

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

**In the Matter of
Luminant Generation Company, LLC
Comanche Peak Nuclear Power Plant
Units 3 and 4
Combined License Adjudication**

**ASLBP No. 11-914-02-COL-BD01
Docket Nos. 52-034 and 52-035
October 28, 2011**

**MOTION TO REINSTATE AND SUPPLEMENT
THE BASIS FOR FUKUSHIMA TASK FORCE REPORT CONTENTION**

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(e), Intervenors hereby move to reinstate and supplement the basis of their contention¹ seeking consideration of the environmental implications of the Fukushima Task Force Report in the Environmental Impact Statement for STP 3 & 4. The contention was rejected as premature by this Atomic Safety and Licensing Board (“ASLB”) in LBP-11-27, Memorandum and Order (Denying Motions to Reopen Closed Proceedings and Intervention Petition/Hearing Request as Premature), __ NRC __ (Oct. 18, 2011). Intervenors seek to supplement the contention’s basis to assert that the Commissioners of the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) have recognized the safety and environmental significance of the conclusions and recommendations of the Fukushima Task Force Report by issuing an order directing the NRC Staff to “strive to complete and implement the lessons learned from the Fukushima accident within five years – by 2016.” SRM/SECY-11-0124,

¹ See Intervenors’ August 11, 2011, Contention Regarding NEPA Requirement to Address Safety and Environmental Implications of the Fukushima Task Force Report

Memorandum from R.W. Borchardt, Executive Director for Operations to Annette L. Vietti-Cook, Secretary, re: Recommended Actions to be Taken Without Delay from the Near-Term Task Force Report (October 18, 2011).² Intervenor also request the ASLB to rule that in light of SRM/SECY-11-0124, the contention is no longer premature under the standard established by the ASLB in LBP-11-27 and should be admitted.³

DISCUSSION

In LBP-11-27, the ASLB interpreted the Commission's decision in *Union Electric Co. d/b/a Ameren Missouri* (Callaway Plant, Unit 2), et al., CLI-11-05, __ NRC __ (Sept. 9, 2011) to preclude admission of the Petitioner's contention because "it remains much too early in the process of assessing the Fukushima event in the context of the operation of reactors in the United States to allow any informed conclusion regarding the possible safety or environmental implications of that event regarding such operation." *Id.* at 13. LBP-11-27 indicates, however, that the ASLB would consider the contention to be admissible if and when the Commission adopts the Task Force recommendations:

It is difficult to fathom how the Commission could have stated more precisely and definitively that it remains much too early in the process of assessing the Fukushima event in the context of the operation of reactors in the United States to allow any informed conclusion regarding the possible safety or environmental implications of that event regarding such operation. *Of still greater importance given [the Intervenor's] entire reliance on the findings and recommendations of*

² The SRM is posted on the NRC's website at <http://www.nrc.gov/reading-rm/doc-collections/commission/srm/2011/2011-0124srm.pdf>.

³ Petitioner also wishes to notify the ASLB that it believes that LBP-11-27 is based on an erroneous interpretation of the National Environmental Policy Act ("NEPA") and the Commission's decision in *Union Electric Co. d/b/a Ameren Missouri* (Callaway Plant, Unit 2), et al., CLI-11-05, __ NRC __ (Sept. 9, 2011), and therefore intends to petition the Commission for review of LBP-11-27. Petitioner will request the Commission to hold its petition for review in abeyance pending the outcome of this motion. *See, e.g., Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-1, 53 NRC 1, 3 (2001) (citing *International Uranium Corp.* (White Mesa Uranium Mill), CLI-97-9, 46 NRC 23, 24-25 (1997)).

the Task Force, the Commission stressed with equal force and clarity that, while under active study, none of those findings and recommendations has been accepted. Thus, they scarcely have been given the effect that, according to [the Intervenor], gives rise to the environmental implications that undergird the contention that is sought to be admitted.

Id. (emphasis added).

Intervenors respectfully submit that the ASLB's condition for admission of the contention is satisfied by a Staff Requirements Memorandum ("SRM") that was issued by the Commission on October 18, 2011, the same day that LBP-11-27 was issued. SRM/SECY-11-0124, Memorandum from R.W. Borchardt, Executive Director for Operations to Annette L. Vietti-Cook, Secretary, re: Recommended Actions to be Taken Without Delay from the Near-Term Task Force Report (Oct. 18, 2011).⁴ In SRM/SECY-11-0124 the Commission ordered the NRC Staff to "strive to complete and implement the lessons learned from the Fukushima accident within five years – by 2016." While the SRM did not order the adoption of every single recommendation, it did endorse a significant number of them, including the sweeping Recommendation # 1 which would expand the scope of the adequate protection standard. Thus, the Commission has "accepted" the Task Force Report in significant respects. LBP-11-27, slip op. at 13.

Therefore Petition requests the ASLB to take the following actions:

- order the reinstatement of the contention;
- permit the supplementation of the contention's basis to include (in addition to the language of the Task Force Report itself and the Declaration of Dr. Arjun Makhijani) SRM/SECY-11-0124 as an indication of the significance of the Task Force Report's conclusions and recommendations; and

⁴ There is no indication in LBP-11-27 that the ASLB was aware of the issuance of SRM/SECY-11-0124 at the time it issued LBP-11-27.

- rule on the admissibility of the reinstated and revised contention in light of SRM/SECY-11-0124.

CONCLUSION

For the foregoing reasons, the Petitioner's motion should be granted.

Respectfully submitted this 28th day of August 2011.

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CERTIFICATE PURSUANT TO 10 C.F.R. § 2.323(b)

I certify that on October 28, 2011, I contacted counsel for the Applicant and NRC Staff and attempted to resolve the issues raised by this motion. Applicant opposes the motion. Staff indicated that without additional information they could not take a position and indicated that a response to the motion would be filed.

/s/ Robert V. Eye

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MOTION TO REINSTATE AND SUPPLEMENT THE BASIS FOR FUKUSHIMA TASK FORCE REPORT CONTENTION** was served upon the following persons by Electronic Information Exchange and/or electronic mail.

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Dated: October 28, 2011
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