7590-01-P

UNITED STATES NUCLEAR REGULATORY COMMISSION

ENTERGY OPERATIONS, INC. ET AL.

NOTICE OF HEARING AND OPPORTUNITY TO PETITION FOR LEAVE TO INTERVENE AND ORDER IMPOSING PROCEDURES FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION AND SAFEGUARDS INFORMATION FOR CONTENTION PREPARATION ON A COMBINED LICENSE FOR THE GRAND GULF UNIT 3

DOCKET NO. 52-024

Pursuant to the Atomic Energy Act of 1954, as amended, and the regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," and 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," notice is hereby given that a hearing will be held, at a time and place to be set in the future by the U.S. Nuclear Regulatory Commission (NRC, the Commission) or designated by the Atomic Safety and Licensing Board (Board). The hearing will consider the application dated February 27, 2008, filed by Entergy Operations, Inc., on behalf of itself and Entergy Mississippi, Inc., Entergy Louisiana, LLC, Entergy Gulf States Louisiana, LLC, and System Energy Resources, Inc. (SERI), pursuant to Subpart C of 10 CFR Part 52, for a combined license (COL). The application, which was supplemented by letters dated April 9, 2008, and April 11, 2008, requests approval of a COL for Grand Gulf Unit 3, located in Claiborne County, Mississippi. The application was accepted for docketing on April 17, 2008. The docket number established for this is 52-024. The Grand Gulf Unit 3 COL application references the Early Site

Permit (ESP-002) granted to SERI for the Grand Gulf ESP site, which was issued on April 5, 2007, and the application for certification of the economic simplified boiling water reactor (ESBWR) design, which was initially submitted on August 24, 2005.

The hearing will be conducted by a Board that will be designated by the Chairman of the Atomic Safety and Licensing Board Panel or will be conducted by the Commission. Notice as to the membership of the Board will be published in the *Federal Register* at a later date. The NRC staff will complete a detailed technical review of the application and will document its findings in a safety evaluation report. The Commission will refer a copy of the application to the Advisory Committee on Reactor Safeguards (ACRS) in accordance with 10 CFR 52.87, "Referral to the ACRS," and the ACRS will report on those portions of the application that concern safety.

Any person whose interest may be affected by this proceeding and desires to participate as a party to this proceeding must file a written petition for leave to intervene in accordance with 10 CFR 2.309. Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

A petition for leave to intervene must be filed no later than 60 days from the date of publication of this notice in the *Federal Register*. Non-timely filings will not be entertained absent a determination by the Commission or presiding officer designated to rule on the petition, pursuant to the requirements of 10 CFR 2.309(c)(1)(i)-(viii).

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. A petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which was promulgated by the NRC on August 28, 2007 (72 *FR* 49139). The E-Filing process requires participants to submit and serve documents over the internet or in

some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the petitioner must contact the Office of the Secretary by e-mail at HearingDocket@nrc.gov, or by calling (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each participant will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at http://www.nrc.gov/site-help/e-submittals/install-viewer.html. Information about applying for a digital ID certificate is available on NRC's public website at http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.

Once a participant has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public website at http://www.nrc.gov/site-help/e-submittals.html. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Standard Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the

General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC website at http://www.nrc.gov/site-help/e-submittals.html or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Standard Time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be

admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Standard Time on the due date.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHDProceeding/home.asp, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Any person who files a motion pursuant to 10 CFR 2.323 must consult with counsel for the applicant and counsel for the NRC staff who are listed below. Counsel for the applicant are Terence A. Burke, (601) 368-5680, tburke@entergy.com, and Steven P. Frantz, (202) 739-5460, sfrantz@morganlewis.com. Counsel for the NRC staff in this proceeding are Sara E. Brock, (301) 415-8393, Sara.Brock@nrc.gov, and Renee V. Holmes, (301) 415-3319, Renee.Holmes@nrc.gov.

