

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

Before Administrative Judges:

Ann Marshall Young, Chair  
Dr. Gary S. Arnold  
Dr. Alice C. Mignerey

In the Matter of

LUMINANT GENERATION COMPANY, LLC  
(Comanche Peak Nuclear Power Plant,  
Units 3 and 4)

Docket Nos. 52-034-COL and 52-035-COL

ASLBP No. 09-886-09-COL-BD01

December 28, 2010

**MEMORANDUM and ORDER**  
**(Ruling on New Contentions Based on the Draft Environmental Impact Statement)**

**I. Introduction and Background**

This Memorandum and Order contains the Licensing Board's rulings on three new contentions filed by Intervenors Sustainable Energy and Economic Development (SEED) Coalition, Public Citizen, True Cost of Nukes, and Texas State Representative Lon Burnam,<sup>1</sup> in this proceeding involving the Combined License (COL) Application of Luminant Generation Company (Luminant or Applicant) for two new nuclear reactors at its Comanche Peak site in Texas.<sup>2</sup> Intervenors have challenged this Application and shown standing to participate collectively as a party in the proceeding.<sup>3</sup> Their new filing, which consists of challenges to parts

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<sup>1</sup> Intervenors' Motion for Leave to File New Contentions Based on the Draft Environmental Impact Statement (Sept. 7, 2010) [hereinafter DEIS Contentions].

<sup>2</sup> See Letter Transmitting Combined License Application for Comanche Peak Nuclear Power Plant, Units 3 & 4 (Sept. 19, 2008) (ADAMS Accession No. ML082680250), *available at* <http://www.nrc.gov/reactors/new-reactors/col/comanche-peak/documents.html> [hereinafter Application or COLA]; *see also* Notice of Receipt and Availability of Application for a Combined License, 73 Fed. Reg. 66,276, 66,277 (Nov. 7, 2008).

<sup>3</sup> See *Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), LBP-09-17, 70 NRC 311, 382 (2009).

of the NRC Staff's August 2010 Draft Environmental Impact Statement (DEIS),<sup>4</sup> originally consisted of six new contentions, but at oral argument held October 28, 2010, three of the six were withdrawn,<sup>5</sup> leaving three "DEIS contentions" requiring rulings at this time.

The Board originally admitted two contentions in this proceeding.<sup>6</sup> Later, we dismissed one of these, which involved alleged environmental impacts of a severe radiological accident at one unit on operation of the other units also located at the Comanche Peak site (original Contention 13), finding it to be moot based on an amendment to Applicant's Environmental Report (ER).<sup>7</sup> We also found the other to be moot in part,<sup>8</sup> based on an additional amendment to the ER; that contention (original Contention 18), as well as certain others submitted January 15, 2010,<sup>9</sup> involved proposed alternatives to the proposed new units consisting of combinations of renewable energy sources such as wind and solar power with certain storage methods and supplemental use of natural gas to create baseload power. We consolidated the remaining part of original Contention 18 with those parts of the January 15 contentions we found admissible into one reformulated contention designated as Alternatives Contention A,<sup>10</sup> which is the sole contention currently remaining in the proceeding. Applicant has filed a Motion for Summary Disposition of this contention,<sup>11</sup> on which we will rule in the near future.

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<sup>4</sup> Office of New Reactors, U.S. Nuclear Regulatory Commission (NRC), Environmental Impact Statement for Combined Licenses (COLs) for Comanche Peak Nuclear Power Plant Units 3 and 4, Draft Report for Comment, NUREG-1943 (Aug. 2010) (ADAMS Accession Nos. ML102170030 & ML102170036) [hereinafter DEIS].

<sup>5</sup> See Transcript (Tr.) at 1124, 1142.

<sup>6</sup> See LBP-09-17, 70 NRC at 382.

<sup>7</sup> See LBP-10-10, 71 NRC \_\_, \_\_ (slip op. at 9) (June 25, 2010).

<sup>8</sup> See *id.* at \_\_ (slip op. at 14).

<sup>9</sup> Intervenors' Contentions Regarding Applicant's Revisions to Environmental Report Concerning Alternatives to Nuclear Power (Jan. 15, 2010) [hereinafter Alternatives Contentions]

<sup>10</sup> See *supra* note 7 and accompanying text; LBP-10-10, 71 NRC at \_\_ (slip op. at 74-75)

<sup>11</sup> Luminant's Motion for Summary Disposition of Contention 18 and Alternatives Contention A (Aug. 26, 2010).

