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November 11, 2010

Ann Marshall Young, Chair
Dr. Gary S. Arnold
Dr. Alice C. Mignerey
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

RE: Luminant Generation Company LLC (Comanche Peak Nuclear Power Plant, Units 3 and 4), Docket Nos. 52-034 and 52-035

Dear Members of the Licensing Board:

During the oral argument on October 28, 2010, the Licensing Board requested that the Intervenor provide citations supporting their arguments relating to the mootness of Contention 18 and Alternatives Contention A (jointly, "Alternatives Contention A"). The Intervenor filed a letter on November 4, 2010, which argued that the contention is not moot with respect to aesthetic impacts and the practicability of the four-part combination. As permitted by the Board, Luminant hereby provides the following response to the Intervenor's November 4, 2010 letter.

The citations provided by the Intervenor are general in nature and do not support their proposition that there is a continuing controversy related to (1) the site-specific aesthetic impacts of the four-part combination of wind, solar, storage, and natural gas supplementation; and (2) the practicability of the four-part combination. As the Board previously held:

If all matters at issue in a contention of omission are addressed by an applicant through the actual (not "purport[ed]" or "claim[ed]") provision of information on all such matters, then no legal interest in that contention remains, and the contention is moot. The

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information need not be such that an intervenor agrees with it, but it must actually address in some way *all* of the issues encompassed within the admitted contention it purports to moot. If, on the other hand, not all matters at issue in such a contention are addressed in information submitted by Applicant, then Intervenors retain a legal interest in having any unaddressed matter(s) appropriately resolved.

Luminant Generation Co., LLC (Comanche Peak Nuclear Power Plant, Units 3 & 4), LBP-10-10, slip op. at 6 (June 25, 2010) (footnote omitted). This principle is equally applicable to information contained in the NRC's Draft Environmental Impact Statement ("DEIS"). *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-28, 56 NRC 373, 382 (2002) ("[W]here a contention is 'superseded by the subsequent issuance of licensing-related documents'—whether a draft EIS or an applicant's response to a request for additional information—the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."). As discussed below, the DEIS discusses the aesthetic impacts and the practicability of the four-part combination, and therefore the contention is moot.

First, the DEIS addresses the aesthetic impacts of a combination of alternatives. *See, e.g.*, NUREG-1943, Vol. 1, Environmental Impact Statement for Combined Licenses (COLs) for Comanche Peak Nuclear Power Plant Units 3 and 4, Draft Report for Comment at 9-23, 9-31 (Aug. 2010) ("The aesthetic impacts based on the large number of wind turbines would be significant."). The argument that this assessment should have been more "site-specific" relates to the adequacy of how the DEIS analyzes this alternative, not whether such an analysis is presented in the DEIS. In rejecting a similar argument by the Intervenors, the Board held that "to argue that the land use projections Applicant uses are inadequate or incorrect is one thing; to characterize such projections as 'omitt[ing] a discussion of impacts based on an accurate land use projection' is another, bordering on the frivolous." LBP-10-10, slip op. at 43.

Additionally, Luminant has submitted an affidavit, which indicates that there are suitable sites in western Texas for the four-part combination and then describes the general characteristics of such a site (*e.g.*, low quality land). Joint Affidavit of Donald R. Woodlan, John T. Conly, Ivan Zujovic, David J. Bean, John E. Forsythe, and Kevin Flanagan ¶ 78 (Aug. 26, 2010) ("Joint Affidavit"). Based on this description, Luminant's experts compared the aesthetic impacts of the four-part combination with the aesthetic impacts of CPNPP Units 3 and 4, and demonstrated that the four-part combination is not environmentally preferable in the area of aesthetics. Joint Affidavit ¶¶ 75-76, 80. The Intervenors have offered no admissible evidence to the contrary, and have not contested Statement of Material Fact # V.A on this issue. *See* Statement of Material Facts on Which No Genuine Dispute Exists # V.A (Aug. 26, 2010) ("Statement of Material Fact"). Therefore, Intervenors' claim that the issue of aesthetics warrants further litigation rings

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hollow. In that regard, Intervenor's reference to *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-471, 7 NRC 477, 504-08 (1978) is unavailing—in that case, the intervenor offered evidence that controverted the applicant's position on aesthetics.

Second, issues related to the reasonableness of the four-part combination (*e.g.*, issues related to feasibility, availability, and practicability) are also moot. The DEIS discusses the environmental impacts from a combination of alternative generation sources, consisting of wind and solar, each with storage; biomass, municipal solid waste, and geothermal; and natural gas. DEIS at 9-28 to 9-29. The NRC staff found that this combination was a “reasonable combination,” and the DEIS evaluates the environmental impacts of this combination and compares those impacts with the impacts from CPNPP Units 3 and 4. DEIS at 9-30. Furthermore, the DEIS states that, to produce baseload power, a fossil fueled energy source “would need to be a significant contributor to a reasonable combination of energy alternatives.” DEIS at 9-28. Therefore, because the DEIS discusses how the four-part elements must be arranged to constitute a reasonable combination for producing baseload power, issues relating to feasibility and availability of the four-part combination are moot.

Furthermore, Luminant has shown that a four-part combination, in which natural gas supplies the majority of the electricity, is a reasonable alternative for producing baseload power. *See* Luminant's Motion for Summary Disposition of Contention 18 and Alternatives Contention A at 19-20 (Aug. 26, 2010) (“Motion for Summary Disposition”); Statement of Material Fact # I.F.1. Luminant has also shown that a four-part combination, in which natural gas does not supply the majority of the electricity, is a feasible but not a proven method for producing large amounts of baseload power. Motion for Summary Disposition at 20-21; Statement of Material Fact # I.F.2-3 and I.F.5-6. The Intervenor's have not controverted those Facts. Therefore, once again, their claim that further litigation is warranted is unsupported.

In summary, issues related to aesthetics and the reasonableness of the four-part combination are moot because the DEIS discusses both of those issues. Because the Intervenor's arguments relate to the adequacy of that discussion in the DEIS, their arguments are insufficient to withstand dismissal of the contention on the grounds of mootness. Furthermore, because the Intervenor's have not provided any evidentiary material to controvert the Statement of Material Facts related to those issues, there is no basis for their claim that further litigation of those issues is warranted.

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Sincerely,

Signed (electronically) by Steven P. Frantz

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**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
		November 11, 2010

CERTIFICATE OF SERVICE

I hereby certify that on November 11, 2010, a copy of a letter dated November 11, 2010 from Steven P. Frantz to the Members of the Licensing Board was served by the Electronic Information Exchange on the following recipients:

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