A person who is not a party may be permitted to make a limited appearance by making an oral or written statement of his or her position on the issues at any session of the hearing or any pre-hearing conference within the limits and conditions fixed by the presiding officer, but may not otherwise participate in the proceeding.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike

(first floor), Rockville, Maryland, and will be accessible electronically through the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room link at the NRC Web site http://www.nrc.gov/reading-rm/adams.html. Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The application is available at http://www.nrc.gov/reactors/new-licensing/col/grand-gulf.html. The ADAMS accession number for the application cover letter is ML080640433. The ADAMS accession numbers for the supplemental letters are ML081020230 and ML081070304. To search for documents in ADAMS using the Grand Gulf 3 COL application docket number, 52-024, enter the term "05200024" in the "Docket Number" field when using either the web-based search (advanced search) engine or the ADAMS find tool in Citrix. The Grand Gulf ESP can be found in ADAMS using the accession number ML070780457 or by going to http://www.nrc.gov/reactors/new-licensing/col/grand-gulf.html. To search for documents on the Grand Gulf ESP docket, enter "05200009" in the "Docket Number" field in the web-based search (advanced search) engine or the ADAMS find tool. The ESBWR design certification can be found by going to http://www.nrc.gov/reactors/new-licensing/design-cert/esbwr.html or by accessing our ADAMS Advanced Web Search and entering "05200010" in the "Docket Number" field to search for documents linked to the ESBWR design certification application.

ORDER IMPOSING PROCEDURES FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION AND SAFEGUARDS INFORMATION FOR CONTENTION PREPARATION

1. This order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI)).

2. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party as defined in 10 CFR 2.4 who believes access to SUNSI or SGI is necessary for a response to the notice may request access to SUNSI or SGI. A “potential party” is any person who intends or may intend to participate as a party by demonstrating standing and the filing of an admissible contention under 10 CFR 2.309. Requests submitted later than 10 days will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

3. The requester shall submit a letter requesting permission to access SUNSI and/or SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555-0001. The expedited delivery or courier mail address for both offices is U.S. Nuclear Regulatory Commission, 11555 Rockville Pike,

Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are HearingDocket@nrc.gov and OGCmail@nrc.gov, respectively.[1] The request must include the following information:

a. A description of the licensing action with a citation to this *Federal Register* notice of hearing and opportunity to petition for leave to intervene;

b. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in (a);

c. If the request is for SUNSI, the identity of the individual requesting access to SUNSI and the requester's need for the information in order to meaningfully participate in this adjudicatory proceeding, particularly why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention;

d. If the request is for SGI, the identity of the individual requesting access to SGI and the identity of any expert, consultant or assistant who will aid the requester in evaluating the SGI, and information that shows[1]:

(i) Why the information is indispensable to meaningful participation in this licensing proceeding; and,

(ii) The technical competence (demonstrable knowledge, skill, experience, training or education) of the requester to understand and use (or evaluate) the requested information to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant or assistant who

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

demonstrates technical competence as well as trustworthiness and reliability, and who agrees to sign a non-disclosure affidavit and be bound by the terms of a protective order; and,

e. If the request is for SGI, Form SF-85, "Questionnaire for Non-Sensitive Positions," Form FD-248 (fingerprint card), and a credit check release form completed by the individual who seeks access to SGI and each individual who will aid the requester in evaluating the SGI. For security reasons, Form SF-85 can only be submitted electronically, through a restricted-access database. To obtain online access to the form, the requester should contact the NRC's Office of Administration at 301-415-0320.[2] The other completed forms must be signed in original ink, accompanied by a check or money order payable in the amount of $191.00 to the U.S. Nuclear Regulatory Commission for each individual and mailed to the U.S. Nuclear Regulatory Commission, Office of Administration, Security Processing Unit, Mail Stop T-6E46, Washington, DC 20555-0012.

These forms will be used to initiate the background check, which includes fingerprinting as part of a criminal history records check. Note: Copies of these forms do <u>not</u> need to be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as described above.

[2] The requester will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and email address. After providing this information, the requester usually should be able to obtain access to the online form within one business day.

4. To avoid delays in processing requests for access to SGI, all forms should be reviewed for completeness and accuracy (including legibility) before submitting them to the NRC. Incomplete packages will be returned to the sender and will not be processed.

5. Based on an evaluation of the information submitted under items 2 and 3.a through 3.d, above, the NRC staff will determine within 10 days of receipt of the written access request whether (1) there is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding, and (2) there is a legitimate need for access to SUNSI or need to know the SGI requested. For SGI, the need to know determination is made based on whether the information requested is necessary (*i.e.*, indispensable) for the proposed recipient to proffer and litigate a specific contention in this NRC proceeding[3] and whether the proposed recipient has the technical competence (demonstrable knowledge, skill, training, education, or experience) to evaluate and use the specific SGI requested in this proceeding.

