

April 24, 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE SECRETARY OF THE COMMISSION

In the Matter of)	
STP Nuclear Operating Co.)	Docket Nos. 50-498-LR
(South Texas Project, Units 1 and 2))	50-499-LR
)	

**SEED COALITION’S HEARING REQUEST
AND PETITION TO INTERVENE IN LICENSE RENEWAL
PROCEEDING FOR SOUTH TEXAS UNITS 1 AND 2**

I. INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.309(c), 2.309(f)(1), and 2.309(f)(2), the Sustainable Energy and Economic Development (“SEED”) Coalition requests a hearing and seeks leave to intervene in the Nuclear Regulatory Commission’s (“NRC’s”) license renewal proceeding for the South Texas Units 1 and 2 nuclear power plant. This Hearing Request/Petition to Intervene is supported by the attached SEED Coalition’s Motion to Reopen the Record of License Renewal Proceeding for South Texas Units 1 and 2 Nuclear Power Plant (April 23, 2015).

SEED Coalition seeks admission of a single “place-holder” contention challenging the NRC’s reliance, in proposing to re-license South Texas Units 1 and 2, on the Continued Storage of Spent Nuclear Fuel Rule (79 Fed. Reg. 56,238 (Sept. 19, 2014) (“Continued Spent Fuel Storage Rule”)) and the Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel (NUREG-2157, September 2014) (“Continued Spent Fuel Storage GEIS”).¹

¹ SEED Coalition notes that similar place-holder contentions have been filed in other reactor licensing and license renewal proceedings, including the Callaway Unit 1 license renewal proceeding and the combined license proceeding for Fermi Unit 3. *See* Missouri Coalition for the Environment’s Hearing Request and Petition to Intervene in License Renewal Proceeding for Callaway Nuclear Power Plant (Dec. 8, 2014); Beyond Nuclear’s Hearing Request and Petition

While SEED Coalition seeks admission of its contention, it does not seek to litigate the substantive content in an adjudicatory hearing. Instead, SEED Coalition has already raised its concerns about the Continued Spent Fuel Storage Rule and the Continued Spent Fuel Storage GEIS in comments on draft versions of those documents, and the NRC has already either rejected or disregarded SEED Coalition's comments in the final versions of the Rule and GEIS. SEED Coalition also has appealed the final versions to the U.S. Court of Appeals for the District of Columbia Circuit. *See Beyond Nuclear et al. v. NRC*, Docket No. 14-1216 (filed Oct. 29, 2014).²

The sole purpose of this contention is to lodge a formal challenge to the NRC's complete and unqualified reliance, in the separate license renewal proceeding for South Texas Units 1 and 2, on the legally deficient Continued Spent Fuel Storage Rule and Continued Spent Fuel Storage GEIS. SEED Coalition submits its contention with the reasonable expectation that it will be denied, because the subject matter of the contention is generic. SEED Coalition respectfully submits that nevertheless, the filing of a contention is the only procedural means offered by Commission regulations for ensuring that any court decision resulting from SEED Coalition's appeal of the generic Continued Spent Fuel Storage Rule and GEIS will also be applied to the individual South Texas Units 1 and 2 license renewal proceeding, which relies on the Continued Spent Fuel Storage Rule and GEIS. Upon denial of SEED Coalition's contention, SEED

to Intervene in Combined License Proceeding for Fermi Unit 3 Nuclear Power Plant (Feb. 12, 2015).

² *Beyond Nuclear v. NRC* was consolidated with four other cases and is now captioned *New York et al. v. NRC*, Docket Nos. 14-1210, 14-1212, 14-1216, and 14-1217 (Consolidated) (filed October 31, 2014) ("*New York II*").

Coalition intends to appeal the decision to the U.S. Court of Appeals and request that the case be held in abeyance pending the Court's decision in *New York II*.³

II. DEMONSTRATION OF STANDING

SEED Coalition is a project of Texas Fund for Energy and Environmental Education, Inc., a statewide nonprofit organization with 5,000 members working for clean air and clean energy in Texas. The organization advocates for sustainable energy, including energy efficiency, renewable energy, and conservation.

SEED Coalition seeks admission of its contention in order to protect its members' interest in a clean and healthy environment, including protection from the health and environmental hazards posed by continued generation of spent fuel at the South Texas Units 1 and 2 nuclear reactors. The organization has standing to intervene through members who live, work, and/or own property within 50 miles of South Texas Units 1 and 2, and their interests may be affected by the results of the proceeding. *Virginia Electric and Power Co.* (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979). Their health, safety, property value, and means of livelihood could be adversely affected if the NRC permits South Texas Units 1 and 2 to operate in a manner that is unsafe or harmful to the environment. SEED Coalition has attached a declaration from member Susan Dancer who has authorized SEED

³ In this context, SEED Coalition notes that its contention is not accompanied by a petition for a waiver of 10 C.F.R. §§ 51.71(d), 51.95(c)(2), or any of the other regulations on which the Commission relies to bar members of the public from litigating generic NEPA issues in individual licensing proceedings. No purpose would be served by such a waiver, because SEED Coalition does not seek an adjudicatory hearing on the NRC's generic environmental findings. Instead, SEED Coalition's only purpose in raising its contention is to ensure that any decision by the U.S. Court of Appeals regarding the validity of the Continued Spent Fuel Storage Rule and GEIS will also be applied to this proceeding, in which the NRC relies on them.

