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NUCLEAR REGULATORY COMMISSION

Title: Southern Nuclear Operating Company
Pre-Hearing Conference

Docket Number: 52-011-ESP

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USNRC

Location: (telephone conference)

August 7, 2007 (9:00am)

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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 TELE-CONFERENCE

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IN THE MATTER OF: :
Southern Nuclear : Docket No. 52-011-ESP
Operating Company :
(Early Site Permit) :

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Wednesday, August 1, 2007

The above-entitled matter came on for
pre-hearing conference, pursuant to notice, at 2:00
p.m.

BEFORE:

ADMINISTRATIVE JUDGE G. PAUL BOLLWERK, III

ADMINISTRATIVE JUDGE JAMES JACKSON

ADMINISTRATIVE JUDGE NICHOLAS TRIKOUROS

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P R O C E E D I N G S

(2:04:46 p.m.)

JUDGE BOLLWERK: Good afternoon, everyone.

This is Judge Paul Bollwerk. We're here this afternoon to conduct a telephone pre-hearing conference for the Vogtle Early Site Permit proceeding. With me here in Rockville, Maryland is Judge Nicholas Trikouros, as well as our Licensing Board Panel Law Clerk, Margaret Parish. And also joining us remotely is Judge James Jackson.

Let's go around with the parties, please, and have you identify yourselves for the record, start with the Applicant, Southern, please.

MR. BLANTON: This is Stan Blanton. I'm a lawyer with Balch & Bingham, representing Southern Nuclear Operating Company, the Applicant.

MS. SUTTON: Kathryn Sutton. I'm an attorney with Morgan Lewis, co-counsel to Mr. Blanton.

JUDGE BOLLWERK: All right. Thank you very much. How about the NRC staff?

MR. RUND: This is Jonathan Rund.

MR. LOFTUS: Matthew Loftus.

MR. KLUGAN: Brett Klugan.

MR. NOTICH: And Mark Notich.

JUDGE BOLLWERK: All right. Thank you.

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1 And then for the Joint Interveners, please?

2 MR. SANDERS: Larry Sanders.

3 JUDGE BOLLWERK: All right. Thank you,
4 everyone. We appreciate you taking the time to get
5 together with us this afternoon. I know in August
6 sometimes people have got a lot of other things
7 they're involved with. Hopefully, no one is calling
8 in from their vacation for this conference call.

9 I don't anticipate that this is going to
10 take a long time, but we did indicate when we had the
11 pre-hearing conference back in April that we would
12 touch base with you later this summer just to check on
13 status, see if there were any issues, concerns,
14 problems, as we move toward the fall. There are some
15 things that are going to be happening probably in the
16 next 30 to 60 days that could have some impact in
17 terms of this proceeding, some filings, and different
18 things happening in the proceeding.

19 Let me start with a couple of status
20 items. First one is being scheduled for two items
21 that are coming up, at least on the NRC website there
22 are two items; the Safety Evaluation Report, the SER
23 with open items to schedule for the end of this month,
24 the 30th of August, as well as the draft Environmental
25 Impact Statement scheduled for September the 14th, the

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1 Notice of Availability for the issuance of the DEIS.
2 Let me just check with the staff, have there been any
3 -- anticipate any changes in those schedules?

4 MR. RUND: This is Jonathan Rund with the
5 NRC Staff. There have been no changes with regard to
6 either of the schedules.

7 JUDGE BOLLWERK: All right. And just so
8 the Board is aware, how will the issuance of those --
9 will the Board and the other parties here, as well
10 as the public, be made aware of the issuance of those
11 documents?

12 MR. RUND: This is Jonathan Rund, again.
13 The Staff will go ahead and send a letter to the
14 parties and the Board, notify everybody when those
15 documents become available.

16 JUDGE BOLLWERK: And do you anticipate
17 that they will -- when the letter is sent out, that
18 they will already be in ADAMS? Is that how you're
19 going to handle it, or what is your approach going to
20 be?

