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Docket Number: 50-390-CivP et al.

Location: Rockville, Maryland

Date: Friday, September 13, 2002

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

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In the Matter of: : Docket Nos. 50-390-CivP  
TENNESSEE VALLEY AUTHORITY : 50-327-CivP; 50-328-CivP  
: 50-259-CivP; 50-260-CivP  
(Watts Bar Nuclear Plant, : 50-296-CivP  
Unit 1; Sequoyah Nuclear : ASLPB No. 01-791-01-CivP  
Plant, Units 1 & 2; Browns : EA 99-234  
Ferry Nuclear Plant, :  
Units 1, 2 & 3) :

-----X

Nuclear Regulatory Commission  
One White Flint North  
11545 Rockville Pike  
Rockville, Maryland

Friday, September 13, 2002

The above-entitled matter came on for hearing,  
pursuant to notice, at 9:00 a.m.

BEFORE:

CHARLES BECHHOEFER, Chairman

ANN MARSHALL YOUNG, Administrative Judge

RICHARD F. COLE, Administrative Judge

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## I-N-D-E-X

## E-X-H-I-B-I-T-S

<u>Exhibit Nos.</u>	<u>Document</u>	<u>Marked</u>	<u>Rec'd</u>
<u>Joint</u>			
9	2-92 NSRB Minutes		5708
<u>TVA</u>			
57	Memo Re: Fiser DOL Complaint		5709
70	NSRB Meeting Minutes		5710
112	Bench Memo		5719
118	Page from Fiser Planner, 6-30-94		5720
121	Page from Fiser Planner, 6-29-94		5720
<u>Staff</u>			
55	HRIS Printout Re: Grover		5723
128	Head Count Numbers for 1996		5723
166	Record of Interview, Kathy Welch		5724

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P-R-O-C-E-E-D-I-N-G-S

9:00 a.m.

CHAIRMAN BECHHOEFER: Good morning, ladies and gentlemen. I note two matters for the record. First, that today is Friday the 13th for whatever that is worth. But, second, we will start the session this morning sitting as a quorum. Judge Young had a flat tire and has not been able to make it in to the office yet. And we will sit as a quorum until she gets here.

So it's my understanding that this morning we first should -- we're going to try to complete the record on various documents, but I understand there's been some discussions about submitting copies of certain documents with personal information redacted.

MR. MARQUAND: We had a discussion, Judge, before you came in the room with Counsel and Judge Cole and with respect to those lengthy documents that were offered yesterday and rejected, 83 through 92, 95 and 96, 109 and 110. They have a lot of privacy information in them, and we thought we had a possible solution we'd like to suggest and make sure everybody's agreeable to. And that is yesterday when we first talked about them, the Board suggested that we offer -- that we go off the record and summarize the numbers that were in there, but that obviously

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1 would have taken a lot of time.

2 What I would suggest is we have a set of  
3 those and we can go through them and count up the  
4 numbers and simply offer a document for -- a one-page  
5 document in lieu of a big stack of documents in each  
6 particular case. For example, we'd offer one page for  
7 TVA Exhibit 83, and that one-page Exhibit 83, if the  
8 numbers would bear it out, would say something that  
9 involved 55 employee retention registers and employees  
10 who were RIF'd or received service notices. And  
11 that's all that that document would have and wouldn't  
12 have anybody's names or Social Security numbers but  
13 just simply a number of employees that were covered by  
14 that document, and we would simply substitute that  
15 summary page in lieu of the large number of individual  
16 notices and retention registers. And we --

17 JUDGE YOUNG: Is there any objection to  
18 that?

19 MR. DAMBLY: No. As a matter of fact, I  
20 wouldn't even object to admitting a one-page document  
21 for Exhibit 83 that says whatever it is, how many  
22 people at Watts Bar or Browns Ferry were covered.

23 JUDGE YOUNG: Then it does not appear you  
24 need to make any argument about it.

25 MR. MARQUAND: Well, I'm just saying

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1 that's that what we -- we weren't arguing, we were  
2 saying we could do that and substitute that for the  
3 exhibits so we wouldn't have to deal with the privacy  
4 issues of going through every single page --

5 JUDGE YOUNG: I understand that.

6 MR. MARQUAND: Okay. And if everybody --

7 JUDGE YOUNG: And there's no objection, so  
8 I see no problem.

9 CHAIRMAN BECHHOEFER: I see no problem.

10 MR. MARQUAND: Okay. Well, we'll do that.

11 CHAIRMAN BECHHOEFER: By the way, let the  
12 record reflect that Judge Young was able to make it to  
13 the office, notwithstanding her flat tire.

