

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

Before Administrative Judges:

Paul S. Ryerson, Chairman
Dr. Gary S. Arnold
Dr. Sue H. Abreu

In the Matter of

TENNESSEE VALLEY AUTHORITY

(Clinch River Nuclear Site Early Site Permit
Application)

Docket No. 52-047-ESP

ASLBP No. 17-954-01-ESP-BD02

November 28, 2017

ORDER

(Circulating Draft Initial Scheduling Order)

The attached draft Initial Scheduling Order sets forth case management procedures and deadlines that the Board proposes to govern this proceeding. The Board has considered suggestions made during the November 14, 2017 conference call. However, the parties may, if they wish, submit—preferably jointly, but otherwise individually—any further comments or suggestions concerning the scheduling order no later than December 6, 2017.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Paul S. Ryerson, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
November 28, 2017

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Docket No. 52-047-ESP

ASLBP No. 17-954-01-ESP-BD02

December ##, 2017

INITIAL SCHEDULING ORDER

This proceeding concerns an early site permit application by the Tennessee Valley Authority (TVA) for two or more small modular reactors at the Clinch River Nuclear site near Oak Ridge, Tennessee. This order sets forth a hearing schedule and protocols governing the remainder of this proceeding.

I. Background

This Board was established on June 26, 2017 to conduct an uncontested hearing mandated by Section 189a(1)(A) of the Atomic Energy Act, 42 U.S.C. § 2239(a)(1)(A), and 10 C.F.R. § 52.21.¹

On November 14, 2017, pursuant to its order dated October 24, 2017,² the Board held an initial scheduling conference by telephone, in which TVA and NRC Staff participated. The NRC Staff estimated that the final environmental impact statement (FEIS) would be issued on

¹ Establishment of Atomic Safety and Licensing Board (June 26, 2017).

² Licensing Board Order (Scheduling Initial Scheduling Conference) (Oct. 24, 2017) (unpublished).

June 21, 2019, and the final safety evaluation report (FSER) would be issued on August 17, 2019.³

On November ##, 2017, the Board circulated a draft initial scheduling order.⁴ The parties submitted comments on the draft on December ##, 2017.

II. Administrative Matters

A. Staff Documents. The NRC Staff shall promptly advise the Board if its estimate regarding the issuance date for the FEIS and FSER should materially change. When available, the NRC Staff shall provide the Board with four hard copies each of the DEIS, FEIS, and FSER.

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.⁵ Accordingly, the Board adopts Attachment A as a synopsis of the mandatory decisions or determinations that it must make.

C. No Bifurcation. Based on the NRC Staff's estimate for issuing the FEIS and FSER, 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.⁶ The parties shall notify the Board of any change.

E. Site Visit. The Board currently does not intend to conduct a site visit.

³ See Tr. at 5.

⁴ Licensing Board Order (Circulating Draft Initial Scheduling Order) (Nov. ##, 2017) (unpublished).

⁵ Tr. at 6. Attachment A reflects that PSEG has not requested a limited work authorization pursuant to 10 C.F.R. § 52.16(c).

⁶ Tr. at 12.

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.⁷

G. Board Written Questions. The Board contemplates two sets of written questions from the Board to the parties: the first concerning the FEIS and the second concerning the FSER. The Board will endeavor to ask all environmental-related questions in the first set, but reserves the opportunity to ask additional environmental-related questions in the second set addressing the FSER. 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 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 the witness need not appear. Unless so advised, however, each party shall ensure that each person is available to testify and respond to questions at the evidentiary hearing.

⁷ 10 C.F.R. § 2.315(a).

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,⁸ the Board expects to conduct the hearing at NRC headquarters in Rockville, Maryland.

III. Schedule

Because the issuances of the FEIS and FSER are not expected until mid-2019, the Board anticipates one or more further scheduling conferences may be necessary to modify this scheduling order. At this time, the Board anticipates a schedule based on the issuances of the FEIS and FSER. For illustrative purposes, the schedule set forth below estimates monthly dates; however, the actual deadline for the specified events shall be determined by the issuances of the FEIS and FSER, regardless of whether those dates coincide with the NRC Staff's current estimates.

Meeting the schedule set forth below depends upon many factors, including but not limited to the quality of the parties' responses to the Board's questions. Subject to these qualifications and the Board's further orders, the schedule for this proceeding shall be as follows:

| | |
|----------------------------------|---|
| June 21, 2019 | FEIS issues |
| August 17, 2019 | FSER issues |
| July 2019 FEIS + 30 days | Board issues first set of questions (on FEIS) |
| August 2019 FEIS + 60 days | Parties submit responses to Board's first set of questions |
| September 2019 FSER + 30 days | Board issues second set of questions (primarily on FSER) |
| October 2019 FSER + 60 days | Parties submit responses to Board's second set of questions |

⁸ Tr. at 6–7.

| | |
|----------------------------------|--|
| November 2019 FSER + 80 days | Board issues order specifying date(s) for oral hearing and identifies areas for prefiled testimony |
| December 2019 FSER + 110 days | Parties submit prefiled testimony and exhibits |
| January 2020 FSER + 140 days | Mandatory hearing |
| January 2020 FSER + 150 days | Parties submit proposed findings of fact and conclusions of law (if necessary) |
| February 2020 FSER + 180 days | Board issues Initial Decision |

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

Paul S. Ryerson, Chairman
ADMINISTRATIVE JUDGE

Dr. Gary S. Arnold
ADMINISTRATIVE JUDGE

Dr. Sue H. Abreu
ADMINISTRATIVE JUDGE

Rockville, Maryland
December ##, 2017

ATTACHMENT A

DETERMINATIONS THAT MUST BE MADE IN THE UNCONTESTED PROCEEDING ON
TENNESSEE VALLEY AUTHORITY'S EARLY SITE PERMIT APPLICATION

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

- (1) An application for an early site permit meets the applicable standards and requirements of the [Atomic Energy] Act 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 be issued 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 [Board] 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)
)
TENNESSEE VALLEY AUTHORITY)
) Docket No. 52-047-ESP
(Early Site Permit Application)
for Clinch River Nuclear Site))
)
(Mandatory Hearing))

CERTIFICATE OF SERVICE

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

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Dated at Rockville, Maryland,
this 28th day of November, 2017

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