

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

January 14, 2009

MEMORANDUM AND ORDER
(Scheduling Initial Prehearing Conference;
Providing Oral Argument Questions)

In response to the Licensing Board's December 31, 2008 memorandum and order regarding scheduling for an initial prehearing conference, on January 6, 2008, applicant Southern Nuclear Operating Company (SNC), Joint Petitioners,¹ and the NRC staff provided a joint report in which they specified several dates and times during which they would be available for such a conference. After reviewing this information, the Board has decided to schedule the initial prehearing conference for the following date, time, and locations:

Date: Wednesday, January 28, 2009
Starting Time: 9:00 a.m. Eastern Time (ET)
Locations: Atomic Safety and Licensing Board Panel
Hearing Room
Room T-3B45
Third Floor, Two White Flint North Building

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.

11545 Rockville Pike
Rockville, Maryland

and

NRC Main Conference Room
Room 24T20
Twenty-Fourth Floor, Sam Nunn Atlanta Federal
Center
61 Forsyth Street, SW
Atlanta, Georgia

The Board will be presiding over this prehearing conference from the Panel's Rockville, Maryland hearing room. The Board's understanding is that counsel for SNC and the staff intend to participate from the Panel's Rockville facility, while Joint Petitioners counsel will participate via videoconference from the agency's Region II conference room in Atlanta. Members of the public may attend at either location. Anyone wishing to attend at either hearing location is reminded that they should arrive in sufficient time to allow for security screening and should bring a government-issued picture identification card (i.e., a driver's license).

In the participants' January 6 joint submission, it was also reported that the staff, without objection from SNC or Joint Petitioners, proposes to have Division of New Reactor Licensing Senior Policy Analyst Jerry N. Wilson provide a generic discussion regarding the 10 C.F.R. Part 52 design certification (DC) and combined operating license (COL) processes and their inter-relationship. The Licensing Board appreciates the opportunity to hear from Mr. Wilson with the understanding that his presentation, which should last no more than fifteen minutes, should be geared to providing the Board and the participants with a baseline understanding of how the DC and COL processes are intended to function as well as how those processes are intended to interact and inter-relate. As the Board indicated in its December 31 order, if Mr. Wilson intends to employ any slides or other presentation materials, the staff should ensure that those materials are provided to the Board and the other participants by E-Filing submission on or

before Friday, January 23, 2009. Additionally, on or before Wednesday, January 21, 2009, any participant that believes it will need to employ any audio/video technology relative to its oral argument presentation should contact the Board's law clerk, Wen Bu, at 301-415-7731 or wen.bu@nrc.gov, and advise her regarding the type and content of those materials.

Also in its December 31 issuance, the Board indicated it might provide the participants with a list of questions or areas of concern it wishes to have addressed during their arguments (the time limits for which were outlined in that order as well). To that end, included as Attachment A to this issuance is a series of questions that the participants should be prepared to address as part of their oral argument presentations.

Given the time of year and the possibility of inclement weather, it is also prudent to provide for the possibility that the proceeding may have to be postponed or canceled because of inclement weather in Rockville or Atlanta. To this end, on or before Wednesday, January 21, 2009, each of the participants should provide Ms. Bu with the name and appropriate contact information, including a phone number and e-mail address, of one individual whom the Board can contact during business or non-business hours in the event it needs to relay scheduling information to be passed along to others who might be attending the proceeding on behalf of that participant. Additionally, if the Board finds it needs to update scheduling information regarding the proceeding, it will make that information available to the public by placing a message on the Panel's message line, (800) 368-5642, extension 5036, or (301) 415-5036 and, to the extent possible, by updating the agency's website at www.nrc.gov/public-involve/public-meetings/index.cfm.

Finally, as the Board noted in its December 31 memorandum and order, following the conclusion of this COL oral argument, it contemplates convening a prehearing conference with these same participants to discuss various administrative matters relating to the planned March

2009 evidentiary hearing sessions regarding contested and uncontested/mandatory matters relating to the Vogtle early site permit proceeding.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD²

/RA/

G. Paul Bollwerk, III
CHAIRMAN

Rockville, Maryland

January 14, 2009

² 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.

ATTACHMENT A

QUESTIONS FOR
JANUARY 28, 2009 ORAL ARGUMENT

A. Contentions MISC-1 and MISC-2

1. Joint Petitioners reply pleading contains the following statement:

First, the design components listed in the contentions have not been conclusively approved in the separate design certification rulemaking proceeding that has been designated by NRC for their resolution. Second, the final AP 1000 design, as certified and as potentially modified through the design certification process, has not been adopted by SNC. Unless and until these procedural steps have been taken, SNC's [COL application (COLA)] remains inadequate with respect to the design components listed in Contentions MISC-1 and MISC-2.

