

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

In the Matter of

NUCLEAR INNOVATION NORTH AMERICA  
LLC

(South Texas Project Units 3 and 4)

Docket Nos. 52-12-COL and 52-13-COL

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

April 27, 2011

ORDER

(Providing Direction on Pre-filed Evidentiary Material)

On March 11, 2011, this Board issued an order establishing a schedule for the submission of filings related to the evidentiary hearing on the two admitted contentions in this proceeding.<sup>1</sup> The evidentiary hearing will take place during the period of August 17 – 19, 2011.<sup>2</sup> This order provides the parties with certain administrative direction regarding pre-filed evidentiary materials, including details of using the Digital Data Management System (DDMS) for the hearing.

A. Use of the DDMS System

The Board intends to use the DDMS at the evidentiary hearing to mark exhibits and enter the exhibits into the record. Provided that the parties properly number their pre-filed testimony and exhibits and pre-file those documents using the agency's E-Filing system, the parties need not provide the Board or counsel for the other parties with any paper copies of their

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<sup>1</sup> See Licensing Board Order (Establishing Schedule for Evidentiary Hearing) (Mar. 11, 2011) (unpublished).

<sup>2</sup> See id.

pre-filed testimony and exhibits prior to or during the hearing. Nonetheless, the Board requests that each party have available at the hearing one properly marked paper copy of each document for use in the event there are any operational issues with the DDMS. Further, if any party has documentary material in addition to its exhibits and pre-filed testimony that it anticipates might become relevant during the course of the hearing, that party should ensure it has available an electronic copy of the document, properly marked and formatted per agency e-filing guidelines,<sup>3</sup> and has properly marked paper copies of such material at the hearing for distribution to all Board members, the Board's law clerk, counsel for the other parties, and the Court Reporter.

B. Providing Pre-Filed Testimony and Exhibits for DDMS Use

Pre-filed testimony and exhibits for the hearing shall be filed in accordance with the following instructions:

1. Pursuant to 10 C.F.R. § 2.304(g), each item of pre-filed testimony and each exhibit must be filed as a separate electronic file. Pre-filed testimony shall be received into evidence in exhibit form using the DDMS system. See 10 C.F.R. § 2.1207(b)(2).

2. All pre-filed testimony and each exhibit shall be marked in the upper right hand corner in the following manner: The parties shall number their pre-filed testimony and any exhibits in a format that consists of a three-character party designation, followed by a six-character zero-filled number. The three-character designation to be used by each of the parties is as follows: NINA – STP, NRC Staff – NRC, Intervenors – INT. Consequently, a typical numbering sequence for the NRC Staff's exhibits would be as follows:

NRC000001

NRC000002

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<sup>3</sup> See U.S. Nuclear Regulatory Commission, Guidance for Electronic Submissions to the NRC, Rev. 6 (May 17, 2010), available at <http://www.nrc.gov/site-help/e-submittals/adjudicatory-sub.html>; see also 10 C.F.R. § 2.302.

\* \* \* \* \*

NRC000100

To the extent possible, the parties should order and number their pre-filed exhibits in the sequence the parties plan to identify and present them for inclusion in the record.

3. In its Initial Scheduling Order (Oct. 20, 2009) (unpublished), the Board directed that if a submission exceeds fifteen (15) megabytes, then the pleading should be separated into multiple submissions, each less than fifteen (15) megabytes. Id. at 18. If an exhibit needs to be separated due to this size limitation, each segment of the document should be given the same numerical designation (using a five-character zero-filled number) along with a unique alpha designation in the ninth character position for that segment (e.g., NRC00001A, NRC00001B, etc.).

4. Once any exhibit or pre-filed testimony is submitted using this numbering protocol, if a party subsequently needs to amend, revise, or otherwise make a substitution for its submission, the new exhibit or pre-filed testimony should be numbered with an "R" as the fourth character (e.g., NRCR0001), with any subsequent revision of that same exhibit or pre-filed testimony given a sequential designation in the fifth character slot (e.g., NRCR20001).

