

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD PANEL

**In the Matter of
South Texas Project Nuclear Operating Co.
Application for the South Texas Project
Units 3 and 4
Combined Operating License**

Docket Nos. 52-012, 52-013

April 22, 2010

INTERVENORS' MOTION TO CONTINUE EVIDENTIARY HEARING

The Intervenors respectfully move the ASLB for an order continuing the evidentiary hearing and related deadlines. In support of this motion the following is stated:

1. On March 15, 2011, Staff filed a petition for review of LBP-11-7 concerning contention CL-2. On March 24, 2011 the Applicant answered the petition and asserted that the petition should be granted and the decision on CL-2 reversed. On March 25, 2011, Intervenors answered the petition and opposed it. On March 30, Staff filed its reply to Intervenors' opposition to the petition for review.

2. The timing for Commission review of Staff's petition for review is governed by 10 C.F.R. 2.341(a)(2) that provides as follows:

Within forty (40) days after the date of a decision or action by a presiding officer, or within forty (40) days after a petition for review of the decision or action has been served under paragraph (b) of this section, whichever is greater, the Commission may review the decision or action on its own motion, unless the Commission, in its discretion, extends the time for its review.

3. On April 15, 2011, the Commission, acting under 10 C.F.R. 2.346(e), entered an order that extended the time specified in 10 C.F.R. 2.341(a)(2) for Commission review of the Staff's petition for review related to LBP-11-7.
4. The provisions of 10 C.F.R. 2.341(a)(2) anticipate that the Commission may review the Staff's petition for review within forty days after it was filed on March 15, 2011. Therefore, the earliest the Commission would have acted on the petition for review is April 24, 2011. With the entry of the order on April 15, 2011, it is clear that the review will commence sometime after April 24, 2011. However, there is no way to know when the Commission will rule on the petition for review.
5. Presently, this case is set for an evidentiary hearing on August 17-19, 2011. However, given the above-referenced April 15, 2011, order extending the time for review until further order of the Commission, it is uncertain whether the Commission's consideration the ASLB's

contention CL-2 ruling at issue in Staff's petition for review will be completed by August 17, 2011.

6. If the Commission grants review of the Staff's petition and subsequently reverses the ASLB decision on admissibility of contention CL-2, no evidentiary hearing would be required. Hence, spending time and resources on preparation and trial may be wasted in the event of a reversal of LBP-11-7.
7. This motion anticipates that the need for power issue that is also set for hearing in August would be subject to the proposed continuance. In the interests of efficiency and economy the evidentiary hearing should proceed as a single hearing rather than requiring two separate settings.
8. Intervenors propose that if the Staff's petition for review is not granted or the ASLB's decision is not reversed after the petition is granted, the matter be set for trial no sooner than 90 days after any such Commission ruling.
9. Counsel for the Staff and counsel for the Applicant have been consulted regarding this motion and both indicated opposition to it.

Respectfully submitted,

/s/ Robert V. Eye

Robert V. Eye, Kan. Sup. Ct. No.10689

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CERTIFICATIONS

I certify that I have made a sincere effort to contact the other parties in this proceeding, to explain to them the factual and legal issues raised in this motion, and to resolve those issues, and I certify that my efforts have been unsuccessful.

I also certify that this motion is not interposed for unreasonable delay, prohibited discovery, or any other improper purpose, that I believe in good faith that there is no genuine issue as to any material fact relating to this motion, and that the moving party is entitled to a decision as a matter of law, as required by 10 C.F.R. §§ 2.1205 and 2.710(d).

/s/ Robert V. Eye

Robert V. Eye, Kan. Sup. Ct. No.10689

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CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2011 a copy of Intervenors' Motion to Continue Evidentiary Hearing was served by the Electronic Information Exchange on the following recipients:

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