21 MR. RUND: Yes, by the time the letter
22 goes out, they will be in ADAMS.

23 JUDGE BOLLWERK: All right. Then I think
24 the next schedule item would be the final SER and a
25 final EIS, with the former being May 20th of 2008, and

1 the latter, the FEIS, being July 3rd, I believe the
2 date was, of 2008. At this point, any changes in that
3 schedule?

4 MR. RUND: Staff is still on schedule for
5 those dates.

6 JUDGE BOLLWERK: All right. At this
7 point, let me see if either of the other parties have
8 any questions about the issuance or availability of
9 those documents. Anything from Southern?

10 MR. BLANTON: Not from us, Your Honor.

11 JUDGE BOLLWERK: All right. Anything from
12 the Joint Intervenors?

13 MR. SANDERS: No, nothing from us.

14 JUDGE BOLLWERK: All right. Let me turn
15 then for a second to the mandatory hearing, the
16 uncontested portion of the proceeding. Again, this
17 assumes that the Board would be conducting that
18 proceeding. As I think you're all aware, I know you
19 were served with the document. The Board has put a
20 certified question before the Commission the middle of
21 July based on an inquiry that we made following the
22 Commission's decision indicating that it had decided
23 to take the responsibility, at least in the first
24 instance, for conducting mandatory hearings in the
25 combined operating license proceedings.

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1 We felt it was appropriate to ask the
2 Commission, given the fact that the Notice of Hearing
3 had already been issued in this case, whether they
4 wanted this Board to go ahead and conduct the
5 mandatory hearing for this ESP, as well. And we
6 haven't heard anything from the Commission. I don't
7 know how long, frankly, they obviously have their own
8 schedule. But assuming, at this point, that the Board
9 is going to be conducting it, I wanted to make both
10 Southern and the Staff aware of the fact that once we
11 see the SER, and I don't know how many open items
12 there are going to be in the SER and the DEIS, we, the
13 Board, may begin interacting with you on those
14 documents.

15 I think we need to have some discussions
16 about that. We don't want to be too piecemeal in
17 terms of our approach here, but I also think there's
18 a concern that we don't want to wait until the very
19 end, and then be asking and taking up a lot of time at
20 the end with a number of questions and inquiries. So
21 I think there's a balance that needs to be struck
22 there, and I don't know if the Board yet has decided
23 what it is. In part, it's probably going to depend on
24 what we see in the SER and the DEIS, but I just wanted
25 to make you aware of that, again, assuming that we're

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1 conducting the mandatory hearing.

2 Any questions from either of those parties
3 about what I've just said, in terms of Southern?

4 MR. BLANTON: No, sir. I don't think so.
5 I assume the interaction would take the form of
6 questions like we've seen in other proceedings. Is
7 that what you're --

8 JUDGE BOLLWERK: Essentially, yes.
9 Although, for instance, in the LES case, we did in a
10 couple of instances hold some -- and, again, that's
11 not an ESP, obviously, Uranium Enrichment Facility.
12 We held a couple of conferences actually with the
13 parties where we talked with them about it. But
14 probably in the first instance it would arrive in the
15 form of some kind of questions, inquiries of that
16 sort. Yes, sir?

17 MR. SANDERS: No questions.

18 JUDGE BOLLWERK: All right. Anything from
19 the Staff?

20 MR. RUND: No, sir.

21 JUDGE BOLLWERK: Okay. All right. Let me
22 move then to a last status item, which we talked about
23 the last time. I don't know that it necessarily has
24 a direct impact on this proceeding, at least at this
25 point, but the submission of the combined operating

1 license application, which was scheduled back in April
2 for March 2008. Anything further that Southern has on
3 that item?

4 MR. BLANTON: We're still on that
5 schedule, Your Honor.

6 JUDGE BOLLWERK: All right. All right,
7 then that's the status items that I have. Let me then
8 ask a series of other questions about some other
9 items. Discovery, have there been any problems from
10 any of the parties' perspectives with respect to
11 problems, issues, questions about either the Staff's
12 hearing file or the initial disclosures by the
13 parties? Southern first.

