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NUCLEAR REGULATORY COMMISSION

Title: South Texas Project Units 3 & 4

Docket Number: 52-12-COL and 52-13-COL

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USNRC

April 24, 2012 (11:00 a.m.)

ASLBP Number: 09-885-08-COL-BD01

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Location: teleconference

Date: Tuesday, April 17, 2012

Work Order No.: NRC-1561

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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PRE-HEARING CONFERENCE

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In the Matter of: : Docket No. 52-12-COL
: and 52-13-COL
NUCLEAR INNOVATION NORTH : ASLBP No.
AMERICA LLC : 09-885-08-COL-BD01
(South Texas Project :
Units 3 and 4) :

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Tuesday, April 17, 2012

Teleconference

BEFORE:

MICHAEL M. GIBSON, Chair
GARY S. ARNOLD, Administrative Judge
RANDALL J. CHARBENEAU, Administrative Judge

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P R O C E E D I N G S

1:00 P.M.

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3 CHAIR GIBSON: Let's have counsel identify
4 themselves and their party for the court reporter,
5 please.

6 MR. FRANTZ: This Steve Frantz. I have
7 John Matthews with me. We're counsel for the
8 Applicant.

9 MR. SPENCER: This is Michael Spencer
10 representing the NRC staff.

11 MR. EYE: This is Robert Eye and Brett
12 Jarmer. We represent the Intervenors.

13 CHAIR GIBSON: Thank you very much. I
14 don't think we'll be needing to take too much of your
15 time, but we got the Joint Motion for Entry of an
16 Amended Protective Order and we wanted to talk with
17 you all about that a little while.

18 The question, I think, that came to Judge
19 Arnold, Judge Charbeneau, and I was what the nature of
20 the proprietary information is that is involved here.

21 MR. FRANTZ: Judge Gibson, this is Steve
22 Frantz. The Intervenors have requested a copy of the
23 loan agreement between TANE and NINA. Although we
24 don't believe that's relevant to the contention, we
25 want to cooperate with the Intervenors and therefore,

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1 we're prepared to give them a copy of that loan
2 agreement subject to the protective order.

3 CHAIR GIBSON: Is this -- so it's
4 basically in the nature of commercial and financial
5 information.

6 MR. FRANTZ: That's correct.

7 CHAIR GIBSON: What occurred to us is is
8 there any reason why we cannot simply have an agreed
9 protective order that addresses -- that is confined to
10 trade secrets or commercial or financial information
11 under 10 CFR 2.390(a)(4), rather than having any
12 association with SUNSI per se.

13 MR. FRANTZ: That would be permissible,
14 but I guess we wrote the protective order a bit more
15 broadly in case there's something I expected that
16 arises in the future that we won't need to come back
17 to the Board once again.

18 MR. SPENCER: Also -- this is Michael
19 Spencer -- the protective order is written currently
20 as superseding the previous protective order governing
21 security-related information. So if the protective
22 order were to be more limited, it either should
23 encompass proprietary and the previous security-
24 related information or I guess be a separate
25 protective order.

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1 CHAIR GIBSON: Right. I guess what I
2 think we would like to see is a protective order
3 that's focused on the FC-1 and is confined to the
4 trade secrets and commercial and financial information
5 that you don't want to be out there in the public
6 domain, but that, of course, you're willing to share
7 with the Intervenors. And I think if we could do
8 that, then hopefully it won't really affect any
9 existing protective order that's in place with respect
10 to these proceedings, but it would just be something
11 in addition to it that would be focused on contingent
12 FC-1.

13 MR. FRANTZ: Judge Gibson, this is Steve
14 Frantz. We're prepared to accept your recommendation
15 and we have no problem with that.

16 CHAIR GIBSON: Okay, Mr. Eye?

17 MR. EYE: Yes, thank you, Judge Gibson.
18 This is Robert Eye. We, too, would have no objection
19 to that approach.

20 CHAIR GIBSON: Mr. Spencer?

21 MR. SPENCER: We agree with that approach,
22 Your Honor.

23 CHAIR GIBSON: Well, then, if you all
24 would not mind going back and just making some fine
25 tuning to this so it's a confined, specific protective

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1 order addressing these issues I think we'll look it
2 over and based on what we're hearing right now I think
3 we would all three find that acceptable.

4 MR. FRANTZ: Very good. This is Steve
5 Frantz. What we'll do is take the lead and revise the
6 draft protective order, send it out to the other
7 parties for their review and comment, and then submit
8 that to the Board.

9 CHAIR GIBSON: Okay. Judge Arnold, do you
10 have anything else?

11 ADMIN. JUDGE ARNOLD: I just have this one
12 question. I understand why we want this. Do the
13 parties understand what we see as the major difference
14 between SUNSI and the financial information and why we
15 would rather have it viewed as proprietary financial
16 information?

17 MR. EYE: The Intervenors understand that,
18 Judge Arnold. This is Bob Eye. Intervenors
19 understand that, Your Honor.

20 ADMIN. JUDGE ARNOLD: Okay, it's because
21 there's something in the Code of Federal Regulations
22 about the handling of proprietary financial
23 information, but there's nothing in the rules anywhere
24 about SUNSI. So we like to keep things clearer and
25 then be able to point to what our justification is.

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1 CHAIR GIBSON: Yes, I think just echoing
2 Judge Arnold's thoughts here, I think 2.309(a)(4) has
3 a very explicit provision. I think it probably
4 encompasses everything you guys are really
5 contemplating exchanging here and I would think it
6 should be sufficient for these purposes. And it
7 sounds like you all are agreeable to doing that.

8 MR. EYE: Yes, sir.

9 CHAIR GIBSON: Judge Charbeneau, do you
10 have anything else?

11 ADMIN. JUDGE CHARBENEAU: No, I don't.

12 CHAIR GIBSON: Do you all have anything
13 else you need to bring to our attention now?

14 MR. MATTHEWS: Your Honor, this is John
15 Matthews, I just want to point out 2.309 governs the
16 actions of the NRC. It doesn't govern the
17 Intervenors. So our protective order needs to reach
18 beyond 2.309 and apply the principles of 2.309 to the
19 Intervenors, just to make sure we're all clear on
20 that.

21 CHAIR GIBSON: I understand what you're
22 saying. All I'm saying is I think if you'll draft the
23 order up so that it addresses that Intervenors are
24 going to agree to be bound by this protective order,
25 they're not, you know, all they want to do is see the

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1 information. So I think we can find a way to get this
2 addressed.

3 Okay, if there's nothing else, I believe
4 we still stand adjourned and I guess the next order of
5 business besides this protective order will be our
6 status report from you, Mr. Spencer, which will be
7 coming up before too, long, huh?

8 MR. SPENCER: Yes.

9 CHAIR GIBSON: Okay, thank you. Have a
10 good day.

11 (Whereupon, at 1:07 p.m., the pre-hearing
12 conference was concluded.)

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CERTIFICATE

This is to certify that the attached proceedings
before the United States Nuclear Regulatory
Commission

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