6. If standing and need to know SGI are shown, the NRC staff will further determine based upon completion of the background check whether the proposed recipient is trustworthy and reliable. The NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection systems are sufficient to protect SGI from inadvertent release or disclosure. Recipients may opt to view SGI at the NRC's facility rather than establish their own SGI protection program to meet SGI protection requirements.

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[3] Broad SGI requests under these procedures are thus highly unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requester's need to know than ordinarily would be applied in connection with an already-admitted contention.

7. A request for access to SUNSI or SGI will be granted if:

   a. The request has demonstrated that there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in this proceeding;

   b. The proposed recipient of the information has demonstrated a need for SUNSI or a need to know for SGI, and that the proposed recipient of SGI is trustworthy and reliable;

   c. The proposed recipient of the information has executed a Non-Disclosure Agreement or Affidavit and agrees to be bound by the terms of a Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI and/or SGI; and,

   d. The presiding officer has issued a protective order concerning the information or documents requested.[4] Any protective order issued shall provide that the petitioner must file SUNSI or SGI contentions 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

[4] If a presiding officer has not yet been designated, the Chief Administrative Judge will issue such orders, or will appoint a presiding officer to do so.

8. If the request for access to SUNSI or SGI is granted, the terms and conditions for access to sensitive unclassified information will be set forth in a draft protective order and affidavit of non-disclosure appended to a joint motion by the NRC staff, any other affected parties to this proceeding,[5] and the petitioner(s). If the diligent efforts by the relevant parties or petitioner(s) fail to result in an agreement on the terms and conditions for a draft protective order or non-disclosure affidavit, the relevant parties to the proceeding or the petitioner(s) should notify the presiding officer within 5 days, describing the obstacles to the agreement.

9. If the request for access to SUNSI is denied by the NRC staff or a request for access to SGI is denied by NRC staff either after a determination on standing and need to know or, later, after a determination on trustworthiness and reliability, the NRC staff shall briefly state the reasons for the denial. Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information. The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing or need to know for SGI by filing a challenge within 5 days of receipt of that determination with (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information

[5] Parties/persons other than the requester and the NRC staff will be notified by the NRC staff of a favorable access determination (and may participate in the development of such a motion and protective order) if it concerns SUNSI and if the party/person's interest independent of the proceeding would be harmed by the release of the information (*e.g.*, as with proprietary information).

access issues, with that officer. In the same manner, an SGI requester may challenge an adverse determination on trustworthiness and reliability by filing a challenge within 15 days of receipt of that determination.

In the same manner, a party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of such a request.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[6]

[6] As of October 15, 2007, the NRC's final "E-Filing Rule" became effective. See Use of Electronic Submissions in Agency Hearings (72 FR 49139; August 28, 2007). Requesters should note that the filing requirements of that rule apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI requests submitted to the NRC staff under these procedures.

10. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI and/or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

Dated at Rockville, Maryland this 25th day of June 2008.

FOR THE NUCLEAR REGULATORY COMMISSION.

/RA/

Annette L. Vietti-Cook,
Secretary of the Commission.

ATTACHMENT - GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION AND SAFEGUARDS INFORMATION IN THIS PROCEEDING

| Day | Event/Activity |
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| 0 | Publication of *Federal Register* notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests. |
| 10 | Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and/or Safeguards Information (SGI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (*e.g.*, showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check. |
| 20 | Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or |

review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.

25 If NRC staff finds no “need,” “need to know,” or likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff’s denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds “need” for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff’s grant of access.

30 Deadline for NRC staff reply to motions to reverse NRC staff determination(s).

40 (Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.

60 Deadline for submitting petition for intervention containing: (i) demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI

and/or SGI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).

190 (Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information.

205 Deadline for petitioner to seek reversal of a final adverse NRC staff determination either before the presiding officer or another designated officer.

A If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.

A + 3 Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.

A + 28 Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between

the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

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| A + 53 | (Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI. |
| A + 60 | (Answer receipt +7) Petitioner/Intervenor reply to answers. |
| B | Decision on contention admission. |