We conclude herein that Intervenor's three new DEIS contentions do not meet relevant requirements for admissible contentions found at 10 C.F.R. § 2.309. In Section II, we quote in full and briefly further describe the contentions themselves. In Section III we summarize parts of Applicant's and NRC Staff's arguments that we find particularly relevant, and in Section IV, we explain our rulings on the new contentions.

## II. New Contentions

### A. DEIS Contention 1 – Need for Power Analysis

Intervenor's in this contention state:

The DEIS analysis of the need for power is flawed, incomplete and internally contradictory.<sup>12</sup>

Intervenor's proceed with the following list of subparts of, or supporting alleged facts for, the contention:

- A. The DEIS fails to consider ERCOT<sup>13</sup> information that call into question whether Comanche Peak Units 3 & 4 will produce adequate net revenue to justify the proposed project based on market conditions. The DEIS concluded that market conditions justify the proposed project. However, the ERCOT report indicates otherwise.
- B. The DEIS analysis does not address the ERCOT information that suggests energy to meet peak loads is needed more than baseload energy.
- C. The DEIS understates the continued growth of wind capacity in Texas and the ERCOT region.
- D. The DEIS analysis does not account for increases in wind carrying capacity.
- E. The DEIS does not account for more efficient deployment and dispatch that is expected from the transition to nodal deployment anticipated for December 2010.
- F. The DEIS does not account for increases in responsive reserve power sources.
- G. The DEIS does not account for the ability of natural gas generation to increase generation capacity in a cost-effective manner.

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<sup>12</sup> DEIS Contentions at 3.

<sup>13</sup> ERCOT stands for Electric Reliability Council of Texas.

- H. The DEIS does not fully account for reduced demand caused by the adoption of energy efficiency programs. The DEIS's attenuated consideration of the effects of energy efficiency/demand side management (DSM) programs has the effect of overstating the Applicant's need for power. Additionally, the assumption in the DEIS that the contribution to load reduction from DSM will remain static at 242 MW through 2024 is not reasonable in light of on-going efforts to reduce loads through DSM.
- I. The DEIS does not account for the additional capacity anticipated from the Texas mandate to include non-wind in the renewable portfolio standard.
- J. The DEIS fails to account for new building codes that are expected to reduce demand.
- K. The DEIS does not acknowledge that energy efficiency is expected to reduce the number of new power plants needed in the future.
- L. The DEIS does not account for all government funds available and reasonably expected for energy efficiency applications.
- M. The DEIS does not fully account for CAES<sup>14</sup> capacity reasonably available in Texas and ERCOT.
- N. The DEIS acknowledges that ERCOT's high-wind generation case does not assume the addition of any new Comanche Peak Units 3 & 4 capacity and a reserve margin of 12.5% is still maintained. Despite this finding the DEIS still concludes that Comanche Peak Units 3 & 4 are needed to meet reserve targets. The DEIS makes no attempt to reconcile these contradictory conclusions nor does it address why the ERCOT high-wind scenario that excludes Comanche Peak Units 3 & 4 should not be relied upon. This analytical omission is contrary to NUREG 1555, Ch. 8, that requires the need for power analysis be systematic and comprehensive. In this case the unexplained contradictory conclusions about the need for power from Comanche Peak Units 3 & 4 casts doubt on whether the DEIS gas [sic] been prepared in a systematic fashion.

The reference to the ERCOT analysis that excludes Comanche Peak Units 3& 4 was not placed in the DEIS Chapter 8 that discusses need for power. Rather, it was placed in Chapter 9 that addresses alternatives to the proposed project. While the reference to the ERCOT report in Chapter 9 may have been appropriate, its omission from the discussion of need for power in Chapter 8 is inexplicable. The Staff properly relies on ERCOT for data and analysis thereof. But when ERCOT's analysis of at least one of its scenarios excludes Comanche Peak Units 3 & 4 and still finds that reserve margins would be met the absence of discussion of this finding in the DEIS chapter on need for power is conspicuous by omission.

This inconsistency/contradiction calls into question whether the DEIS Chapter 8, Need for Power, was prepared in a systematic and/or comprehensive manner consistent with NUREG 1555.<sup>15</sup>

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<sup>14</sup> CAES stands for Compressed Air Energy Storage.