14 JUDGE YOUNG: I was told it was Friday the  
15 13th, so I don't know what that has to do with it.

16 CHAIRMAN BECHHOEFER: We started the  
17 record that way.

18 MR. MARQUAND: I hope that's the worst  
19 thing that happens.

20 JUDGE YOUNG: I hope so. I hope I can get  
21 it fixed. Has anything else been raised?

22 MR. MARQUAND: No.

23 JUDGE YOUNG: Okay. Have we gotten the  
24 exhibits marked since yesterday -- from yesterday?  
25 Okay. Are there any other preliminary matters?

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1 CHAIRMAN BECHHOEFER: I don't know if it's  
2 preliminary but we have to set schedules for filing  
3 proposed findings.

4 JUDGE YOUNG: Judge Bechhoefer is saying  
5 that we need to proposed findings of fact and  
6 conclusions of law, and I don't see any reason not to  
7 do that at this point and deal with the exhibits  
8 later. One thing that I would say is that I want  
9 everyone to be very clear that you need to cite to  
10 pages and lines of exhibits and transcripts on every  
11 fact that you propose us to adopt, and also address  
12 the legal issues that we've discussed earlier on, and  
13 I don't think there's any need to repeat those, is  
14 there?

15 MR. MARQUAND: No.

16 JUDGE YOUNG: They'll be in the  
17 transcript.

18 MR. MARQUAND: But in terms of format, do  
19 you wish to have this in terms of concluded findings  
20 and fact and conclusions of law in a brief or  
21 separately or how would you -- how does the Panel want  
22 --

23 MR. DAMBLY: The Staff -- I would suggest  
24 that in this type of a case proposed findings are just  
25 an arcane thing that have no meaning, but if you want



1       them filed, we'll file them. We intend to file a  
2       separate post-hearing brief like you would find at DOL  
3       or MSPB or the EEOC when you're dealing with  
4       credibility and who did what to who. This is not a  
5       normal licensing case where you just trunk out a bunch  
6       of facts. So we'll end up filing two briefs if you  
7       insist on --

8               JUDGE YOUNG: The normal way to do this is  
9       -- it doesn't make any difference to me whether you  
10      include your brief in your proposed conclusions of  
11      law, which is done very often, but I think that you do  
12      need to tell us what facts you want us to find, and  
13      you do need to cite to the record for those facts,  
14      because a brief arguing the law with no facts to  
15      support is not going to be very helpful to us.

16             MR. DAMBLY: I'm sorry. I wasn't clear.  
17      When I say post-hearing brief, I don't mean just the  
18      legal issues. A post-hearing brief that one would  
19      file in front of the Department of Labor, in front of  
20      the Merit Systems Protection Board --

21             JUDGE YOUNG: You're talking semantics  
22      then, in other words.

23             MR. DAMBLY: -- deals with all the facts,  
24      and he said this and she said that, and this happened,  
25      and there's this document and whatever --

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1 JUDGE YOUNG: Whatever you want to call  
2 it. I think the issue is you need to propose to us  
3 what facts you think we should find, and you need to  
4 cite to the record for that, and you need to make all  
5 your legal arguments. You can entitle it whatever you  
6 want to entitle it.

7 MR. DAMBLY: Well, but it's not a proposed  
8 -- issue of a proposed findings of fact. I mean  
9 that's a separate kind of -- very stilted document.  
10 If that's what you want, we'll file one of those, but  
11 we're also going to file a separate one.

12 JUDGE YOUNG: Call it whatever you want.  
13 Address facts and law.

14 CHAIRMAN BECHHOEFER: Right. Now, the  
15 Staff -- as I understand the rules, the Staff files  
16 first a -- in fact, you should file a proposed  
17 decision, spell out everything that you want us to  
18 find, and the rules say 30 days from the close of the  
19 record. I assume that you will need somewhat more  
20 time for that, and I would like some suggestions. And  
21 we'll assume for purposes of calculating times that  
22 the record will be closed today. Whether or not it  
23 will be because of the documents, that's beside the  
24 point. But assume -- calculate from today 60 days, is  
25 that a -- I mean I'm not --

1 MR. DAMBLY: Actually, we were thinking 90  
2 would be adequate, given this record and what it's  
3 going to take to put together the proposed findings  
4 and the brief.