Coalition to bring this legal action on her behalf.

III. FACTUAL AND PROCEDURAL BACKGROUND

For several decades, the NRC relied on its “Waste Confidence” decision and Temporary Storage Rule to address, in reactor licensing and re-licensing proceedings, safety and environmental issues associated with spent fuel storage and disposal. In 2010, the NRC published updates to the Waste Confidence decision (the “Waste Confidence Update”) and Temporary Storage Rule, which were challenged by several state governments, an Indian tribe, and environmental organizations. Waste Confidence Decision Update, 75 Fed. Reg. 81,037 (Dec. 23, 2010) and Temporary Storage Rule, 75 Fed Reg. 81,032 (Dec. 23, 2010).

In 2011, the NRC issued the Final Environmental Impact Statement for Comanche Peak Units 3 and 4. Final Environmental Impact Statement for Combined Licenses (COLs) for Comanche Peak Units 3 and 4 at 6-12 – 6-13 (NUREG-1943, May 2011) (ML11131A001).

In *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012) (“*New York I*”), the U.S. Court of Appeals vacated the Waste Confidence Update and Temporary Storage Rule, and remanded them to the NRC for further proceedings. Shortly thereafter, in response to petitions by SEED Coalition and other parties, the NRC suspended licensing and re-licensing decisions for all reactors, pending completion of the environmental studies ordered by the U.S. Court of Appeals. *Calvert Cliffs 3 Nuclear Power Project, LLC et al.*, CLI-12-16, 76 NRC 63 (2012) (“CLI-12-16”).

On September 13, 2013, in response to the Court’s remand in *New York I*, the NRC published a proposed rule entitled Waste Confidence – Continued Storage of Spent Nuclear Fuel, 78 Fed. Reg. 56,776 (Sept. 13, 2013) (“Proposed Waste Confidence Rule”). The NRC also

published a Draft Waste Confidence GEIS (NUREG-2157, noticed at 78 Fed. Reg. 56,621 (Sept. 13, 2013)).

In November of 2013, the NRC issued Supplement 48 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding South Texas Project, Units 1 and 2 (NUREG-1437) (“South Texas 1-2 FEIS”). Noting that the U.S. Court of Appeals had vacated the NRC’s most recent safety and environmental analysis regarding spent fuel storage and disposal, the NRC stated that it would revise its regulations and issue a new environmental analysis. The NRC predicted that: “The revised rule and supporting EIS are expected to provide the necessary NEPA analyses of waste confidence-related human health and environmental issues.” *Id.* at 6-2. No subsequent changes were made to the South Texas 1-2 FEIS.

On December 20, 2013, SEED Coalition joined thirty-two other environmental organizations in submitting Comments by Environmental Organizations on Draft Waste Confidence Generic Environmental Impact Statement and Proposed Waste Confidence Rule and Petition to Revise and Integrate All Safety and Environmental Regulations Related to Spent Fuel Storage and Disposal (ADAMS Accession No. ML14030A152, corrected on Jan. 7, 2014 in ML14024A297) (“SEED Coalition et al. Comments”). The SEED Coalition et al. Comments were supported by expert declarations by Dr. Arjun Makhijani, David Lochbaum, Dr. Gordon Thompson, and Mark Cooper (ADAMS Accession No. ML14030A152). The comments and supporting declarations made detailed and comprehensive criticisms of the Proposed Waste Confidence Rule and Draft Waste Confidence GEIS, charging that they were inadequate to satisfy NEPA or the Atomic Energy Act on both legal and technical grounds. Other

organizations, as well as state and local governments, also filed comments critical of the Proposed Rule and Draft GEIS.

Despite these criticisms, in September 2014, the NRC published the Final Continued Spent Fuel Storage Rule and Final Continued Spent Fuel Storage GEIS, without changing its environmental analysis in any significant respect. The Final Continued Spent Fuel Storage Rule also omitted “Waste Confidence” safety findings required by the Atomic Energy Act. Upon issuance of the Rule and GEIS, the Commission lifted the suspension of licensing and re-licensing for South Texas Units 1 and 2 and other reactors. *Calvert Cliffs 3 Nuclear Power Project, LLC et al.*, CLI-12-08, 80 NRC 71 (2014).