5. All pre-filed testimony and exhibits must be marked with their dates of filing or dates of revision on the first page below the numerical identifier.

6. Pre-filed testimony and exhibits that are not provided in the preceding format shall not be considered to have been submitted as evidence in the proceeding. Moreover, the citations or discussion in pre-filed testimony (other than citations to legal authorities, including statutes, regulations, and judicial or NRC decisions) should be accompanied by an evidentiary exhibit that includes the relevant portions of the supporting material cited.

7. Only one copy of each document should be offered into evidence as an exhibit. Accordingly, the parties should confer with one another to determine whether more than one party intends to introduce the same document, and if so, should coordinate the introduction of

the exhibit so that only one copy is included as evidence. For example, if the NRC Staff offers a certain exhibit into evidence, Intervenors or Applicant need only refer to the Staff's exhibit number identified in its pre-filed testimony or statement of position. In each such instance, the parties should determine which party will offer the exhibit into evidence. If the parties prefer, rather than using the initial submitting party's identifier, shared exhibits may be identified with the prefix JNT. If parties rely on different portions of the same exhibit, they should submit separate portions as separate exhibits.

8. At the time pre-filed testimony and exhibits or revised exhibits are filed, each party should submit an electronic copy (preferably in Microsoft Word format) of its pre-filed exhibit list, using the exhibit list template included in Attachment A to this order. Upon request, the Board's law clerk, Mr. Jonathan Eser, Esq. (Jonathan.Eser@nrc.gov) will provide the parties with the template of the exhibit list in Microsoft Word format.

C. Document Handling at the Evidentiary Hearing

At the evidentiary hearing, the parties should present documentary materials in the form and manner set forth below:

1. As the party with the ultimate burden of persuasion under 10 C.F.R. § 2.325 relative to the issuance of the requested combined operating license, Applicant's witnesses and exhibits shall be presented first for Board questioning. NRC Staff shall follow Applicant's presentation, and Intervenors shall follow NRC Staff.

2. Provided the parties correctly submit electronic copies of their pre-filed testimony and exhibits, the parties need not provide additional paper copies to the Board and the other parties at the hearing, although the parties should have paper copies available, as specified above (see section A).

3. Although strongly discouraged, if a party must revise its pre-filed testimony at hearing, it will be required to provide that revised testimony, marked appropriately both electronically (per agency e-filing guidance) and in hard copy with sufficient number of paper

copies for the Board, the Board's law clerk, counsel for the other parties, and two paper copies for the Court Reporter.

4. The Board anticipates that pre-filed direct and rebuttal testimony should be in question-and-answer format and identify the witness(es) sponsoring each such answer.

5. The parties will offer their exhibits and pre-filed testimony with a brief description of each exhibit. Objections to exhibits or testimony are to be made at that time.

D. Miscellaneous Matters

1. To maintain the confidentiality of each party's proposed cross-examination questions, see 10 C.F.R. § 2.1207(a)(3)(iii), those questions should not be filed in the agency docket for this proceeding using the E-filing system. Instead, counsel should submit their proposed questions directly to the Board via e-mail directed to the Board's law clerk. The proposed questions must be submitted in PDF format.

2. The Board anticipates breaking at appropriate intervals during the hearing to allow the parties to compile and submit proposed examination questions based on the information the Board elicits during its questioning of witnesses. The parties should be prepared logistically to generate their proposed questions in an efficient and effective manner.

3. The Board may issue additional administrative guidance over the next few weeks to assure a smooth and productive evidentiary hearing.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

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Michael M. Gibson, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
April 27, 2011



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
)  
NUCLEAR INNOVATION NORTH AMERICA LLC ) Docket Nos. 52-012-COL and 52-013-COL  
(NINA) )  
)  
(South Texas Project Units 3 and 4) )  
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER (PROVIDING DIRECTION ON PRE-FILED EVIDENTIARY MATERIAL) 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 (PROVIDING DIRECTION ON PRE-FILED EVIDENTIARY MATERIAL)

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

Dated at Rockville, Maryland  
this 27th day of April 2011