5 JUDGE YOUNG: Which puts us again over the  
6 holiday season working on your order. I think 60 days  
7 would be reasonable.

8 MR. DAMBLY: Well, since they're going to  
9 file after we do, it won't put you anywhere.

10 CHAIRMAN BECHHOEFER: No. They will file  
11 --

12 JUDGE YOUNG: I don't see any reason not  
13 to file simultaneously.

14 CHAIRMAN BECHHOEFER: I do, I do, I do.  
15 I think that simultaneous too many things get off in  
16 the wind and you have to guess what the parties'  
17 positions are.

18 JUDGE COLE: With simultaneous filings,  
19 sometimes you get ships passing in the night.

20 CHAIRMAN BECHHOEFER: Yes.

21 MR. DAMBLY: We normally handle that by  
22 replying --

23 CHAIRMAN BECHHOEFER: Well, you get that  
24 too, but the Staff will have, we think -- some period  
25 after the Staff files, the TVA will file its own

1 proposed findings, and I might say to the extent TVA  
2 doesn't disagree with particular factual findings,  
3 findings of fact, numbered findings of fact, we would  
4 appreciate your stating, well, both the ones you  
5 disagree with and the ones you agree with. Because if  
6 there are proposed findings that one party proposes  
7 and the other party doesn't disagree with, we may well  
8 just adopt that as a finding of fact. And I would  
9 think that type of thing would apply to the timing of  
10 the hearing, the noticing of various matters. Of  
11 course, if there's any disagreement to those, TVA  
12 should so state.

13 JUDGE YOUNG: I just want to state for the  
14 record, I've had very good experience having  
15 simultaneous filings and then replies to each other's  
16 filings. The manner in which we're proposing to  
17 proceed at this point is going to take quite a long  
18 period of time and not be terribly efficient. If  
19 that's what the majority of the Board wants to do,  
20 then certainly we can do that, but I think that the  
21 Commission has recommended the use of simultaneous  
22 filings whenever possible. I find it to be a very  
23 efficient way of handling things, and it gets things  
24 resolved much more quickly.

25 MR. MARQUAND: Let me ask, I mean

1       apparently there is some sort of constriction here or  
2       restriction with respect to the timing for the Panel  
3       to issue a decision; is that right?

4               JUDGE YOUNG:   We normally try to do our  
5       orders within 60 days of the final filing.

6               MR.   MARQUAND:       So   we're   talking,  
7       basically, two months.   Counsel mentioned that he  
8       would like to have 90 days to file his initial filing,  
9       whatever it might be, and if we -- let's explore the  
10      possibilities if we did simultaneous filings, say 90  
11      days, and then there was another 45 to 60 days to file  
12      replies, I think that -- and then -- that would put us  
13      well beyond the holidays for the Panel to even begin  
14      having to sift things out.

15              JUDGE YOUNG:   Well, the holidays are  
16      obviously a consideration just in terms of  
17      accommodating personal schedules, but they're not the  
18      main thing. I think that if you don't do simultaneous  
19      filings, you're talking about three periods of time,  
20      and then possibly after that there will be another  
21      effort by TVA to --

22              MR. MARQUAND:   Understand.

23              JUDGE YOUNG:   -- respond to the response,  
24      and so --

25              MR. MARQUAND:   We certainly want an

1 opportunity -- I don't disagree with simultaneous  
2 filings, and I think if the parties each had 90 days  
3 to do -- somewhere in that neighborhood to do their  
4 initial filing, and then there was a 45- to 60-day  
5 response time to respond to the initial briefs, I  
6 think that would be -- that would suit our needs. I  
7 don't know about Staff's.