<sup>15</sup> *Id.* at 3-6 (citations omitted).

Intervenors support DEIS Contention 1 with footnote references to parts of the DEIS and to an undated report written by Public Citizen member David Power, provided as an attachment to the DEIS Contentions. In this report, entitled “Comments Regarding Draft Environment Impact Statement for Combined Licenses (COLs) for Comanche Peak Nuclear Power Plant Units 3 and 4,” Mr. Power states that it is his “professional judgment that the NRC Staff has committed numerous errors in the calculations of the need for power,” and goes on to recount various asserted shortcomings. Mr. Power does not, however, provide any description of his actual profession. In addition, his references to sources are largely unclear or incomplete, some consisting only of website addresses, with no dates provided.<sup>16</sup>

## **B. DEIS Contention 2 – CO<sub>2</sub> Emissions**

In this contention Intervenors state:

The DEIS distorts the CO<sub>2</sub> emissions in the comparison of nuclear power and the combination of alternatives.<sup>17</sup>

This statement is accompanied by the following discussion:

The DEIS addresses compressed air energy storage (CAES) as an alternative to the proposed project. The DEIS briefly notes that a project planned for Texas by ConocoPhillips/General Compression will be available for baseload capacity. Significantly, the ConocoPhillips/General Compression project will not utilize natural gas for combustion. However, the DEIS comparison of CO<sub>2</sub> emissions for energy alternatives still attributes 180,000,000 metric tons of CO<sub>2</sub> that would result from using the combination of alternatives. The effect of attributing the CO<sub>2</sub> emissions to CAES in light of the ConocoPhillips/General Compression’s near- isothermal technology that will have little or no GHG<sup>18</sup> emissions has the effect of distorting the relative GHG burdens attributable to nuclear power and CAES. Assuming use of isothermal technologies for CAEs [sic] the CO<sub>2</sub> emissions for the combination of alternatives in Table 9-6 would no longer favor nuclear power.

Furthermore, Table 9-6 distorts the relative CO<sub>2</sub> contributions of nuclear by omitting emissions for workforce transportation, construction and decommissioning. The combination of adding CO<sub>2</sub> emissions to CAES and not accounting for all such

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<sup>16</sup> *Id.*, Attached Comments of David Power (undated).

<sup>17</sup> *Id.* at 6.

<sup>18</sup> GHG stands for green house gas.

emissions related to the nuclear option calls into doubt whether the DEIS has been prepared in a systematic and comprehensive manner as required by NUREG 1555.<sup>19</sup>

Intervenors support DEIS Contention 2 with references to parts of the DEIS.

### **C. DEIS Contention 4 -- Global Warming Effect on Water Temperatures**

Intervenors in this new contention state:

The DEIS fails to discuss increases in ambient water temperatures caused by global warming as such would affect the capacity of the Squaw Creek Reservoir to maintain water temperatures consistent with operational requirements.<sup>20</sup>

Intervenors provide the following discussion in connection with New Contention 4:

The DEIS fails to consider the effect of global warming on operations of Comanche Peak Units 3 & 4 related to increased ambient temperatures of air and the effect of higher cooling water temperatures and limited quantities of water. The failure to consider these adverse impacts has the effect of omitting material information concerning water usage and temperature thereof and effects on plant operations. This omission has the effect of overstating advantages of nuclear power and understating environmental impacts.

The DEIS discusses the changes caused by global warming on surface water that is intended for use by Units 3 & 4. However, the DEIS omits discussion of increased ambient water temperatures that would cause the nuclear units to decrease power output or cease operations altogether. Ambient water temperature that reaches 95 F causes a loss in plant production and at 101 F operations must cease. This surface water impact was not compared to surface water impacts related to alternatives for generating power. This omission is material because it bears on the suitability of the nuclear generation option when compared to other generation options that are not constrained by ambient temperatures of surface water.<sup>21</sup>

Intervenors support new Contention 4 with references to the DEIS and an undated report written by Tom "Smitty" Smith (otherwise unidentified) provided as an attachment to the DEIS Contentions. In this report, various references are made to water temperatures rising due to climate change and to the alleged effect of this on plant operation, including the possibility that

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<sup>19</sup> *Id.* at 6-7 (citations omitted).

