UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Alex S. Karlin, Chairman
Dr. Paul B. Abramson
Dr. Gary S. Arnold

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| In the Matter of | Docket Nos. 50-327-LR, 50-328-LR |
| TENNESSEE VALLEY AUTHORITY | ASLBP No. 13-927-01-LR-BD01 |
| (Sequoyah Nuclear Plant, Units 1 and 2) | August 26, 2013 |

# INITIAL SCHEDULING ORDER

This proceeding concerns an application by the Tennessee Valley Authority (TVA) to renew its licenses to operate two nuclear power reactors located at TVA's Sequoyah Nuclear Plant (Sequoyah), approximately 18 miles northeast of Chattanooga, Tennessee. Under Nuclear Regulatory Commission (NRC) regulations, this Board has the "duty to conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing process, to avoid delay and to maintain order." 10 C.F.R. § 2.319. In order to promote these objectives, the Board is required to issue an initial scheduling order (ISO) "as soon as practicable." 10 C.F.R. § 2.332(a). Accordingly the Board is issuing this ISO.

## I. Background

On January 7, 2013, TVA submitted its license renewal application (LRA) for the renewal of the operating licenses for its two nuclear power reactors, designated as Sequoyah Units 1

and 2.[1] On March 5, 2013, the NRC published a notice in the Federal Register stating that any person whose interests may be affected by this proceeding, and who wished to participate as a party, must file a petition for leave to intervene with the NRC within 60 days. Id. On May 6, 2013, three entities – the Blue Ridge Environmental Defense League (BREDL), Bellefonte Efficiency and Sustainability Team (BEST), and Mothers Against Tennessee River Radiation (MATRR) – filed such a petition and jointly challenged TVA's license renewal application (LRA). LBP-13-08, 78 NRC __, __ (slip op. at 1) (July 5, 2013). The petitioners proffered eight contentions. On May 31, 2013, TVA and the NRC Staff filed answers opposing the petition. Id. at 2.

On July 5, 2013, the Board ruled that BREDL had established standing to intervene[2] and that the environmental portion of one of BREDL's contentions – Contention B – would be held in abeyance, without being either admitted or denied. Id. at 42. This was in accordance with the Commission's decision in Calvert Cliffs Nuclear Project, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC 63, 69 (2012). We also ruled that none of the other proposed contentions met the admissibility criteria of 10 C.F.R. § 2.309(f)(1). LBP-13-08, 78 NRC at __ (slip op. at 42).

On July 12, 2013, the Board issued an order scheduling an initial conference, pursuant to 10 C.F.R. §§ 2.329 and 2.332, for the purpose of developing a scheduling order to govern the conduct of this proceeding. Order (Scheduling Initial Scheduling Conference) (July 12, 2013) (unpublished). Pursuant to that order, on July 31, 2013, the NRC Staff filed its estimate that it would issue both the Final Supplement Environmental Impact Statement (FSEIS) and the Final

[1] [TVA]; Notice of Acceptance for Docketing of Application and Notice of Opportunity for Hearing Regarding Renewal of Sequoyah Nuclear Plant, Units 1 and 2 Facility Operating License Nos. DPR-77, DPR-79 for an Additional 20-Year Period, 78 Fed. Reg. 14,362, 14,363 (Mar. 5, 2013).

[2] We held that BEST and MATRR failed to establish standing. LBP-13-08, 78 NRC at __ (slip op. at 5-6). Accordingly, they are not parties and are not authorized to file pleadings herein.

Safety Evaluation Report (FSER) on TVA's license renewal application in October of 2014. Letter from Beth N. Mizuno, Counsel for the NRC Staff (July 31, 2013).