Petitioners' Reply to SNC Answer Opposing Petition to Intervene and NRC Staff Answer to Petition for Intervention (Dec. 23, 2008) at 3 (footnotes omitted) [hereinafter Joint Petitioners Reply]. Given applicant SNC's apparently uncontested assertion that the "listed" design components are, in fact, in its COLA, and that it has not yet amended its COLA to incorporate AP1000 design control document (DCD) proposed revision 17, see [SNC] Answer Opposing Petition to Intervene (Dec. 12, 2008) at 17-18, 23, are Joint Petitioners really seeking a Board declaratory order, see 5 U.S.C. § 554(e); see also 10 C.F.R. § 2.319(r), that (1) the Vogtle COL cannot issue absent agency adoption of the DCD that is incorporated by reference in the Vogtle COLA; and (2) the Vogtle COL cannot include any design certification components that are the subject of a subsequent DCD revision unless that revision has been incorporated by reference into the Vogtle COLA? What is the Board's authority to issue such an order absent an admitted contention?

2. Joint Petitioners reply also states that a "panel of the ASLB recently admitted a virtually identical contention to MISC-1, and confirmed its consistency with NRC's Policy Statement," but notes that this ruling "is in direct conflict" with another licensing board's recent ruling. Joint Petitioners Reply at 4, 7 n.14.

a. How do contentions MISC-1 and MISC-2 differ, if at all, from the contention admitted by the Shearon Harris COL Board, see Progress Energy Carolinas, Inc. (Combined License Application for Shearon Harris Nuclear Power Plant, Units 2 & 3), LBP-08-21, 68 NRC ____ (Oct. 30, 2008), and the contention rejected by the Lee COL Board, see Duke Energy Carolinas, L.L.C. (Combined License Application for William States Lee III Nuclear Station Units 1 & 2), LBP-08-17, 68 NRC __ (Sept. 22, 2008)?

b. In light of the recognition in the Commission's policy statement on the conduct of reactor licensing proceedings that generic consideration of common issues could benefit the overall licensing process, see Conduct of New Reactor Licensing Proceedings; Final Policy Statement, 73 Fed. Reg. 20,963, 20,973 (Apr. 17, 2008), should the Board

- (1) pursuant to 10 C.F.R. § 2.317(b), refer contentions MISC-1 and MISC-2 to the Lee or Shearon Harris licensing boards for their resolution; or

(2) pursuant to 10 C.F.R. § 2.319(l), certify a question to the Commission regarding the admissibility of these contentions?

3. In the absence of a COLA amendment to incorporate a pending DCD revision into a pending COLA, is there any requirement or practice under which the staff performs a review to see if a docketed DCD revision request has an impact on a pending COLA or any staff COLA-associated licensing document that has been issued, such as a draft or final environmental impact statement or safety evaluation report?

4. Assuming an applicant does not amend its COLA to reference a pending DCD revision, would the need for any of the changes outlined in the DCD revision become a plant-specific issue that could be litigated by a hearing petitioner who submitted an appropriately supported contention?

5. The NRC staff answer declares that:

Petitioners also note that their review of Revision 17 is hindered because the entire application has not yet been made publicly available. It is true that Revision 17 of the AP1000 design certification amendment was not publicly available when Petitioners filed their Petition for Intervention. But it is now available to the public, curing this portion of the Petitioners' challenge. Revision 17 of the AP1000 design certification amendment was published on the NRC public website on November 25, 2008.

NRC Staff Answer to "Petition for Intervention" (Dec. 12, 2008) at 37 (citations omitted). What is the appropriate trigger for any COL contentions based on a proposed DCD revision: the public availability of the revision, any COLA amendment incorporating the revision, both, or some other event?

B. Contention SAFETY-1

1. Joint Petitioners reply indicates that:

[E]ach such assertion is merely a restatement of the underlying argument in both the SNC Answer and the NRC Answer – that SNC should not be required to set forth a complete and definitive explanation of its plans to comply with NRC regulations governing management of [low-level radioactive waste (LLRW)] at the Vogtle Electric Generating Plant ("VEGP") site. Such an argument is illogical and stands counter to NRC guidance regarding storage of LLRW.

Joint Petitioners Reply at 8. This statement references NUREG-0800 and NUREG-1437. What is the minimum required level of detail that should be provided in a COLA and a reactor life extension application regarding plans for the design and construction of a LLRW facility onsite? Is the level of detail provided by the Vogtle COL and/or life extension applications sufficient?

See, e.g., Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Vogtle Electric Generating Plant, Units 1 and 2, Final Report, NUREG-1437, at 2-13 to -14 (Supp. 34 Dec. 2008) (SNC aware Barnwell LLRW storage facility closure impacts ability to dispose of VEGP LLRW and is developing several onsite LLRW storage design concepts, including use of shielded storage pad with individual compartments for high integrity containers to ensure offsite dose does not exceed Environmental Protection Agency radiation standards).

2. Does the staff need to make a finding regarding an acceptable LLRW storage design concept before it can issue a COL? If yes or no, what is the basis for that answer? Can the availability of a suitable LLRW storage facility be treated as one of the inspections, tests, analyses, and acceptance criteria (ITAAC) applicable to a COL?

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 (SCHEDULING INITIAL PREHEARING CONFERENCE; PROVIDING ORAL ARGUMENT QUESTIONS) have been served upon the following persons by Electronic Information Exchange.

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Docket No. 52-025 and 52-026-COL
 MEMORANDUM AND ORDER (SCHEDULING INITIAL PREHEARING CONFERENCE;
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[Original signed by Nancy Greathead]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 14th day of January 2009