

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

Before Administrative Judges:

Paul S. Ryerson, Chairman
Nicholas G. Trikouros
Dr. Gary S. Arnold

In the Matter of

INTERIM STORAGE PARTNERS LLC

(WCS Consolidated Interim Storage Facility)

Docket No. 72-1050-ISFSI

ASLBP No. 19-959-01-ISFSI-BD01

October 16, 2019

INITIAL SCHEDULING ORDER

This proceeding involves an application from Interim Storage Partners LLC (ISP) for a license to construct and operate a consolidated interim storage facility for spent nuclear fuel and greater-than-Class C (GTCC) waste in Andrews County, Texas. The 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.”¹ This scheduling order is intended to further those objectives.²

I. Background

The principal history of this proceeding is set forth in the Board’s August 23, 2019 Memorandum and Order, in which we admitted Sierra Club as an intervenor to this proceeding.³ On August 30, 2019, the parties filed a joint motion regarding an agreement for mandatory

¹ 10 C.F.R. § 2.319.

² See id. § 2.332(c)(1)–(5).

³ LBP-19-07, 90 NRC ____ (2019).

disclosures and hearing file obligations,⁴ which the Board granted on September 4, 2019.⁵ On August 30, 2019, the NRC Staff noticed its intention to participate as a party with respect to the admitted contention. On September 9, 2019, the NRC Staff submitted its current estimate of the schedule for completing its safety and environmental reviews.

The Board convened an initial scheduling conference with the parties by telephone on September 18, 2019, pursuant to 10 C.F.R. § 2.332. During the scheduling conference call, the parties discussed scheduling preferences as instructed by the Board's September 5, 2019 order scheduling the conference.⁶

On October 8, 2019, the Board circulated a draft of this order for comment.⁷ No party submitted comments on the draft.

In preparing this initial scheduling order, the Board has considered the positions of the parties and has taken them into account consistent with the responsibility to establish "early and continuing control so that the proceeding will not be protracted because of lack of management."⁸ In accordance with this responsibility, the Board issues this schedule order notwithstanding the pendency of motions that may determine whether the proceeding goes forward.⁹

⁴ Joint Motion Regarding an Agreement for Mandatory Disclosures and Hearing File Obligations (Aug. 30, 2019).

⁵ Order (Granting Joint Motion Regarding Mandatory Disclosures and Hearing File Obligations) (Sept. 4, 2019) (unpublished).

⁶ Order (Scheduling Initial Scheduling Conference) (Sept. 5, 2019) (unpublished).

⁷ Order (Circulating Draft Initial Scheduling Order) (Oct. 8, 2019) (unpublished).

⁸ 10 C.F.R. § 2.332(c)(2).

⁹ On September 9, 2019, ISP moved to dismiss Sierra Club's only admitted contention (Sierra Club Contention 13) as moot and terminate the proceeding. On September 13, 2019, Sierra club moved to amend Contention 13.

II. Schedule

In addition to the general deadlines and time frames applicable to Subpart L proceedings pursuant to 10 C.F.R. Part 2, the following case management procedures and schedule shall govern this adjudicatory proceeding in accordance with 10 C.F.R. § 2.332. (Because the NRC Staff's final environmental impact statement (FEIS) is not expected until May 2021, the Board anticipates conducting further scheduling conferences to modify or update this scheduling order as needed.)

A. Mandatory Disclosures and Production of Hearing File

1. Initial Mandatory Disclosures and Production of Hearing File. Unless otherwise ordered by the Board, the parties must make certain mandatory disclosures within 30 days of the Board's ruling admitting contentions.¹⁰ Likewise, within those 30 days, the NRC Staff must also produce a hearing file available to all parties.¹¹ As agreed to by all parties during the initial scheduling conference, this 30-day deadline is extended to the first Tuesday of a calendar month that occurs at least 30 days after the Board's ruling on the pending motions concerning Sierra Club Contention 13.

2. Updated Disclosures. Updates to mandatory disclosures and to the NRC Staff's hearing file shall be filed on the first Tuesday of every calendar month thereafter and shall include documents identified by the 15th of the prior month.¹²

3. Monthly Status Report. Should the NRC Staff's best estimate of the projected schedule¹³ for completion of either its safety or environmental evaluations materially change, the NRC Staff shall so advise as soon as practicable, and in no event later than in the next monthly update of disclosures.

¹⁰ 10 C.F.R. § 2.336.

¹¹ Id. § 2.1203.

¹² 10 C.F.R. § 2.336(d); see also Tr. at 353.

¹³ See NRC Staff's Safety and Environmental Review Schedule (Sept. 9, 2019).

4. Lists of Potential Witnesses. Notwithstanding 10 C.F.R. § 2.336(a)(1), Intervenor Sierra Club shall file a final list of potential witnesses no less than 30 days after the Trigger Date, as defined in section II.G.1. infra. Applicant ISP and the NRC Staff shall file their final lists of potential witnesses no later than 60 days after the Trigger Date.

B. Protective Order and Nondisclosure Agreement

The parties agreed during the scheduling conference call that at present a protective order is not necessary.¹⁴ If a party anticipates the need for a protective order and nondisclosure agreement, it shall submit either an agreed-upon proposed protective order and nondisclosure agreement or individually or jointly proposed versions of such documents.

