

January 16, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
SOUTHERN NUCLEAR OPERATING CO.) Docket No. 52-011-ESP
)
(Early Site Permit for Vogtle ESP Site))

JOINT REPORT REGARDING THE USE OF CONFIDENTIAL INFORMATION

In a December 31, 2008, Memorandum and Order, the Atomic Safety and Licensing Board (“Board”) requested that the parties 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.” *Id.* at 2. The parties have conferred and prepared the following joint report.

In response to subsection (a), the parties submit that at this time they do not anticipate that any confidential information will be used in the evidentiary proceeding. If it were to be necessary, it would only be in connection with Contention 6.

Due to the parties’ strong interest in having the hearing open to the public, the parties prefer to avoid closing any portion of the proceedings. However, in response to part (b) of the Board’s request, to the extent it becomes necessary to present any confidential information in the course of the evidentiary proceeding, the parties make the following comments and recommendations.

- At the time of the hearing, filings containing confidential information will have been provided to the Board and to authorized representatives of the parties using the

nonpublic filing procedures. The parties would continue to protect this information as required by the Protective Order issued by the Board. Nothing in these comments or recommendations precludes the parties from following the process described in that Order for challenging whether information is properly designated as confidential.

- Where possible, the parties will stipulate to relevant facts in order to avoid the need to introduce confidential information. This approach could include stipulations submitted on the record but under seal. Furthermore, if a document containing confidential information will be relied on, the parties will confer as to whether use of a redacted version would be sufficient for use at the hearing.
- If a redacted document can be used, the parties will seek to reach consensus as to whether the parties (and witnesses relying on that document) can present the relevant subject matter without referring specifically to the confidential information. If such consensus is reached, the parties will recommend to the Board that the portion of the hearing need not be closed. If consensus is not reached, the hearing would need to be closed. Similarly, if a party or witness believes that a question posed (by the Board or a party) during this portion of the hearing would require the witness to reveal confidential information in his or her answer, the witness or party would need to so inform the Board, at which time the Board would determine whether to modify the question or close the proceeding.
- If confidential information must be used or discussed, the hearing would have to be closed for the portion using confidential information. Consequently, before commencing a portion of the hearing where confidential information will be used, the courtroom would need to be cleared of all persons who have not executed a non-disclosure agreement.
- Where possible, such portions of the hearing could be scheduled at the end of a given

day of the hearing, to minimize the need for members of the public to exit the courtroom and wait to return.

- Because of the above, the court reporter and all witnesses and counsel who wish to be present for the portion of the hearing utilizing confidential information would need to execute non-disclosure agreements.
- There would need to be two (2) copies of all filings. One redacted copy would be publicly available, and the other copy containing the confidential information would be served – utilizing the function in the EIE system -- only upon those parties who have executed a non-disclosure agreement.

The following recommendations apply only if proprietary information has been introduced at the hearing:

- Once the transcript is produced it would be served upon the parties before being made public. The parties would go through the transcript and redact the appropriate portions. This redacted transcript would then be made public.
- Before issuing any Orders in this case, the Board would circulate the draft Orders to the parties in order to redact any confidential information. If information is redacted, there would be a publicly available and non-publicly available version of the Order.

Counsel for the Applicant and counsel for the Joint Intervenors have each authorized me to state their agreement with the contents of this joint report.

Respectfully submitted,

/signed (electronically) by/

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Dated at Rockville, Maryland
this 16th day of January, 2009

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "JOINT REPORT REGARDING THE USE OF CONFIDENTIAL INFORMATION" have been served upon the following persons by Electronic Information Exchange this 16th day of January, 2009:

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