

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

(Additional Presentation Topic and Administrative
Directives for Mandatory Hearing)

Under the current general schedule for this proceeding, the Licensing Board is scheduled to conduct a mandatory hearing between March 23-25, 2009, in the Auditorium at the Augusta Technical College, Waynesboro/Burke Campus, 216 Highway 24 South, Waynesboro, Georgia, regarding uncontested matters associated with this early site permit (ESP) proceeding. In anticipation of that mandatory hearing, the Board specifies an additional presentation topic as well as provides the following administrative directives:

A. Additional Presentation Topic

In its October 17 and December 5, 2008 memoranda and orders, the Licensing Board outlined a number of environmental and safety topics that it requested be the subject of participant presentations during the upcoming mandatory hearing session for this early site permit proceeding. At this juncture, the Board requests that the following additional topic be included as the subject of a presentation:

Provide a presentation that outlines the impacts, if any, of the AP1000 design certification revisions 16 and 17 on the SNC ESP application for Vogtle Units 3 and 4.

B. Administrative Directives

1. Lead/Non-Lead Parties for Presentations

Relative to each of the requested mandatory hearing presentations, the Board contemplates there will be a “lead” party that would make the initial presentation on the topic. This designation would not, however, preclude the non-lead party from making an additional, supplemental presentation on the topic or, in lieu of a supplemental presentation, making one or more witnesses available to answer any questions the Board might pose regarding the topic.

In this regard, as part of their response to the questions set forth by the Board as part of its December 5, 2008 issuance, after consultation with the other mandatory hearing party,¹ either the NRC staff or applicant Southern Nuclear Operating Company (SNC) should provide an outline indicating (a) which party will be taking the lead on each of the presentation topics designated by the Board; (b) whether there will be any supplemental presentation by the non-lead party as to each designated topic; (c) a preliminary estimate as to how long each lead party and non-lead party presentation will take relative to each of the designated topics; and (d) whether any lead or supplemental presentation will involve the discussion of proprietary/sensitive information that would require any portion of the mandatory hearing to be closed to the public. Once the Board has had a chance to review this information, as well as the witness availability information provided relative to section B.2 below, it will provide a schedule outlining the order of the presentations for the mandatory hearing.

¹ As we have indicated previously, Joint Intervenors, which 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, are not parties to the mandatory hearing, although as a courtesy they are being served with this issuance.

2. Designation and Availability of Lead/Non-Lead Party Witnesses

Relative to any witness being proffered by either a lead or a non-lead party in connection with a particular topic, the Board would anticipate relative to each presentation topic that at the time presentation materials are filed, each party will provide a list of its witnesses for that topic as well as make available a curriculum vitae for each witness, which should be marked as a prefiled exhibit in accordance with paragraph B.3. below.

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 23-25, 2009 period, unless they advise the Board in the context of their responses to the questions set forth by the Board as part of its December 5, 2008 issuance that there is some limitation on the availability of a planned witness relative to a particular presentation topic. 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 mandatory hearing.

3. Filing and Form of Evidentiary Materials

As is the case with the contested portion of this proceeding, all exhibits that the parties wish to have in the record to support their presentations must be prefiled in accordance with 10 C.F.R. § 2.304(g). See Licensing Board Memorandum and Order (Contested Evidentiary Hearing Administrative Matters) (Dec. 15, 2008) at 4 (unpublished) [hereinafter Contested Hearing Administrative Order]. If, however, a proposed mandatory hearing exhibit has previously been prefiled for the contested portion of this ESP proceeding, it should not be submitted again. Also, because the Board intends to utilize the Digital Data Management System (DDMS) for the purpose of marking any exhibits in the mandatory/uncontested portion of this proceeding, for those evidentiary materials used in support of a lead or supplemental

presentation,² the contested proceeding administrative directives in sections A.4 and A.5.a of the Board's December 15, 2008 issuance regarding exhibits will apply, including those relating to the number of paper copies of exhibits, "rebuttal" exhibits, and avoiding duplicate exhibits. See id. at 4-5.

Regarding the numbering of exhibits, for those items that were not assigned exhibit numbers for the contested proceeding, the numbering should continue sequentially from each party's last numbered exhibit identified in the context of the contested hearing in this proceeding, using the same numbering scheme as was specified in section A.5.b of the Board's December 15, 2008 issuance regarding contested hearing administrative matters. See id. at 5. For those exhibits already assigned numbers for the contested hearing, the same exhibit number should be used for identifying that item if a party proposes to use it as support for a presentation during the mandatory hearing.³ Also, to the extent possible, the parties should order and number their prefiled exhibits in the sequence the parties plan to identify, and provide presentation testimony referring to, each exhibit.