C. Additional Contentions

1. Timeliness. A new or amended contention shall be deemed timely if it is filed within 30 days of the date when the new and material information on which it is based first becomes available to the moving party. A proffered new or amended contention must also show good cause pursuant to 10 C.F.R. § 2.309(c)(i)–(iii).

2. Consolidated Briefing. A party seeking to file a motion or request for leave to file a new or amended contention shall file such motion and proffer the proposed contention simultaneously. The pleading shall include a motion for leave to file a new or amended contention under 10 C.F.R § 2.309(c), and the support for the proposed new or amended contention showing that it satisfies 10 C.F.R. § 2.309(f)(1). Within 25 days after service of the motion and proposed contention, any other party may file an answer responding to all elements of the motion and contention.¹⁵ Within 7 days of service of the answer, the movant may file a reply.¹⁶

¹⁴ Tr. at 357.

¹⁵ 10 C.F.R. § 2.309(i)(1).

¹⁶ Id. § 2.309(i)(2).

D. Dispositive Motions

Notwithstanding 10 C.F.R. § 2.323, a dispositive motion, such as a motion for summary disposition under 10 C.F.R. § 2.1205 or a motion to dismiss a contention as moot, need not necessarily be made within 10 days of the occurrence or circumstance from which the motion arises. In no event, however, shall any dispositive motion be filed later than 30 days after the Trigger Date.

E. Site Visit

The Board does not intend to conduct a site visit.

F. Limited Appearances

Before the evidentiary hearing, any person may 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.¹⁷

G. Evidentiary Hearing and Related Filings

1. Trigger Date. Pursuant to 10 C.F.R. § 2.1207, certain documents must be filed before the hearing. Because currently the only admitted contention raises environmental issues, the trigger date ("Trigger Date") for the initiation of such filings shall be the date on which the NRC Staff issues the FEIS. If new or amended contentions are admitted, the Board may, as appropriate, either revise the Trigger Date, bifurcate the evidentiary hearing, or both.

2. Prehearing Evidentiary Submissions. Prehearing evidentiary submissions by the parties shall contain an initial written statement of position, written testimony, and exhibits. The initial written statement shall be a trial brief that summarizes the party's case, setting out applicable legal standards, identifying witnesses and evidence, and specifying with as much particularity as practicable how each witness, exhibit, or category of evidence supports a factual

¹⁷ 10 C.F.R. § 2.315(a).

or legal position. The written testimony shall be submitted under oath in the form of an affidavit or sworn declaration suitable for being received directly into evidence pursuant to 10 C.F.R. § 2.1207(b)(2). The exhibits shall include all documents that the party or its witnesses refer to, use, or are specifically relying upon.

3. Schedule. The parties shall file their prehearing evidentiary submissions sequentially by the following number of days after the Trigger Date:

40 Days: Sierra Club

70 Days: ISP and NRC Staff Responses

90 Days: Sierra Club Reply

4. Motions in Limine or to Strike. Motions in limine or motions to strike regarding prehearing evidentiary submissions shall be filed no later than 30 days after service of the submission in issue. Answers shall be filed no later than 10 days after service of such motions.

5. Proposed Questions for Board to Ask. No later than 30 days after service of the last prehearing evidentiary submission, all parties may file proposed questions for the Board to consider propounding to the witnesses, pursuant to 10 C.F.R. § 2.1207(a)(3)(i) and (ii). The examination plans should contain a brief description of the issue or issues that the party contends need further examination, the objective of the examination, and the proposed line of questioning (including specific questions) that may logically lead to achieving the objective. Proposed examination questions and plans should be filed in camera, using the NRC's E-Filing system, and not be served on other parties.

6. Motions for Cross-Examination. No later than 30 days after the last prehearing evidentiary submission, all parties shall file any motions or requests to permit that party to conduct cross-examination of a specified witness or witnesses, together with the associated cross-examination plan(s), pursuant to 10 C.F.R. § 2.1204(b). The motion for cross-examination shall be filed and serviced in the normal manner, but the cross-examination plan

itself should be filed in camera, using the NRC's E-Filing system, and not be served on other parties.

7. Evidentiary Hearing. Although the specific time and date for the evidentiary hearing will be determined later, the Board currently contemplates that it will commence between 50 and 65 days after service of the last prehearing evidentiary submission.

8. Witness with Written Testimony Must Be Available in Person. Unless the Board orders otherwise, each party (including the NRC Staff) must, at its own expense and effort, assure that each person for whom it submitted written direct or rebuttal testimony attends the evidentiary hearing in person and is available to testify and to respond orally to questions.

H. Additional Case Management

The Board assumes that all parties will act responsibly. While the Board expects that most legal briefs rarely should exceed 15 pages, we prefer not to impose, beyond the requirements of 10 C.F.R. Part 2, unnecessarily prescriptive rules concerning the length or format of future filings and other administrative matters. As experiences warrants, however, the Board may establish additional case-specific requirements, either on its own initiation or at the suggestion of a party.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Paul S. Ryerson, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
October 16, 2019

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

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

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[Original signed by Wendy C. Moore]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 16th day of October 2019