8 MR. DAMBLY: It's fine with us.

9 CHAIRMAN BECHHOEFER: Well, I think the  
10 Board's efforts would be, I won't say easier, but it  
11 would assist us in preparing a decision if we had  
12 consecutive filings, as the rules state. They're not  
13 binding, but I think that to the extent there are  
14 many, many formal type findings, formalistic type  
15 findings, we could start with that, and it would be  
16 useful for us to know then whether -- later on whether  
17 TVA agrees or disagrees. If you agree, it's likely  
18 we'll make that finding.

19 JUDGE YOUNG: They can do that in their  
20 responses.

21 MR. DAMBLY: I would just note for the  
22 record too exactly who files when is not all that  
23 clear in the rules, because the rules are written for  
24 licensing proceedings and not enforcement. And it  
25 says the Staff files X number of days after the

1 licensee also.

2 CHAIRMAN BECHHOEFER: Correct.

3 MR. DAMBLY: So I mean it's -- which is  
4 not going to be the case here, and I'm not suggesting  
5 it. But it's nothing --

6 CHAIRMAN BECHHOEFER: Well, those rules  
7 are incorporated by reference in Subpart B of Part 2,  
8 so they do apply to --

9 MR. DAMBLY: No, I know they apply to this  
10 proceeding, I'm just saying the way it's set up would  
11 be normally the Applicant files -- and it says  
12 specifically the Staff files X number of days after  
13 everybody else. Now, in this case, the Staff happens  
14 to have the burden, so it doesn't fit in the rule, and  
15 I understand we should either go simultaneously or we  
16 go first, but it's not abundant, and my only point is  
17 Part 2, as it pertains to this proceeding, is not all  
18 that clear.

19 MR. MARQUAND: And as Judge Young has  
20 noted, the Staff goes first and then we file our main  
21 brief, and then Staff files a reply. TVA would want  
22 to have the opportunity to file a response, and going  
23 consecutively, I'm not sure I see an end to that  
24 briefing. Filing simultaneously seems to me to solve  
25 that problem.

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1 MR. DAMBLY: And I'm sure, given that we  
2 would have the burden to prove, we always get to file  
3 last at some point, so if they wanted to reply our  
4 reply, we'd probably want to reply to their reply.

5 JUDGE YOUNG: We could probably extend  
6 this all the way through the end of 2003 if you really  
7 want to do that.

8 MR. DAMBLY: November of 2003 is fine for  
9 me.

10 JUDGE YOUNG: I think it would be most  
11 appropriate to have 60 days as a deadline for both  
12 parties to file their initial filings, and then if you  
13 want 45 to 60 days after that, that would be the most  
14 efficient way to handle it. If you really think you  
15 need 90 days, I don't have any problem with that, but  
16 I think that --

17 JUDGE COLE: One thing we might consider  
18 if more time is needed is we might not close the  
19 record today until the documents come in. That would  
20 give you a little additional time.

21 MR. MARQUAND: The other thing is we  
22 obviously aren't going to have all the transcripts  
23 until they're all on ADAMS, and the last time it took  
24 a good 30 days or 45 days to get all those transcripts  
25 on there. So we'll be at a disadvantage until that

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1 happens.

2 JUDGE YOUNG: I think there's maybe an  
3 accommodation that could be made for electronic  
4 copies.

5 CHAIRMAN BECHHOEFER: Well, I think the  
6 parties should serve their proposed findings, both  
7 electronically and --

8 MR. MARQUAND: Certainly.

9 CHAIRMAN BECHHOEFER: -- paper copies are  
10 still required under the rules.

11 MR. MARQUAND: In fact, we -- maybe the  
12 easiest thing to do since they're going to be so  
13 voluminous would be to give you a CD with them on  
14 them, I don't know.

15 JUDGE YOUNG: The proposed findings?

16 MR. DAMBLY: Yes. I would assume they  
17 will be quite large, could be several hundred pages.  
18 And I'm not sure what the limitation on e-mail  
19 transmittals around here size-wise is.

20 JUDGE COLE: Did we put a limitation on  
21 the proposals?

22 MR. DAMBLY: Five hundred pages?

23 (Laughter.)

24 JUDGE COLE: You mean pounds.

25 JUDGE YOUNG: I think that you all are

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1 perfectly capable of keeping this under 100 pages,  
2 well under 100 pages.

