

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

Before Administrative Judges:

Lawrence G. McDade, Chairman
Dr. Paul B. Abramson
Dr. Gary Arnold

In the Matter of
Tennessee Valley Authority
(Watts Bar Unit 2)

Docket Nos. 50-391-OL
ASLBP No. 09-893-01-OL-BD01
May 26, 2010

SCHEDULING ORDER

This proceeding arises from an updated application pursuant to 10 C.F.R. Part 50 by the Tennessee Valley Authority (TVA) for an operating license (OL) for a second nuclear reactor at the Watts Bar Nuclear Plant (WBN) in Rhea County, Tennessee.¹

On May 1, 2009, the Nuclear Regulatory Commission (NRC) issued a Notice of Opportunity for Hearing for the Watts Bar Unit 2 OL application,² and on November 19, 2009, the Board granted a Petition to Intervene and Request for Hearing submitted by the Southern Alliance for Clean Energy (SACE), and admitted two of SACE's proffered contentions.³

The initial scheduling conference in this proceeding was conducted on December 22, 2009, pursuant to 10 C.F.R. §§ 2.329 and 2.332.⁴ On March 19, 2010,

¹ Construction of WBN Unit 2 was authorized by the Commission on Jan. 23, 1973 (Construction Permit CPPR-92), and TVA filed an OL application for this facility on June 30, 1976. The construction of the unit, however, was not promptly completed. After some delay, on March 4, 2009, TVA filed an update to the OL application and has stated that it expects to complete construction of WBN Unit 2 prior to April 1, 2012.

² 74 Fed Reg. 20,350 (May 1, 2009).

³ LBP-09-26, 70 NRC __ (slip op.) (Nov. 19, 2009).

⁴ Tr. at 1-24.

the Board conducted a second scheduling conference⁵ that resulted in a Draft Scheduling Order that was presented to the parties for review and comment on May 14, 2010. After considering proposals from the parties, the Board hereby issues this Scheduling Order to control the progress of this proceeding.

A. Final Environmental Impact Statement and Final Supplement to the Safety Evaluation Report. During the initial scheduling conference on December 22, 2009, the NRC Staff advised the Board that it anticipated the final Environmental Impact Statement (FEIS) and the last supplement to the Safety Evaluation Report (FSER) will be published in or around January 2011.⁶ At that initial scheduling conference, all parties agreed that it would not be appropriate to proceed to hearing until after the EIS is published.⁷ During the March 19th telephone conference, the NRC Staff stated that those projected dates for the publication of the FEIS and FSER remained unchanged.⁸

B. Mandatory Disclosures and Production of Hearing File.⁹ The applicable regulations specify that, within thirty (30) days of the Board's ruling admitting contentions, the parties must make certain mandatory disclosures.¹⁰ In addition, Subpart L proceedings require the NRC Staff to produce a hearing file and make it available to all parties.¹¹

In this proceeding the parties agreed to a disclosure schedule, previously approved by the Board, under which the initial phase of the mandatory disclosures would be completed by January 15, 2010, and information or documents subsequently developed or obtained would be disclosed in periodic updates to be transmitted

⁵ Tr. at 25-42. This conference was a continuation of the initial scheduling conference that was held on December 22, 2009.

⁶ Tr. at 6.

⁷ Tr. at 6-7.

⁸ Tr. at 29.

⁹ Except where otherwise specified herein, the term "mandatory disclosures" includes the witness lists and privilege logs required under 10 C.F.R. § 2.336(a) and (b).

¹⁰ 10 C.F.R. § 2.336(a), (b).

¹¹ 10 C.F.R. § 2.1203(a).

thereafter on the 15th day of each month.¹² The monthly updates of new material that is within the scope of mandatory disclosure shall continue until the commencement of the hearing. If information that is within the scope of mandatory disclosure is obtained after the start of the hearing, the Board shall be immediately notified of the new information.

