

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD PANEL**

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**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  
June 27, 2011**

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**INTERVENORS' CONSOLIDATED RESPONSE TO APPLICANT'S &  
STAFF'S MOTIONS IN LIMINE**

The Intervenors offer the following response to the Applicant's and Staff's motions in limine.

Introduction

On June 15 and 16, 2011, undersigned counsel received emails from counsel for the Staff and Applicant that set forth the testimony, exhibits and arguments that they intended to move to exclude. In response, emails were sent to Applicant's counsel and Staff's counsel. The response specified the areas of agreement concerning the proposed exclusions. The email from undersigned follows:

Steve & Michael,  
Having considered your proposed exclusions, we offer this response.

Mosenthal direct:

Agree with excluding p. 5, lines 3-14; p. 12; p. 13, lines 5-12; p. 14; p. 15; p. 16, lines 1-10 and lines 20-25; p. 17, lines 6-11.

Mosenthal rebuttal:

Agree with excluding p. 6, lines 19-20; p. 7, lines 1-4; p. 8, line 8 partial "...and no impacts from Federal Standards."; p. 11, line 14 sentence beginning "Considering mothballed plants...."; p. 12, lines 3-20; p. 13, lines 9-19, 23-24; p. 14, lines 1-6.

Mosenthal exhibits: agree with excluding 5,6,8, 42, 43, 44.

Mr. Mosenthal has been traveling overseas and I have not been able to clarify the status of exhibits 17 & 18. There's a possibility we may connect yet today; if so, I'll let you know what the status is of 17 & 18.

Johnson direct, rebuttal & exhibits:  
No agreement on exclusions.

Intervenors' statements of positions:  
No agreement on Applicant's proposed exclusions  
It's possible we can reach agreement with Staff's proposed exclusions that correspond to the testimony that we've agreed to exclude. But unless the proposed exclusions are referenced more specifically, we can't agree on exclusions.

Please let me know if our response to your proposed exclusions raises questions I may answer. My availability tomorrow is limited due to a criminal preliminary hearing that's anticipated to last most or all day. I'll check my messages as able.  
Bob

In a separate email later that same day, undersigned agreed with Applicant's counsel on exclusion of Exhibit INT00010 and Mosenthal direct, page 13, Table 2 that comprise the two sets of lines that deal with Federal Equipment Standards and the resulting impacts on net needed after Federal Equipment Standards.

However, many of the designated portions of testimony and exhibits that Intervenors agreed to exclude are covered in the motions in limine. Given the agreement in the above-referenced emails, the portions of testimony and exhibits that Intervenors agreed to exclude, that are nevertheless included in the motions, are moot issues. Accordingly, Intervenors will address herein the proposed exclusions that were not part of the agreed upon exclusions.

Proposed exclusions of Mosenthal direct testimony

Page 5, lines 1-2

The basis for the objection to this testimony is that it projects savings into the future based on adoption of building codes over a planning duration to 2025.<sup>1</sup> Contention DEIS-1G does not specify the duration of time that energy efficient building codes will reduce demand in the ERCOT service area. Therefore, testimony that projects savings to 2025 is germane to this contention.

Page 6, lines 7-14

The basis for the objection to this testimony is that it projects savings into the future based on adoption of building codes over a planning duration to 2025.<sup>2</sup> Contention DEIS-1G does not specify the duration of time that energy efficient building codes will reduce demand in the ERCOT service area. Therefore, testimony that projects savings to 2025 is germane to this contention.

Page 9, lines 1-14

The basis for the objection to this testimony is that it projects savings into the future based on adoption of building codes over a planning duration to 2025.<sup>3</sup> Contention DEIS-1G does not specify the duration of time that energy efficient building codes will reduce demand in the ERCOT service area. Therefore, testimony that projects savings to 2025 is germane to this contention.

Additionally, Mr. Mosenthal references the *Estimates of Energy Cost Savings Achieved From 2009 IECC Code-Compliant, Single-Family Residences in Texas*, Jan 2011, <http://www->

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<sup>1</sup> Mosenthal direct, pp. 4-5.

<sup>2</sup> Id.

<sup>3</sup> Id.

esl.tamu.edu/docs/terp/2011/ESL-TR-11-01-01.pdf.<sup>4</sup> This reference covers projected savings from the 2009 code only.

Page 9, lines 18-19 to p. 10, lines 1- 11 and Table 1

The basis for the objection to this testimony is that it projects savings into the future based on adoption of building codes over a planning duration to 2025.<sup>5</sup> Contention DEIS-1G does not specify the duration of time that energy efficient building codes will reduce demand in the ERCOT service area. Therefore, testimony that projects savings to 2025 is germane to this contention.

Additionally, Mr. Mosenthal references the *Estimates of Energy Cost Savings Achieved From 2009 IECC Code-Compliant, Single-Family Residences in Texas*, Jan 2011, <http://www-esl.tamu.edu/docs/terp/2011/ESL-TR-11-01-01.pdf>.<sup>6</sup> This reference covers savings from the 2009 code only.

