

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

November 9, 2015

ORDER

(Concerning Draft Initial Scheduling Order)

On November 4, 2015, the Board held a scheduling conference by telephone, in which PSEG and the NRC Staff participated. On the basis of the conference, the Board has prepared a draft initial scheduling order (attached hereto as Attachment 1). PSEG and the NRC Staff may submit any comments on the draft initial scheduling order on or before November 13, 2015.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

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Paul S. Ryerson, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
November 9, 2015

**Attachment 1**

**DRAFT**

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

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PSEG POWER, LLC AND PSEG  
NUCLEAR, LLC

(Early Site Permit Application)

Docket No. 52-043-ESP

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

November XX, 2015

INITIAL SCHEDULING ORDER

This proceeding concerns an application by PSEG Power, LLC and PSEG Nuclear, LLC (collectively PSEG) for an early site permit (ESP).<sup>1</sup> In its ESP application, PSEG proposes a site for a potential nuclear power facility adjacent to two existing facilities in Salem County, New Jersey (the PSEG Site).<sup>2</sup> The Board was established on September 25, 2015 to conduct an uncontested hearing mandated by Section 189a(1)(A) of the Atomic Energy Act, 42 U.S.C. §

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<sup>1</sup> The Notice of Hearing regarding PSEG's application was issued by the Commission on November 8, 2010. PSEG Power, LLC, and PSEG Nuclear, LLC, Early Site Permit Application for the PSEG Site, Notice of Hearing, Opportunity to Petition for Leave to Intervene, and Associated Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation, 75 Fed. Reg. 68,624 (Nov. 8, 2010).

<sup>2</sup> The existing nuclear power facilities are Salem Generating Station Units 1 and 2 and Hope Creek Generating Station Unit 1. Safety Evaluation of the Early Site Permit Application in the Matter of PSEG Power, LLC and PSEG Nuclear, LLC for the PSEG Early Site Permit Site (Sept. 29, 2015) at 1-1 (ADAMS Accession No. ML14302A447).

2239(a)(1)(A), and 10 C.F.R. § 52.21.<sup>3</sup> This Order sets forth a hearing schedule that contemplates an Initial Decision on or before May 27, 2016.

## I. BACKGROUND

On September 29, 2015, the NRC Staff issued the final safety evaluation report (SER) on PSEG's application.

On November 4, 2015, pursuant to its Order dated October 15, 2015,<sup>4</sup> the Board held an initial scheduling conference by telephone, in which PSEG and the NRC Staff participated. During the telephone conference, the NRC Staff estimated that the final environmental impact statement (FEIS) will issue on November 27, 2015.

## II. ADMINISTRATIVE MATTERS

A. Staff Documents. The Board directs the NRC Staff to promptly advise the Board if its estimate regarding the issuance date for the FEIS should materially change. When available, the NRC Staff shall provide the Board with four copies of the FEIS. As proposed by the NRC Staff, the Board anticipates receiving a near final draft of the FEIS prior to November 27, 2015. The NRC Staff shall provide the Board with four paper copies of the draft when available and shall identify any revisions upon issuance of the FEIS.

B. Synopsis of Mandatory Determinations. During the initial scheduling conference call, the parties agreed that Attachment A hereto is an accurate synopsis of the mandatory decisions or determinations that the Board must make in this uncontested proceeding.<sup>5</sup> Accordingly, the Board adopts Attachment A as a synopsis of the mandatory decisions or determinations that it must make.

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<sup>3</sup> Establishment of Atomic Safety and Licensing Board (Sept. 25, 2015); see also 80 Fed. Reg. 58,793 (Sept. 30, 2015).

<sup>4</sup> Licensing Board Order (Concerning Scheduling) (Oct. 15, 2015) (unpublished).

<sup>5</sup> Attachment A reflects that PSEG has not requested a limited work authorization pursuant to 10 C.F.R. § 52.16(c).