At the March 19th conference, all parties stated that the disclosures to date had been made consistent with the approved agreement and that no problems had arisen in that regard.¹³

C. Protective Order and Non-Disclosure Agreement.¹⁴ Consistent with the cooperative spirit demonstrated to date in this proceeding, all parties agreed to a comprehensive Protective Order to facilitate the expeditious disclosure of sensitive information. After review, the Board approved and entered a Protective Order in the form agreed to by the parties.¹⁵

D. Disclosure Disputes and Motions to Compel. To date the parties have not filed any motions to compel or challenges regarding the adequacy of any mandatory disclosure, hearing file, or redactions, or the validity of any claim that a document is privileged or protected, concerning any disclosures. If the need to file such a motion or challenge arises in the future, it shall be filed not later than twenty (20) days after the occurrence or circumstance from which it arises. This additional time will be authorized for the filing of such motions in order to allow the parties a full opportunity to resolve such disputes before seeking intervention by the Board.¹⁶

E. Monthly Status Report. Commencing on July 2, 2010, the NRC Staff shall submit a short report updating its estimates of the dates on which the FEIS and FSER will be

¹² Tr. at 8-9.

¹³ Tr. at 29-30.

¹⁴ Documents covered by a protective order are nevertheless required to be included in a privilege log. Indeed, the only way that an opposing party can learn of the existence of such a document, and thus to request access to that document, is for it to be included in the privilege log.

¹⁵ Licensing Board Protective Order (Apr. 22, 2010) (unpublished).

¹⁶ Ordinarily, motions must be filed within ten (10) days after the occurrence or circumstance from which the motion arises. 10 C.F.R. § 2.323(a).

issued. Thereafter, the Staff shall update this status report on the first Tuesday of every other month. In addition, each party shall promptly inform the Board of any other developments that could potentially impact the schedule for this proceeding.

F. Requests for Subpart G Proceeding Based on Disclosures of Eyewitnesses.¹⁷ A request that a contention or other contested matter be handled pursuant to Subpart G procedures based on 10 C.F.R. § 2.310(d) (which focuses, inter alia, on issues “where the credibility of an eyewitness may reasonably be expected to be at issue, and/or issues of motive or intent of the party or eyewitness”) shall be filed as follows:

1. For witnesses who have been identified to date, within thirty (30) days of the date of this Order; and
2. For additional witnesses identified by any party in a subsequent disclosure, within thirty (30) days of said disclosure.

G. Additional Contentions.

1. Consolidated Briefing. A party seeking to file a motion or request for leave to file a new or amended contention shall file such motion and the substance of the proposed contention simultaneously. The pleading shall include a motion for leave to file a timely new or amended contention ~~under 10 C.F.R. § 2.309(f)(2), or a motion for leave to file an untimely new or amended contention~~ under 10 C.F.R. § 2.309(c) ~~(or both)~~, and the support for the proposed new or amended contention showing that it satisfies 10 C.F.R. § 2.309(f)(1). Within twenty-five (25) days after service of the motion and proposed contention, any other party may file an answer responding to all elements

¹⁷ Mandatory disclosures by the parties include the disclosure of “the name . . . of any person, including any expert, upon whose opinion the party bases its claims and contentions and may rely upon as a witness, and a copy of the analysis or other authority upon which that person bases his or her opinion.” 10 C.F.R. § 2.336(a)(1).

of the motion and contention. Within seven (7) days of service of the answer, the movant may file a reply.¹⁸

2. Timeliness. A motion and proposed new contention specified in the preceding paragraph shall be deemed timely under 10 C.F.R. § 2.309(c)(21)(iii) if it is filed within thirty (30) days of the date when the new and material information on which it is based first becomes available to the moving party through service, publication, or any other means. ~~If filed thereafter, the motion and proposed contention shall be deemed nontimely under 10 C.F.R. § 2.309(c). If the movant is uncertain, it may file pursuant to both sections, and the 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)).~~

3. Selection of Hearing Procedures. A motion and proposed new contention specified in paragraph G.1 above may address the selection of the appropriate hearing procedure for the proposed new contention.¹⁹

H. Pleadings and Motions – Generally.

1. Pleadings – Page Limitation. Motions and answers to motions shall not exceed twenty-five (25) pages in length (including signature page but excluding attachments, see L.5, infra), absent preapproval of the Board. A motion for preapproval to exceed this page limitation shall be submitted in writing no less than three (3) business days prior to the time the motion or answer is due to be filed. A motion to exceed this page limitation must (i) indicate whether the request is opposed or supported by the other participants to the proceeding; (ii) provide a good faith estimate of the