3 MR. MARQUAND: I don't think the findings  
4 will be.

5 MR. DAMBLY: I don't think there's any way  
6 in the world to keep this under 100 pages.

7 MR. DAMBLY: No, I don't believe so.

8 MS. EUCHNER: And, Your Honor, one of the  
9 reasons for that is if you do want it in the format of  
10 the proposed findings, pretty much every sentence has  
11 to be its own numbered paragraph.

12 JUDGE YOUNG: Not necessarily.

13 MR. MARQUAND: No, I think you could have  
14 paragraphs with proposed findings and citations of  
15 record, but I think by the time you deal with all the  
16 facts and the credibility issues you talked about, as  
17 well as the legal issues, it's going to run upwards of  
18 200 pages. I have had experience in this several  
19 times in the last several years.

20 JUDGE YOUNG: I have also, and it's not  
21 necessary, but if you all feel the need to do that,  
22 again, go right ahead. But I think that we need to  
23 encourage conciseness to the degree possible, and I  
24 would ask the parties to be cognizant of that.  
25 There's no need to file every sentence as a separate

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1 of finding of fact. You can do it in paragraphs as  
2 long as you cite to the record. Try to be as concise  
3 as you can be.

4 CHAIRMAN BECHHOEFER: Each sentence may  
5 need separate citations, however, of a paragraph.

6 MR. MARQUAND: Right. But we're not paid  
7 by the hour, so we're not going to be padding this.

8 MR. DAMBLY: You're not going to have Dave  
9 help you?

10 (Laughter.)

11 MR. MARQUAND: And, Your Honors, to  
12 express my opinion, we would request simultaneous  
13 briefing, initial simultaneous brief, whether it's  
14 findings of briefs, followed by simultaneous replies.  
15 I don't think there's any secret what the legal issues  
16 or factual issues in this case are.

17 (Judges consult.)

18 JUDGE COLE: So neither the Staff nor TVA,  
19 both of them would be in favor of simultaneous  
20 filings?

21 MR. DAMBLY: Yes, Your Honor.

22 MR. MARQUAND: Yes, sir.

23 JUDGE YOUNG: And in your responses,  
24 obviously, you need to address everything that the  
25 other party has put forward, and if you disagree with

1 things, indicate your disagreement and indicate why.  
2 And if you want to cite to other parts of the record,  
3 you need to do that as well.

4 MR. MARQUAND: Let me suggest, and maybe  
5 we can consider how this is done, but, for instance,  
6 in many federal courts when you're dealing with  
7 summary judgment, they require a document -- they  
8 require several documents. One of the documents on  
9 summary judgment is sort of a findings kind of thing  
10 that states undisputed facts. And then when the  
11 opponent to the movement has to respond to that, they  
12 file a brief, but they also file a separate document  
13 which addresses serially the undisputed facts asserted  
14 by the movement.

15 And it sounds to me like what Judge  
16 Bechhoefer is saying, that he wants a document that  
17 specifically addresses the findings. I'll tell you  
18 what, if we got into that, then we would -- supposed  
19 we, TVA, had 100 pages of numbered findings and  
20 paragraphs. That would require almost the same sort  
21 of -- unless -- almost the same sort of document in  
22 response by the Staff then to address each of those  
23 separate findings and say why those findings were --  
24 why they disagreed with a particular finding. That  
25 could even run longer than the original document.

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1 JUDGE COLE: Yes. I bet you're right.

2 JUDGE YOUNG: I think that it's possible  
3 to do these things in single documents and to try to  
4 be as concise as possible. I've done a lot of  
5 personnel cases like this. I know it's possible. I  
6 encourage the parties to be as concise as possible and  
7 to address what you disagree with. If you want to do  
8 it in separate documents, I have no objection. You  
9 can file whatever you want, but I think it's more  
10 efficient to try to be as concise as possible.

11 MR. MARQUAND: The separate documents, in  
12 my opinion, turn out to be simply formalities that  
13 nobody --

14 JUDGE YOUNG: Exactly. I think you're  
15 exactly right.

16 MR. MARQUAND: -- really pays any  
17 attention to.

18 JUDGE YOUNG: It's a matter of semantics  
19 and formalities. Whatever you call them, whether you  
20 do them in single or multiple documents, the idea is  
21 to try to be as concise as possible, be direct, cite  
22 to the record, give your legal arguments concisely and  
23 give us authority for all legal arguments that you  
24 make. It's pretty straightforward.