14 MR. BLANTON: Nothing -- we don't have any
15 questions about the hearing file, or any of the
16 disclosure, and we haven't received any prior
17 disclosures.

18 JUDGE BOLLWERK: Okay. All right.
19 Anything from the Staff?

20 MR. RUND: This is Jonathan Rund for the
21 Staff. We've been making our disclosures, and when
22 the other parties make their's, we've been looking at
23 them, and we've had no problems.

24 JUDGE BOLLWERK: All right. Anything then
25 from the perspective of the Joint Intervenors?

1 MR. SANDERS: No problems. Just a
2 question for clarification. I have not been
3 submitting monthly disclosures because we have nothing
4 new to disclose. And I just want to make sure that
5 that is okay with the proceedings, or with the
6 procedures.

7 JUDGE BOLLWERK: Again, if you have
8 nothing to disclose, there's nothing --

9 MR. SANDERS: Yes, that's what I was
10 assuming, but I just want to make sure that I'm not
11 supposed to be filing something that just says nothing
12 new this month. It sounds like you've answered my
13 question.

14 JUDGE BOLLWERK: All right. I take it the
15 other parties simply assume that.

16 MR. SANDERS: Yes. I'm assuming that, as
17 well. If I didn't hear from them, I guess they
18 understood that I didn't disclose anything because I
19 didn't have anything.

20 JUDGE BOLLWERK: Either of the other
21 parties want to comment on that?

22 MR. BLANTON: That's what we've been
23 assuming, Your Honor.

24 JUDGE BOLLWERK: All right. And the
25 Staff?

1 MR. RUND: Yes, we've been assuming the
2 same.

3 JUDGE BOLLWERK: Okay. Everybody is on
4 the same page then.

5 MR. SANDERS: Great.

6 JUDGE BOLLWERK: All right. Let me just
7 mention, and again, looking at the upcoming issuances
8 from the Staff, that I think the order that we issued
9 following the last pre-hearing conference that had a
10 schedule attached to it, as well as some guidance on
11 different filing dates, May 7th, 2007, indicated the
12 procedures for filing either new or late file
13 contentions or amended contentions. I think the order
14 was clear. We asked anyone if they had part of the
15 order, any problems with what we'd issued, and we
16 didn't receive any responses so I'm assuming that
17 that's clear in terms of what the Board's expectations
18 are, as any new documents come out from the Staff in
19 terms of anyone wanting to amend their contentions,
20 and/or file new ones.

21 MR. BLANTON: All right from Southern
22 standpoint, Your Honor.

23 JUDGE BOLLWERK: All right.

24 MR. SANDERS: Yes, that's our
25 understanding, as well. The order was clear.

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1 JUDGE BOLLWERK: All right.

2 MR. RUND: And the Staff thought the order
3 was clear, as well.

4 JUDGE BOLLWERK: Okay. Thank you. And
5 then in terms of Summary Disposition, once again,
6 that's something we discussed that could be occurring
7 after the filings that we talked about earlier from
8 the Staff. And, again, it depends on if -- the dates
9 depend on whether or not there are -- the admitted
10 contentions are amended after the DEIS or there's some
11 filings after the SER. And, again, any questions
12 about what we provided for the parties?

13 MR. BLANTON: I did have one on that, Your
14 Honor.

15 JUDGE BOLLWERK: All right.

16 MR. BLANTON: If there are no amended
17 contentions, I understand the order to say the process
18 for Summary Dispositions begins seven days after the
19 date on which admitted contentions were due. Does
20 that mean the Motion for Summary Disposition is due
21 seven days after --

22 JUDGE BOLLWERK: That's correct.

23 MR. BLANTON: Okay. That's the way I
24 interpreted it. I just wanted to make sure.

25 JUDGE BOLLWERK: Yes. In other words, if

1 there isn't any attempt to amend the contentions, then
2 seven days after the date by which amended contentions
3 were due to be filed, then the Summary Disposition
4 motion, if there is any with respect to the admitted
5 contentions should be filed on that date.

