

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

February 08, 2016

MEMORANDUM AND ORDER
(Identifying Additional Areas for Prefiled Testimony)

On January 28, 2016, in accordance with the Board's Memorandum and Order of January 6, 2016,¹ the parties responded to the Board's second set of written questions, which primarily address the Final Environmental Impact Statement (FEIS).² Collectively, the parties' responses total 36 pages, exclusive of the authors' supporting affidavits and resumes. As requested by the Board, the parties coordinated their responses so as to avoid repetition.³

Once again, the parties have provided substantial and responsive answers to the Board's questions. As contemplated by the Initial Scheduling Order, the need for written or oral testimony during the evidentiary hearing is therefore reduced to the extent that the parties'

¹ Licensing Board Memorandum and Order (Second Set of Board Questions and Associated Administrative Directives) (Jan. 6, 2016) (unpublished) [hereinafter January 6, 2016 Questions Order].

² PSEG Response to Second Set of Board Questions (Jan. 28, 2016); NRC Staff Response to the Licensing Board's Second Set of Questions Issued January 6, 2016 and Other Matters (Jan. 28, 2016).

³ January 6, 2016 Questions Order at 2.

answers to the Board's written questions resolve many of the Board's concerns and establish an adequate record.⁴

After reviewing the parties' responses to its second set of written questions, however, the Board still wishes to receive more detailed and integrated prefiled testimony and exhibits concerning certain matters, as described below. When preparing such testimony, the parties may repeat or incorporate by reference portions of their January 28, 2016 responses as appropriate. The matters to be covered in prefiled written testimony and exhibits are as follows:

1. In its response to FEIS Question 8, PSEG implies that there was never evidence of the Bog Turtle on Artificial Island. Does the NRC Staff agree? If so, should FEIS subsection 2.4.1.3, which states that the Bog Turtle was recorded historically "for Artificial Island and vicinity," be revised to assert merely that there is historical evidence of the Bog Turtle in the "vicinity" of Artificial Island?
2. In its response to FEIS Question 9, PSEG implies that there was never evidence of the Eastern Tiger Salamander on Artificial Island. Does the NRC Staff agree? If so, should FEIS subsection 2.4.1.3, which asserts that the Eastern Tiger Salamander was recorded "during an ecological survey conducted on Artificial Island from 1972 through 1978," be revised to assert that the cited survey examined a study area within a 16 kilometer radius of southern Artificial Island and concluded merely that the Eastern Tiger Salamander was found in southern New Castle County, Delaware "just outside the study area and may occur within it"?
3. In its response to FEIS Question 21, PSEG clarifies that flow augmentation from Merrill Creek is not for the purposes of safety or non-safety cooling system operability. PSEG acknowledges, however, that such flow augmentation may be necessary to allow power generation to continue, in certain conditions, so as to avoid impacting the salt line in the Delaware River. Should PSEG apply for a construction permit or COL, will the NRC Staff examine at that time PSEG's ability to obtain adequate water supplies from the Merrill Creek Reservoir?
4. Following the discussion in FEIS subsection 5.3.1.1 and the NRC Staff responses to FEIS Questions 22 and 23, the Staff shall provide additional detail about the potential impact of salt drift on freshwater wetlands in the vicinity of the ESP site. Specifically, the Staff noted in their response that "vegetation in the area has already adapted to naturally occurring levels of salt deposition" and that "cumulative impacts of salt deposition on the site and the vicinity would be minimal"; however, does this generalization apply to all of the potentially affected wetlands and could an

⁴ Initial Scheduling Order (Nov. 16, 2015) at 3 (unpublished).

incremental increase in salt drift adversely affect threatened or endangered plant or animal species?