On August 8, 2013, the Board conducted the initial conference. Tr. at 1-52. The pro se representative of BREDL, counsel for TVA and counsel for the NRC Staff participated in this telephonic conference. During the call, we noted that the posture of this case is somewhat unusual because, although the adjudication has commenced, no contentions have been admitted and Contention B is in abeyance. Tr. at 10. Thus, although ISOs typically include provisions such as (a) rules for the timing of mandatory disclosures, privilege logs, and discovery disputes, and (b) the schedule for the filing of initial and rebuttal evidence (on the admitted contentions) at the evidentiary hearing stage of the proceeding, no such provisions are appropriate in this proceeding at this time.[3]

## II. Schedule

In addition to the general deadlines and time frames applicable to NRC adjudicatory proceedings pursuant to 10 C.F.R. Part 2, the following case management procedures and schedule shall govern this adjudicatory proceeding:

A. Mandatory Disclosures and Hearing File.[4]

1. Mandatory Disclosures Under 10 C.F.R. § 2.336. Inasmuch as no contentions have been admitted, no mandatory disclosures pursuant to 10 C.F.R. § 2.336(a) or (b) are required at this time.

2. Hearing File Under 10 C.F.R. § 2.1203. Inasmuch as no contentions have been admitted, and thus there has been no determination as to which type of adjudicatory procedures

[3] Id. See also Order (Scheduling Initial Scheduling Conference) at 2, (July 12, 2013) (unpublished). An example of an ISO where contentions have been admitted, can be found at Progress Energy Florida, Inc. (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-22, 70 NRC 640 (2009).

[4] 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).

apply to this adjudication, the Staff is not obliged to produce a hearing file pursuant to 10 C.F.R. § 2.1203 at this time.

B. General Duty to Disclose.

Despite the inapplicability of 10 C.F.R. §§ 2.336 and 2.1203, the parties are reminded that they must follow the Commission's general disclosure policy. This policy states:

> All parties in NRC adjudicatory proceedings, including the NRC staff, have a duty to disclose to the boards and other parties all new information they acquire which is considered material and relevant to any issue in controversy in the proceeding. Such disclosure is required to allow full resolution of all issues in the proceeding. The Commission expects all NRC offices to utilize procedures which will assure prompt and appropriate action to fulfill this responsibility.[5]

1. Such disclosures shall be filed with the Board, with a copy provided to each party, within twenty (20) days of the date when the party knew, or should have known, of the new information.

2. For purposes of this proceeding, the duty to notify includes, but is not limited to, any new information that is material and relevant to whether the Commission has issued any order, or taken any other action, that a party believes alters or terminates the abeyance status of Contention B.[6]

C. Monthly Status Report. On the third Thursday of each month, the NRC Staff shall submit a brief report specifying its best estimate of the dates when it expects to issue the DSEIS, FSEIS, SER with open items, and the final SER.

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[5] Nuclear Regulatory Commission Statement of Policy; Investigations, Inspections, and Adjudicatory Proceedings, 49 Fed. Reg. 36,032, 36,032 (Sept. 13, 1984).

[6] The fact that new information has arisen that a party believes alters or terminates the abeyance status of Contention B, and that the party notifies the Board of its belief, does not make it so.

D. New or Amended Contentions.

1. Consolidated Filing. If a party seeks to file a motion for leave to file a new or amended contention, then such motion shall be accompanied by the proposed contention. This consolidated filing shall specify how the motion satisfies the "good cause" criteria of 10 C.F.R. § 2.309(c)(1)(i)-(iii) and how the proposed contention satisfies the admissibility criteria of 10 C.F.R. § 2.309(f)(1)(i)-(vi). Within twenty-five (25) days thereafter, any other party may file an answer responding to the motion. See 10 C.F.R. § 2.309(i)(1). The answer shall also address the admissibility of the proffered contention. Within seven (7) days thereafter, the movant may file a reply. See 10 C.F.R. § 2.309(i)(2).