In the fall of 2014, SEED Coalition joined seven other environmental organizations in seeking judicial review of the Rule and GEIS by the U.S. Court of Appeals for the District of Columbia Circuit under NEPA, the Atomic Energy Act, and the Administrative Procedure Act, *inter alia*. *Beyond Nuclear et al. v. NRC*, No. 14-1216 (filed Oct. 29, 2014). The case was consolidated with similar appeals by the States of New York, Connecticut, Massachusetts, and Vermont; the Prairie Island Indian Community; and Natural Resources Defense Council in *New York II*. The parties are now awaiting a briefing schedule.

After the NRC issued the Continued Spent Fuel Storage Rule and GEIS, SEED Coalition reasonably anticipated that the NRC Staff would comply with NEPA and the agency’s own implementing regulations by incorporating the Continued Spent Fuel Storage GEIS by reference into the South Texas 1-2 FEIS. When three months had passed after the effective date of the Rule and the NRC Staff still had not supplemented the South Texas 1-2 FEIS (or any other EIS issued prior to the Continued Spent Fuel Storage GEIS), SEED Coalition joined four other

organizations in petitioning the NRC Commissioners to order the correction of the Staff's legal error. Petition to Supplement Reactor-Specific Environmental Impact Statements to Incorporate by Reference the Generic Environmental Impact Statement for Continued Spent Fuel Storage (Jan. 28, 2015) ("Petition to Supplement"). The Petitioners argued that NEPA and implementing regulations of NRC and the Council on Environmental Quality ("CEQ") require the NRC to supplement the South Texas 1-2 FEIS and other EISs to incorporate the Continued Spent Fuel Storage GEIS by reference. The Petition to Supplement is pending before the Commission.

IV. CONTENTION

A. Statement of Contention

While the text of the South Texas Units 1 and 2 FSEIS is outdated with respect to its discussion of spent fuel storage impacts, 10 C.F.R. § 51.23(b) provides that the Continued Spent Fuel Storage GEIS is incorporated by reference into the South Texas Units 1 and 2 FSEIS.⁴ For all of the reasons stated in SEED Coalition et al.'s Comments on the Draft Waste Confidence GEIS, the NRC lacks a lawful basis under NEPA for licensing South Texas Units 1 and 2, because the NRC relies on the generic conclusions of the Continued Spent Fuel Storage Rule and GEIS for its analysis of the environmental impacts of spent fuel storage. As discussed in SEED Coalition et al.'s comments on the Rule and GEIS, they suffer from the following failures:

- In blatant violation of NEPA and the Court's decision in *New York I*, the Continued Spent Fuel Storage GEIS fails to examine the probability and consequences of failure to site a repository. Instead of examining the risk of failing to site a repository, the GEIS rationalizes the risk away, by arbitrarily assuming that spent fuel will be protected by

⁴ 10 C.F.R. § 51.23(b) states that the Continued Spent Fuel Storage GEIS is deemed incorporated into EISs prepared under 10 C.F.R. § 51.95 (which governs preparation of draft and final supplemental EISs for reactor licensing and license renewal).

“institutional controls” for an infinite period of time at reactor sites. This assumption is not only absurd and inconsistent with the Nuclear Waste Policy Act (“NWPA”), but it also defeats the Court’s purpose of forcing NRC to reckon with the environmental consequences of its failure to site a repository.

- The GEIS fails to acknowledge that the Continued Spent Fuel Storage Rule is a licensing action, and therefore it distorts the statement of purpose and need for the rule as relating to administrative rather than environmental concerns. As a result, the GEIS also mischaracterizes the alternatives that must be considered. Instead of evaluating alternatives related to storage and disposal of spent fuel, the GEIS examines alternatives related to the administrative question of how to prepare an EIS. The result is a farcical cost-benefit analysis that utterly fails to address alternatives for avoiding or mitigating the environmental impacts of storing spent fuel or siting a repository.
- The GEIS’ analysis of the environmental impacts of extended spent fuel storage ignores the fact that NRC knows very little about the behavior of spent fuel in long-term or indefinite storage conditions, especially the potentially significant effects of long-term dry cask storage on high burnup fuel integrity. In violation of NEPA, the NRC makes no attempt to quantify these uncertainties.
- The GEIS fails to fully consider the environmental impacts of spent fuel pool leaks and fires. In violation of NEPA, the GEIS relies upon incomplete data, adopts a flawed concept of risk and ignores a range of causes for accidents.
- In violation of NEPA, the GEIS makes no attempt to show how the environmental impacts associated with the Continued Spent Fuel Storage Rule will be quantified and incorporated into cost-benefit analyses for nuclear reactors. Although spent fuel disposal and long-term storage costs are high enough to tip the balance of a cost-benefit analysis for reactor licensing away from licensing, nowhere does the NRC explain how it will take these costs into account in reactor licensing decisions.
- In violation of NEPA, the GEIS fails to support the limited conclusions in the Continued Spent Fuel Storage Rule and GEIS regarding the technical feasibility of spent fuel disposal.
- The NRC has splintered the analysis of environmental impacts associated with storage and disposal of spent fuel into an array of safety findings and environmental analyses. While the issues covered by these separate findings and analyses overlap and involve cumulative impacts, the NRC refuses to integrate them. The NRC also refuses to correct inconsistencies between them.⁵

