

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

DOCKETED 07/12/07

G. Paul Bollwerk, III, Chairman
Nicholas G. Trikouros
Dr. James F. Jackson

SERVED 07/12/07

In the Matter of

SOUTHERN NUCLEAR OPERATING CO.

(Early Site Permit for Vogtle ESP Site)

Docket No. 52-011-ESP

ASLBP No. 07-850-01-ESP-BD01

July 12, 2007

MEMORANDUM

(Certifying Question Regarding Conduct of Mandatory Hearing)

In the October 2006 notice of hearing and opportunity to petition for leave to intervene for this early site permit (ESP) proceeding for the Vogtle ESP site, the Commission indicated that a Licensing Board (to be designated subsequently) would hold the mandatory hearing for the proceeding and make the findings required by 10 C.F.R. § 2.104(b). See 71 Fed. Reg. 60,195, 60,195-96 (Oct. 12, 2006). Based on that notice, this Licensing Board, which was assigned to conduct this ESP proceeding, issued a notice of hearing indicating it intends to officiate at the required mandatory hearing and established a general schedule for conducting that hearing on uncontested matters. See Licensing Board Notice of Hearing (Application for Early Site Permit) (Mar. 28, 2007) at 2-3 (72 Fed. Reg. 15,913 (Apr. 3, 2007)); Licensing Board Memorandum and Order (Prehearing Conference and Initial Scheduling Order) (May 7, 2007) app. A at 2-3 (unpublished); see also Tr. at 238-39.

Subsequently, in June 2007 the Commission approved implementation of a number of recommendations by the Combined License Review Task Force, which was established to

explore avenues for increasing the efficiency of the new reactor combined operating license (COL) review process. Among these was the Task Force proposal that the Commission itself conduct the mandatory hearings for COL proceedings required by the agency's rules implementing section 189a(1)(A) of the Atomic Energy Act of 1954, 42 U.S.C. § 2239(a)(1)(A). See Memorandum from Annette L. Vietti-Cook, Secretary, to Luis A. Reyes, Executive Director for Operations, et al., Staff Requirements - COMDEK-07-0001/COMJSM-07-0001 - Report of the Combined License Review Task Force (June 22, 2007) at 1.

Although this Commission pronouncement on its face applies only to COL proceedings, it seemingly has implications for other licensing cases in which mandatory hearings have been deemed necessary, including uranium enrichment facility and ESP proceedings. See, e.g., Dominion Nuclear North Anna, LLC (Early Site Permit for North Anna ESP Site), LBP-07-09, 65 NRC ___ (June 29, 2007) (initial decision for Licensing Board-conducted mandatory hearing in ESP case); USEC, Inc. (American Centrifuge Plant), LBP-07-06, 65 NRC ___ (Apr. 13, 2007) (initial decision for Licensing Board-conducted mandatory hearing in uranium enrichment facility construction/operation proceeding). For such future non-COL cases, the Commission can express its intent regarding the presiding officer for the mandatory hearing in the notice of hearing that is issued for the particular cause. As an ongoing non-COL proceeding, however, this case does not present that opportunity.

Consistent with the Commission's directive in the Vogtle ESP notice of hearing, this Licensing Board stands ready to conduct the mandatory hearing for this proceeding. Nonetheless, in light of the Commission's recent action concerning the mandatory hearing associated with COL applications, to avoid any uncertainty and ensure the Board properly allocates its resources and those of the mandatory hearing parties in this case, i.e., applicant

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
SOUTHERN NUCLEAR OPERATING) Docket No. 52-011-ESP
COMPANY)
)
(Early Site Permit for the Vogtle ESP Site))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM (CERTIFYING QUESTION REGARDING CONDUCT OF MANDATORY HEARING) have been served upon the following persons by Electronic Information Exchange and/or electronic mail.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

Administrative Judge
G. Paul Bollwerk, III, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: gpb@nrc.gov

Administrative Judge
Nicholas G. Trikourous
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ngt@nrc.gov

Administrative Judge
James Jackson
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: jackson538@comcast.net

Ann P. Hodgdon, Esq.
Jonathan M. Rund, Esq.,
Robert M. Weisman, ES Esq.
Kathryn L. Winsberg, Esq.,
Joseph S. Gilman, Esq., Brett M. Klukan, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: aph@nrc.gov; tac2@nrc.gov;
jmr3@nrc.gov; rmw@nrc.gov; klw@nrc.gov;
jsg1@nrc.gov; bmk1@nrc.gov

Kenneth C. Hairston, Esq.
M. Stanford Blanton, Esq.
Peter D. LeJeune, Esq.
Balch & Bingham LLP
1710 Sixth Avenue North
Birmingham, Alabama 35203-2014
E-mail: kchairston@balch.com;
sblanton@balch.com; plejeune@balch.com

Docket No. 52-011-ESP
 LB MEMORANDUM (CERTIFYING QUESTION
 REGARDING CONDUCT OF MANDATORY HEARING)

Moanica M. Caston, Esq.
 Southern Nuclear Operating Company, Inc.
 40 Inverness Center Parkway
 P.O. Box 1295, Bin B-022
 Birmingham, AL 35201-1295
 E-mail: mcaston@southernco.com

Kathryn M. Sutton, Esq.
 Steven P. Frantz, Esq.
 Paul M. Bessette, Esq.
 Mary Freeze, Admin. Assist.
 Morgan, Lewis & Bockius, LLP
 Co-Counsel for Southern Nuclear Operating
 Company, Inc.
 1111 Pennsylvania Ave., NW
 Washington, DC 20004
 E-mail: ksutton@morganlewis.com
sfrantz@morganlewis.com
pbessette@morganlewis.com
mfreeze@morganlewis.com

Mary Maclean D. Asbill, Esq.
 Lawrence D. Sanders, Esq.
 Turner Environmental Law Clinic
 Emory University School of Law
 1301 Clifton Road
 Atlanta, GA 30322
 E-mail: masbill@law.emory.edu;
lawrence.sanders@emory.edu

Charles R. Pierce
 Southern Company Services, Inc.
 600 North 18th Street, BIN B056
 Birmingham, AL 35291-0300
 E-mail: crpierce@southernco.com

Diane Curran, Esq.
 Harmon, Curran, Spielberg &
 Eisenberg, L.L.P.
 1726 M Street, NW, Suite 600
 Washington, DC 20036
 E-mail: dcurran@harmoncurran.com

Margaret Parish
 Law Clerk
 Atomic Safety and Licensing Board Panel
 Mail Stop - T-3 F23
 U.S. Nuclear Regulatory Commission
 Washington, DC 20555-0001
 E-mail: map4@nrc.gov

C. Grady Moore, III, Esq.
 Balch & Bingham, LLP
 1901 6TH Avenue, Suite 2600
 Birmingham, AL 35203
 E-mail: gmoore@balch.com

[Original signed by Adria T. Byrdsong]
 Office of the Secretary of the Commission

Dated at Rockville, Maryland
 this 12th day of July 2007