¹⁸ ~~This procedure resolves difficulties that have arisen in several proceedings concerning the interplay of the sequence and timing for motions under 10 C.F.R. § 2.323 (motion, answer), and the sequence and timing for contentions under 10 C.F.R. § 2.309(h) (contention, answer, reply). Further, this procedure expedites the process by collapsing the two-step process established by the regulations into a single step.~~

¹⁹ See 10 C.F.R. §§ 2.309(g) and 2.310(d).

number of additional pages that will be filed; and (iii) demonstrate good cause for being permitted to exceed the page limitation.

2. Response to New Facts or Arguments in Answer Supporting a Motion.

Except for a motion to file a new or amended contention as set forth in section G supra or where there are compelling circumstances, the moving party shall have no right to reply to an answer or response opposing the granting of a motion.²⁰ However, if any party files an answer that supports a motion, then a party opposing the motion may, within ten (10) days after service of that answer, file a response to any new facts or arguments presented in that answer. Except as otherwise specified herein, no further supporting statements or responses thereto will be entertained.²¹

3. Motion for Leave to File Reply. ~~No party may file a reply without prior~~

~~leave from the Board~~A party seeking to file a reply to any answer must first obtain leave of the Board, except with respect to motions to file new or amended contentions under 10 C.F.R. § 2.309. A motion for leave to file a reply shall be submitted not less

than three (3) business days prior to the time the reply would be required to be filed.²² In addition to all other requirements, a motion to file a reply must (i) indicate whether the request is opposed or supported by the other participants to the particular proceeding; and (ii) demonstrate good cause for permitting the reply to be filed.

4. Motion for Extension of Time. A motion for extension of time shall be

submitted in writing at least four (4) business days before the due date for the pleading or other submission for which an extension is sought. In addition to all other requirements, a motion for extension of time must (i) indicate whether the request is

²⁰ See 10 C.F.R. § 2.323(c).

²¹ This provision avoids unnecessary confusion and litigation that has arisen on this point in several cases. This provision is modeled on 10 C.F.R. § 2.710(a).

²² Although the agency's rules of practice regarding motions do not provide for reply pleadings, the Board will presume that for a reply to be timely it would have to be filed within seven (7) days of the date of service of the response it is intended to address. See 10 C.F.R. § 2.309(h)(2).

opposed or supported by the other participants to the particular proceeding; and (ii) demonstrate appropriate cause that supports permitting the extension.

5. Answer Opposing a Motion to Exceed the Page Limitation, to File a Reply, or to Extend the Time for Filing a Pleading. An answer to a motion to exceed the page limit, to file a reply, or to extend the time for filing a pleading shall be filed and served within two (2) business days after the filing of the motion.

6. Motion Certification.²³ In accordance with 10 C.F.R. § 2.323(b), a motion will be rejected if it does not include the following certification by the attorney or representative of the moving party:

“I certify that I have made a sincere effort to contact the other parties in this proceeding, to explain to them the factual and legal issues raised in this motion, and to resolve those issues, and I certify that my efforts have been unsuccessful.”²⁴

7. Answer Certification. If the attorney or representative of a party is contacted pursuant to the consultation requirement of 10 C.F.R. § 2.323(b), then that person (or his or her alternate) shall make a sincere effort to make himself or herself available to listen and respond to the moving party’s explanation, and to resolve the factual and legal issues raised in the motion. If the answering party is unaware of any attempt by the moving party to contact it, then the answer shall so certify. Otherwise, an answer will be rejected if it does not include the following certification by the contacted attorney or representative (or his or her alternate) of the answering party:

“I certify that I have made a sincere effort to make myself available to listen and respond to the moving party, and to resolve the factual and legal issues raised in the motion, and that my efforts to resolve the issues have been unsuccessful.”

²³ The consultation and certification requirements in paragraphs H.6 and H.7 do not apply to motions to file new or amended contentions. See 10 C.F.R. § 2.323(a)(1).

