

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.

(Early Site Permit for Vogtle ESP Site)

Docket No. 52-011-ESP

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

December 15, 2008

MEMORANDUM AND ORDER  
(Contested Evidentiary Hearing Administrative Matters)

Under the current general schedule for this proceeding, the Licensing Board is scheduled to conduct an evidentiary hearing between March 16-19, 2008, at the DoubleTree Hotel and Convention Center, 2651 Perimeter Parkway, Augusta, Georgia, regarding admitted contentions EC 1.2, EC 1.3, and EC 6.0. In anticipation of the above-scheduled evidentiary hearing session,<sup>1</sup> the Board provides the following administrative directives:

A. Prefiled Testimony, Exhibits, and Related Matters

1. Order and Manner of Presentation of Evidence

Absent some other information provided by the parties on or before Friday, January 9, 2009, the Board anticipates that the contentions will be litigated in numerical order and that contentions EC 1.2 and EC 1.3 will require approximately one day each, while contention

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<sup>1</sup> Based on the information provided by the parties to this point, the Board anticipates that the entire hearing on these contested matters will be open to the public in that none of the testimony or exhibits being utilized will contain information that is proprietary or otherwise not subject to public release pursuant to 10 C.F.R. § 2.390.

EC 6.0 will require two days. Because of the uncertainties inherent in attempting to predict the time required for litigation, the parties should be prepared to have their respective witnesses available for the entirety of the March 16-19, 2009 period, unless they advise the Board on or before Friday, January 9, 2009, that there is some limitation on the availability of a particular witness. In addition, the parties should plan for the possibility that one or more hearing sessions might extend into the evening if such an extension would facilitate completing any portion of the evidentiary session.

As to the order of party presentations, while the Board recognizes that the admitted contentions all raise issues associated with the NRC staff's environmental impact statement, as the party with the ultimate burden of proof under 10 C.F.R. § 2.325 relative to issuance of the requested early site permit, applicant Southern Nuclear Operating Company (SNC) will present its witnesses and evidence for Board questioning first,<sup>2</sup> followed by the staff, followed by Joint Intervenors.<sup>3</sup>

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<sup>2</sup> Assuming SNC and the staff agree to the joint sponsorship of the staff-designated United States Army Corps of Engineers witnesses, see [SNC] Update to Witness List for EC 6.0 (Dec. 12, 2008) at 1, absent some other agreement between these parties, the Board would anticipate that the staff will be the lead party to which the Board should address any questions regarding scheduling and other administrative matters associated with those witnesses.

<sup>3</sup> Joint Intervenors include the Center for a Sustainable Coast, Savannah Riverkeeper, Southern Alliance for Clean Energy, Atlanta Women's Action for New Directions, and Blue Ridge Environmental Defense League.

2. Schedule for Party Filings

Party prefiled testimony, supporting evidentiary materials,<sup>4</sup> any motions in limine related thereto, and proposed Board cross-examination questions shall be filed in accordance with the schedule set forth in the Board's November 13, 2008 memorandum and order. See Licensing Board Memorandum and Order (Revised General Schedule) (Nov. 13, 2008) attach. A (unpublished) [hereinafter Revised General Schedule]. To the degree the parties have been able to arrive at any stipulations regarding factual information and/or the authenticity and admissibility of evidentiary materials, see id. at 2-3, that information should be filed at the same time the parties' initial prefiled testimony and supporting evidentiary materials are submitted.

3. Initial Written Statements of Position and Written Responses

In crafting their initial written statements of position in accord with 10 C.F.R. § 2.1207(a)(1), which should be in the nature of a trial brief that provides a road map of the party's case relative to each admitted contention, the parties should, at a minimum, provide the Board with a brief summary or outline of (a) the key points made in the testimony of each witness or witness panel proffered by the party; (b) any important legal issues in controversy; and (c) the relief and/or determinations sought from the Board. Written responses prepared pursuant to section 2.1207(a)(2) should, at a minimum, provide a brief summary or outline of (1) the key points made in the testimony of each rebuttal witness or witness panel proffered by the party in response to the direct testimony provided by the other parties, identifying the particular witness or witness panel to which the rebuttal testimony is directed; (2) the party's response to