6 MR. BLANTON: Gotcha.

7 JUDGE BOLLWERK: All right. Any other
8 questions from anyone about Summary Disposition at
9 this point? Anything from the Staff?

10 MR. RUND: Nothing further from us.

11 JUDGE BOLLWERK: Or from the Joint
12 Interveners?

13 MR. SANDERS: No.

14 JUDGE BOLLWERK: All right. Then I just
15 have one last item, and I'll raise it again, as I will
16 continuously throughout the proceedings. You all had
17 mentioned at that point that the last pre-hearing
18 conference that we had there was some talk about
19 settlement. It hadn't really gone anywhere, but I'll
20 raise the question again. Either any settlement
21 discussions going on, or any need for a settlement
22 judge? Let me turn to Southern first.

23 MR. BLANTON: I don't see the need for a
24 settlement judge, Your Honor. We made -- we had some
25 preliminary discussions with the Interveners, and I

1 really can't remember whether we had a discussion
2 since our last conference or not, but those
3 discussions sort of deteriorated, not deteriorated,
4 but just didn't go anywhere. After the DEIS comes
5 out, depending on what it looks like, we may renew
6 those discussions, but nothing to report other than
7 that.

8 JUDGE BOLLWERK: All right. So it sounds
9 like what you're saying then is there may be some
10 additional contact post DEIS, but nothing in the
11 interim.

12 MR. BLANTON: I will never say never to
13 settlement.

14 JUDGE BOLLWERK: Okay. All right. That's
15 a good attitude, I think, because as I've said in the
16 past, you've probably, if you can settle it, you're
17 probably going to get -- everybody is going to walk
18 away with at least some satisfaction. If the Board
19 rules, who knows what - everybody will be
20 dissatisfied, so okay.

21 Let me turn to the Staff. Anything from
22 your perspective?

23 MR. RUND: Nothing from the Staff on
24 settlement.

25 JUDGE BOLLWERK: All right. And the Joint

1 Interveners?

2 MR. SANDERS: I think Mr. Blanton
3 expressed it perfectly. We have some interest in
4 talking, but probably the issuance of the DEIS will
5 give us a whole lot more information, and I would
6 expect that we'll have more to talk about then.

7 JUDGE BOLLWERK: All right. Well, then
8 again, I would -- the Board would certainly urge you
9 all once the DEIS comes out, to -- I don't know who
10 needs to make the first contact, but given the
11 discussion we've just had, hopefully, someone will
12 pick up the phone, and say let's talk for a second
13 here now that the DEIS is out. I think that would be
14 a useful exercise, obviously.

15 MR. BLANTON: I agree, Your Honor.

16 JUDGE BOLLWERK: All right. And again, if
17 at that point you need a settlement judge, the
18 standard NRC practice is just simply come to the
19 Board, indicate you think it would be useful. The
20 Board then will go to the Chief Administrative Judge,
21 have a discussion with him. We can get someone
22 appointed, hopefully fairly rapidly, and that person
23 then can interact with you all and try to help you out
24 to reach some kind of accommodation, if that's
25 possible.

1 All right. At this point, I believe
2 that's all I have. Let me see, Judge Trikouros,
3 anything for the parties?

4 JUDGE TRIKOUROS: Nothing right now.

5 JUDGE BOLLWERK: All right. Judge
6 Jackson?

7 JUDGE JACKSON: Nothing further.

8 JUDGE BOLLWERK: All right. Let me see if
9 the parties have anything for the Board?

10 MR. BLANTON: Your Honor, this is Stan
11 Blanton for Southern. I have one question that's
12 probably -- there's a simple answer to, about the
13 schedule the Board issued with the scheduling order.

14 JUDGE BOLLWERK: All right.

15 MR. BLANTON: The last thing on the
16 schedule, and I apologize for not having it in front
17 of me. I'm not at the beach, but I am out of the
18 office.

