

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

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

In the Matter of

SOUTHERN NUCLEAR OPERATING CO.

(Vogtle Electric Generating Plant, Units 3 and 4)

Docket Nos. 52-025-COL and 52-026-COL

ASLBP No. 09-873-01-COL-BD01

December 2, 2008

MEMORANDUM AND ORDER
(Initial Prehearing Order)

In the above-captioned proceeding, Southern Nuclear Operating Company (SNC) has applied under 10 C.F.R. Part 52 for a combined operating license (COL) for two new AP1000 advanced passive pressurized water reactors to be constructed and operated at the site near Waynesboro, Georgia, currently associated with its Vogtle Electric Generating Plant, Units 1 and 2. On November 17, 2008, Joint Petitioners¹ filed a hearing petition challenging the SNC application. By memorandum dated November 21, 2008, the Secretary of the Commission referred this petition to the Chief Administrative Judge who, in turn, referred Joint Petitioners submission to this Licensing Board.

Relative to the conduct of this proceeding, the following directives shall apply:

¹ Joint Petitioners include the Atlanta Women's Action for New Directions, Blue Ridge Environmental Defense League, Center for a Sustainable Coast, Savannah Riverkeeper, and Southern Alliance for Clean Energy.

I. DESIGNATION OF CONTENTIONS

In their November 17 petition, pursuant to 10 C.F.R. § 2.309(f), Joint Petitioners have submitted three contentions contesting the SNC COL application for Vogtle Units 3 and 4. They have labeled these contentions Technical Contention 1, Technical Contention 2, and Safety Contention 1. Consistent with the agency's general approach to contentions, under which each of these issue statements must focus, in the first instance, on the application and other information available at the time a hearing petition is submitted, see 10 C.F.R. § 2.309(f)(2), contentions in this proceeding should bear a separate numeric or alpha designation within one of the following groups:

1. Administrative and Financial Information (A/FI) -- primarily concerns issues relating to matters discussed or referenced in the A/FI portion (Part 1) of the COL application at issue in the proceeding, or matters a petitioner asserts should be discussed in the A/FI portion of the COL application.
2. Final Safety Analysis Report (SAFETY) -- primarily concerns issues relating to safety or technical matters discussed or referenced in the FSAR portion (Part 2) of the COL application at issue in the proceeding, or matters a petitioner asserts should be discussed in the FSAR portion of the COL application.
3. Environmental Report (NEPA) -- primarily concerns issues relating to matters discussed or referenced in the Environmental Report (ER) portion (Part 3) of the COL application at issue in the proceeding, or matters a petitioner asserts should be discussed in the ER portion of the COL application.
4. Technical Specifications (TS) -- primarily concerns issues relating to matters discussed or referenced in the TS portion (Part 4) of the COL application at issue in this proceeding, or matters a petitioner asserts should be discussed in the TS portion of the COL application.
5. Emergency Plan (EP) -- primarily concerns issues relating to matters discussed or referenced in the EP portion (Part 5) of the COL application at issue in this proceeding, or matters a petitioner asserts should be discussed in the EP portion of the COL application.

6. Departures and Exemption Requests (D/ER) -- primarily concerns issues relating to matters discussed or referenced in the DER portion (Part 7) of the COL application at issue in this proceeding, or matters a petitioner asserts should be discussed in the DER portion of the COL application.
7. License Conditions and Inspection, Tests, Analyses and Acceptance Criteria (LC/ITAAC) -- primarily concerns issues relating to matters discussed or referenced in the LC/ITAAC portion (Part 10) of the COL application at issue in this proceeding, or matters a petitioner asserts should be discussed in the LC/ITAAC portion of the COL application.
8. Enclosures (ENC) -- primarily concerns issues relating to matters discussed or referenced in the ENC portion (Part 11) of the COL application at issue in this proceeding, or matters a petitioner asserts should be discussed in the ENC portion of the COL application.
9. Miscellaneous (MISC) -- does not fall into one of the categories outlined above.²

In this instance, it seems apparent that, consistent with these designations, Joint Petitioners three contentions should be labeled and would be referred to hereafter as, respectively, MISC-1, MISC-2, and SAFETY-1. If Joint Petitioners disagree with these Board designations, they should so advise the Board on or before Friday, December 5, 2008, and explain what other designation under this labeling scheme they believe would be more appropriate.

