

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

G. Paul Bollwerk, III, Chair
Dr. Anthony J. Baratta
Dr. William W. Sager

In the Matter of

TENNESSEE VALLEY AUTHORITY

(Bellefonte Nuclear Power Plant Units 3 and 4)

Docket Nos. 52-014-COL and 52-015-COL

ASLBP No. 08-864-02-COL-BD01

August 8, 2012

MEMORANDUM AND ORDER

(Incorporating Revisions to the Rules of Practice)

On August 3, 2012, the agency published in the Federal Register a notice of the adoption of a final rule that outlines changes to its 10 C.F.R. Part 2 rules of practice. See Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562 (Aug. 3, 2012). Among the alterations is one that potentially impacts scheduling for this proceeding. A change incorporated into 10 C.F.R. § 2.309(i)(1) provides that the applicant and the NRC staff have twenty-five days to file an answer to a hearing petition, or to any subsequently filed request to admit a new or amended contention. See id. at 46,592. This revision can be compared with the provisions of the Licensing Board's initial prehearing order setting a fourteen-day time period for an answer to a motion to admit a new or amended contention. See Licensing Board Memorandum and Order (Initial Prehearing Order) (June 18, 2008) at 6 n.4 (unpublished).

According to the explanation in the agency's statement of considerations regarding the effectiveness of these rule changes relative to any ongoing proceedings, any "new or amended

requirements will be effective and govern all obligations and disputes that arise after the effective date of the final rule,” i.e., September 4, 2012. Id. at 46,562. The statement of considerations thereafter provides an example regarding the impact of the rule’s changes on the fourteen-day mandatory discovery disclosure deadline under existing section 3.336(d), which (absent some other party agreement) is changed to a specified monthly due date. The agency’s statement of considerations indicates that a monthly disclosure schedule consistent with the new language in section 2.336(d) is to take effect following the September 4 effective date of the rule change.¹ See id. These provisions of the agency’s statement of considerations effectiveness account thus suggest that, absent some new Board order to the contrary reflecting an agreement of the parties or some other factor that provides an appropriate basis for establishing another time period, the final rule’s twenty-five-day time frame governing applicant and staff answers to a new/amended contention admission motion would govern in this proceeding.

Given there currently is no already-established briefing schedule that would be affected by this rule change, absent some request from the parties to the contrary submitted in accordance with the schedule established below for responding to this issuance, the Board will consider the twenty-five-day response time established by revised section 2.309(i)(1) for answers to motions to admit new/amended contentions as governing this proceeding going forward.²

¹ The Board notes that for this proceeding the parties recently proposed, and the Board adopted, a mandatory discovery schedule that seemingly conforms with revised section 2.336(d). See Licensing Board Memorandum and Order ((Revising Schedule for Mandatory Disclosure/Hearing File Updates) (Apr. 20, 2012) at 1-2 (unpublished).

² In this regard, we also note that under another recent change embodied in section 2.309(j)(1), the period within which a licensing board is to make a decision on a motion to admit a new/amended contention is designated as forty-five days from either the filing of the
(continued...)

If, after reviewing the recent modifications to the agency's rules of practice, any party sees any other revision that it believes requires an additional scheduling change or some other Board action in this proceeding, it should bring the matter to the Board's attention in a response to this issuance that should be filed on or before Monday, August 20, 2012.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III
CHAIR

Rockville, Maryland

August 8, 2012

²(...continued)
movant's reply or any prehearing conference regarding the motion, whichever is later. See
77 Fed. Reg. at 46,592. For scheduling purposes, we will utilize this revision as well.

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Incorporating Revisions to the Rules of Practice)** have been served upon the following persons by the Electronic Information Exchange and by electronic mail as indicated by an asterisk*.

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[Original signed by Nancy Greathead]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 8th day of August 2012