C. No Bifurcation. Based on the NRC Staff's estimate for issuing the FEIS, it would not appear efficient to bifurcate hearings on safety and environmental issues. Accordingly, the Board intends to conduct a single hearing on all issues.

D. Sensitive Information. During the initial scheduling conference, the parties agreed that this proceeding is not likely to involve any sensitive information. The parties shall notify the Board of any change.

E. Site Visit. The Board will defer its decision whether to conduct a site visit.

F. Limited Appearances. Prior to the evidentiary hearing, any person may request permission to submit a written limited appearance statement pursuant to 10 C.F.R. § 2.315(a). The Board does not contemplate oral limited appearance statements. As provided by NRC regulations, no limited appearance statement shall be considered as evidence.<sup>6</sup>

G. Board Written Questions. The Board contemplates two sets of written questions from the Board to the parties: the first concerning the SER, and the second concerning the FEIS. The Board will endeavor to ask all safety-related questions in the first set, but reserves the opportunity to ask additional safety-related questions in the second set addressing the FEIS. The parties' written answers shall, for each question, identify the responding subject matter expert(s) or individual(s), and shall be submitted in exhibit form, under oath, so that they are suitable for receipt into evidence without the necessity of the personal appearance of each expert or individual. The parties are reminded that the need for written or oral testimony during the evidentiary hearing may be reduced if the parties' answers to the Board's written questions resolve the Board's concerns and establish an adequate record.

H. Prefiled Testimony. The Board will specify the topics to be covered and the written testimony and exhibits to be filed before the evidentiary hearing. The prefiled written testimony shall identify the responding subject matter expert(s) or individual(s), and shall be submitted in

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<sup>6</sup> 10 C.F.R. § 2.315(a).

exhibit form, under oath, so that it is suitable for receipt into evidence without the necessity of the personal appearance of the witness. After reviewing the prefiled testimony and exhibits, the Board may advise a party that oral testimony from a particular expert or individual is not needed and that witness need not appear. Unless so advised, however, each party shall ensure that each person for whom it submits written testimony personally attends the evidentiary hearing and is available to testify and respond to questions.

I. Hearing Date and Location. The Board will confirm the date and specify the location of the evidentiary hearing in a subsequent order. Consistent with the views expressed by the parties, the Board expects to conduct the hearing at NRC headquarters in Rockville, Maryland. The format for the hearing will be addressed in one or more subsequent prehearing conferences.

### III. SCHEDULE

Meeting the schedule set forth below depends upon the NRC Staff's issuance of the FEIS when estimated and upon many other factors, including but not limited to the quality of the parties' responses to the Board's questions. The Board may conduct future scheduling conferences if modifications to this scheduling order are required. Subject to these qualifications and the Board's further orders, the schedule for this proceeding shall be as follows:

September 29, 2015	SER issued.
November 27, 2015	FEIS issues.
December 17, 2015	Board issues first set of questions (on SER).
January 11, 2016	Board issues second set of questions (primarily on FEIS).
January 25, 2016	Parties submit responses to Board's questions.
February 16, 2016	Board enters order specifying date(s) for oral hearing and identifies areas for prefiled testimony.
March 8, 2016	Parties submit prefiled testimony and exhibits.

April 5, 2016	Mandatory hearing.
April 26, 2016	Proposed findings of fact and conclusions of law (if necessary).
May 27, 2016	Board issues Initial Decision.

It is so ORDERED.

THE ATOMIC SAFETY  
AND LICENSING BOARD

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Paul S. Ryerson, Chairman  
ADMINISTRATIVE JUDGE

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Dr. Gary S. Arnold  
ADMINISTRATIVE JUDGE

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Dr. Craig M. White  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
November XX, 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 10 C.F.R. § 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.” Specifically, 10 C.F.R. § 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.”

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
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PSEG POWER, LLC ) Docket No. 52-043-ESP  
AND PSEG NUCLEAR, LLC )  
(Early Site Permit Application) )

CERTIFICATE OF SERVICE

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

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

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

Dated at Rockville, Maryland,  
this 9<sup>th</sup> day of November, 2015