1)(iv)).

Fuel damage events occurring during refueling outages have a much higher risk of early large radiological releases to the environment than when the reactor is at power. Therefore, shutdown events should be of particular concern with regard to any analysis of co-location environmental impacts

³³ The ER revisions specifically exclude shutdown events and assume the containment is sealed. ER, p.7.5-4, 7.

³⁴ See footnote 8 related to requirements for omission contentions.

including impacts on safe shutdown of co-located units.³⁵ Applicant concludes that shutdown events are too remote and speculative to justify analysis in the ER.³⁶ In support Applicant relies on quantitative risk analysis and posits the probability of an accident during shutdown events is “too low to warrant further consideration” and these “events are remote and speculative.”³⁷ It is not only the statistical improbability of a serious accident that bears on the determination whether, in a given circumstance, a severe accident should be anticipated and thereby considered in the context of the COLA. For example, in the case of *In the Matter of Philadelphia Electric Company* (Limerick Generating Station, Units 1 and 2) 22 N.R.C. 681(1985) the issue was whether the improbability of evacuation a nuclear plant justified allowing backup medical facilities to be located forty-five minutes from the nuclear plant. In reversing the Board’s decision that was premised on the low probability of circumstances that would ever require the need to use backup medical facilities the Atomic Safety and Licensing Appeal Board stated:

...the improbability of PPMC's evacuation and consequent unavailability to receive contaminated injured workers is beside the point. The Commission's emergency planning regulations are premised on the assumption that a serious accident might occur and that evacuation of the EPZ might well be necessary. The adequacy of a given emergency plan therefore must be adjudged with this underlying assumption in mind. As a corollary, a possible deficiency in an emergency plan cannot properly be disregarded because of the low probability that action pursuant to the plan will ever be necessary. Thus, the Licensing Board majority gave undue weight to the fact that evacuation of PPMC is remote.³⁸

Similar reasoning applies here. Notwithstanding the low probability of a severe accident, Applicant has on-site emergency response capabilities, separation distances between units and independent safety systems. The Applicant has made design decisions and preparations for severe accidents that it claims are so remote and speculative that there is actually no need to anticipate such in the context of severe co-location accident effects. However, evidently, the accidents are not so remote and

³⁵ Intervenors contend that categorically excluding events during shutdown 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 shutdown accident scenario 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 (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.)

³⁶ ER Revisions, pp. 7.5-4

³⁷ *Id.*

³⁸ *In the Matter of Philadelphia Electric Company* (Limerick Generating Station, Units 1 and 2) 22 N.R.C. 681, 713 (1985) (internal cite omitted).

speculative to obviate the need to account for such in design (10 C.F.R. § 50.150) and accident mitigation responses (10 C.F.R. § 50.54(hh)). As pointed out by the ASLB in *In the Matter of Philadelphia Electric Company* (Limerick Generating Station, Units 1 and 2) emergency planning assumes that a serious accident might occur.³⁹ (10 C.F.R. § 2.309(f)(1)(v))

A genuine dispute exists with the Applicant based on its decision to exclude shutdown event accident scenarios that may prevent safe shutdown and/or require additional time to bring co-located units to safe shutdown status. (10 C.F.R. § 2.309(f)(1)(vi)).

Contention CL-5

The Applicant fails to fully evaluate the impact of a chain-reaction that leads to more than one unit experiencing a severe accident.

The failure to address radiological impacts that result during accidents at all four Comanche Peak units is a material omission in the context of dealing with emergencies.⁴⁰ 10 C.F.R. § 52.79(a)(29)(ii). (10 C.F.R. § 2.309(f)(1)(i)).

This omission contention raises the question whether the ER revisions are adequate because they exclude any accident scenarios that involve more than one unit being directly affected by the accident. (10 C.F.R. § 2.309(f)(1)(ii)).⁴¹

This contention is within the scope of the proceeding because the Board's order admitting Contention 13 recognized that accident impacts at one unit may materially affect other units. It follows that accidents that occur at all four units in close temporal proximity may materially affect capacity of plant operators to achieve safe shutdown of the units. Additionally, this contention bears on the requirements of 10 C.F.R. § 52.79(a)(29)(ii) and 42 USC 2133(d). (10 C.F.R. § 2.309(f)(1)(iii)).

³⁹ *Id.*

⁴⁰ The ER revisions specifically exclude shutdown events. ER, p.7.5-4.

⁴¹ See footnote 4 related to requirements for omission contentions.

This issue is material to findings the NRC must make in this proceeding related to the adequacy of Applicant's capacity to safely shut down reactors and its ability to deal with accidents. 10 C.F.R. § 52.79(a)(29)(ii). (10 C.F.R. § 2.309(f)(1)(iv)).

The ER revisions conclude that even if all four co-located units were to have simultaneous severe accidents, the environmental impact would remain small because the individual risk associated with each plant is small.⁴² However, if the units were indeed coupled in that a severe accident affecting one would likely lead to comparable accidents in one or more of the co-located units, then the combined radiological consequences could have a significant impact on the US-APWR severe accident mitigation design alternatives (SAMDA) analysis.⁴³ (10 C.F.R. § 2.309(f)(1)(v)).⁴⁴

A genuine dispute exists with the Applicant based on its decision to exclude a full evaluation of the impact of a chain-reaction that leads to more than one unit experiencing a severe accident. (10 C.F.R. § 2.309(f)(1)(vi)).

Conclusion

Based on the arguments and authorities above, Intervenor urge that the contentions specified herein be admitted for adjudication and that a hearing pursuant to 10 C.F.R. Part 2, Subpart L be ordered for these contentions.

⁴² ER Revisions Sec.7.5.5

⁴³ Regarding whether the probabilities of multiple simultaneous accidents are too remote and speculative to justify analysis in the ER, Intervenor incorporate by reference the arguments in CL-2, pp. 6-7,*supra*.

⁴⁴ The ER amendments purport to discuss environmental impacts of severe accidents at all four units. ER 7.5. However, the so-called discussion consists of conclusory statements based on assumptions that exclude, *inter alia*, externally initiated events, shutdown accident scenarios and accidents at all four units happening in close temporal proximity. Accordingly, any conclusions by the Applicant about the impacts from a four unit accident scenario are deficient for the same reasons that support CL-1-CL-4.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2010 a copy of “Intervenors’ Proposed Contentions Regarding Applicant’s Environmental Report Revisions and Request for Hearing” was served by the Electronic Information Exchange on the following recipients:

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