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<sup>4</sup> In the context of this 10 C.F.R. Part 2, Subpart L proceeding, the Board generally does not anticipate accepting into evidence any documentary material that is not discussed or cited in support of a party's prefiled direct or rebuttal testimony. Citations in prefiled testimony to documentary material (other than citations to legal authorities, including statutes, regulations, and NRC Issuances) should be accompanied by an evidentiary exhibit that includes the relevant portions of the supporting material cited.

any important legal issues identified by the other parties in their initial written statements; and (3) the party's response to the relief and/or determinations sought from the Board by the other parties in their initial written statements.

4. Form of Evidentiary Materials

As we advised the parties previously, the Board intends to utilize a portable version of the Digital Data Management System (DDMS) for the purpose of marking exhibits. As such, assuming that the exhibits they submit are properly prefiled using the agency's E-Filing system, see id. at 2 & n.1, it should not be necessary for the parties to provide the Board or counsel for the other parties with any paper copies of their evidentiary materials (or prefiled testimony). Nonetheless, the Board requests that each party have available one numbered paper copy of each of its prefiled exhibits for use in the event there are any operational issues with the DDMS.

Additionally, while the format for a hearing under 10 C.F.R. Part 2, Subpart L, does not generally contemplate the provision of additional "rebuttal" evidentiary material during an evidentiary hearing, see supra note 4, if any of the parties has documentary material that it does not wish to provide in support of its direct or rebuttal pre-filed testimony but nonetheless contemplates might become relevant in the context of Board questioning of any of the witnesses, it should ensure that it has that material available in the hearing room both electronically (in a PDF format that complies with the agency's E-Filing guidance) and via hard copy with enough paper copies to provide to counsel for the other parties, the three Board members, and the Board's law clerk.

5. Filing of Prefiled Exhibits

a. Duplicate Exhibits. Only one copy of each item of documentary material should be offered as evidence in this proceeding. For example, if SNC offers (and has admitted) a certain portion of a staff report regarding the Vogtle facilities, the staff should not then offer into

evidence the same portion of the report. Instead, the staff would rely on the document already proffered by SNC.

To this end, the parties should consult with one another and determine whether any of the prefiled exhibits a party intends to offer into evidence in support of its prefiled testimony would otherwise be duplicated by another party in the proceeding. In each instance this is found to be the case, the parties should determine, based on the order of party presentations, which party will first offer the exhibit into evidence. The other party intending to use that material as an exhibit should revise its evidentiary submissions to reference the initial submitting party's exhibit number.<sup>5</sup> Additionally, the parties should follow this practice relative to any exhibits utilized for prefiled rebuttal testimony or any evidentiary material introduced in the first instance during the evidentiary hearing itself.

b. Exhibit Order and Numbering. To expedite electronic processing, for the contested proceeding each party should number their prefiled exhibits in a format that consists of a three-character party designation, followed by a six-character zero-filled number. The three-character designation to be used by each of the parties is as follows: Southern Nuclear Operating Company - SNC, NRC Staff - NRC, Joint Intervenors - JTI. Consequently, a typical number sequence for the staff's exhibits would be as follows:

NRC000001

NRC000002

\* \* \* \* \*

NRC000100

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<sup>5</sup> When duplicate pre-filed party exhibits have been identified, the party that is recognized as the one that initially will offer the document must, if it subsequently decides not to offer the item, provide timely notice of its intent to all other parties who identified the item as a duplicate document or thereafter evidenced an intent to rely upon it in prefiled direct or rebuttal testimony.

To the extent possible, the parties should order and number their prefiled exhibits in the sequence the parties plan to identify, and present testimony referring to, each exhibit.

6. Exhibit List

At the time they submit the exhibits associated with their prefiled direct testimony, each party should provide Board law clerk Wen Bu (e-mail address: wen.bu@nrc.gov) with an electronic copy (preferably in Word format) of their prefiled exhibit list. In addition, concurrent with the filing of prefiled rebuttal testimony and any revised prefiled direct or rebuttal testimony, each party should provide the Board's law clerk with an updated exhibit list. In that regard, to the extent possible the parties should utilize the exhibit list template included as Attachment A to this issuance, which Ms. Bu can provide in Word format upon request.