<sup>20</sup> *Id.* at 10.

<sup>21</sup> *Id.* at 10-11.

this would necessitate plant shutdown.<sup>22</sup> As with Mr. Powers' report, not all of the references to sources are altogether clear.

### III. Parties' Arguments

Applicant and the NRC Staff argue that none of the three contentions at issue is admissible, for various reasons including that none was timely filed.<sup>23</sup> Applicant, for example, argues that Intervenors neither claim nor demonstrate that the contentions are based on "data or conclusions" in the DEIS that "differ significantly" from those in Applicant's ER, as required at 10 C.F.R. § 2.309(f)(2).<sup>24</sup> Moreover, Applicant suggests, to the extent any contentions cite any new information, that information is not "materially different than information previously available," as required at § 2.309(f)(2)(ii), and all of the contentions at issue are essentially restatements of earlier contentions that were not admitted.<sup>25</sup> In response to these arguments Intervenors assert simply that the new contentions are timely because, as assertedly required by 10 C.F.R. § 2.309(f)(2)(iii) and the Licensing Board's October 28, 2009, Initial Scheduling Order, "new contentions are timely . . . if filed within thirty days when [sic] new and material information becomes available," and the DEIS contentions were filed within thirty days of the availability of the DEIS.<sup>26</sup>

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<sup>22</sup> *Id.*, Attached Report of Tom "Smitty" Smith (undated).

<sup>23</sup> Luminant's Answer Opposing New Contentions Based on the Draft Environmental Impact Statement (Sept. 27, 2010) at 2 [hereinafter Luminant Answer]; NRC Staff Response to Intervenors' New Contentions Based on the Draft Environmental Impact Statement (Sept. 27, 2010) at 2-3 [hereinafter Staff Answer].

<sup>24</sup> Luminant Answer at 2.

<sup>25</sup> *Id.* at 2-4 (referencing Alternatives Contention 5 as similar to DEIS Contention 1, original Contention 12 as similar to DEIS Contention 2, and original Contention 11 as similar to Contention 4). The contentions are indeed very similar and, as Entergy notes, we did find Alternatives Contention 5 and original Contentions 11 and 12 to be inadmissible, for similar reasons. See LBP-09-17, 70 NRC at 362, 364-65; LBP-10-10, 71 NRC at \_\_\_ (slip op. at 83).

<sup>26</sup> Intervenors' Consolidated Response to the Applicant's and Staff's Answers in Opposition to the Proposed Contentions Based on the [DEIS] (Oct. 4, 2010) at 1 [hereinafter Intervenors' Response].

NRC Staff, in addition to arguing that the new contentions fail to meet the requirements of 10 C.F.R. § 2.309(f)(2), assert among other things regarding DEIS Contention 1 that the Staff was justified in relying on ERCOT in its need for power analysis, citing a 2003 NEI Rulemaking Petition Denial in which it was stated that the NRC “does not supplant the States” in this regard, and case law for the principle that analyses by bodies such as ERCOT are “‘entitled to great weight’ absent ‘some fundamental error’ in its analysis.”<sup>27</sup> Because Intervenors allege no “fundamental error,” Contention 1 shows no genuine dispute on a material issue of law or fact as required by 10 C.F.R. § 2.309(f)(1)(vi) and is inadmissible, Staff urges.<sup>28</sup> Luminant makes the same argument, suggesting that Contention 1 “does not provide or reference any new demand or generation forecast that is materially different than the DEIS analysis or the ERCOT studies referenced in the DEIS,” citing only various possibilities and uncertainties that do not overcome the authority of *Shearon Harris*, from which it quotes, as follows:

[W]here a utilities commission forecast is neither shown nor appears on its face to be seriously defective, no abdication of NRC responsibilities results from according conclusive effect to that forecast. Put another way, although the National Environmental Policy Act mandates that this Commission satisfy itself that the power to be generated by the nuclear facility under consideration will be needed, we do not read that statute as foreclosing the placement of heavy reliance upon the judgment of local regulatory bodies which are charged with the duty of insuring that the utilities within their jurisdiction fulfill the legal obligation to meet customer demands.<sup>29</sup>

Intervenors respond in various particulars on each subpart of Contention 1, including the statement that their “purpose in advancing DEIS Contention 1 is tied to the premise that nuclear generating capacity that is more costly than its nonnuclear market competitors is marginally less competitive and less likely to generate net revenues,” and the related challenge of ERCOT’s

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<sup>27</sup> Staff Answer at 6-8 (citing 68 Fed. Reg. 5,905 at 55,909 (Sept 29, 2003); *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, & 4), ALAB-940, 8 NRC 234, 240 (1979)).

