

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

G. Paul Bollwerk, III, Chair
Dr. Gary S. Arnold
Dr. Sue H. Abreu

In the Matter of

VISTRA OPERATIONS COMPANY, LLC

(Comanche Peak Nuclear Power Plant, Units 1
and 2)

Docket Nos. 50-445-LR
50-446-LR

ASLBP No. 23-978-01-LR-BD01

April 6, 2023

MEMORANDUM AND ORDER
(Scheduling Initial Prehearing Conference)

In this 10 C.F.R. Part 54 initial reactor operating license renewal proceeding, petitioner Citizens for Fair Utility Regulation's (CFUR) April 3, 2023 reply to the March 27, 2023 answers of applicant Vistra Operations Company, LLC (Vistra) and the Nuclear Regulatory Commission (NRC) Staff completes the briefing process contemplated under 10 C.F.R. § 2.309(a), (i) regarding the March 1, 2023 CFUR amended hearing petition.¹ The Licensing Board indicated previously that it was considering convening an initial prehearing conference/oral argument in

¹ See Reply of [CFUR] to Answers of [Vistra] and the NRC Staff (Apr. 3, 2023) [hereinafter CFUR Reply]; see also Amended Petition for Leave to Intervene and Request for Hearing of [CFUR] (Mar. 1, 2023) [hereinafter CFUR Amended Petition]; [Vistra's] Answer Opposing the Petition for Leave to Intervene and Request for Hearing of [CFUR] (Mar. 27, 2023); NRC Staff's Answer Opposing [CFUR's] Hearing Request (Mar. 27, 2023) [hereinafter NRC Staff Answer].

this proceeding for the week of April 17, 2023.² Based on the scheduling information provided by the participants, the Board will conduct an initial prehearing conference in this proceeding on Wednesday, April 19, 2023, beginning at 2:00 p.m. Eastern Time (ET) to hear oral argument regarding the admissibility of CFUR's four proffered contentions.

After reviewing the participants' filings, however, the Board has determined that it will limit the scope of the argument to several specific issues that are set forth in section C below. Further, because of this limited scope, the Board now contemplates that (1) the argument should be completed within approximately one hour; and (2) the session will be conducted with all the participants appearing virtually using the WebEx web conferencing platform.³

Set forth below are details on information technology and administrative matters relevant to the conduct of the conference.

A. Information Technology Matters

The oral argument will be conducted virtually using the Cisco WebEx web conferencing platform. The Board's law clerk Allison Wood will contact the participants' counsel by e-mail to (1) schedule a test session conducted by the Licensing Board Panel's Information Technology staff to identify and mitigate any technical issues concerning access to the status conference; and (2) provide information about accessing the Cisco WebEx web conference to the participants' counsel.

² See Licensing Board Memorandum and Order (Initial Prehearing Order Supplement) (Mar. 6, 2023) at 3 (unpublished).

³ In its March 6, 2023 initial prehearing order supplement, the Board indicated that the participants could attend the conference either in person at the Licensing Board Panel's Rockville, Maryland hearing room or virtually using the Cisco WebEx web conferencing platform. See *id.* Given the resource expenditure involved in appearing in person for what is now an argument of more limited scope as delineated below, having all participant counsel appear virtually seems the most administratively efficient way to proceed in this instance.

For the public and other interested persons, the Board will provide telephone listen-only access to the oral argument. The details on how to access this listen-only connection will be provided in a subsequent issuance.

B. Administrative Matters

The oral argument's primary purpose is to allow the Board to obtain information and ask questions concerning the three issues specified in section C below as they relate to the admissibility of CFUR's contentions under 10 C.F.R. § 2.309(f)(1). The order of presentation and time allotted for each issue is set forth in section C as well.

In their oral presentations, participants' counsel should not merely repeat arguments presented in their written filings. Instead, they should focus on the particular questions posed in section C and provide information that supports their claims regarding those issues. And because the argument is not an evidentiary hearing, the participants should not attempt to introduce evidence during the argument. Consequently, with one exception set forth below, see infra note 5, material that has not already been cited in the participants' pleadings before the Board should not be used.

Further, given the scope of the issues specified by the Board and the time allotted to each of the three participants for argument, the Board does not anticipate hearing from more than one counsel for each participant. Those counsel will also be the only participant representative given WebEx video access to the argument per section A above, with all other counsel and participant representatives being afforded access via the listen-only telephone connection.⁴ Accordingly, on or before noon ET on Wednesday, April 12, 2023, each of the

⁴ The Board recognizes that because the conference is being conducted virtually, a participant's counsel may not be in the presence of those individuals who might be able to provide information that would help frame the most accurate response to a Board inquiry, particularly regarding technical matters. If a participant believes it needs video access to the argument for more than one representative for consultation purposes, by the Wednesday

three participants should provide Board law clerk Allison Wood, allison.wood@nrc.gov, with an e-mail specifying the name of the single counsel who will be making a presentation on behalf of that participant.

