

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

NUCLEAR INNOVATION NORTH AMERICA
LLC

(South Texas Project Units 3 and 4)

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

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

July 14, 2011

ORDER

(Ruling on Motions in Limine)

On June 17, 2011, the Board received two motions in limine—one each from NRC Staff and Nuclear Innovation North America LLC (Applicant)¹—seeking to strike portions of Intervenor²s' prefiled direct testimony, prefiled rebuttal testimony and associated exhibits relating to two contentions that are the subjects of evidentiary hearing beginning August 18, 2011. For the reasons set forth below, the Board grants in part NRC Staff's and Applicant's motions in limine.

Applicant and NRC Staff argue that portions of Intervenor²s' pre-filed direct and rebuttal testimony and certain exhibits should be excluded, arguing inter alia, that they contain

¹ NRC Staff Motion In Limine to Exclude Portions of Testimony and Exhibits Filed by the Intervenor²s (June 17, 2011) [hereinafter NRC Staff Motion in Limine]; Nuclear Innovation North America's Motion in Limine to Strike Portions of Intervenor²s' Initial and Rebuttal Submissions (June 17, 2011) at 1-2 [hereinafter Applicant Motion in Limine].

² Intervenor²s are the Sustainable Energy and Economic Development Coalition, the South Texas Association for Responsible Energy, and Public Citizen.

information outside the scope of the contentions, outside the scope of rebuttal, or not supported by a qualified expert.³

Intervenors responded to the motions, conceding that portions of testimony and certain exhibits should be excluded, but arguing that, in all other respects, the motions in limine should be denied.⁴ On July 1, 2011, Intervenors clarified that they agree with NRC Staff and Applicant that the following submissions should not be included in the hearing record:⁵

1. Mosenthal Direct Pre-filed Testimony:⁶

- a. Exclude at page 5, lines 3-14; page 12; page 13, lines 5-12 and 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”⁷; page 14, page 15, page 16, lines 1-10 and lines 20-25; and page 17, lines 6-11.

2. Mosenthal Rebuttal Pre-filed Testimony:⁸

- a. Exclude at page 6, lines 19-20; page 7, lines 1-4; page 8, line 8 partial “. . . and no impacts from Federal Standards.”; page 11, line 14 the sentence beginning

³ See NRC Staff Motion in Limine at 1-2; Applicant Motion in Limine at 1-2. In the alternative, Applicant requests that the testimony and exhibits proposed to be excluded be accorded no weight in the Board’s findings of fact. Id. at 2.

⁴ Intervenors’ Consolidated Response to Applicant’s & Staff’s Motions in Limine (June 27, 2011) at 1-2 [hereinafter Intervenors’ Response].

⁵ Id. at 1-2; Corrected Intervenors’ Addendum to Intervenors’ Consolidated Response to Applicant’s and Staff’s Motion in Limine (July 1, 2011) at 1.

⁶ Direct Testimony of Philip H. Mosenthal on Behalf of Sustainable Energy and Economic Development (SEED) Coalition, Public Citizen and South Texas Association for Responsible Energy (Intervenors) (dated May 9, 2011 and submitted May 16, 2011) (Ex. INT000001).

⁷ Intervenors’ Response at 2.

⁸ Rebuttal Testimony of Philip H. Mosenthal (dated May 31, 2011 and submitted June 8, 2011) (Ex. INT000R. 41).

“Considering mothballed plants”; page 12, lines 3-20; page 13, lines 9-19 and 23-24; and page 14, lines 1-6.

3. Intervenors’ Exhibits:

- a. Exclude INT000005; INT000006, INT000008, INT000010, INT000018, INT000042, INT000043; and INT000044.

Licensing boards are accustomed to weighing evidence and determining its relevance to the issues presented.⁹ While “strict rules of evidence do not apply to written submissions,” licensing boards may “on motion or on the presiding officer’s own initiative, strike any portion of a written presentation or a response to a written question that is irrelevant, immaterial, unreliable, duplicative or cumulative.”¹⁰ In the instant case, the Board concludes that Applicant, NRC Staff and Intervenors have identified some material that is not relevant. Upon our independent review, the Board excludes from the record the portions of the prefiled direct testimony, the prefiled rebuttal testimony and the exhibits that all three parties agree should be excluded. Accordingly, by July 25, 2011, Intervenors shall re-file, consistent with this order, the

⁹ 10 C.F.R. § 2.337(a) (“Only relevant, material, and reliable evidence which is not unduly repetitious will be admitted. Immaterial or irrelevant parts of an admissible document will be segregated and excluded so far as is practicable.”).

¹⁰ 10 C.F.R. § 2.319(d); see also id. at § 2.319(e).

Direct Testimony of Philip H. Mosenthal, the Rebuttal Testimony of Philip H. Mosenthal, and an updated exhibit list. In all other respects, the motions in limine are denied.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Michael M. Gibson
ADMINISTRATIVE JUDGE

Rockville, Maryland

July 14, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
NUCLEAR INNOVATION NORTH AMERICA LLC)	Docket Nos. 52-012-COL and 52-013-COL
(NINA))	
)	
(South Texas Project Units 3 and 4))	
)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER (Ruling on Motions in Limine) 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
ORDER (Ruling on Motions in Limine)

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[Original signed by Nancy Greathead]
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Dated at Rockville, Maryland
this 14th day of July 2011