

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

February 4, 2009

MEMORANDUM AND ORDER

(Memorializing Results of Prehearing Conference
and Providing Additional Administrative Directives)

On January 28, 2009, the Licensing Board conducted a prehearing conference with the parties, including representatives of applicant Southern Nuclear Operating Company (SNC), the NRC staff, and Joint Intervenors.¹ During the conference, the Board and the parties discussed the schedule for, and certain administrative matters concerning, the upcoming evidentiary hearing on contested issues and the mandatory hearing on uncontested matters. As reflected in the transcript of that conference, see Tr. at 441-505, the Board addressed those matters as follows:

A. Contested Hearing

The parties are reminded that the dates for party prehearing submissions related to the evidentiary hearing on contested issues, scheduled to begin on Monday, March 16, 2009, in

¹ 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.

Augusta, Georgia, remain in effect as established in the Board's November 13, 2008 revised general schedule.

Relative to administrative or procedural matters associated with the contested hearing, SNC counsel raised a question concerning whether a witness who is presenting individual testimony on a particular contention can appear before the Board as part of a panel for that same contention. See Tr. at 468-69. The Board requests that the parties provide notice to the Board and the other parties on or before Monday, March 2, 2009, regarding individual witnesses who will appear with a panel. Additionally, although the Board and the parties currently do not anticipate that any confidential information will be used during the proceeding, any party wishing to use confidential information should inform the Board and the other parties promptly. See Tr. at 483. Similarly, although the Board does not expect any change to the format of opening statements, which it currently expects to be one fifteen-minute statement from each party concerning all three admitted contentions, if any party contemplates that its opening argument will be presented by more than one individual, on or before Monday, March 2, 2009, it should advise the Board and the other parties of that fact, identifying each of the individuals who will be presenting the argument and the particular contention(s) they will be addressing. See Tr. at 494-97.

Per the discussion during the prehearing conference, see Tr. at 471-83, one laptop computer will be available to each party for use in the local hearing room for the contested (and the uncontested/mandatory) hearing to access the Licensing Board Panel's Digital Data Management System (DDMS) during the hearing. Access to the DDMS requires a username and password.² Usernames and passwords, which will be available for up to two individuals

² As the Board noted, a DDMS user also can access the system via the web from another computer. To do so, however, the individual must have an agency-issued digital

from each party, will be issued after the individuals to whom they are being assigned have had a brief training session, which includes a review of security rules, and have executed a Rules of Behavior agreement. Currently, there are training sessions scheduled in the Panel's Hearing Room at the NRC's Rockville, Maryland headquarters on Thursday, February 26, 2009, at 1:00 p.m. Eastern Time (ET) and Friday, February 27, 2009, at 9:00 a.m. ET. Additionally, Panel information technology (IT) staff will offer DDMS training on Sunday, March 15, 2009, at 5:00 p.m. ET in the Doubletree hearing room in Augusta, Georgia. Participants wishing to attend one of these training sessions, or wishing to arrange a different training time, should contact Andrew Welkie, at andrew.welkie@nrc.gov or 301-415-6541.

Finally, in view of the fact that the hearing will be conducted under Subpart L of the agency's 10 C.F.R. Part 2 rules of practice and the likelihood that only one contention will require more than a single day, the Board does not anticipate using overnight transcript service. The Board will, however, request that each hearing session be transcribed within three business days. See Tr. at 469-71.

B. Mandatory Hearing

In accord with the November 13, 2008 revised general schedule, presentation materials for the mandatory hearing, scheduled to begin on Monday, March 23, 2009, in Waynesboro, Georgia, should be filed on or before Monday, March 2, 2009. Moreover, in light of the additional presentation topic in section C.2 below, on or before Friday, February 13, 2009, the parties to the mandatory hearing are also asked to notify the Board if they anticipate any

²(...continued)

certificate on that computer, such as the one provided to those accessing the agency's E-Filing system. (The laptop computers provided for DDMS access at the Georgia hearing venues will have a digital certificate pre-loaded that will provide access to the system.)

restrictions on witness availability during the three-day period planned for the hearing. See Tr. at 487-88.

Regarding the filing of presentation materials, all materials should be marked according to the procedure outlined in the Board's December 31, 2008 memorandum and order providing administrative directives for the mandatory hearing. See Licensing Board Memorandum and Order (Additional Presentation Topic and Administrative Directives for Mandatory Hearing) (Dec. 31, 2008) at 4-5 (unpublished) [hereinafter Mandatory Hearing Order]. Each party should provide Board law clerk Wen Bu (email: wen.bu@nrc.gov) with an electronic copy (preferably in Word format) of their exhibit list. On the exhibit list, any confidential prefiled exhibits should be marked in bold and an asterisk should be placed after the exhibit number of any exhibit on the list that was already identified in connection with the contested hearing. See Tr. at 492-94. Also, if either party anticipates having to rely on any confidential information in the course of its mandatory hearing presentation, it should advise the Board of that possibility as soon as possible, but in any event no later than Monday, March 2, 2009. See Tr. at 490-91.

C. Additional Administrative Directives

1. Contested Hearing

As the Board indicated at the prehearing conference in connection with the mandatory hearing, see Tr. at 489-90, prefiled exhibits should be tied to the testimony of a particular witness or panel. It has come to the Board's attention that the following prefiled exhibits currently are not referenced in specific discussions by particular witnesses or panels:

- a. Joint Intervenors exhibits JTI000020 and JTI000036.³

³ Additionally, Joint Intervenors exhibit JTI000032 is only referenced in the testimony of Mr. Powers, but is listed in the exhibit list as being referenced by three witnesses. Joint Intervenors should clarify their witness list in this regard.