⁵ As discussed above, the NRC Staff has not yet updated the FEIS for South Texas Units 1 and 2 to incorporate the Continued Spent Fuel Storage GEIS by reference, as required by NEPA, 10

B. Statement of Basis for the Contention

The basis for SEED Coalition’s contention is provided in the SEED Coalition et al. Comments and attachments (including the declarations of Dr. Arjun Makhijani, Dr. Gordon Thompson, David Lochbaum, and Mark Cooper).

C. Demonstration that the Contention is Within the Scope of the Proceeding

The contention is within the scope of the proceeding because it challenges the adequacy of the NRC’s NEPA review for the licensing of South Texas Units 1 and 2.

D. Demonstration that the Contention is Material to the Findings the NRC Must Make to License This Reactor

The contention is material to the findings that the NRC must make in order to license this reactor because it asserts that the environmental findings in the Continued Spent Fuel Storage Rule and the Continued Spent Fuel Storage GEIS are not supported and are legally deficient.

E. Concise Statement of the Facts or Expert Opinion Supporting the Contention, Along with Appropriate Citations to Supporting Scientific or Factual Materials

The statements of fact or expert opinion supporting the contention are set forth in the SEED Coalition et al. Comments and attachments (including the declarations of Dr. Arjun Makhijani, Dr. Gordon Thompson, David Lochbaum, and Mark Cooper).

C.F.R. Part 51, Appendix A and other authorities. *See also* Petition to Supplement at 7-9. In the absence of an accurate FEIS, SEED Coalition is not able to challenge the FEIS for South Texas Units 1 and 2 with the accuracy and specificity required by 10 C.F.R. §§ 2.309(f)(1)(vi) and (f)(2). *Id.* at 10-11. Nevertheless, in order to ensure that the contention is filed before the NRC licenses South Texas Units 1 and 2, SEED Coalition submits it now, based on the best available information.

F. A Genuine Dispute Exists with the Applicant on a Material Issue of Law or Fact

This contention raises a genuine dispute with both the applicant and the NRC regarding whether the NRC has satisfied NEPA for the purpose of issuing the license renewal for South Texas Units 1 and 2.

V. THE CONTENTION IS TIMELY PURSUANT TO 10 C.F.R. §§ 2.309(c) and 2.309(f)(2)

NRC regulations 10 C.F.R. § 2.309(c) and § 2.309(f)(2) call for a showing that:

(i) The information upon which the amended or new contention is based was not previously available;

(ii) The information upon which the amended or new contention is based is materially different than information previously available; and

(iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

This Hearing Request/Petition to Intervene is timely because it does not depend at all on past information. Instead, it is a “place-holder” that depends on an event that will occur in the future: the U.S. Court of Appeals’ decision in *New York II*. SEED Coalition’s contention seeks the denial (or revocation) of a renewed license for South Texas Units 1 and 2 in the event that the Court of Appeals reverses the Continued Spent Fuel Storage Rule and/or GEIS. Because the NRC may renew the operating license for South Texas Units 1 and 2 before the Court reaches a decision in *New York II*, this contention must be filed now to ensure that the Court’s decision in *New York II* will be applied to this proceeding.

VI. CONSULTATION CERTIFICATION PURSUANT TO 10 C.F.R. § 2.323(b)

Undersigned counsel Robert Eye certifies that on April 21, 2015, he contacted counsel for STP Nuclear Operating Co. and the NRC Staff in an attempt to obtain their consent to this Hearing Request/Petition to Intervene. Counsel for both parties stated that they would oppose it.

VII. CONCLUSION

For the reasons stated, SEED Coalition respectfully requests that its contention be admitted.

Respectfully submitted,

Signed (electronically) by:
Robert V. Eye
Robert V. Eye Law Office, L.L.C.
123 SE 6th Ave., Suite 200
Topeka, KS 66603
785-234-4040
E-mail: bob@kauffmaneye.com

April 24, 2015

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2015, a copy of the above and foregoing Request for Hearing and Petition to Intervene the Record was served by the Electronic Information Exchange.

Signed (electronically) by:
Robert V. Eye, KS Sup. Ct. # 10689
Robert V. Eye Law Office, L.L.C.
123 SE 6th Ave., Suite 200
Topeka, KS 66603
785-234-4040
E-mail: bob@kauffmaneye.com

