

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
CALVERT CLIFFS 3 NUCLEAR PROJECT, LLC,)
AND UNISTAR NUCLEAR OPERATING) Docket No. 52-016-COL
SERVICES, LLC)
)
(Calvert Cliffs Nuclear Power Plant, Unit 3))

NRC STAFF MOTION AND PROPOSED SCHEDULE

INTRODUCTION

In accordance with the instructions from the Atomic Safety and Licensing Board during the pre-hearing phone conference held April 8, 2009, and after being unable to reach agreement with the Applicant, the NRC Staff (Staff) provides this Motion that the Staff's Proposed Schedule be adopted by the Atomic Safety and Licensing Board (Board). In support of its Motion, the Staff provides the following discussion.

DISCUSSION

A. Legal Standards for Establishing a Hearing Schedule

The Board is required to issue an order establishing a hearing schedule pursuant to 10 C.F.R. § 2.332(a), which provides that, "[t]he presiding officer shall, as soon as practicable after consulting with the parties . . . enter a scheduling order that establishes limits for the time to file motions, conclude discovery, commence the oral phase of the hearing (if applicable) and take other actions in the proceeding." 10 C.F.R. § 2.332(b) further states:

In developing the scheduling order under paragraph (a) of this section, the presiding officer shall utilize the applicable model milestones in Appendix B to this part as a starting point. The Presiding officer shall make appropriate modifications based upon all relevant information, including but not limited to, the number of contentions admitted, the complexity of the issues presented, relevant considerations which a party may bring to the attention of the presiding officer, the NRC staff's schedule for completion of its

safety and environmental evaluations . . . and the NRC's interest in providing a fair and expeditious resolution of the issues sought to be adjudicated by the parties in the proceeding.

According to the Model Milestones for a 10 C.F.R. Part 2, Subpart L proceeding, within 55 days of a decision granting intervention and admitting contentions, the presiding officer is to set the initial schedule for the proceeding based on the staff schedule for issuing draft and final Safety Evaluation Reports (SER) and Environmental Impact Statements (EIS). Where the staff schedule for issuing the draft and final SERs and EISs is uncertain, a previous Board found that no purpose would be served in issuing a schedule in the proceeding.¹

The Board is to consider the effect of the Staff's review schedule in establishing a schedule in the proceeding.

In establishing a schedule, the presiding officer shall take into consideration the NRC staff's projected schedule for completion of its safety and environmental evaluations to ensure that the hearing schedule does not adversely impact the staff's ability to complete its reviews in a timely manner. Hearings on safety issues may be commenced before publication of the NRC staff's safety evaluation upon a finding by the presiding officer that commencing the hearings at that time would expedite the proceeding. Where an environmental impact statement (EIS) is involved, hearings on environmental issues addressed in the EIS may not commence before the issuance of the final EIS.

10 C.F.R. § 2.332(d). The Commission has interpreted the provisions of Section 2.332, specifically addressing limitations on the ability expedite the proceedings by holding hearings on environmental and safety issues prior to the issuance of the final SER and EIS.² The Commission determined that the Board may not commence a hearing on environmental issues before the final EIS, and may only commence a hearing with respect to safety issues prior to

¹ *Tennessee Valley Authority* (Bellefonte Nuclear Power Plant Units 3 and 4), ADAMS Accession No. ML083150879 (LBP November 10, 2008) (slip op. at 9) (Unpublished Order); and *Tennessee Valley Authority* (Bellefonte Nuclear Power Plant Units 3 and 4), ADAMS Accession No. ML083310438 (LBP November 26, 2008) (slip op. at 2) (Unpublished Order).

² *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site) CLI-07-17, 65 NRC 392 (2007).

issuance of the final SER, if it “will indeed expedite the proceeding, taking into account the effect of going forward on the staff’s ability to complete its evaluations in a timely manner.”³

B. The Staff’s Proposal for Future Establishment of a Hearing Schedule

The Staff believes that a detailed hearing schedule in this proceeding cannot be established at this time because the Staff’s application review schedule is uncertain. The staff faces difficulties in setting a review schedule in this case due to changes to the application and the Applicant’s extensions of time for responding to requests for additional information (RAIs). The schedule does not include projected dates for issuance of the final SER or the final EIS. As the Board in the Bellefonte case observed, these are necessary reference points for establishing a detailed hearing schedule.