19 JUDGE BOLLWERK: All right.

20 MR. BLANTON: Refers to the partial
21 initial decision of the Board, which I assume is
22 referring to the decision on any contested issues that
23 remain, but that may not be correct. There's not any
24 reference to a final or complete decision of the
25 Board. Is that just a misstep on the terminology, or

1 does the Board intend to have a different schedule for
2 its final decision?

3 JUDGE BOLLWERK: In theory, the way that
4 schedule is set out, there's a contested and a
5 mandatory hearing. And I guess the reason I used
6 partial is because those decisions will be issued
7 separately, so they would be partial to the degree
8 that one would deal with the contested hearing, the
9 second one would deal with the uncontested hearing.
10 But in toto, they would be the two final decisions
11 relative to both of those portions of the proceeding.

12 MR. BLANTON: And the intention is to
13 issue those on the same date?

14 JUDGE BOLLWERK: No, actually the schedule
15 set out for the contested hearing was April 30th, and
16 for the mandatory hearing, the uncontested hearing was
17 May 15th.

18 MR. BLANTON: Yes, but I didn't see -- I
19 only saw one, unless I'm missing something, I only saw
20 one decision scheduled.

21 JUDGE BOLLWERK: There were two columns on
22 the schedule, one for mandatory, and one for
23 contested, and they had slightly different dates on
24 them.

25 MR. BLANTON: Well, maybe I need to

1 recheck then.

2 JUDGE BOLLWERK: All right. Was there any
3 confusion with respect to the Staff on that point?

4 MR. RUND: No, Your Honor.

5 JUDGE BOLLWERK: All right. Again, take a
6 look at the schedule. There are two columns in the
7 schedule. One labeled contested, one labeled
8 mandatory hearing, that being the uncontested portion,
9 and there were separate schedules that dealt with both
10 of them.

11 MR. BLANTON: All right, sir. I'll check
12 that.

13 JUDGE BOLLWERK: All right. Anything
14 else?

15 MR. BLANTON: That's all from us, Your
16 Honor.

17 JUDGE BOLLWERK: All right. Anything from
18 the Staff?

19 MR. RUND: Nothing further from the Staff.

20 JUDGE BOLLWERK: All right. And anything
21 from the Joint Interveners?

22 MR. SANDERS: No, sir.

23 JUDGE BOLLWERK: All right. I should
24 mention, I don't think -- prior to the issuance of the
25 SER and the DEIS, I don't know that there's a reason

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1 for us to have another conference. Potentially, post
2 issuance, there might be. We'll have to see what
3 filings come in, but I would indicate to the parties,
4 if they have any problems or issues before then, go
5 ahead and feel free to contact the Board. Hold on one
6 second here. I'm going to put you on mute. We have
7 someone coming in. Okay. Still there?

8 MR. BLANTON: Yes, sir.

9 JUDGE BOLLWERK: Okay. If in the interim
10 you all have any concerns or issues, contact the Board
11 and let us know, and if we need to, we'll get together
12 and talk with you all.

13 All right. If there is nothing else then,
14 we appreciate again your getting together with us this
15 afternoon, however briefly. And at this point, this
16 conference stands adjourned. And if we could, Judge
17 Jackson, we're going to call you back on your land
18 line. Will that work?

19 JUDGE JACKSON: That's great.

20 JUDGE BOLLWERK: Okay. And, again, I hope
21 everyone has -- the balance of your summer is a good
22 one, and perhaps we'll be talking with you again in
23 the next 60 days or so.

24 MR. BLANTON: Same to you, Judge.

25 JUDGE BOLLWERK: All right.

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MR. SANDERS: Thanks.

JUDGE BOLLWERK: Thank you very much.

Bye.

(Whereupon, the proceedings went off the record at 2:21:54 p.m.)

CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: Southern Nuclear Operating
Company Pre-Hearing Conference

Docket Number: 52-011-ESP

Location: (Telephone conference)

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.



Charles Morrison
Official Reporter
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