Proposed exclusions of Mosenthal rebuttal testimony

Page 10, lines 11-19

The basis for this proposed exclusion is that the projected energy savings include those realized from building renovations as well as new construction. As Mr. Mosenthal points out, renovations are part of the code and savings therefrom should be considered. This information was offered at least in part, in the context of rebutting the assertion that energy savings were double counted.<sup>7</sup> The information disputes the idea of double counting and demonstrates the

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<sup>4</sup> Mosenthal direct, p.9, fn. 12.

<sup>5</sup> Id.

<sup>6</sup> Mosenthal direct, p.9, fn. 12; <http://www-esl.tamu.edu/docs/terp/2011/ESL-TR-11-01-01.pdf>, p. 1-2.

<sup>7</sup> Applicant Rebuttal Statement of Position on DEIS-1-G, p. 7.

conservatism in the savings reflected in Table 2 in Mosenthal's direct. This is not new information because renovations are part of the energy efficient building code.<sup>8</sup>

Page 11, lines 1-3

The basis for the objection to this testimony is that it projects savings into the future based on adoption of building codes over a planning duration to 2025.<sup>9</sup> Contention DEIS-1G does not specify the duration of time that energy efficient building codes will reduce demand in the ERCOT service area. Therefore, testimony that projects savings to 2025 is germane to this contention.

Page 11, lines 11 beginning "As my analysis" to line 14 ending with "standard savings"

The stated basis for this proposed exclusion relates to the EISA and other federal standards. To the extent this references the two lines in Table 2 of Mosenthal's direct that deal with the EISA, such have been excluded by agreement.

Page 11, lines 14-16

The basis for this proposed exclusion is that the information is not related to the energy efficient building code. However, the testimony provides a context of circumstances against which to consider whether the building code savings should be included in the EIS. Because of its contextual nature, it should not be excluded.

Page 11, lines 16-19

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<sup>8</sup> Mosenthal rebuttal, p. 10, line 13.

<sup>9</sup> Id.

The basis for this proposed exclusion is that the projected energy savings include those realized from building renovations as well as new construction. As Mr. Mosenthal points out, renovations are part of the code and savings therefrom should be considered.<sup>10</sup> This information was offered at least in part, in the context of rebutting the assertion that energy savings were double counted.<sup>11</sup> The information disputes the idea of double counting and demonstrates the conservatism in the savings discussed Mosenthal's direct.<sup>12</sup>

Page 8, line 12 to page 9, line 2

The basis for this proposed exclusion is that it is outside the scope of the contention. First, this testimony is contextual to demonstrate the conservatisms in Mosenthal's analysis. Second, contention DEIS-1G is not limited in the duration of time that energy efficient building codes will reduce demand in the ERCOT service area. Therefore, testimony that projects savings to 2025 is germane to this contention.

Page 11, line 20 to page 12 line 2

The basis for this proposed exclusion is that it is outside the scope of the contention. First, this testimony is contextual to demonstrate the conservatisms in Mosenthal's analysis. Second, contention DEIS-1G is not limited in the duration of time that energy efficient building codes will reduce demand in the ERCOT service area. Therefore, testimony that projects savings to 2025 is germane to this contention.

Page 13, lines 4-8

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<sup>10</sup> Mosenthal rebuttal, p. 10, lines 8-19.

<sup>11</sup> Applicant Rebuttal Statement of Position on DEIS-1-G, p. 7.

<sup>12</sup> Mosenthal direct, pp. 10-11.

The basis for this proposed exclusion is that it is outside the scope of the contention. This testimony is contextual to address the implied consequences of shortfalls in ERCOT's energy supply if STP 3 & 4 are not built as scheduled.

Page 13, lines 20-22

The basis for this proposed exclusion is that it is outside the scope of the contention. This testimony is contextual to address the benefits of a delay in building STP 3 & 4 as scheduled.

Page 14, lines 8-11

The basis for this proposed exclusion is that it is outside the scope of the contention. This testimony is contextual to address the benefits of a delay in building STP 3 & 4 as scheduled.

Page 13, lines 1-3 beginning "while at the same time"

The basis for this proposed exclusion is that it is outside the scope of the contention. However, the testimony provides a circumstantial context against which to consider whether the building code savings should be included in the EIS. Because of its contextual nature it should not be excluded.

Exhibits 3, 4 and 17

Exhibits 3 and 4 should be excluded.

Contention DEIS-1G does not specify the duration of time that energy efficient building codes will reduce demand in the ERCOT service area. Therefore, Exhibit 17, that projects savings to 2025, is germane to this contention.

#### Proposed Exclusions from Intervenors' Initial Statement of Position

P. 8, Sentence that begins "Intervenors rely"

The basis for this proposed exclusion is that it is outside the scope of the contention. This is a contextual argument related to whether the building code savings should be included in the EIS. Because of its contextual nature it should not be excluded.