2. Timeliness Deadline. The consolidated filing referred to in the preceding paragraph shall be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) if it is filed within forty-five (45) days of the date when the new and material information on which it is based first became available.[7]

3. Extensions of Time. A party may move for an extension to the foregoing timeliness deadline for good cause or by stipulation approved by the Board. See 10 C.F.R. § 2.307(a). A motion for extension may be filed before or after the deadline specified in the preceding paragraph. The "good cause" concept and criterion specified in 10 C.F.R. § 2.307(a)

[7] The forty-five day time frame begins on the date when the new information first becomes "available." See 10 C.F.R. § 2.309(c)(1)(iii). This issue was discussed during the initial scheduling conference. Tr. at 27-28. The determination as to when a document or item of information first becomes "available" is case-specific. But the basic criterion is: A document or item of information becomes "available" on the earlier of (a) when the person first had actual knowledge of it, or (b) when a reasonable person, acting with due care, should have known about the document or information. Under this standard, an intervenor cannot simply wait until the Staff or Applicant notifies it of some new information (such as by waiting for a notification under II.B, supra) and should not assume that the forty-five day clock starts to run only upon the receipt of such a notice. To the contrary, the Commission has repeatedly held that an intervenor has an "iron-clad obligation to examine the publicly available documentary material . . . with sufficient care to enable it to uncover any information that could serve as the basis for a specific contention." Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC 481, 496 (2010) (quoting Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 NRC 135, 147 (1993)).

may include such causes as serious health issues, severe weather issues, or NRC electronic hearing docket issues. The "good cause" test under 10 C.F.R. § 2.307(a) is broader than the "good cause" test under 10 C.F.R. § 2.309(c)(1)(i)-(iii).[8]

4. Selection of Hearing Procedures. A motion and proposed new contention specified in paragraph II.D.1 above may address the selection of the appropriate hearing procedure for the proposed new contention. See 10 C.F.R. §§ 2.309(g) and 2.310(d).

E. New Hearing Requests and Petitions to Intervene. New hearing requests and petitions to intervene challenging this license renewal may be filed in this proceeding by persons not currently a party hereto provided that they satisfy the "good cause" criteria of 10 C.F.R. § 2.309(c)(1)(i)-(iii), the contention admissibility criteria of 10 C.F.R. §2.309(f)(1)(i)-(vi), and the standing criteria of 10 C.F.R. § 2.309(d). See 10 C.F.R. § 2.309(c)(3). Because such filings are subject to additional requirements, the determination as to whether such requests or petitions are filed in a "timely manner" as required by 10 C.F.R. § 2.309(c)(1)(iii) is not limited by the forty-five (45) day deadline specified in II.D.2 above and instead shall be subject to a reasonableness standard.

F. Pleadings and Motions – Generally.

1. Ten Days. Except for motions under 10 C.F.R. § 2.309(c) or as otherwise specified herein, all motions must be filed within ten (10) days after the occurrence or circumstance from which the motion arises. See 77 Fed. Reg. at 46,567, 46,593.

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 paragraph II.D.1 above or where there are compelling circumstances, the moving party has no right to reply to an answer or response to a motion. See 10 C.F.R. § 2.323(c). 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

[8] See Amendments to Adjudicatory Process Rules and Related Requirements; Final Rule, 77 Fed. Reg. 46,562, 46,571-72, 46,582, 46,591 (Aug. 3, 2012).

that answer, file a response to any new facts or arguments presented in that answer. Any such response will address only the new facts or arguments, and will not be an opportunity to re-challenge the original motion. Except as otherwise specified herein, no further supporting statements or responses thereto will be entertained.[9]

3. Motion Certification. 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.[10]

4. 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 must make a sincere effort (a) to make himself or herself available to listen, (b) to respond to the moving party's explanation, and (c) 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. 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 consider and respond to the moving party, and to resolve the factual and legal issues

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[9] This provision avoids unnecessary confusion and litigation that has arisen on this point and is modeled on 10 C.F.R. § 2.710(a).