²⁴ Although in general the movant has only ten (10) days within which to file its motion under 10 C.F.R. § 2.323(a), the Board believes that, in order to be sincere, the effort should be timely, *i.e.*, not initiated at the last minute, but instead commenced sufficiently in advance to provide enough time for the possible resolution of the matter or issues in question. If the initial consultation is initiated at a reasonable time and the parties believe that all or part of the matter may be resolved amicably if additional time for filing the motion were provided, the parties are encouraged to file a joint motion requesting an extension of time.

It is inconsistent with the dispute avoidance/resolution purposes of 10 C.F.R. § 2.323(b), and thus insufficient, for the contacted attorney or representative to fail or refuse to consider the substance of the consultation attempt, or for the party to respond that “it takes no position on the motion (or issues) and that it reserves the right to file a response to the motion when it is filed.”

8. Supplemental Information. The certifications specified in the foregoing two subsections may be supplemented with any additional information that the representative or attorney deems necessary to ensure the accuracy of the certification or to explain the situation.

I. Dispositive Motions. Dispositive motions, such as motions for summary disposition under 10 C.F.R. § 2.1205, and Subpart L evidentiary hearings under 10 C.F.R. § 2.1207 are both conducted on the basis of written pleadings, testimony, and exhibits. The Board finds that such motions for summary disposition, if filed late in the proceeding when the parties are heavily engaged in other tasks (e.g., preparing and submitting their pleadings, testimony, and exhibits immediately prior to the commencement of the evidentiary hearing), may impede and burden the litigants and the Board, rather than serving to narrow the scope or expedite the resolution of the adjudicatory proceeding. Indeed, the Subpart L proceeding has two key advantages over motions for summary disposition. First, in a Subpart L evidentiary hearing the Board may ask the witnesses to appear in person and answer questions, the answers to which might significantly assist in resolving the matter.²⁵ This is not possible when ruling on a motion for summary disposition. Second, in an evidentiary hearing the Board may weigh competing evidence and expert opinion and may resolve/decide factual disputes, whereas this is not possible when ruling on motions for summary disposition, which are

²⁵ 10 C.F.R. § 2.1207(b)(6). The Board may also allow parties to conduct cross-examination in Subpart L proceedings pursuant to 10 C.F.R. § 2.1204(b)(3).

restricted to situations where “there is no genuine issue as to any material fact.”²⁶

Further, a motion for summary disposition requires significant and often duplicative time and effort from all parties (and the Board), whereas, historically, Subpart L evidentiary hearings have proven to be short, often requiring a day or less to hear any particular contention. For the foregoing reasons, motions for summary disposition and other dispositive motions, while permissible, will be managed in this proceeding as follows:²⁷

1. Certification. A dispositive motion (e.g., motion for summary disposition or motion to dismiss) will be rejected unless, in addition to the signature requirements of 10 C.F.R. § 2.304(d) and the certifications required by 10 C.F.R. § 2.323(b) and this order, the motion includes the following certification by the attorney or representative of the moving party:

“I certify that this motion is not interposed for delay or any other improper purpose, that I believe in good faith that there is no genuine issue as to any material fact relating to this motion, and that the moving party is

²⁶ 10 C.F.R. § 2.710(d)(2). See also *id.* § 2.1205(c).

²⁷ The Commission has stated that

[t]here may be times in the proceeding where [motions for summary disposition] should not be entertained because consideration of the motions would unduly delay or complicate proceedings by distracting responding parties from addressing other pending issues or distracting other parties and the presiding officer from their preparation for a scheduled hearing. Moreover, there may be situations in which the time required to consider summary disposition motions and responses and to issue a ruling on these motions will substantially exceed the time needed to complete the hearing and record on the issues. The presiding officer . . . is in a good position to determine when the use of summary disposition would be appropriate and would not delay the ultimate resolution of issues and the Commission will provide presiding officers the flexibility to make that determination in most proceedings.

Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2186 (Jan. 14, 2004). More recently, the Commission issued a notice in an expedited case prohibiting summary disposition motions from proceeding absent an affirmative finding by the Board that it would expedite the proceeding. Notice of Receipt of Application for License; Notice of Consideration of Issuance of License; Notice of Hearing and Commission Order and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation; In the Matter of Areva Enrichment Services, LLC (Eagle Rock Enrichment Facility), 74 Fed. Reg. 38,052, 38,057 (July 30, 2009) (“[T]he Licensing Board shall not entertain motions for summary disposition under 10 C.F.R. 2.710, unless the Licensing Board finds that such motions, if granted, are likely to expedite the proceeding.”).

entitled to a decision as a matter of law, as required by 10 C.F.R. §§ 2.1205 and 2.710(d)."²⁸

2. Additional Time for Dispositive Motions. In light of the gravity and importance of dispositive motions, and in order to accommodate careful consultation as specified above, dispositive motions may be filed thirty up to thirty (30) days after the occurrence or circumstance from which the motion arises (rather than the ten (10) day time frame established by 10 C.F.R. § 2.323(a)), provided that the moving party commences sincere efforts to contact and consult all other parties within fifteen (15) days of the occurrence or circumstance, and the accompanying certification so states.

3. Answers. In accordance with 10 C.F.R. § 2.1205(b), an answer supporting or opposing a motion for summary disposition or other dispositive motion shall be filed within twenty (20) days after service of the motion.

4. Deadline. With the exceptions noted below, all Motions for Summary Disposition based on information that is now available shall be filed on or before July 30, 2010. With regard to any Motion for Summary Disposition filed after that date, the moving party shall identify and explain the new information or event that gave rise to the motion. If the Board determines that the motion was not filed in a timely manner or that its consideration would delay the hearing in this proceeding, the motion will be summarily denied. In addition, no motion for summary disposition or other dispositive motion relating to any NEPA contention may be filed more than thirty (30) days after the NRC Staff publishes the FEIS. With regard to any other contention or issue, no Motion for Summary Disposition or other dispositive motion may be filed more than thirty (30) days after the NRC Staff publishes the FSER.

J. Clarification, Simplification, and Amendment of the Pleadings.

²⁸ See 10 C.F.R. § 2.304(d) (representations of a signatory to a pleading); cf. Fed. R. Civ. P. 11(b).

The Board encourages the parties and NRC Staff to continue to consider and pursue such measures as are specified in 10 C.F.R. §§ 2.329(c)(1)-(3) and 2.338. We will revisit these issues throughout this proceeding. For example, if it appears that stipulations or admissions of fact can narrow or eliminate factual or legal disputes, the parties and the NRC Staff are encouraged to consult with each other and/or file motions to pursue the same.

K. Evidentiary Hearing Filings. The Board currently contemplates a single evidentiary hearing herein, which will cover both environmental and any safety contentions that may be admitted. Pursuant to 10 C.F.R. § 2.1207, a number of documents must be filed immediately prior to the evidentiary hearing. The Board has determined that the earliest practicable trigger date for the initiation of such filings is the date when the NRC Staff makes the FEIS publicly available or, if safety contentions are subsequently admitted, the date when both the FEIS and FSER are publicly available.²⁹

1. Initial Statements of Position, Testimony, Affidavits, and Exhibits. Unless modified by the Board due to the admission of new or amended contentions or for some other due cause, sixty (60) days after the Trigger Date, the intervenor, SACE, shall file its initial written statement of position, written testimony with supporting affidavits, and exhibits, on a contention-by-contention basis, pursuant to 10 C.F.R. § 2.1207(a)(1). The initial written statement should be in the nature of a trial brief that provides a precise road map of the party's case, setting out affirmative arguments and applicable legal standards, identifying witnesses and evidence, and specifying the purpose of witnesses and evidence (i.e., stating with particularity how the witness, exhibit, or evidence

²⁹ 10 C.F.R. § 2.332(d) prohibits the commencement of evidentiary hearings on environmental issues until after issuance of the FEIS. It also prohibits commencement of evidentiary hearings on safety issues until after issuance of the FSER, unless the Board affirmatively finds that the safety hearing can be held earlier and still expedite the ultimate resolution of the case.

supports a factual or legal position). The written testimony shall be under oath or by an affidavit so that it is suitable for being received into evidence directly, in exhibit form, in accordance with 10 C.F.R. § 2.1207(b)(2). The exhibits shall include all documents that the party or its witnesses refer to, use, or rely upon for their statements or position.