<sup>28</sup> *Id.* at 8

<sup>29</sup> Luminant Answer at 21-22 (citing *Shearon Harris*, ALAB-940, 8 NRC at 241).



“leav[ing] to market participants to determine whether generating capacity should be added.”<sup>30</sup>

They do not, however, make any assertion of any fundamental error or serious defect in the ERCOT study, or address the *Shearon Harris* case and the standard set in it.<sup>31</sup>

As to DEIS Contention 2, concerning CO<sub>2</sub> emissions, Applicant argues that it fails to raise a genuine issue of material fact because the DEIS conservatively assumes, regarding the combinations at issue, that only natural gas generation has significant CO<sub>2</sub> emissions, and because “the DEIS includes a complete discussion of the CO<sub>2</sub> contributions of nuclear, including the emissions from workforce transportation, construction, and decommissioning,” as well as CO<sub>2</sub> produced by operation of the alternative plants.<sup>32</sup> NRC Staff makes essentially the same arguments, asserting as well that Intervenor fail to provide any “concise statement of the alleged facts or expert opinions, including references to specific sources and documents that support the Intervenor’s position and upon which the Intervenor intend to rely at the hearing,” and thus do not satisfy 10 C.F.R. § 2.309(f)(1)(v).<sup>33</sup> Staff also points out that Intervenor’s statement that the DEIS “notes that ConocoPhillips/General Compression will be available for baseload capacity” is incorrect, as the DEIS does not in fact say this, but rather notes only that the CAES project would increase the efficiency of wind power – not that it alone could produce baseload power.<sup>34</sup> Intervenor reply that the DEIS should have considered an alternatives

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<sup>30</sup> Intervenor’s Response at 3.

<sup>31</sup> *See id.* at 3-14.

<sup>32</sup> Luminant’s Answer at 43-44 (citing DEIS at 9-32, 4-66 to 4-67).

<sup>33</sup> Staff Answer at 32-33 (citing DEIS at 9-30). We note that Staff also explains a numerical error in DEIS table 9-6, which Staff says will be corrected in the FEIS. *Id.* at 32 n.11. As for Intervenor’s claim that the table should include CO<sub>2</sub> produced by workforce transportation, construction and decommissioning, we note that the DEIS text states that these components are not included in the table, *see* DEIS at 9-30, lines 26-30, and, as Luminant has noted, these additional sources of CO<sub>2</sub> are in fact discussed elsewhere in the DEIS, at 4-66, 4-67, and 6-36. Luminant Answer at 43-44.

<sup>34</sup> Staff Answer at 34.

combination that excludes natural gas, such as the ConocoPhillips/General Compression project, that would not produce CO<sub>2</sub>.<sup>35</sup>

On DEIS Contention 4, Luminant argues that its “most fundamental and fatal defect” is that it concerns the Squaw Creek Reservoir, which is irrelevant given that Units 3 and 4 would have “two mechanical draft cooling towers that will use *Lake Granbury* as the source of cooling water and for blowdown discharges, *not the Squaw Creek Reservoir*.”<sup>36</sup> In addition, Applicant argues, the contention lacks adequate factual documentary and expert support, and fails to establish a genuine dispute on a material issue of law or fact.<sup>37</sup> Staff makes similar arguments.<sup>38</sup>

#### IV. Board Rulings on Contentions

We find, first, that none of the contentions is timely, as Intervenors have not shown that any of the information on which they are based differs significantly from the data and conclusions of Applicant’s Environmental Report, is otherwise new or different from information that was previously available, or is otherwise timely. Intervenors merely state that they filed the contentions within 30 days of the issuance of the DEIS – and have not, even when given the specific opportunity to do so during oral argument, shown that any of the information on which the contentions are based was new or significantly different from any earlier information in the ER or elsewhere, previously unavailable, or otherwise timely.<sup>39</sup> All three contentions are

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<sup>35</sup> Intervenors’ Response at 14.

<sup>36</sup> Luminant Answer at 52 (emphasis in original); see *id.* at 51-52.