[10] Although in general the movant has only ten (10) days within which to file its motion under 10 C.F.R. § 2.323(a)(2), the sincere effort at consultation should be timely, i.e., not initiated at the last minute. It should be initiated sufficiently in advance of the ten-day deadline to provide enough time for the possible resolution of the matter or issues in question. See Entergy Nuclear Vermont Yankee, LLC (Vermont Yankee Nuclear Power Station), LBP-06-5, 63 NRC 116, 128 (2006). If 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 that the Board grant such an extension of time to allow for further consultation and discussion.

> raised in the motion, and that my efforts to resolve the issues have been unsuccessful.

As a general rule it is inconsistent with the dispute avoidance/resolution purposes of 10 C.F.R. § 2.323(b), for a party to respond to a consultation attempt by the boilerplate statement that it "takes no position on the motion" and instead simply "reserves the right to file a response to the motion when it is filed."

5. 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.

G. Dispositive Motions. Until further notice, dispositive motions, such as motions for summary disposition and motions to dismiss a matter as moot, will be managed in this proceeding as follows:

1. Certification. A dispositive motion 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, prohibited discovery, 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 entitled to a decision as a matter of law.

2. Promptness Deadline: Additional Time for Dispositive Motions. In light of the importance of dispositive motions, and in order to accommodate careful consultation as specified above, dispositive motions may be filed 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)). The issuance of an order or other action by the Commission which changes the abeyance status of Contention B and, it is asserted, warrants the dismissal or

summary disposition of Contention B, shall be deemed such an "occurrence or circumstance" triggering this promptness deadline.[11]

3. Answers. 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.

H. Evidentiary Hearing Filings. Inasmuch as no contentions have been admitted, the Board will not establish a schedule for the filings necessary for the evidentiary hearing at this time.

I. 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 the relevant portion of that document shall be attached to the pleading. The Board will not track down or attempt to locate such documents. In addition, the pleading must cite to the specific pages or sections of the document that are relevant. Citations should be as specific as possible.

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 Environmental Report, the DSEIS, the FSEIS, the FSER with open items, and the 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.[12]

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[11] The 30 days does not run from the date of the notice under paragraph II.B., but rather from the event or circumstance that triggered the notice.

[12] The NRC's E-Filing guidance document has guidance concerning the filing of copyrighted material. See http://www.nrc.gov/site-help/e-submittals.html (under Additional Information, follow link to Reference Materials for Electronic Submissions and then access link for Guidance for Electronic Submissions to the NRC, Revision 6).

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.[13]

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 K.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. Method of Electronic Submission. 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 the pleading should be separated into two or more submissions, each less than fifteen (15) megabytes.[14]

J. Duty of Truthfulness, Accuracy, and Candor. Each person who signs a pleading, motion or other document in this proceeding is reminded of the obligations of truthfulness and accuracy specified in 10 C.F.R. §§ 2.304(d) and 2.323(d). In addition, counsel in this proceeding are to act with candor toward this Board, and to abide by Rule 3.3(a)(3) of the American Bar Association Model Code of Ethics, which states:

> A lawyer shall not knowingly . . . fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel.

[13] The term "exhibit" is reserved for use as a designation for those items that are submitted pursuant to paragraph II.K as proffered evidence for the evidentiary hearing.

[14] This accords with NRC's E-Filing guidance (at page 14-15). See http://www.nrc.gov/site-help/e-submittals.html (under Additional Information, follow link to Reference Materials for Electronic Submissions and then access link for Guidance for Electronic Submissions to the NRC, Revision 6).

The duty of candor is especially important in cases, such as this one, where one of the parties is an agency of the United States government and one of the parties is not represented by counsel.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

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Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
August 26, 2013

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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| In the Matter of | ) | |
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| TENNESSEE VALEY AUTHORITY | ) | |
| | ) | |
| SEQUOYAH NUCLEAR PLANT, | ) | Docket Nos. 50-327-LR and 50-328-LR |
| UNITS 1 AND 2 (License Renewal) | ) | |
| | ) | |

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **INITIAL SCHEDULING ORDER** have been served upon the following persons by Electronic Information Exchange.

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

Dated at Rockville, Maryland,
this 26th day of August, 2013