2. Rebuttal Statements of Position, Testimony, Affidavits, and Exhibits. No later than thirty (30) days after service of the materials submitted under paragraph K.1, the applicant and the NRC Staff shall file in response their written statements of position, written testimony with supporting affidavits, and exhibits, on a contention-by-contention basis, pursuant to 10 C.F.R. § 2.1207(a)(2). The written statement of position should be in the nature of a response brief that identifies the legal and factual weaknesses in SACE's position, identifies witnesses and evidence, and specifies the precise purpose of witnesses and evidence. This testimony shall also be under oath or by an affidavit so that it is suitable for being received into evidence directly, in exhibit form, in accordance with 10 C.F.R. § 2.1207(b)(2). The exhibits shall include all documents that the party or its witnesses refer to, use, or are relying upon for their statements or position.

3. Optional Revised Statement of Position. Thereafter, no later than thirty (30) days after the service of the materials submitted by T/A and/or the NRC Staff under paragraph K.2, SACE may, but need not, submit a revised statement of position and rebuttal testimony with supporting affidavits and exhibits in response to the materials submitted by TVA and/or the NRC Staff.

4. Motions In Limine or to Strike. No later than twenty (20) days after service of the materials submitted by SACE under paragraph K.1 or K.3 or by the TVA and the NRC Staff under paragraph K.2, the parties shall file any motions in limine or motions to strike regarding the materials submitted under paragraphs K.1 through K.3. Answers shall be filed no later than ten (10) days after service of such motions.

5. Proposed Questions for Board to Ask.³⁰ No later than thirty (30) days after service of the last materials submitted under paragraph K.2 or, if applicable, K.3, all parties may file proposed questions for the Board to consider propounding to the direct or rebuttal witnesses, pursuant to 10 C.F.R. § 2.1207(a)(3)(i) and (ii). The direct or rebuttal examination plans should contain a brief description of the issue or issues that the party contends need further examination, the objective of the examination, and the proposed line of questioning (including specific questions) that may logically lead to achieving the objective. The proposed direct examination questions and plans should be filed in camera and not served on the NRC Staff or any other party. Such proposals shall be submitted only to the Board, and the Board will not disclose such proposals to the other parties, except in any hearing conducted in furtherance of such matters.³¹

6. Motions for Cross-Examination.³² No later than thirty (30) days after service of the last materials submitted under paragraph K.2 or, if applicable, K.3, all parties shall file any motions or requests to permit that party to conduct cross-examination of a specified witness or witnesses, together with the associated cross-examination plan(s), pursuant to 10 C.F.R. § 2.1204(b). The motion for cross-

³⁰ A party should cover all essential points in the direct and rebuttal testimony that it profiles for each of its own witnesses. The prefled proposed questions should not focus on a party's own witnesses, but should instead be directed to the witnesses of the other parties.

³¹ The proposed questions will, however, be provided to the Commission's Secretary for inclusion in the official record of the proceeding when the Board issues its Initial Decision. 10 C.F.R. § 2.1207(a)(iii).

³² The basis for allowing the parties to conduct cross-examination is the same under Subparts G and L, to wit – the Administrative Procedure Act (APA) standard for cross-examination in formal administrative proceedings as set forth in 5 U.S.C. § 556(d) ('A party is entitled . . . to conduct such cross examination as may be required for a full and true disclosure of the facts.').

Progress Energy Florida, Inc. (Combined License Application for Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC __, __ (slip op. at 104-05) (July 8, 2009) (citing Citizens Awareness Network, Inc. v. NRC, 391 F.3d 338, 351 (1st Cir. 2004); 69 Fed. Reg. at 2195-96).

examination shall be filed with all parties, but the cross-examination plan itself should be filed in camera and not be served on the NRC Staff or any other party.³³

7. Witnesses with Written Testimony Must be Available in Person. Unless the Board expressly provides otherwise, each party (including the NRC Staff) must, at its own expense and effort, assure that each person for whom it submitted written direct or rebuttal testimony attends the evidentiary hearing in person and is available to testify and to respond orally to questions.³⁴

8. Evidentiary Hearing. Although the specific time and date for the evidentiary hearing will be determined later, the Board currently contemplates that it will commence between thirty (30) and sixty (60) days after the service of the material specified in paragraphs K.5 and K.6. This would be approximately six (6) to eight (8) months after the trigger date or, given the current projections by the NRC Staff regarding the publication of the FEIS, between July and September 2011. Within the framework outlined above, the Board will endeavor to conduct the hearing at the earliest possible date.