In the future, Joint Petitioners should use these designations for filing any new contentions. If Joint Petitioners believe a new contention raises issues that cannot be classified

² In addition to the portions of the application specified above, there are also two other sections, one containing proprietary and other information relevant to the application (Part 9), and one containing the Security Plan (Part 8), both of which are not accessible absent a protective order. The hearing notice established a procedural construct under which Joint Petitioners could obtain access to these sections of the application. See [SNC], 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 Vogtle Electric Generating Plant Units 3 and 4, 73 Fed. Reg. 53,446, 53,448-50 (Sept. 16, 2008). As far as the Board is aware, Joint Petitioners have not sought access to these nonpublic portions of the application.

as primarily falling into only one of these categories, they must set forth the contention and supporting bases in full separately for each category into which it is asserted to fall, with a separate designation for that category (e.g., SAFETY-2 and TS-1). Contentions bearing more than one designation (e.g., SAFETY-2/TS-1) are not acceptable and may result in the Board making a determination regarding in which of the several designated categories the contention will be litigated.

Based on the certificate of service attached to Joint Petitioners November 17, 2008 hearing request, in accordance with section 2.309(h), SNC and NRC staff responses to Joint Petitioners hearing request shall be filed on or before Friday, December 12, 2008. Thereafter, assuming that filing and service will be done using the E-Filing system per the Commission's September 10, 2008 hearing notice,³ Joint Petitioners reply to the applicant and staff answers shall be filed on or before Friday, December 19, 2008.

II. ADMINISTRATIVE MATTERS

A. Notice of Appearance

If they have not already done so, on or before Friday, December 5, 2008, each counsel or representative for each participant shall file a notice of appearance complying with the requirements of 10 C.F.R. § 2.314(b). In each notice of appearance, besides providing a business address and telephone number, an attorney or representative should provide a facsimile number and an Internet e-mail address. Counsel or representatives who have already

³ See 73 Fed. Reg. at 53,447. The Board also notes that the agency recently has established a "help desk" that can be contacted by telephone or e-mail to obtain information and assistance regarding electronic filings. See Notice of Availability of an Updated Version of the Guidance for Electronic Submissions to the NRC, 73 Fed. Reg. 66,949 (Nov. 12, 2008).

submitted a notice of appearance that does not provide facsimile or e-mail information should file a supplemental statement with that information on or before that same date.

B. Limitations on Pleading Length and Reply Pleadings

1. Page Limitation

Any motion filed after the date of this memorandum and order and any related responsive pleadings shall not exceed ten pages in length (including signature page) absent preapproval of the presiding officer.⁴ A request for presiding officer preapproval to exceed this page limitation shall be submitted in writing no less than three business days prior to the time the motion or responsive pleading is filed or due to be filed. A request to exceed this page limitation must (1) indicate whether the request is opposed or supported by the other participants to the proceeding; (2) provide a good faith estimate of the number of additional pages that will be filed; and (3) demonstrate good cause for being permitted to exceed the page limitation.

2. Reply Pleadings

In accordance with the agency's rules of practice, except in instances involving a motion to file a new/amended contention, see 10 C.F.R. § 2.309(c), (f)(2), leave must be sought to file a reply to a response to a motion. Compare 10 C.F.R. § 2.323(c) with id. § 2.309(h)(2). A request for presiding officer preapproval to file a reply shall be submitted in writing no less than

⁴ The intervention petition supplement and any responses/replies thereto permitted under section I above are not subject to this page limitation. However, any subsequent motion for admission of a new or amended contention under section 2.309(c), (f)(2) and responses/replies thereto are subject to this page limitation. In an instance when more than one new or amended contention is being filed in connection with information that is asserted to provide the basis for a motion to admit new or amended contentions, see supra n.6, because the page limit applies regardless of the number of contentions involved, in lieu of filing multiple separate motions of ten pages seeking the admission of each individual contention, it would be preferable to seek leave of the Board to exceed the page limit. If granted, this would permit the participant to file one timely motion that deals with all the contentions being proffered relative to a particular triggering event.

three business days prior to the time the reply will be filed.⁵ A request to file a reply must (1) indicate whether the request is opposed or supported by the other participants to the particular proceeding; and (2) demonstrate good cause for permitting the reply to be filed.

