

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

Before Administrative Judges:

Ronald M. Spritzer, Chairman
Dr. Gary S. Arnold
Dr. Thomas J. Hirons

In the Matter of:

ENTERGY NUCLEAR OPERATIONS, INC.

(Palisades Nuclear Plant)

Docket No. 50-255-LA-2

ASLBP No. 15-939-04-LA-BD01

July 14, 2015

INITIAL SCHEDULING ORDER

After reviewing the parties' written submissions and conferring with the parties during a conference call on July 8, 2015, the Board adopts this Order to govern this proceeding. The Board has previously determined that the hearing in this proceeding will be conducted using the simplified hearing procedures of 10 C.F.R. Part 2, Subpart L.¹

A. Mandatory Disclosures. The parties submitted a joint proposal on mandatory disclosures required by 10 C.F.R. § 2.336 and the hearing file required by 10 C.F.R. § 2.1203.² The Board agrees that the disclosure protocol set forth in the Joint Proposal will govern the parties' disclosure obligations under Sections 2.336 and 2.1203, with one modification:

1. The parties may limit the mandatory discovery disclosures to final documents that they and their contractors develop, and need not include drafts (including comments on drafts, transmittals of drafts, resolution of comments on drafts, and similar documents). Handwritten notes on a final document constitute a separate document, and must be produced as well as the original document. If a document otherwise qualifying as a draft has been shown by one party (or its agents) to another party (or its agents), then the document does not qualify as an exempt draft. Examples of documents that must be disclosed

¹ Licensing Board Order (Identifying Hearing Procedures and Scheduling Conference Call) (June 26, 2015) (unpublished).

² Joint Proposal on Mandatory Disclosures and Schedule (July 7, 2015).

and that do not qualify as exempt drafts include: (a) a draft response to a request for additional information that Entergy has shown the NRC Staff; (b) a draft guidance document that the NRC Staff has shown Entergy; or (c) a draft document that the NRC Staff reviewed during a conference with Entergy. Provided, however, that nondocketed information reviewed by NRC Staff during an audit or inspection, that is not removed from Entergy's site, need not be disclosed if it otherwise qualifies as a "draft" document.

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 may produce the sender's copy of the e-mail. If a chain or string of e-mails exists, the party need only produce the last e-mail in the chain or string, provided that it includes all of the previous e-mails and recipients of the chain or string.
3. To the extent reasonably practicable, each party will provide electronic copies of documents in a word-searchable, PDF format.
4. The parties have agreed to waive the requirement in 10 C.F.R. §§ 2.336(a)(3) and 2.336(b)(5) to produce privilege logs. For example, the parties agree not to produce a log identifying attorney-client privileged material, attorney work product, or information subject to the deliberative process privilege. The parties, however, will still produce as part of their disclosures lists of any documents withheld as containing sensitive unclassified non-safeguards information ("SUNSI"), including, but not limited to, proprietary, confidential commercial, and security-related information.
5. A party need not identify or produce any document that already has been served on the other parties to this proceeding.
6. In connection with the Staff's submittal of the hearing file, the Staff will identify all documents available via the NRC's website or ADAMS, as required by 10 C.F.R. §§ 2.336(b), 2.1203. Other parties need not identify any document that already has been identified by the Staff.³
7. The parties need not produce publicly-available documents. Each party, however, will produce as part of its disclosures a log identifying publicly-available documents upon which the party may rely at hearing and indicating the location of such documents, either through ADAMS Accession Number, web address or other clearly-specified location.
8. The parties need not identify or produce press clippings, including web clippings, unless they plan to rely on them at hearing.
9. The duty to update mandatory disclosures and the hearing file shall terminate 30 days before submittal to the Board of initial direct testimony. If a contention has been dismissed, then the duty to update mandatory disclosures shall terminate with respect to that contention upon issuance of the Board order dismissing that contention.

³ The Board has changed the second sentence of this paragraph to clarify the intent.

Initial disclosures are due July 31, 2015.⁴ Monthly updates are due by the first day of every month beginning September 1, 2015, unless the parties agree on a different schedule.⁵

B. New and Amended Contentions.

1. Consolidated Briefing. If a party wishes to file a new or amended contention, the party must file simultaneously the motion requesting leave to file the contention and the substance of the proposed contention. This consolidated filing must specify how the motion satisfies the “good cause” criteria of 10 C.F.R. § 2.309(c)(1)(i)–(iii) and how the proposed contention satisfies the admissibility criteria of 10 C.F.R. § 2.309(f)(1)(i)–(vi).

Within twenty-five (25) days after service of the motion and proposed contention, any other party may file an answer responding to the motion and contention. Within seven (7) days of service of the answer, the movant may file a reply.

2. Timeliness. Any new or amended contentions must be filed in compliance with 10 C.F.R. § 2.309(f)(2), including the requirements in section 2.309(c)(1)(i)–(iii) that any new or amended contention must be submitted “in a timely fashion” based on new information that is materially different from that previously available. The Board will consider a proposed new or amended migrated contention timely under 10 C.F.R. § 2.309(c)(1)(iii) if it is filed within thirty (30) days of the date when the new and materially different information on which it is based first becomes available.

This 30-day deadline applies to all new or amended contentions, including those based on the Staff’s Safety Evaluation. If Intervenors believe that the Safety Evaluation requires additional time for review because of its length or complexity, or have some other specific reason why 30 days is not sufficient time to prepare a new or amended contention, they should

⁴ Licensing Board Order (Denying Entergy’s Motion to Defer Initial Disclosures) (July 9, 2015) (unpublished).