Although the participants' counsel will be appearing remotely, the Board encourages all those taking part in the oral argument to conduct themselves as if in a hearing room setting, including seeking to minimize outside noise and interruptions while the conference is ongoing.

C. Issues to be Addressed during the Oral Argument

In presenting arguments before the Board, the participants should focus exclusively on the following issues, the participant order of presentation and time limitations for which are specified below:

1. CFUR's Contention 1 claims that the Vistra environmental report (ER) fails to analyze the cumulative radiological impacts of an additional twenty years of Comanche Peak facility operation in terms of health risks and farm, crop, wildlife, and vegetation impacts. See CFUR Amended Petition at 11–12. In its answer, the NRC Staff asserts that this portion of Contention 1 is inadmissible because (1) the Category 1 generic finding in 10 C.F.R. Part 51, Subpart A, Appendix. B, Table B-1 regarding the radiological impacts of extended operation upon members of the public, plant workers, and terrestrial and aquatic organisms required CFUR to seek a 10 C.F.R. § 2.335 waiver to challenge this impacts finding; and (2) CFUR failed to challenge the plant-specific Category 2 cumulative impacts discussion in ER section 4.12.

deadline specified above it should provide a separate e-mail to the Board's law clerk, with a copy to all other participants, that identifies the additional individual(s) who should be given video access and explains why such access is necessary.

It should be noted that video access will not provide participant's counsel with the ability to communicate with the designated individual(s). Accordingly, counsel should make other communications arrangements that will allow for prompt consultation in formulating a response to a Board question.

See NRC Staff Answer at 17–18. CFUR in its reply asserts that the Staff improperly characterizes its argument as not meeting the federal or NRC definitions of “cumulative impacts,” but does not appear to address the substance of the Staff’s arguments. See CFUR Reply at 5.

Query: Is this “cumulative impacts” claim precluded by one or both of the two reasons assigned by the NRC Staff in its answer? (CFUR: 5 minutes; NRC Staff: 5 minutes; Vistra: 5 minutes; CFUR Reply: 5 minutes.)

2. In Contention 2 CFUR claims that smaller earthquakes could contribute to structural cracking and damage at the Comanche Peak facility. See CFUR Amended Petition at 18–19. The NRC Staff’s answer noted CFUR’s failure to challenge “with specificity” how Vistra carried out its aging management evaluations or developed aging management programs. NRC Staff Answer at 25–26. In its reply CFUR maintains that it could not provide such a discussion because it did not have “meaningful” access to that information. CFUR Reply at 9.

Query: How did CFUR have “meaningful” access to the relevant aging management material, via citations to that material in the Vistra application or otherwise, and how would that material have provided the requisite “specificity” needed to support CFUR’s claim?⁵ (NRC Staff: 5 minutes; Vistra: 5 minutes; CFUR: 5 minutes; NRC Staff Reply: 5 minutes.)

3. In the NRC’s ongoing rulemaking to update the 2013 Generic Environment Impact Statement for reactor license renewals, see NRC Staff Answer at 11 n.54, the agency has proposed that climate change impacts as they concern (1) greenhouse gas emissions from

⁵ If a participant response to this question requires a reference to material not previously cited in this proceeding or to specific uncited portions of otherwise previously cited material (such as the Vistra license renewal application), the participant should advise the Board and the other participants of those references by a filing submitted no later than Friday, April 14, 2023. That filing should not include any arguments regarding this issue or the cited materials.

continued facility operation; and (2) the environmental resource areas (e.g., land use, air quality, water resources) that may be affected by continued plant operations during license renewal would be considered as Table B-1 Category 1 and 2 issues, respectively, with the former not subject to adjudicatory challenge absent the submission of a section 2.335 waiver petition.⁶

Query: Given the Commission's previous recognition that licensing boards should not accept in individual license proceedings contentions that are the subject of general rulemaking by the Commission,⁷ what is the impact, if any, of this proposed rule on the admissibility of Contentions 3 and 4? (CFUR: 5 minutes; NRC Staff: 5 minutes; Vistra: 5 minutes; CFUR Reply: 5 minutes.)

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III, Chair
ADMINISTRATIVE JUDGE

Rockville, Maryland

April 6, 2023

⁶ See Renewing Nuclear Power Plant Operating Licenses—Environmental Review, 88 Fed. Reg. 13,329, 13,345 (Mar. 3, 2023).

⁷ See Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 345 (1999) (citing Potomac Elec. Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85 (1974); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-813, 22 NRC 59, 86 (1985)).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
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VISTRA OPERATIONS COMPANY, LLC) Docket Nos. 50-445-LR
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(Comanche Peak Nuclear Power Plant,)
Units 1 and 2))
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Scheduling Initial Prehearing Conference)** have been served upon the following persons by Electronic Information Exchange.

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**Vistra Operations Company, LLC (Comanche Peak Nuclear Power Plant, Units 1 and 2)
MEMORANDUM AND ORDER (Scheduling Initial Prehearing Conference)**

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Dated at Rockville, Maryland,
this 6th day of April 2023.

Office of the Secretary of the Commission