Finally, consistent with the Board's December 19, 2008 protective order, any prefiled exhibit that contains confidential information of the kind covered by that order should be filed separately in the agency's E-Filing system using the "protective order" filing option and should

² In the context of the mandatory hearing portion of this 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 lead or supplemental presentation. The citations or discussion in presentations of 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.

³ By using the DDMS, the Board will be able to mark each prefiled exhibit electronically to indicate whether the exhibit was identified and admitted/rejected in either the contested or the mandatory hearing, or both. Likewise, after the hearings are concluded, the parties will be able to verify the status of an exhibit utilized in either the contested or mandatory hearing via information available on the agency's electronic hearing docket.

include appropriate page markings. See Licensing Board Memorandum and Order (Protective Order Governing Disclosure of Proprietary Materials) (Dec. 19, 2008) at 2, 5 (unpublished).

4. Exhibit List

At the time they prefile any exhibits associated with their presentation materials, 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.⁴ This list should include all exhibits they propose to utilize in the mandatory hearing, including those previously identified for use in the contested portion of this proceeding. 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. In this regard, the parties should complete for each exhibit listing the party exhibit number, witness/panel, and description fields, including an ADAMS accession number to the extent it is available for the document (or portion of the document) that will be proffered. Also, for any exhibit having a proprietary/sensitive status that would preclude public disclosure, the listing information should be set forth in **bold** type.

5. Evidentiary Material Handling at the Mandatory Hearing

Assuming the E-Filing-submitted electronic copies of all materials they anticipate entering into the record during their mandatory hearing presentations, including any charts, maps, graphs, pictures/illustrations, and slides, are complete and correct, the parties need not provide any additional hard copies of those materials at the hearing. Although strongly discouraged, if a party sees a compelling need to make any revisions to these materials that were not submitted to the Board and the other parties prior to the hearing, it must be prepared

⁴ 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 party. The parties nonetheless are free to make such an exchange if they wish.

to provide the revised materials 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.

When seeking to have an exhibit identified (e.g., at the time a party making a presentation supported by that exhibit makes reference to the exhibit or at the end of its presentation), the sponsoring party should be prepared to give a brief description of that individual exhibit for the record.⁵

6. 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.

7. Opening Statements by Counsel

To the extent the parties wish to do so, at the outset of the mandatory hearing the Board will afford one counsel for each of the parties a total of fifteen minutes to present a summary of that party's anticipated evidentiary presentations/proof relative to the matters being considered during the March 2009 mandatory hearing, as well as the ultimate findings the Board must make relative to the application, see 10 C.F.R. § 52.24. The order of party opening statements will be specified in a subsequent issuance.

8. Audio/Visual Needs

If either party making a mandatory hearing evidentiary presentation has a special audio/visual display equipment requirement (such as an overhead/computer projector and/or

⁵ Use of the DDMS electronic marking system may also require that some brief additional identifying information be added to each exhibit number beyond that used to identify the exhibit as it is prefiled. If that is the case, prior to the contested and mandatory hearings, the Board will advise the parties about what that information is so that each exhibit can be appropriately identified for the record.

screen), it should advise the Board during the course of the prehearing conference noted in section B.9 below. To the degree there are similar needs, the Board will attempt to coordinate party use of such equipment.

9. Party Comments Regarding this Order/Prehearing Conference

Any mandatory hearing party comments regarding any aspect of this order should be filed on or before Tuesday, January 6, 2009. Also, as is noted in an order issued today in the combined operating license (COL) proceeding regarding Vogtle Units 3 and 4,⁶ 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 coincide with the 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 BOARD⁷

/RA/

G. Paul Bollwerk, III
CHAIRMAN

Rockville, Maryland

December 31, 2008

⁶ 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).

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 Intervenors; and (3) the staff.

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 (ADDITIONAL PRESENTATION TOPIC AND ADMINISTRATIVE DIRECTIVES FOR MANDATORY HEARING) have been served upon the following persons by Electronic Information Exchange.

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ADMINISTRATIVE DIRECTIVES FOR MANDATORY HEARING)

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

Dated at Rockville, Maryland
this 31st day of December 2008