⁵ See 10 C.F.R. § 2.336(d).

promptly request an extension of the deadline after consulting with the other parties. The Board will grant an extension only for good cause shown.⁶

C. Status Report. The NRC Staff currently expects to issue the Safety Evaluation by November 2015.⁷ The Staff should promptly notify the Board if this estimate changes.

D. Schedule. To expedite the process and for ease of review, the Board has chosen a two-step evidentiary process with written direct testimony from all parties followed by written rebuttal testimony from all parties. Any motions for summary disposition are due forty (40) days before the deadline for direct testimony.

The schedules below will govern this proceeding. For these schedules, SE is the date on which the Safety Evaluation becomes available for public review.

TABLE 1
If new or amended contentions are filed, the following deadlines apply:

SE+30	New or amended contentions
SE+55	Answers to new or amended contentions
SE+62	Replies to answers to new or amended contentions
SE+107	Board Order (O) on admission of new or amended contentions (if oral argument is not required)
O+14	Complete mandatory disclosures
O+30	Summary disposition motions
O+70	All written direct testimony, statements of position, and exhibits
O+115	All written rebuttal testimony, statements of position, and exhibits
O+145	Evidentiary Hearing (Hrg)
Hrg+90	Initial decision

⁶ See 10 C.F.R. § 2.307(a); FirstEnergy Nuclear Operating Co. (Davis-Besse Nuclear Power Station, Unit 1), LBP-15-1, 81 NRC 15, 30 n.72 (2015) (“The Commission has suggested that if an intervenor cannot meet the requirements for filing a contention under the new 10 C.F.R. § 2.309(c)(1), he or she can still take advantage of an extension request under 10 C.F.R. § 2.307 ‘if unanticipated events, such as a weather event or unexpected health issues, prevented the participant from filing for a reasonable period of time after the deadline.’” (quoting 77 Fed. Reg. 46,562, 46,571–72 (Aug. 3, 2012))).

⁷ Letter from Anita Ghosh, Counsel for the NRC Staff, to the Board (July 1, 2015).

TABLE 2

If no new or amended contentions are filed, the following deadlines apply:

SE+30	Summary disposition motions
SE+70	All written direct testimony, statements of position, and exhibits
SE+115	All written rebuttal testimony, statements of position, and exhibits
SE+145	Evidentiary Hearing (Hrg)
Hrg+90	Initial decision

E. Motions to Modify the Schedule. The Board understands that modifications of the schedule may be appropriate based on future developments. Any motion for an extension or enlargement of time or other modification should be filed within ten (10) days of when the party learns of the facts and circumstances establishing the need for an extension or modification.⁸ The movant must first attempt to resolve the issue with the other parties, and if unable to do so must include the certification required by 10 C.F.R. § 2.323(b) stating that the party made a sincere effort to contact the other parties and to resolve the issues raised in the motion.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Ronald M. Spritzer, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 14, 2015

⁸ See 10 C.F.R. § 2.323(a).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
ENTERGY NUCLEAR OPERATIONS, INC.)	Docket No. 50-255-LA-2
(Entergy))	
)	
(Palisades Nuclear Plant))	
)	

CERTIFICATE OF SERVICE

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

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop: O-7H4
Washington, DC 20555-0001
ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-16C1
Washington, DC 20555-0001
Hearing Docket
hearingdocket@nrc.gov

U.S. Nuclear Regulatory Commission.
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
Washington, DC 20555-0001

Ronald M. Spritzer, Chair
Administrative Judge
ronald.spritzer@nrc.gov

Gary S. Arnold,
Administrative Judge
gary.arnold@nrc.gov

Thomas J. Hiron
Administrative Judge
thomas.hiron@nrc.gov

Sachin Desai, Law Clerk
sachin.desai@nrc.gov

Nicole Pepperl, Law Clerk
nicole.pepperl@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15D21
Washington, DC 20555-0001
Anita Ghosh, Esq.
Joseph Lindell, Esq.
David Roth, Esq.
Daniel Straus, Esq.
John Tibbetts, Paralegal
Edward Williamson, Esq.
anita.ghosh@nrc.gov
joseph.lindell@nrc.gov
david.roth@nrc.gov
daniel.straus@nrc.gov
john.tibbetts@nrc.gov
edward.williamson@nrc.gov

Docket No. 50-255-LA-2
INITIAL SCHEDULING ORDER

Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Raphael P. Kuyler, Esq.
Paul Bessette, Esq.
Ryan Lighty, Esq.
Martin O'Neill, Esq.
rkuyler@morganlewis.com
pbessette@morganlewis.com
rlighty@morganlewis.com
martin.oneill@morganlewis.com

Beyond Nuclear, Don't Waste Michigan, Michigan
Safe Energy Future – Shoreline Chapter, Nuclear
Energy Information Service "The Petitioners"
316 N. Michigan St., Street, 520
Toledo, OH 43604-5627
Terry Lodge, Counsel for the Petitioners
tjlodge50@yahoo.com

Entergy
William B. Glew, Jr., Esq.
Jeanne Cho, Esq.
440 Hamilton Avenue
White Plains, NY 10601
wglew@entergy.com
jcho1@entergy.com

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

Dated at Rockville, Maryland
this 14th day of July, 2015