Page 8, beginning "The drastic difference" to end of sentence on page 9.

The basis for this proposed exclusion is that it is outside the scope of the contention. This is a contextual argument related to whether the building code savings should be included in the EIS. Because of its contextual nature it should not be excluded. Moreover, it is part of the disputed facts related to this contention.

#### Proposed Exclusions from Intervenors' Rebuttal Statement of Position

Page 6, sentence beginning "Further, Mr. Mosenthal estimates" to end of paragraph

The basis for this proposed exclusion is that the projected energy savings include those realized from building renovations as well as new construction. As Mr. Mosenthal points out, renovations are part of the code and savings therefrom should be considered.

Page 7, first full paragraph

The basis for this proposed exclusion is that it is outside the scope of the contention. This is a contextual argument related to whether the building code savings should be included in the EIS. Because of its contextual nature it should not be excluded.

#### Proposed exclusions of Johnson direct testimony



Page 6, lines 1-7

This objection is based on the rejection of a contention that the ER should consider a shut down of all four STP units. However, the Johnson testimony highlights the Fukushima related issues that the NRC is grappling with currently. Mr. Johnson's testimony is contextual and demonstrates the conservatism in his testimony that does not assume a permanent shut down of all four STP units.

Page 14, line 16 to page 15, line 8 (Staff)

Page 14, line 22 to page 15, line 8 (Applicant)

This objection is premised on the rejection of a contention that the ER should consider a shut down of all four STP units for a longer duration than previously assumed based. The Johnson testimony highlights the Fukushima related issues that the NRC is grappling with currently. Mr. Johnson's testimony is contextual and demonstrates the conservatism in his analysis that does not assume a longer duration shut down of all four STP units.

Proposed exclusions of Johnson rebuttal testimony

Page 18, lines 1-12 (Applicant)

Page 18, lines 6-12 (Staff)

Johnson poses questions related to whether mitigation benefits should be calculated for co-located units and whether Fukushima events should be considered for purposes of CDF analyses. This testimony highlights the Fukushima related issues that the NRC is grappling with currently. It does not affect the conclusions Johnson reaches in his SAMDA analysis and therefore, should not be excluded.

Page 12, lines 13-18

The basis for this proposed exclusion is that it is outside the scope of the contention. This testimony highlights the Fukushima related issues that the NRC is grappling with currently. It does not affect the conclusions Johnson reaches in his SAMDA analysis and therefore, should not be excluded.

Page 8, lines 12-20

Johnson's testimony states the obvious. The 1991 estimates are less reliable than estimates that are more current. However, his testimony relies upon the same estimates as relied upon by Staff and Applicant. His testimony should not be excluded because it does not alter his conclusions.

Page 17, lines 7-23 excluding for the full sentence on lines 10-12

This testimony is a critique on the analytical methods and conclusions related to calculation of SAMDA costs. This testimony addresses current analytical defects that cast doubt on whether SAMDAs are appropriately screened. However, Mr. Johnson has relied upon the same basic information relied upon by Staff and Applicant; he has not utilized what he considers more reliable methods and his critique does not affect his conclusions.

Proposed Exclusions from Intervenors' Rebuttal Statement of Position

Page 4, top partial paragraph, three sentences that begin "Additionally, this" and all of footnote 19.

This argument is premised on the implications for nuclear power policy that derive from the Fukushima accidents. That the NRC is considering such implications is common

knowledge.<sup>13</sup> The request that this Panel take notice of a pertinent collateral emergency petition that has a material bearing on this COL is reasonable and germane.

The discovery requirements have not been violated.

Applicant argues that the Intervenors did not inform of witnesses or related information through disclosures.<sup>14</sup> The scheduling order requires updates of disclosures based on information known as of the 15<sup>th</sup> of each month.<sup>15</sup> On April 15, 2011, the Intervenors had not secured the services of Mr. Johnson. His availability and willingness to engage the work related to CL-2 was not secured until or about April 29, 2011. Mr. Mosenthal's availability and willingness to engage the work related to DEIS-1-G was not secured until or about May 2, 2011.<sup>16</sup> Accordingly, as of April 15, 2011, there was nothing to report in the May 2, 2011, disclosure.

Conclusion

For the reasons stated, the subject motions in limine should be denied.

Respectfully submitted,

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<sup>13</sup> See for example: <http://www.nrc.gov/japan/japan-news.html>  
<http://pbadupws.nrc.gov/docs/ML1109/ML110960045.pdf>  
<http://www.nrc.gov/japan/japan-activities.html>

<sup>14</sup> Applicant's motion, pp. 11-14

<sup>15</sup> Initial scheduling order, Sec.II.A.1

<sup>16</sup> Declaration of Robert V. Eye, attached

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 27, 2011 a copy of "INTERVENORS' CONSOLIDATED RESPONSE TO APPLICANT'S & STAFF'S MOTIONS IN LIMINE" was served by the Electronic Information Exchange on the following recipients:

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