C. Motions for Extension of Time

A motion for extension of time in these proceedings shall be submitted in writing at least three business days before the due date for the pleading or other submission for which an extension is sought.⁶ A motion for extension of time must (1) indicate whether the request is opposed or supported by the other participants to the particular proceeding; and (2) demonstrate appropriate cause that supports permitting the extension.

D. Opposing a Request to Exceed the Page Limitation, to File a Reply, or to Extend the Time for Filing a Pleading

Any written opposition to a request to exceed the page limit, to file a reply, or to extend the time for filing a pleading shall be filed and served on the presiding officer, the Office of the Secretary, and counsel for the other participants in the particular proceeding on the next business day after the filing of the request.

⁵ Although the agency's rules of practice regarding motions practice do not provide for reply pleadings, the Board will presume that for a reply to be timely, it would have to be filed within seven days of the date of service of the response it is intended to address. See 10 C.F.R. § 2.309(h)(2).

⁶ In accordance with 10 C.F.R. § 2.323(a), unless some other time is specified in the agency's rules of practice or by the Board, motions generally are due within ten days after the occurrence or circumstance from which the motion arises, with any response to that motion due within ten days of service of the motion. The Board notes, however, relative to motions seeking the admission of new/amended contentions, see 10 C.F.R. § 2.309(c), (f)(2), that to be considered timely such motions should be filed within thirty days of the date upon which the information that is the basis of the motion becomes available to the petitioner/intervenor, with any response to such a motion due within fourteen days of service of the motion, and any reply to a response due within seven days of service of the response.

E. Attachments/Enclosures to Filings and Evidentiary Exhibits

If a participant files a pleading or other submission that has additional documents appended to it, these items shall be referred to as attachments or enclosures (not exhibits) and a separate alpha or numeric designation shall be given to each appended document (e.g., Attachment A, Enclosure 1), either on the first page of the appended document or on a cover/divider sheet in front of the appended document. Attachments or enclosures to a motion and any related responsive pleadings are not subject to the page limitation set forth in section II.B.1 above, but shall be submitted via the E-Filing system as part of a single electronic file that consists of the pleading or other submission, the certificate of service, and all the attachments or enclosures associated with the pleading or submission. In accordance with the agency's E-Filing guidance (at page 14), multiple electronic files should be used for pleadings or submissions with attachments or enclosures only if the filing exceeds fifteen megabytes in size. See <http://www.nrc.gov/site-help/e-submittals.html> (under Submittal Instructions, access link for Guidance for Electronic Submissions to the NRC, Revision 4 (10/29/08)).

The label "exhibit" shall be reserved for use as a designation for those items that are submitted, whether by pre-filing or at the time of an evidentiary hearing, as potential materials a participant will seek to have identified for inclusion in the evidentiary record of the proceeding.

Exhibits (and prefiled written testimony) shall be submitted via the agency's E-Filing system as separate electronic files. See 10 C.F.R. § 2.304(g).

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁷

/RA/

G. Paul Bollwerk, III
CHAIRMAN

Rockville, Maryland

December 2, 2008

⁷ Copies of this memorandum and order were sent this date by the agency's E-Filing system to counsel for (1) applicant SNC; (2) Joint Petitioners; and (3) the staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
SOUTHERN NUCLEAR OPERATING) Docket No. 52-025-COL
COMPANY) and 52-026-COL
)
(Vogtle))
)
(Combined Operating License))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM AND ORDER (INITIAL PREHEARING ORDER) have been served upon the following persons by Electronic Information Exchange.

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MEMORANDUM AND ORDER (INITIAL PREHEARING ORDER)

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[Original signed by Nancy Greathead]
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Dated at Rockville, Maryland
this 2nd day of December 2008