

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 31, 2008

MEMORANDUM AND ORDER

(Contested Evidentiary Hearing Administrative Matters  
Regarding Confidential Information)

In a December 15, 2008 memorandum and order, the Licensing Board provided the parties with a series of administrative directives relative to the conduct of an evidentiary hearing scheduled for March 16-19, 2009,<sup>1</sup> regarding admitted contentions EC 1.2, EC 1.3, and EC 6.0. See Licensing Board Memorandum and Order (Contested Evidentiary Hearing Administrative Matters) (Dec. 15, 2008) (unpublished) [hereinafter Contested Hearing Administrative Order]. Subsequently, on December 18, 2008, applicant Southern Nuclear Operating Company (SNC), acting on behalf of itself, the NRC staff, and Joint Intervenors,<sup>2</sup> filed a joint motion seeking issuance of a protective order to govern the dissemination and use of certain confidential

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<sup>1</sup> In its December 15, 2008 memorandum and order addressing administrative matters regarding the scheduled evidentiary hearing on contested matters relative to this proceeding, the Board incorrectly listed the date for that hearing as "March 16-19, 2008" rather than March 16-19, 2009.

<sup>2</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.

information of SNC and its vendors in connection with the contested portion of this early site permit (ESP) proceeding. See Joint Motion for Protective Order Governing Access to and Disclosure of Trade Secrets and/or Confidential Commercial or Financial Information (Dec. 18, 2008). In a December 19, 2008 issuance, the Board granted the joint motion and issued the requested protective order, as revised by the Board. See Licensing Board Memorandum and Order (Protective Order Governing Disclosure of Proprietary Materials) (Dec. 19, 2008) (unpublished) [hereinafter Protective Order].

Given the parties request for a protective order, it now seems, in contrast to the situation outlined in the Board's December 15 order, see Contested Hearing Administrative Order at 1 n.1, that some portion of the contested proceeding may involve the use of confidential information. Accordingly, the Board requests that the parties take the following additional steps:

1. On or before Friday, January 16, 2009, the parties should provide the Board with a joint report that (a) indicates what portions, if any, of the evidentiary proceeding they anticipate will involve the consideration of confidential information, so as to require closing the proceeding to the public; and (b) provides any recommendations as to how the Board and/or the parties might structure the hearing sessions and/or any evidentiary material being presented to minimize such closures.

2. For the exhibit list that is to be provided to the Board under the section A.6 of the Board's December 15 memorandum and order, see Contested Hearing Administrative Order at 6,<sup>3</sup> in addition to each party completing the party exhibit number, witness/panel, and description fields for each exhibit listing, which should include an ADAMS accession number to

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<sup>3</sup> Because the parties, having previously consulted regarding exhibit duplication, see Contested Hearing Administrative Order at 5, should be aware of the exhibits each is utilizing, the Board is not requiring that these exhibit lists be provided to the other parties. The parties nonetheless are free to make such an exchange if they wish.

the extent it is available for the document (or portion of the document) that will be proffered, for any exhibit having a proprietary/sensitive status that would preclude public disclosure, the listing information should be set forth in **bold** type.

Also, as was outlined in the December 19 protective order, prefiled testimony or prefiled exhibits that contain confidential information of the kind covered by that protective order should be filed separately in the agency's E-Filing system using the "protective order" filing option and should include appropriate page markings. See Protective Order at 2, 5.

Any contested hearing party comments regarding any aspect of this order should be filed on or before Tuesday, January 6, 2009. Finally, as is noted in an order issued today in the combined operating license (COL) proceeding regarding Vogtle Units 3 and 4,<sup>4</sup> following a soon-to-be-scheduled late-January 2009 oral argument in that case, the Board in this proceeding (whose membership coincides with that of the COL Board) anticipates convening a brief prehearing conference with the parties to this proceeding (which coincides with the

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<sup>4</sup> See Licensing Board Memorandum and Order (Scheduling Initial Prehearing Conference Regarding Contention Admissibility; Opportunity for Written Limited Appearance Statements) (Dec. 31, 2008) at 4 (unpublished).

participants in the COL proceeding) to review administrative and scheduling matters associated with the scheduled mid-March 2009 contested and mandatory hearings for this ESP proceeding.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>5</sup>

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G. Paul Bollwerk, III  
CHAIRMAN

December 31, 2008

Rockville, Maryland

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<sup>5</sup> 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 Intervenors; and (3) the staff.

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 REGARDING CONFIDENTIAL INFORMATION) have been served upon the following persons by Electronic Information Exchange.

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LB MEMORANDUM AND ORDER (CONTESTED EVIDENTIARY HEARING  
ADMINISTRATIVE MATTERS REGARDING CONFIDENTIAL INFORMATION)

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[Original signed by Christine M. Pierpoint]  
Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 31<sup>st</sup> day of December 2008