

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)		
NUCLEAR INNOVATION NORTH AMERICA LLC))	Docket Nos. 52-012-COL
(South Texas Project Units 3 and 4)))	52-013-COL
)	September 4, 2012

**JOINT RESPONSE TO BOARD ORDER NOTIFYING THE PARTIES OF
AMENDMENTS TO 10 C.F.R. PART 2**

On August 17, 2012, in response to the Nuclear Regulatory Commission’s (NRC) amendments to its rules of practice and procedure in 10 C.F.R. Part 2 (New Part 2 Rules),¹ the Atomic Safety and Licensing Board (Board) issued a Notice and Order requesting the Parties² submit written statements, jointly or individually, specifying whether the New Part 2 Rules warrant any changes to the Initial Scheduling Order (ISO)³ “or any other orders or instructions governing the conduct of this proceeding.” If changes are warranted, the Board requested that the Parties submit proposed language to implement the changes.

The Parties support the proposed changes to the ISO that are identified in tabular format below, and do not believe changes to any other orders or instructions issued by the Board are necessary or warranted.

¹ Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562 (Aug. 3, 2012) (New Part 2 Rules). The New Part 2 Rules do not apply retroactively, but apply to “obligations and disputes that arise after [September 4, 2012].” *Id.* at 46,562.

² The Parties are Nuclear Innovation North America LLC (NINA), NRC Staff, and Intervenors (e.g., SEED Coalition, South Texas Association for Responsible Energy, and Public Citizen).

³ Licensing Board ISO (Oct. 20, 2009) (unpublished).

ISO Paragraph	Proposed Change to ISO	Reason for Proposed Change to ISO
II.E.1	In the second sentence, delete “under 10 C.F.R. § 2.309(f)(2), or a motion for leave to file an untimely new or amended contention” and “(or both).”	These changes are necessary to be consistent with the New Part 2 Rules regarding the timeliness of new or amended contentions. <i>See</i> New Part 2 Rules, 77 Fed. Reg. at 46,570 – 46,572, 46,582.
II.E.1	Delete footnote 29.	This footnote is no longer necessary given the New Part 2 Rules regarding Sections 2.309(f)(2) and (c)(1). <i>Id.</i>
II.E.2	In the first sentence, change “10 C.F.R. § 2.309(f)(2)(iii)” to “10 C.F.R. § 2.309(c)(1)(iii).”	This change is necessary to be consistent with the New Part 2 Rules regarding the timeliness of new or amended contentions. <i>Id.</i>
II.E.2	Delete the second and third sentences, which state: “If filed thereafter, the motion and proposed contention shall be deemed non-timely under 10 C.F.R. § 2.309(c). If the movant is uncertain, it may file a motion pursuant to both, and such motion should cover the three criteria of 10 C.F.R. § 2.309(f)(2) and the eight criteria of 10 C.F.R. § 2.309(c) (as well as the six criteria of 10 C.F.R. § 2.309(f)(1)).”	This change is necessary to be consistent with the New Part 2 Rules regarding the timeliness of new or amended contentions. <i>Id.</i>
II.F.3	Delete the entire paragraph, and replace with “RESERVED.”	This change is necessary because the New Part 2 Rules state in accordance with 10 C.F.R. § 2.309(i)(2) that the participant filing the motion to file a new or amended contention has a right to reply to an answer to such a motion, and 10 C.F.R. § 2.309(i)(3) states, “No other written answers or replies will be entertained.” <i>Id.</i> at 46,573, 46,592. Paragraph II.E.1 adequately addresses 10 C.F.R. § 2.309(i)(2)-(3).
II.F.6	After the title of Section II.F.6, “ <u>Motion Certification</u> ,” add a footnote with the following text: “The consultation and certification requirements in paragraphs II.F.6 and	This clarification is warranted because motion certification requirements are derived from 10 C.F.R. § 2.323, but new § 2.323(a)(1) provides that the requirements of § 2.323 do not apply to

ISO Paragraph	Proposed Change to ISO	Reason for Proposed Change to ISO
	II.F.7 do not apply to motions to file new or amended contentions. <i>See</i> 10 C.F.R. § 2.323(a)(1).”	motions to file new or amended contentions. <i>Id.</i> at 46,574, 46,593.

Respectfully submitted,

Executed in Accord With 10 C.F.R. § 2.304(d)

/s/ Steven P. Frantz

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Dated in Washington, DC
this 4th day of September 2012

