

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Michael M. Gibson, Chairman
Dr. Gary S. Arnold
Dr. Randall J. Charbeneau

In the Matter of

SOUTH TEXAS PROJECT NUCLEAR
OPERATING COMPANY

(South Texas Project, Units 3 and 4)

Docket Nos. 52-12-COL and 52-13-COL

ASLBP No. 09-885-08-COL-BD01

April 22, 2010

ORDER

(Response to NRC Staff Motion for Extension of Time to Move for a Protective Order)

On April 13, 2010, this Board ordered NRC Staff to provide Intervenors with access to Chapter 19 of the ABWR DCD (Chapter 19) within 14 days,¹ and further directed NRC Staff to move for a protective order within seven days in the event it deemed Chapter 19 to contain information that required limits on disclosure or dissemination.² Thereafter, NRC Staff moved for an extension of time to comply with this Board's April 13 Order with respect to six pages of Chapter 19 that have been redacted (contemporaneously, the other 1,212 pages of Chapter 19 were placed on the public NRC website).³ NRC Staff maintains these six redacted pages contain Sensitive Unclassified Non-Safeguards information ("SUNSI") and assert that Intervenors must first request those pages using procedures outlined in the Commission's "Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

¹ Licensing Board Order (Granting Access to ABWR DCD Chapter 19) (April 13, 2010) at 1 (unpublished).

² Id.

³ NRC Staff's Motion for an Extension of Time to Move for a Protective Order (April 15, 2010) at 3 [hereinafter Staff Motion]. In an April 20, 2010 teleconference with the parties, NRC Staff stated that the redacted version of ABWR DCD Chapter 19 was made publicly available as of Friday, April 16, 2010.

and Safeguards Information for Contention Preparation” (SUNSI Access Order), which was part of the original Notice of Hearing in this matter.⁴

Intervenors have advised the Board that they obtained full access to Chapter 19 of the ABWR DCD via an Internet search.⁵ If this is the same document, NRC Staff’s motion for extension of time would appear to be moot. NRC Staff shall advise the Board whether and why it intends to continue to withhold access to the six pages of Chapter 19 under a claim of SUNSI.

⁴ 74 Fed. Reg. 7934, 7936 (Feb. 20, 2009); Staff Motion at 2. The issue of whether the SUNSI Access Order even applies to Intervenors, as admitted parties, is currently before the Commission on appeal. See NRC Staff Notice of Appeal and Request for Stay of LBP-10-02 (Feb. 9, 2010). As we stated in our January 29, 2010 Order, the applicability of the procedures outlined in the SUNSI Access Order appears to be limited to the time period bracketed by two distinct events: the date on which potential parties are afforded an opportunity to petition for leave to intervene in a Licensing Board proceeding and the date on which a licensing board issues an order granting intervention. LBP-10-02, 71 NRC __, __ (Jan. 29, 2010) (slip op. at 8-9 n.36). We note that at least one other Licensing Board has rejected the NRC Staff’s position that the Commission’s SUNSI Access Order continues to apply after intervention has been conferred. See Luminant Generation Co. (Comanche Peak Nuclear Power Plant, Units 3 and 4), LBP-10-05, 71 NRC __, __ (Mar. 11, 2010) (slip op. at 18). We note that 10 C.F.R. § 2.307(c), which forms the regulatory basis for SUNSI Access Orders, refers not to “parties” but instead to “potential parties,” further suggesting that once an adjudicatory proceeding has commenced, initial determinations about access should be made, not by the NRC Staff, but by licensing boards.

⁵ Intervenors’ Response to NRC Staff’s Motion for an Extension of Time to Move for a Protective Order (April 20, 2010).

Per the parties' representations, any new contentions based on the new information contained within Chapter 19 (placed on the public NRC website on Friday, April 16, 2010) are due to be filed no later than May 24, 2010.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Michael M. Gibson
CHAIRMAN

/RA/

Dr. Gary S. Arnold
ADMINISTRATIVE JUDGE

/RA by E. R. Hawkens for:/

Dr. Randall J. Charbeneau
ADMINISTRATIVE JUDGE

Rockville, Maryland
April 22, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
SOUTH TEXAS PROJECT NUCLEAR) Docket Nos. 52-012-COL and 52-013-COL
OPERATING COMPANY)
)
(South Texas Project Units 3 and 4))
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER (RESPONSE TO NRC STAFF MOTION FOR EXTENSION OF TIME TO MOVE FOR A PROTECTIVE ORDER) have been served upon the following persons by the Electronic Information Exchange.

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Docket Nos. 52-012-COL and 52-013-COL 2
ORDER (RESPONSE TO NRC STAFF MOTION FOR EXTENSION OF TIME
TO MOVE FOR A PROTECTIVE ORDER)

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[Original signed by Nancy Greathead]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 22nd day of April 2010