With regard to general considerations for the future when the Board can set a schedule, the Staff proposes the following considerations: While the Applicant would propose to have direct pre-filed testimony due 30 days after issuance of the Advance SER with no open items, the Staff believes it will require the entire 155 days suggested by the model milestones for preparation of the direct testimony due to the very high allocation of staff resources. Additionally, the Staff will be working to complete the final SER at the time of the issuance of the Advance SER with no open items, and simultaneous work on drafting direct testimony would likely interfere with the completion of the SER. Furthermore, the Staff believes that no overall efficiency would be gained by expediting the hearing schedule because the design certification rulemaking will likely not be completed by the time the hearing would commence even under the model milestone schedule.

³ *Id.* at 395.

CONCLUSION

Considering the delays in establishing a Staff review schedule, competing demands on Staff resources, and lack of any expected gain in efficiency, the Staff proposes that the Board wait to enter an order establishing a schedule for this proceeding until the Staff review schedule is set. The Staff also proposes that the hearing schedule, when determined by the Board, follow the model milestones established by the Commission in 10 C.F.R. Part 2, Appendix B. The Intervenors, through Mr. Mariotte, indicate that they could agree to a schedule based upon the model milestones.

Respectfully submitted,

Signed (electronically) by

James P. Biggins
Counsel for the NRC Staff

Dated at Rockville, Maryland
this April 15, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
CALVERT CLIFFS 3 NUCLEAR PROJECT, LLC,)
AND UNISTAR NUCLEAR OPERATING) Docket No. 52-016-COL
SERVICES, LLC)
)
(Calvert Cliffs Nuclear Power Plant, Unit 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC Staff Motion and Proposed Schedule", have been served on the following persons by Electronic Information Exchange on this 15th day of April, 2009:

Administrative Judge
Ronald M. Spritzer, Chair
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: rms4@nrc.gov

Office of Commission Appellate
Adjudication
Mail Stop O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail:OCAAmail@nrc.gov

Administrative Judge
Gary S. Arnold
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: gxa1@nrc.gov

Office of the Secretary
ATTN: Docketing and Service
Mail Stop: O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: HEARINGDOCKET@nrc.gov

Administrative Judge
William W. Sager
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: wws1@nrc.gov

David A. Repka, Esq.
Tyson R. Smith, Esq.
Emily J. Duncan, Esq.
Winston & Strawn LLP
1700 K St. NW
Washington, DC 20006
E-mail: drepka@winston.com
E-mail: trsmith@winston.com
E-mail: ejduncan@winston.com

Public Citizen
Allison Fisher, Energy Organizer
215 Pennsylvania Avenue, SE
Washington, DC 20003
E-mail: afisher@citizen.org

Southern MD CARES
June Sevilla, Spokesperson
P.O. Box 354
Solomons, MD 20688
E-mail: qmakeda@chesapeake.net

Brent A. Bolea, Assistant Attorney General
M. Brent Hare, Assistant Attorney General
State of Maryland
Office of the Attorney General
Maryland Energy Administration and
Power Plant Research Program of the
Department of Natural Resources
1623 Forest Drive, Suite 300
Annapolis, Maryland 21403
E-mail: BBolea@energy.state.md.us
E-mail: bhare@energy.state.md.us

Carey W. Fleming, Esq.
UniStar Nuclear Energy, LLC
750 E. Pratt Street
Baltimore, MD 21202
E-mail: Carey.Fleming@constellation.com

Nuclear Information and Resource Service
Michael Mariotte, Executive Director
6930 Carroll Avenue, Suite 340
Takoma Park, MD 20912
E-mail: nirsnet@nirs.org

Beyond Nuclear
Paul Gunter, Director
6930 Carroll Avenue Suite 400
Takoma Park, MD 20912
E-mail: paul@beyondnuclear.org

Signed (electronically) by

James P. Biggins
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-15 D21
Washington, DC 20555-0001
(301) 415-6305
James.Biggins@nrc.gov

Dated at Rockville, Maryland
this 15th day of April, 2009