

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

Michael M. Gibson, Chairman
Gary S. Arnold
Randall J. Charbeneau

In the Matter of

SOUTH TEXAS PROJECT NUCLEAR
OPERATING COMPANY

(South Texas Project Units 3 and 4)

Docket Nos. 52-012-COL and 52-013-COL

ASLBP No. 09-885-08-COL-BD01

June 08, 2009

ORDER

(Scheduling Site Visit and Providing Guidance for Oral Argument)

A. Scheduling Site Visit

In its June 4, 2009 Notice and Order, the Licensing Board indicated to the parties that it would provide further information on a site visit of the South Texas Project Units 3 and 4 surrounding area.¹

The Licensing Board and parties will participate in a tour of the future site of Units 3 and 4 at the South Texas Project facility on the morning of June 25, 2009.² The purpose of the visit is to allow the Board to view the location and immediate vicinity of the facility area proposed by South Texas Project Nuclear Operating Company. The procedures to be followed during the site visit are as follows:

1. A representative(s) of the Applicant will guide the Board and the representatives of the Petitioners, NRC Staff, and the Applicant on the site visit.

¹ Licensing Board Notice and Order (Regarding Oral Argument) at 2 (June 4, 2009).

² The precise meeting time and location will be determined prior to conclusion of the oral argument.

2. Participation in the site visit is limited to the following persons:
 - a. Licensing Board: The three judges and up to three additional persons.
 - b. Petitioners: One or two counsel and up to two additional persons.
 - c. NRC Staff: One or two counsel and up to two additional persons.
 - d. Applicant: One or two counsel and up to two additional persons.
3. The names of the specific individuals who will participate in the site visit and their affiliation shall be provided to the Applicant's counsel at least seven (7) days prior to the site visit. At the same time, the names shall also be provided to the Board through its law clerk, Erica LaPlante (Erica.LaPlante@nrc.gov).
4. During this visit, the Board and all parties shall make every effort to assure that no *ex parte* communications occur, even inadvertently.

B. Guidance for Oral Argument

The oral argument will commence at 9:00 a.m. with the format, including the allocation of time to the various participants, to be determined at the outset of the June 23 session. The parties shall notify the Board through its law clerk, Erica LaPlante (Erica.LaPlante@nrc.gov), no later than Thursday, June 18, 2009, as to the name of the counsel who will be presenting argument on its behalf.

While the Board expects counsel to be prepared to address the legal issues raised in all contentions during oral argument, the following guidance is intended to aid participating counsel in their preparation for the oral argument with respect to certain technical issues pertaining to contention admissibility:

1. For each contention, Petitioners should be prepared to state concisely the specific law, rule or regulation that the application fails to satisfy.
2. Concerning Contention 2: Petitioners should be prepared to discuss and explain the particular requirements of 10 C.F.R. § 50.54(hh) and 10 C.F.R. § 52.80(d) that directly involve the US-APWR DCD. On what basis must the DCD include the discussions required by

these new regulations? NRC Staff should be prepared to discuss the review status of Applicant's May 26, 2009 submittal (Mitigative Strategies Report).

3. With regard to Contention 11, all participants should be prepared to discuss how global warming's effect on rainfall should be meaningfully evaluated considering the different theories with respect to global warming effect on rainfall (i.e., some theories predict global warming will increase rainfall, others predict wet regions will get wetter and arid regions drier, and some predict reduced rainfall).

4. With regard to Contention 14, all participants should be prepared to discuss the extent to which groundwater seepage is permitted and the specific regulatory authority(ies) with jurisdiction over the issue.

5. With regard to Contention 17, Petitioners should be prepared to provide a reference to the Savannah River study used by Dr. Makhijani in his comparison of the two code versions, and should be prepared to explain how this study supports the contention.

6. With regard to Contention 21, FSAR section 2.2S.3 evaluates the effects of accidents at nearby sites. This section states that design basis events have a probability of occurring greater than 10^{-7} per year. Applicant should be prepared to discuss this evaluation and why it does not include the possibility of a severe accident at Units 1 or 2.

7. With regard to Contention 26, Chapter 8 of the Environmental Report provides an extensive description of the need for power. Petitioners should be prepared to address those points of this discussion with which Petitioner specifically disagrees and why? Applicant should be prepared to discuss the decision to close down some operating plants in light of the current need for power.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Michael M. Gibson
CHAIRMAN

Rockville, Maryland
June 08, 2009

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NUCLEAR REGULATORY COMMISSION

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)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER (SCHEDULING SITE VISIT AND PROVIDING GUIDANCE FOR ORAL ARGUMENT) have been served upon the following persons by the Electronic Information Exchange.

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Docket Nos. 52-012-COL and 52-013-COL
ORDER (SCHEDULING SITE VISIT AND PROVIDING GUIDANCE FOR ORAL ARGUMENT)

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[Original signed by Nancy Greathead]_____
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 8th day of June, 2009