B. Document Handling at the Evidentiary Hearing

At the evidentiary hearing, the parties should present their documentary materials in the form specified below:

1. Testimony

Assuming the versions provided via E-Filing are complete and correct, the parties need not provide any additional hard copies of their witnesses' prefiled testimony at the hearing. Although strongly discouraged, if a party sees a compelling need to make any revisions to the prefiled testimony that were not submitted to the Board and the other parties prior to the hearing, it must be prepared to provide that revised testimony at the hearing session both electronically (in a PDF format that conforms to the agency's E-Filing guidance) and in hard copy with a sufficient number of copies for counsel for the other parties, three copies for the Board members, one copy for the Board's law clerk, and two copies for the Court Reporter/Clerk.

The Board anticipates that prefiled direct and rebuttal testimony, which should be in question-and-answer format that, in the case of a witness panel, identifies the witness(es) sponsoring each answer, will be adopted by the witnesses and incorporated into the record as if read prior to questioning each witness or witness panel. Accordingly, it is not necessary for the parties to assign an exhibit number to prefiled testimony.

2. Exhibits

In accord with section A.4 above, for exhibits that have been prefiled via the agency's E-Filing system, no additional paper copies need be provided. When first seeking to have an exhibit identified (e.g., at the time a party is seeking to have the prefiled testimony that relies upon that exhibit incorporated into the record), the sponsoring party should be prepared to give a brief description of that individual exhibit for the record.

C. Miscellaneous Matters

1. Copies of Transcripts

The Board contemplates having a daily transcript prepared and will provide the parties with instructions on obtaining copies of the daily transcript prior to the hearing.

2. Submission of Proposed Cross-Examination Questions

a. Pre-Hearing Proposed Questions. To maintain the confidentiality of each party's proposed cross-examination questions pending a Board initial decision, see 10 C.F.R. § 2.1207(a)(3)(iii), those questions should not be filed into the agency docket for this proceeding using the E-Filing system. Instead, counsel should submit their proposed questions directly to the Board via e-mail directed to the Board Chairman (e-mail: paul.bollwerk@nrc.gov). The submission containing the questions should be in a PDF format that complies with the agency's E-Filing guidance. If the party so chooses, it may password-protect the electronic file it uses to

submit its questions, but if it does so, the party should contact the Board's law clerk, Wen Bu, at 301-415-7731, and provide the password used.

b. Proposed Questions Submitted During Ongoing Hearing. The Board contemplates breaking at appropriate intervals to allow the parties to compile and submit proposed examination questions based on the information the Board elicits during its questioning of a particular witness or witness panel. The parties should come to the hearing prepared logistically to generate their proposed questions in a manner that will be both efficient (e.g., will not require extended breaks) and effective (e.g., readable). On or before Friday, January 9, 2009, the parties should advise the Board of any logistical requirements they may have in connection with their proposed question generation capabilities.

3. Opening Statements By Counsel

To the extent the parties wish to do so, at the outset of the hearing the Board will afford one counsel for each of the parties making an evidentiary presentation a total of fifteen minutes to present a summary of that party's anticipated evidentiary presentations/proof relative to each of the contentions at issue during the March 2009 hearing session. The order of party opening statements will be the same as that specified in section A.1 above for party evidentiary presentations.

D. Party Comments Regarding this Order/Prehearing Conference

Any party comments regarding any aspect of this order should be filed on or before Thursday, December 18, 2008. Alternatively, if any of the parties believe it would be useful to convene a prehearing conference to discuss the matters outlined above (or any others) relative to the administration of the upcoming evidentiary hearing on contested matters, they should contact the other parties to ascertain mutually agreeable dates and then, on or before Thursday,





ATTACHMENT A



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 AND ORDER (CONTESTED EVIDENTIARY HEARING ADMINISTRATIVE MATTERS) have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Nancy Greathead]  
Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 15<sup>th</sup> day of December 2008