<sup>37</sup> *Id.* at 51.

<sup>38</sup> See Staff Answer at 53.

<sup>39</sup> We note that Intervenors urged, in oral argument, that some parts of the contentions in question were based on various reports that they assert the DEIS did not consider, but they have not shown that the contentions would be timely based on such reports, a number of which were inadequately cited. See, e.g., Tr. at 1047, 1050, 1054-55, 1062-65, 1066-72, 1080-83, 1090-97, 1098-1100, 1101-03, 1107-12, 1125-41. They have also shown that there were some differences between the DEIS from the ER, see, e.g., Tr. at 1056-57, but have not shown that any such differences were significant.

therefore inadmissible under 10 C.F.R. § 2.309(f)(2) and may not legally be admitted in this proceeding.

In addition, we find that none establishes a genuine dispute on a material issue of law or fact, as required at 10 C.F.R. § 2.309(f)(1)(vi). As indicated above, Intervenors did not even argue in reply to Applicant and Staff that their assertions in Contention 1 meet the standard of *Shearon Harris* by alleging that the ERCOT conclusions the Staff relies on were “seriously defective.”<sup>40</sup> In oral argument Intervenors essentially conceded that none of the individual bases for Contention 1 raised any issue that would change the Staff’s conclusion in the DEIS that there is a need for the power that would be generated by the two new units, but argued that the “cumulative effect” of all such considerations “does dispute whether there’s a need for power.”<sup>41</sup> This was not raised in the contention, however,<sup>42</sup> nor, we find, was it effectively shown in any manner.

We note also that Contention 2 is based on a misreading of the DEIS (which does in fact address the ConocoPhillips project, but not as Intervenors characterize it); and Contention 4 is based on the wrong body of water to be used for cooling purposes, and ignores the proposed use of cooling towers as well.<sup>43</sup> Moreover, neither Contention 2 nor Contention 4 can fairly be said to be adequately supported as required at 10 C.F.R. § 2.309(f)(1)(v), in any manner appropriate for legal pleadings.<sup>44</sup> The contentions thus must also be denied on these grounds.

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<sup>40</sup> See *supra* text accompanying note 29.

<sup>41</sup> Tr. at 1146.

<sup>42</sup> Intervenors essentially concede this. Tr. at 1147.

<sup>43</sup> Even accepting Intervenors’ indication at oral argument that this was essentially an oversight, Tr. at 1127, this is but one indication of an apparent level of carelessness exhibited in all of the new contentions and the support provided for them.

<sup>44</sup> Although some leeway might appropriately be permitted for *pro se* litigants, see *Consolidated Edison Co of N.Y.* (Indian Point, Unit 2) and *Power Authority of the State of N.Y.* (Indian Point, Unit 3), LBP-83-5, 17 NRC 134, 136 (1983), Intervenors are represented by counsel, who should have assured that Intervenors’ filings comply with minimal standards for legal pleadings.

In short, the Intervenor's have failed to establish that any of their DEIS Contentions are admissible under any relevant governing regulations or law.

**V. Conclusion and Order**

Having found that none of Intervenor's' new DEIS contentions is admissible, while implicitly granting Intervenor's' Motion for Leave to File New Contentions Based on the [DEIS], we deny and DISMISS all of the new DEIS contentions that were submitted for our consideration.

Interlocutory review of this Memorandum and Order may be requested as provided at 10 C.F.R. § 2.341(f)(2).

It is so ORDERED.

THE ATOMIC SAFETY  
AND LICENSING BOARD

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Ann Marshall Young, Chair  
ADMINISTRATIVE JUDGE

*/RA/*

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Dr. Gary S. Arnold  
ADMINISTRATIVE JUDGE

*/RA/*

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Dr. Alice C. Mignerey  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
December 28, 2010<sup>45</sup>

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<sup>45</sup> Copies of this Order were filed this date with the agency's E-filing system for service to all parties.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
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LUMINANT GENERATION COMPANY, LLC ) Docket Nos. 52-034-COL  
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(Comanche Peak Nuclear Power Plant, )  
Units 3 and 4) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM AND ORDER (RULING ON NEW CONTENTIONS BASED ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT) have been served upon the following persons by Electronic Information Exchange.

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 BASED ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT)

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 Office of the Secretary of the Commission

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