

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

**In the Matter of
South Texas Project Nuclear Operating Co.
Application for the South Texas Project
Units 3 and 4
Combined Operating License Application**

Docket Nos. 52-012, 52-013

**Petitioners' Reply to Applicant's Answer to
Petition for Intervention and Request for Hearing**

Introduction

Petitioners offer the following Reply for consideration in the *instant* combined operating license adjudication. Petitioners have limited their reply to specific points in selected contentions. The absence of a specific reply does not constitute an agreement by Petitioners with the Applicant's Answer.

The Staff's Answer and the Applicant's Answer raise essentially the same arguments regarding the Petitioners' Contentions. Accordingly, the Petitioners incorporate by reference their Reply to the Staff's Answer except as related to Contention Two.

The Petitioners submit that all their contentions meet the requirements of 10 C.F.R. Pt. 2 and should be admitted in this adjudication. The contentions raise material issues related to the adjudication, are adequately supported by citation to documents submitted by the Applicant, NRC documentation, information in the public domain, expert analysis and/or rules of law including the Atomic Energy Act, 42 U.S.C. 2011 et seq. All of the contentions are within the scope of the proceeding because they raise issues directly related to the Applicant's documentation, NRC

regulatory requirements and/or the Atomic Energy Act, *Id.*

Contention Two

The Staff and Applicant differ on Contention Two related to fires and explosions at nuclear plants. The Staff states that Contention Two is an admissible contention to the extent that the Combined Operating License Application (COLA) does not include information required under 10 CFR 52.80(d). (Staff Answer, pp.16-17)

The Applicant states that the contention should not be admitted because (1) the regulation will not be final until May 26, 2009, (2) the contention is premature and that Petitioners should have an opportunity to submit a contention on this issue after Applicant has revised its application and the required information will be provided by the Applicant, (3) the contention is a challenge to the ABWR DCD and (4) the contention is not adequately supported. (Applicant's Answer, pp.18-20).

The Applicant's first objection to Contention Two deals strictly with the timing of when the requirements of 10 CFR 50.54(hh) become final. The Applicant is correct that the regulatory requirements will not be final until May 26, 2009. However, pursuant to a hearing notice the oral argument in this matter is set for June 23 and 24, 2009. This is after the regulatory requirements in question will become final. Therefore, artificially excluding the subject regulatory requirements from this adjudication because of the timing question allows form to overtake function. It is clear that this adjudication will not be completed by May 26, 2009, and excluding Contention Two simply because the regulations were not final as of the date that the contentions were originally filed, April 21, 2009, or when the Applicant filed its Answer, May 18, 2009, simply forestalls regulatory proceedings related to this otherwise admissible contention.

Second, the Applicant contends that this contention is premature because it has not yet revised its application and subsequent to the revision, the Petitioners would have another opportunity to submit a contention related to the subject regulatory requirements. The Petitioners contend that the fact that the required information is not currently in the application does not render the contention premature and the Staff's Answer agrees with that point. (Staff Answer, pp. 16-17) Moreover, the better procedural mechanism is to allow the contention to go forward with an opportunity to amend it depending on the contents of the Applicant's revised application.

Third, the Applicant asserts that Contention Two is an impermissible attack on the ABWR DCD. The Petitioners disagree with any implication that the ABWR DCD meets the regulatory requirements to establish that in the event of a large explosion/fire comparable to that expected by the impact of a large commercial airliner the plant can maintain containment integrity, reactor cooling and spent fuel pool cooling. Nowhere in the Applicant's documents are there assumptions that large areas of the plant could be lost to explosions/fires and the means by which such losses could be adequately mitigated in order to prevent a loss of containment integrity, reactor core cooling and/or the loss of spent fuel pool cooling capabilities. Indeed, the Applicant's admission that its application requires revision contradicts this particular objection to Contention Two. The substantive point is how the Applicant will respond to large losses of the plant due to explosions/fires and still maintain containment integrity, reactor core cooling and spent fuel pool cooling capabilities. The point is that this information is not in the Applicant's documents at present. Accordingly, the contention should be admitted in order to assure that the Applicant has not only addressed the regulatory requirements in question but has done so in a way to establish precisely how it intends to deal with the large loss of plant areas due to explosions/fires and the safety implications related thereto.

Finally, the Applicant objects to Contention Two because it is not adequately supported by the Petitioners. Petitioners incorporate by reference their original citations to information in the Petition. Additionally, the fact that the Applicant has acknowledged that revisions must be made to the Application in order to satisfy the regulatory requirements of 10 CFR 52.80(d) is an acknowledgment of the application's incompleteness and deficiencies. The information cited by the Petitioners related to Contention Two is intended to point out why compliance with the regulatory requirements is crucial.

Furthermore, the Petitioners anticipate that the Applicant will suggest that fires and explosions that cause the loss of large areas of the plant can be mitigated by use of conventional methods as outlined in its current application documents. The Applicant's anticipated responses and reliance on conventional means to suppress fires and deal with the after effects of explosions that implicate multiple safety systems and represent potential loss of containment integrity, reactor core cooling and spent fuel pool cooling capabilities are inadequate and the Applicant's intention to revise its documents is an implicit admission of this inadequacy. Additionally, the Petitioners have cited to specific sections of the Design Control Document that address deficiencies in the Applicant's fire modeling assumptions. The deficiencies do not address the magnitude of explosions/fires that would result from the impact of a large aircraft into the reactor complex. Accordingly there is sufficient support for this contention and it should be admitted.

Conclusion

The Petitioners have satisfied the requirements related to Contention Two and it should be admitted to this adjudication.

Respectfully submitted,

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