L. Attachments to Filings.

1. Documents Must be Attached. If a motion or pleading of any kind refers to a report, website, NUREG, guidance document, or document of any kind (other than to a law, regulation, case, or other legal authority), then a copy of that document, or the relevant portion thereof, shall be submitted with and attached to the pleading. The pleading must cite to the specific page or section of the document that is relevant.

³³ These prepared cross-examination plans will be kept in confidence by the Board until the issuance of the Board's Initial Decision, at which time they will be provided to the Commission's Secretary for inclusion in the official record of this proceeding. 10 C.F.R. § 2.1204(b)(2).

³⁴ If, after reading the prefiled testimony, the Board concludes that it has no questions for a particular witness and has not granted a motion to allow cross-examination of that witness, it will so advise the parties and that individual will not need to attend the evidentiary hearing. Likewise, if the Board concludes that it has no questions for any witness concerning a particular contention, it will so advise the parties and will resolve that contention pursuant to 10 C.F.R. § 2.1208.

2. Exception. If the following documents are publicly available on the NRC ADAMS system, then they do not need to be attached to a motion or pleading: TVA's Application and EIS, the NRC Staff's FEIS, and the NRC Staff's FSER. With regard to such documents, it is sufficient if the pleading clearly identifies the document (including its date and revision number, if any), provides its ADAMS ML number, and cites to the specific page or section that is relevant. All other documents (or the relevant portions thereof), even if they can be found in ADAMS, should be attached to the pleading.³⁵

3. Attached Documents are "Attachments." All documents referred to in the pleadings (pursuant to the two preceding paragraphs) shall be labeled and referred to as "Attachments," not exhibits.³⁶

4. Designation and Marking of Attachments. A separate numeric designation shall be assigned to each Attachment (e.g., Attachment 3). With regard to Attachments covered by paragraph L.1, the numeric designation shall be prominently marked either on the first page of the appended document or on a cover/divider sheet in front of the appended document.

5. Page Limits/Method of Electronic Submission. Attachments are not subject to the page limitation set forth in section H.1 above. All Attachments associated with a pleading shall be submitted together via the E-Filing system as a single electronic file that consists of the pleading or other submission, the certificate of service, and all the Attachments. If, however, the submission exceeds fifteen (15) megabytes in size, then

³⁵ The NRC's E-Filing guidance document has guidance concerning the filing of copyrighted material (at page 21). See <http://www.nrc.gov/site-help/e-submittals.html> (under Adjudicatory Submissions, Related Instructional Resources, access link for Guidance for Electronic Submissions to the NRC, Revision 6).

³⁶ The term "exhibit" is reserved for use as a designation for those items that are submitted pursuant to section K as proffered evidence for the evidentiary hearing.

the pleading should be separated into two submissions, each less than fifteen (15) megabytes.³⁷

M. Findings of Fact and Conclusions of Law. All parties shall submit proposed Findings of Fact and Conclusions of Law within sixty (60) days after the close of the evidentiary hearing in this proceeding. Thereafter, within thirty (30) days after service of the proposed Findings of Fact and Conclusions of Law all parties may submit responses thereto.³⁸

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD³⁹

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
May 26, 2010

³⁷ This accords with NRC's E-Filing guidance (at pages 14-15). See <http://www.nrc.gov/site-help/e-submittals.html> (under Adjudicatory Submissions, Related Instructional Resources, access link for Guidance for Electronic Submissions to the NRC, Revision 6).

³⁸ [Proposed findings of fact and conclusions of law must conform to the format requirements in § 2.712\(c\).](#)

³⁹ Copies of this Order were sent this date by Internet e-mail to: (1) Counsel for the NRC Staff; (2) Counsel for the TVA; and (3) Counsel for SACE.