

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

June 11, 2013

ORDER

(Amending Schedule for Hearing on Contention FC-1)

Before the Board is a single live contention challenging the application of Nuclear Innovation North America, LLC (NINA or Applicant) for two combined operating licenses (COLs) for construction and operation of two nuclear reactors (STP Units 3 and 4) near Bay City, Texas.¹ In this Order, we establish the schedule for the written filings and oral hearing for contention FC-1, to be conducted under the regulations of 10 C.F.R. Part 2, Subpart L.

I. RECENT BACKGROUND

On October 3, 2012, we issued a revised scheduling order for this proceeding.² Subsequently, on February 7, 2013, we modified the schedule with respect to Contention FC-1, establishing the “trigger date” for proceeding to evidentiary hearing as the date on which the NRC Staff made available its position on the foreign ownership, control and domination (FOCD)

¹ A separate contention concerning waste confidence is in abeyance pending further order from the Commission. Licensing Board Order (Holding Waste Confidence Contention in Abeyance) (Mar. 1, 2013) (unpublished).

² Revised Scheduling Order (Oct. 3, 2012) (unpublished).

issues that are the subject of Contention FC-1.³ The Staff submitted its position on April 30, 2013.⁴

We sought the views of the parties as to whether the hearing schedule should be further revised in a teleconference on May 7, 2013.⁵ As a result of that conversation, the parties submitted a joint motion proposing a schedule for the hearing.⁶ As detailed below, we adopt the parties' proposed schedule in large part.

II. SCHEDULE FOR HEARING ON CONTENTION FC-1

1. Initial Statements of Position, Testimony, Affidavits, and Exhibits. On July 1, 2013, each party shall file its initial written statement of position, exhibits, and written testimony with supporting affidavits, pursuant to 10 C.F.R. § 2.1207(a)(1). The initial written statement should be in the nature of a trial brief that sets out affirmative arguments and applicable legal standards, identifies witnesses and evidence, and specifies the purpose of witnesses and evidence (i.e., stating with particularity how the witness, exhibit, or evidence 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 are relying upon for its statements or position.

2. Rebuttal Statements of Position, Testimony, Affidavits, and Exhibits. No later than July 22, 2013, each party shall file its written responses, rebuttal testimony with supporting affidavits, and rebuttal exhibits, pursuant to 10 C.F.R. § 2.1207(a)(2). The written response should be in the nature of a response brief that identifies the legal and factual weaknesses in an opponent's

³ Licensing Board Order (Establishing Revised Schedule for Hearing on Contention FC-1) (Feb. 7, 2013) (unpublished).

⁴ See Letter from Richard S. Harper, NRC Staff Counsel, to Licensing Board (Apr. 30, 2013) at 1.

⁵ See Tr. at 1939-60.

⁶ Joint Motion to Establish Contention FC-1 Hearing Schedule (May 9, 2013).

position, identifies rebuttal witnesses and evidence, and specifies the precise purpose of rebuttal witnesses and evidence. The rebuttal 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 are relying upon for its statements or position. Being in the nature of rebuttal, the response, rebuttal testimony and rebuttal exhibits are not to advance any new affirmative claims or arguments that should have been, but were not, included in the party's previously filed initial written statement.

3. Motions In Limine or to Strike. No later than August 1, 2013, each party shall file its motions in limine or motions to strike regarding the materials submitted under paragraphs 1 and 2. Answers to such motions shall be filed no later than seven (7) days after service of the subject motion.

4. Proposed Questions for Board to Ask.⁷ No later than August 21, 2013, each party shall file its 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 any other party.

5. Motions for Cross-Examination. No later than August 21, 2013, each party shall file its motions to conduct cross-examination of a specified witness or witnesses, if any, together with the associated cross-examination plan(s), pursuant to 10 C.F.R. § 2.1204(b). Such motion to

⁷ A party should cover all essential points in the direct and rebuttal testimony that it prefiles for each of its own witnesses. The prefiled proposed questions should not focus on a party's own witnesses, but should instead be directed to the witnesses of the other parties.

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

6. Evidentiary Hearing. The evidentiary hearing will occur on October 16th and 17th, 2013, at the United States Courthouse for the Southern District of Texas in Houston, Texas. Further details will follow in a subsequent order.

7. Witness with Written Testimony Must be Available in Person. Unless the Board expressly provides otherwise, each party 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.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD
/RA/

Michael M. Gibson, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
June 11, 2013

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

I hereby certify that copies of the foregoing **ORDER (Amending Schedule for Hearing on Contention FC-1)** 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 (Amending Schedule for Hearing on Contention FC-1)

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[Original signed by Brian Newell]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 11th day of June, 2013