- b. Staff exhibits NRC000019 and NRC000026, which are listed among the sources "consulted" by particular panels but are not referenced with respect to any particular discussion.

The Board requests that on or before Friday, February 13, 2009, Joint Intervenors and the staff should advise the Board and the other parties whether they still intend to offer these exhibits into evidence as part of their case and, if so, how they intend to comply with the Board's directive to ensure there is a connection between an exhibit and a party's prefiled testimony.

Additionally, the staff also appears to have used a format for referencing its exhibits in its prefiled testimony that differs from the marking system used on the exhibits themselves (i.e., NRC-1 = NRC000001). Though the Board does not ask the staff to re-file its prefiled testimony, it does request the staff to refer to the exhibits using the established numbering system in its prefiled rebuttal testimony.

The Board received the parties' revised prefiled direct testimony and exhibits on February 2, 2009. It has come to the Board's attention that neither Joint Intervenors originally filed exhibit JT1000041, nor its refiled version, JTIR00041, is marked with the exhibit number on the document. In light of the Board's instructions to mark prefiled exhibits with a number on the first page of the exhibit, see Licensing Board Memorandum and Order (Ruling on In Limine Motions) (Jan. 26, 2009) at 9 (unpublished), the Board requests that Joint Intervenors refile exhibit JTIR00041, which should now be marked as JTIR20041 (the "R2" in the exhibit number indicating this is the second revision), with the exhibit number marked on the first page of the document.

Also, in refiled its prefiled direct testimony, the staff made a number of corrections to its testimony, which were accompanied by a list of the changes. Consistent with the Board's direction, see Tr. at 449-50, if there are any additional changes to prefiled testimony or exhibits

by any party that are not the result of a Board order, the re-filed testimony or exhibits should be accompanied by a separate filing that outlines any changes that have been made to the original filings. Also, in providing their revised testimony, Joint Intervenors and the staff noted both the date of the original filing and the date of revision. This is a prudent practice that should be continued for any other revised prefiled testimony.

2. Mandatory Hearing

Finally, as was noted at the prehearing conference, see Tr. at 451, the Board has been considering issuing additional presentation topics or additional guidance on presentation topics for the mandatory hearing. The Board now requests that SNC and the staff be prepared to address the following areas:

a. Additional Guidance for the Mandatory Hearing Seismic Evaluation Presentation (Presentation F)

As discussed in section 3.7 of the advanced safety evaluation report, and shown in figures 3-4 and 3-5 of Appendix 2.5E of the supplemental safety analysis report (SSAR), the ground motion response spectra predicted for the Vogtle ESP site exceeds the AP1000 (rev. 15) Certified Seismic Design Response Spectra in two frequency ranges. As a result, the applicant provided site-specific analyses to demonstrate the suitability of the certified design for the Vogtle ESP site (SSAR Appendix 2.5E). Please ensure that the mandatory hearing seismic evaluation presentation covers this issue, which should include the staff's rationale for concluding that the applicant's evaluation met the applicable requirements for granting a limited work authorization (LWA), as well as the adequacy of the evaluation with respect to granting an ESP.

b. Additional Guidance for Mandatory Hearing AP1000 Design Certification Revisions Presentation (Presentation J)

Please ensure that the mandatory hearing AP1000 design certification revisions presentation (or, alternatively, the LWA and site redress plan presentation (Presentation D)) discusses the impacts, if any, of the AP1000 design certification revisions 16 and 17 on the requested LWA and the site redress plan.

c. Additional Presentation Regarding Severe Accident Mitigation Design Alternatives (SAMDA)

Please provide a presentation regarding the site-specific SAMDA analysis that formed the basis of the conclusion in the NRC staff's final environmental impact statement that there were no cost-beneficial design alternatives required to be implemented at the Vogtle ESP site. Include a discussion of how uncertainties were accounted for in this analysis and the major differences between the site-specific analysis and the AP1000 design control document (DCD) analysis.

Regarding this additional presentation, on or before Friday, February 13, 2009, either the staff or SNC should provide an outline indicating (1) which party will be taking the lead on this presentation topic designated by the Board; (2) whether there will be any supplemental presentation by the non-lead party as to each designated topic; (3) 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 (4) 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. Also, in that outline, the staff or SNC should indicate whether, and by what amount, the presentation requests in sections C.2.a. and b. will increase the presentation time estimates previously provided.

Finally, in its December 31, 2008 administrative order, see Mandatory Hearing Order at 6-7, the Board indicated that SNC and the staff should advise it during the January 28 prehearing conference whether either anticipated needing any special audio/visual display equipment for the mandatory hearing. Although neither did so, the Board also did not make a specific inquiry in that regard. Accordingly, if either party does have such a need, they should advise the Board on or before Friday, February 13, 2009.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁴

/RA/

G. Paul Bollwerk, III
CHAIRMAN

Rockville, Maryland

February 4, 2009

⁴ 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.

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (MEMORIALIZING RESULTS OF PREHEARING CONFERENCE AND PROVIDING ADDITIONAL ADMINISTRATIVE DIRECTIVES) have been served upon the following persons by Electronic Information Exchange.

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

Dated at Rockville, Maryland
this 4TH day of February 2009