

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

G. Paul Bollwerk, III, Chairman  
Nicholas G. Trikouros  
Dr. James F. Jackson

In the Matter of

SOUTHERN NUCLEAR OPERATING CO.

(Vogtle Electric Generating Plant, Units 3 and 4)

Docket Nos. 52-025-COL and 52-026-COL

ASLBP No. 09-873-01-COL-BD01

August 17, 2009

MEMORANDUM AND ORDER

(Ruling Regarding Joint Motion on Mandatory Disclosures  
and Request for Additional Scheduling Information)

In this 10 C.F.R. Part 52 combined license (COL) proceeding, as part of its March 5, 2009 ruling granting the Joint Intervenors<sup>1</sup> November 17, 2008 hearing request and admitting their contention SAFETY-1, Low-Level Radioactive Waste Storage, the Licensing Board requested that the parties conduct a meeting to discuss, among other things, the mandatory disclosures required under 10 C.F.R. §§ 2.336(a), (b), 2.1203. See LBP-09-03, 69 NRC \_\_\_, \_\_\_ (slip op. at 28) (Mar. 5, 2009). Thereafter, in response to a joint motion from the parties, pending resolution of the appeals of applicant Southern Nuclear Operating Company (SNC) and the NRC staff regarding the March 5 ruling, the Board temporarily suspended the parties mandatory disclosure obligations. See Licensing Board Order (Suspending Proceeding Pending Appeal) (Mar. 13, 2009) (unpublished). With the Commission's July 31, 2009

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<sup>1</sup> Joint Intervenors include the Atlanta Women's Action for New Directions, Blue Ridge Environmental Defense League, Center for a Sustainable Coast, Savannah Riverkeeper, and Southern Alliance for Clean Energy.

affirmation of the Board's contention admission ruling, see CLI-09-16, 70 NRC \_\_, \_\_ (slip op. at 9) (July 31, 2009), in an August 4, 2009 memorandum and order, the Board re-established the discovery schedule for this proceeding, reminding the parties of their discovery obligations, including those related to the meeting regarding discovery, and requested that the staff provide a schedule. See Licensing Board Memorandum and Order (Re-establishing Administrative/Discovery Schedule) (Aug. 4, 2009) (unpublished).

The Board is now in receipt of (1) an August 7, 2009 joint motion from the parties requesting that it approve a series of agreed-upon protocols that would govern the mandatory disclosure process, see Joint Unopposed Motion Regarding Mandatory Disclosures (Aug. 7, 2009) at 2-3; and (2) an August 13, 2009 letter from the staff outlining its current environmental and safety review schedules for the Vogtle COL application, see Letter from Patrick A. Moulding, NRC Staff Counsel, to Licensing Board at 1-2 (Aug. 13, 2009).

A. Mandatory Disclosure Protocols

With regard to the August 7 joint motion regarding mandatory disclosure, the Board approves the following procedures agreed to by the parties (i.e., Joint Intervenors, SNC, and the staff):

1. The parties need not identify draft versions of any document, data compilation, correspondence, or other tangible thing that must be disclosed.
2. If the same relevant e-mail exists in multiple locations, each party may produce only one copy of that e-mail. If the e-mail exists in both sender and recipient e-mail folders, the party will produce the sender's copy of the e-mail.
3. The parties need not identify or produce any document that has been served on the parties to this proceeding.
4. The parties need not identify or produce press clippings.

5. In connection with the staff's submittal of the hearing file, the staff will identify all relevant documents available via the NRC's website or ADAMS, as required by 10 C.F.R. §§ 2.336(b), 2.1203. The parties shall not otherwise be required to identify or produce docketed correspondence or other documents available via the NRC's website or ADAMS.
6. The parties need not produce documents that are publicly available, but the parties shall produce a log of such documents and where they can be obtained.
7. The parties agree to waive the obligation to provide a privilege log required by 10 C.F.R. § 2.336(a)(3), (b)(5). For example, the parties agree not to produce, at this time, a log identifying attorney-client privileged material, attorney work product, or information subject to the deliberative process privilege. However, the parties shall produce a log of the documents withheld as containing proprietary information. The parties agree to preserve and maintain all privileged documents during the pendency of this proceeding.
8. Until the staff issues the final safety evaluation report (SER) or final environmental impact statement (EIS), as applicable to the admitted contention(s), the continuing obligation of the parties under 10 C.F.R. § 2.336(d) to update their respective disclosures is modified so that information or documents subsequently developed or obtained must be disclosed within thirty days. Following issuance of the final SER or final EIS, as applicable, the continuing obligation of the parties to disclose information or documents will revert to the fourteen-day update period required by 10 C.F.R. § 2.336(d).
9. Pursuant to the provisions of the Board's August 4, 2009 order re-establishing the administrative/discovery schedule following the Commission decision on the

appeal of LBP-09-03, the parties other than the staff will provide initial disclosures by Monday, August 31, 2009. The staff will produce its initial hearing file and mandatory disclosures by Monday, August 31, 2009.

10. A party requesting documents from another party will pay the related expenses.
11. If a party seeks to obtain full disclosure of another party's disclosures, in the absence of an agreement establishing another mutually acceptable request submission date approved by the Board, a party must submit the request to the party from whom full disclosure is sought within ten days of the initial or subsequent disclosure. Thereafter, in the absence of the party's agreement to make the disclosure, the party seeking full disclosure must file a motion to compel disclosure with the Board in accordance with 10 C.F.R. § 2.323.
12. All the parties may, at their option, update their disclosures under 10 C.F.R. § 2.336(d) through the use of e-mail alone. The staff, however, will make the hearing file available via the Electronic Hearing Docket, as required by the Board's March 5, 2009 Order (LBP-09-03) in this proceeding.

B. Request for Additional Scheduling Information

In its August 13 letter, while providing its safety review schedule, the staff indicated that development of a schedule for the draft and final supplemental environmental impact statements for the SNC COL application are awaiting a final decision regarding the Vogtle early site permit (ESP) application. In a second and final partial initial decision issued this date, the Licensing Board in the ESP proceeding authorized issuance of that permit, effective immediately. See Southern Nuclear Operating Co. (Early Site Permit for Vogtle ESP Site), LBP-09-19, 70 NRC \_\_, \_\_-\_\_ (slip op. at 158-60) (Aug. 17, 2009). As a consequence, this Board

requests that on or before Monday, August 31, 2009, the staff provide this Board and the parties with its schedule for the environmental portion of this COL proceeding.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>2</sup>

/RA/

G. Paul Bollwerk, III  
CHAIRMAN

Rockville, Maryland

August 17, 2009

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<sup>2</sup> Copies of this memorandum and order were sent this date by the agency's E-Filing system to counsel for (1) applicant SNC; (2) Joint Intervenors; and (3) the staff.

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NUCLEAR REGULATORY COMMISSION

In the Matter of )  
)  
SOUTHERN NUCLEAR OPERATING ) Docket No. 52-025-COL  
COMPANY ) and 52-026-COL  
)  
(Vogtle) )  
)  
(Combined Operating License) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (RULING REGARDING JOINT MOTION ON MANDATORY DISCLOSURES AND REQUEST FOR ADDITIONAL SCHEDULING INFORMATION) have been served upon the following persons by Electronic Information Exchange.

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Docket No. 52-025 and 52-026-COL  
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DISCLOSURES AND REQUEST FOR ADDITIONAL SCHEDULING INFORMATION)

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[Original signed by Evangeline S. Ngbea]  
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Dated at Rockville, Maryland  
this 17<sup>th</sup> day of August 2009