5. In its response to FEIS Question 29, the NRC Staff asserts that it does not expect that the potential new nuclear units “and associated infrastructure” would adversely affect either the Bog Turtle or the Eastern Tiger Salamander. Has the Staff confirmed that, in the most recent surveys, neither the Bog Turtle nor the Eastern Tiger Salamander were identified in the areas proposed for a new causeway, transmission lines, or related infrastructure?
6. In its response to FEIS Question 33, the NRC Staff states that, “[w]ith the exception of the mitigation activities associated with the PSEG traffic study, all of the activities listed in Table 10-1 in the FEIS are associated with expected permit requirements of other Federal, State, and local agencies.” For each of these expected permit requirements, the Staff shall either confirm that the expected permit requirement is essentially certain, or if not essentially certain, provide an estimate of the unavoidable impact if the respective requirement is not made. Likewise, in Table 10-2 of the FEIS, listing unavoidable impacts of operation, the Staff makes use of similar mitigation acts based upon expected permit requirements. The Staff shall make similar confirmations for this table as well.
7. Related to the NRC Staff’s response to FEIS Question 34, on page 10-5 of the FEIS, Table 10-1 lists the unavoidable adverse environmental impacts of construction on the PSEG site. The third column of this table lists the actions that can be taken to mitigate the impacts. However, FEIS section 10.2, Unavoidable Adverse Environmental Impacts, defines unavoidable adverse impacts as: “Unavoidable adverse environmental impacts are those potential impacts of the NRC action and the USACE action that cannot be avoided and for which no practical means of mitigation are available.” The Staff shall confirm that the mitigation actions listed will not reduce impacts to less than the impacts listed in the second column of Table 10-1, but rather are actions required to limit impacts to those listed in the second column.
8. The NRC Staff shall ensure the presence at the evidentiary hearing of one or more witnesses capable of making brief presentations identifying the most significant parts of the cumulative impact assessment and assessment of alternative sites, and responding to the Board’s questions thereon.

* * *

To the extent practicable, the Board again encourages the parties to coordinate their testimony so as to avoid repetition. As provided in the Initial Scheduling Order,⁵ all prefiled testimony shall be submitted no later than February 25, 2016, shall identify the responding subject matter expert(s) or individuals(s), and shall be submitted in exhibit form, under oath, so that it is suitable for receipt into evidence without the necessity of the personal appearance of the witness. Unless otherwise advised by the Board, 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. (In contrast, persons who have been identified as responsible for answers to the Board's written questions—but who are not also identified as responsible for prefiled testimony—need not attend the evidentiary hearing unless expressly requested by the Board.)

As indicated in our January 27, 2016 Order,⁶ the Board intends to mark and enter prefiled testimony and exhibits into the record electronically. Pursuant to 10 C.F.R. § 2.304(g), each item of prefiled testimony and each exhibit that is submitted via the agency's E-filing system must be submitted as an individual electronic file. Each party shall number its prefiled testimony and exhibits with an abbreviated party designation followed by a three-digit number. For example, the first item of testimony or exhibit submitted by the NRC Staff shall be NRC001, and the first item of testimony or exhibit submitted by the Applicant shall be PSEG001.⁷

The prefiled testimony and exhibit numbers should be presented sequentially, beginning with the testimony and exhibit numbers that respond to the Board's January 27, 2016 Order,

⁵ Id. at 5.

⁶ Licensing Board Memorandum and Order (Identifying Areas for Prefiled Testimony) (Jan. 27, 2016) (unpublished).

⁷ If a document must be separated into multiple segments to comply with the NRC's guidance on maximum file sizes, each segment should be identified with a letter following the exhibit number: for example, NRC001A, NRC001B and NRC001C.

and then proceeding to testimony and exhibits associated with this Order. The exhibit number should be placed in the upper right-hand corner of the first page of the document, and a separate cover sheet should be used only if there is no space on the first page where the exhibit number can be legibly placed. When prefiled testimony and exhibits are submitted, each party should transmit an electronic copy of its prefiled exhibit list in Microsoft Word format to the Board's law clerks, Jennifer Scro (Jennifer.Scro@nrc.gov) and Cooper Strickland (Cooper.Strickland@nrc.gov). Exhibit lists should be ordered by exhibit number and set forth the witness(es) with whom the exhibit is associated and be prepared using the exhibit list template included as Attachment A to this order. Each party should submit only one consolidated list that is responsive to both the Board's January 27, 2016 Order and to this Order.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Paul S. Ryerson, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
February 08, 2016

Attachment A

Submitted/Revised: [mm/dd/yyyy]

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
2016 Evidentiary Hearing

[Party] Hearing Exhibits

[Party] Exhibit #	Witness(es)	Descriptive Exhibit Title ⁸	ADAMS Accession # (If Applicable)

⁸ Exhibit titles should not exceed 200 characters and should not include ADAMS Accession Numbers.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
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AND PSEG NUCLEAR, LLC)
(Early Site Permit Application))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Identifying Additional Areas for Prefiled Testimony)** 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
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[Original signed by Herald M. Speiser]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 8th day of February, 2016