

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

Before Administrative Judges:

Paul S. Ryerson, Chairman
Dr. Gary S. Arnold
Dr. Craig M. White

In the Matter of

PSEG POWER, LLC AND PSEG
NUCLEAR, LLC

(Early Site Permit Application)

Docket No. 52-043-ESP

ASLBP No. 15-943-01-ESP-BD01

October 15, 2015

ORDER
(Concerning Scheduling)

On September 25, 2015, the Board was established to conduct a mandatory hearing in this proceeding. The Board will conduct an initial scheduling and case management conference, by telephone, on November 4, 2015 at 10:00 AM EST. The purpose of this conference will be to assist in developing a scheduling order that will facilitate the fair and efficient resolution of this uncontested proceeding.

On or before November 2, 2015, counsel for the Applicant and for the NRC Staff should contact Ms. Jennifer Scro at 301-415-5757 to obtain the telephone number and pass code for the November 4, 2015 conference call. Members of the public who wish to listen to the conference may do so, and should contact Mr. Cooper Strickland at 301-415-5880 for the necessary information.

The Applicant and the NRC Staff should be prepared to address the following questions:

1. On September 29, 2015, the NRC Staff issued its final safety evaluation report (SER). The Staff has estimated that it will issue the final environmental impact statement (FEIS) in November 2015. What is the Staff's present

sense of the likelihood that this estimate might change and, if so, by how much?

2. Assume that the SER and FEIS are issued within a few months of each other, is there any reason to consider bifurcation of the mandatory hearing with respect to safety and NEPA issues?
3. Since the Staff have already issued the SER, would it be efficient for the Board to propound written questions concerning the SER as soon as possible, regardless of whether the FEIS has been issued?
4. What is the appropriate target for the issuance of the Board's initial decision in light of the schedule for the FEIS?
5. Given that PSEG has not requested a limited work authorization pursuant to 10 C.F.R. § 52.17(c), do the parties agree that Attachment A to this order is an accurate synopsis of the determinations that the Board must make in this uncontested proceeding, as mandated by 10 C.F.R. § 52.24? If not, why not? What additional questions or determinations, if any, must the Board address?
6. How (and where) should the Board conduct this mandatory hearing? Will the Applicant or the NRC Staff desire an opportunity to present evidence, separate and apart from responding to the Board's written or oral questions? If so, what would be the most efficient way for the Board to receive such evidence?
7. Should the Board allow oral limited appearances?
8. Would a site visit be likely to assist the Board in understanding any of the relevant issues?
9. Is the SER or FEIS likely to contain or refer to sensitive information? How should such information be managed in this proceeding?

10. What other matters should be considered by the Board at this stage of the proceeding?

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Paul S. Ryerson, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
October 15, 2015

ATTACHMENT A

DETERMINATIONS THAT MUST BE MADE IN THE
UNCONTESTED PROCEEDING ON
PSEG POWER, LLC AND PSEG NUCLEAR, LLC'S EARLY SITE PERMIT APPLICATION

A. Safety Issues: Pursuant to § 52.24(a), an early site permit may issue if the Licensing Board finds that:

- “(1) An application for an early site permit meets the applicable standards and requirements of the [AEA] and the Commission's regulations;
- (2) Notifications, if any, to other agencies or bodies have been duly made;
- (3) There is reasonable assurance that the site is in conformity with the provisions of the Act, and the Commission's regulations;
- (4) The applicant is technically qualified to engage in any activities authorized;
- (5) The proposed inspections, tests, analyses and acceptance criteria, including any on emergency planning, are necessary and sufficient, within the scope of the early site permit, to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of the Act, and the Commission's regulations; [and]
- (6) Issuance of the permit will not be inimical to the common defense and security or to the health and safety of the public”

B. NEPA Issues: Section 52.24(a)(8) states that an early site permit may issue if “[t]he findings required by subpart A of 10 CFR part 51 have been made.”

Section 51.105(a) states that “for the issuance of a[n] . . . early site permit for a nuclear power reactor . . . the presiding officer will:

- (1) Determine whether the requirements of Sections 102(2)(A), (C), and (E) of NEPA and the [10 C.F.R. Part 51, Subpart A] regulations have been met;
- (2) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken;
- (3) Determine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, whether the construction permit or early site permit should be issued, denied, or appropriately conditioned to protect environmental values; [and]
- (4) Determine, in an uncontested proceeding, whether the NEPA review conducted by the NRC Staff has been adequate.”

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(Early Site Permit Application))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Concerning Scheduling)** have been served upon the following persons by Electronic Information Exchange or by electronic mail.

Office of Commission Appellate
Adjudication
Mail Stop: O-7H4
Washington, DC 20555-0001
OCAAMAIL@nrc.gov

Office of the Secretary of the Commission
Mail Stop: O-16G4
Washington, DC 20555-0001
hearingdocket@nrc.gov

E. Roy Hawkens
Chief Administrative Judge
Atomic Safety and Licensing Board Panel
Mail Stop T-3 F23
Washington, DC 20555-0001
roy.hawkens@nrc.gov

Dr. Gary S. Arnold
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, DC, 20555-0001
gary.arnold@nrc.gov

Paul S. Ryerson, Chairman
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, DC, 20555-0001
paul.ryerson@nrc.gov

Dr. Craig M. White
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, DC, 20555-0001
craig.white@nrc.gov

PSEG POWER, LLC AND PSEG NUCLEAR, LLC - Docket No. 52-043-ESP
ORDER (Concerning Scheduling)

OGC Mail Center
U.S. Nuclear Regulatory Commission
Mail Stop: O-15D-21
Washington, DC, 20555-0001
ogcmailcenter@nrc.gov

Susan H. Vrahoretis, Esq.
Office of the General Counsel
Mail Stop O-15D-21
Washington, DC 20555-0001
susan.vrahoretis@nrc.gov

Patrick A. Moulding, Esq.
Office of the General Counsel
Mail Stop O-15D-21
Washington, DC 20555-0001
patrick.moulding@nrc.gov

Kevin C. Roach, Esq.
Office of the General Counsel
Mail Stop O-15D-21
Washington, DC 20555-0001
kevin.roach@nrc.gov

Ann N. Hove, Esq.
Office of the General Counsel
Mail Stop O-15D-21
Washington, DC 20555-0001
ann.hove@nrc.gov

Stephen J. Burdick, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave., N.W.
Washington, DC 20004
sburdick@morganlewis.com

[Original signed by Herald M. Speiser _____]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 15th day of October, 2015