25 MR. MARQUAND: I'm not sure that I see a

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1 way to -- I agree with you, Judge Young, but I'm not  
2 sure I understand how to deal with Judge Bechhoefer's  
3 request to deal with every specific finding in a  
4 response and say whether we agree or disagree and why  
5 we don't agree with the specific finding while still  
6 keeping the document tight.

7 JUDGE YOUNG: Well, obviously, depending  
8 upon what you get, you would need to respond to it.  
9 And if you get a long document, you would have a  
10 longer response, at least with regard to the findings.  
11 But that's --

12 CHAIRMAN BECHHOEFER: Well, I think the  
13 Board needs to know where the parties -- which  
14 proposed findings that the parties have no dispute  
15 over or, to the contrary, ones that they do dispute.  
16 And just submitting us different bottom line results  
17 isn't going to help. I mean it's not going to really  
18 tell us --

19 MR. DAMBLY: But in the reply briefs or  
20 reply findings or whatever we're going to call those,  
21 we could easily have in the first page, "The following  
22 proposed findings by TVA are not disputed by the  
23 Staff," and just list them without --

24 MR. MARQUAND: If they were listed, that  
25 would be the way --

1 MR. DAMBLY: That would be one paragraph  
2 that lists however many findings we don't contest, and  
3 they could put the same thing in theirs, and that  
4 ought to tell you what we don't contest. Anything  
5 that's not in that paragraph is contested.

6 JUDGE YOUNG: And you'll give reasons for  
7 why you contest it?

8 MR. MARQUAND: Well, I'm not sure we would  
9 individually address each one. I think your own  
10 findings -- it's not like we're going to be like this.  
11 I think those findings are implicitly going to --

12 JUDGE YOUNG: I think you're right. We  
13 don't need to make this more complicated than it needs  
14 to be.

15 CHAIRMAN BECHHOEFER: Well, but we do want  
16 to make it clear so that the Board can try to come up  
17 with a decision within 60 days. I don't know if we'll  
18 make it but within 60 days of the final proposed  
19 findings, conclusions, et cetera. So it's not --

20 JUDGE YOUNG: Have we set deadlines? Or  
21 have we set 90 days and 60 days for responses? Is  
22 that what the parties feel you need?

23 MR. MARQUAND: That's suitable to us, and  
24 we start the 90 days from the date that we --

25 CHAIRMAN BECHHOEFER: Oh, let's calculate

1 dates.

2 JUDGE COLE: Do you want to finish your  
3 sentence there?

4 MR. MARQUAND: I was going to suggest --  
5 I mean somebody mentioned that TVA was going to submit  
6 the summary documents in lieu of 83 through 92 and 95  
7 and 96, and once we submit that and if nobody's got  
8 any problem with that and the way we've tallied up the  
9 numbers, then the record would close and then we'd  
10 start the briefing at that point?

11 JUDGE COLE: Do you have any idea how long  
12 that will take?

13 MR. MARQUAND: Probably a week to ten days  
14 for us to get it done and get it to Counsel to make  
15 sure they don't have -- let them check our numbers.

16 JUDGE COLE: Okay.

17 MR. DAMBLY: I think we won't be checking  
18 those numbers, so you can just submit them. I mean  
19 they're big numbers. Whatever they are, they're  
20 numbers.

21 CHAIRMAN BECHHOEFER: But make sure that  
22 if questions were asked about the full document in  
23 relation to particular pages of that document, that  
24 perhaps a summary would not be appropriate for those  
25 particular documents. And I think there was only one

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1 or two of the --

2 MR. MARQUAND: I think transcript  
3 adequately reflects the questions that were there.

4 MR. DAMBLY: I don't see the need for --  
5 I mean the only questions that were asked on I think  
6 it was, 83 was is this a retention register and who's  
7 name on it and is he on the next page, which was the  
8 preliminary one, and how did that work out. And I  
9 think the testimony is self-contained; it doesn't  
10 require the document.

11 MR. MARQUAND: I agree.

12 CHAIRMAN BECHHOEFER: I just didn't want  
13 disputes to arise.

14 JUDGE YOUNG: I think Mr. Dambly said he  
15 had no dispute.

16 CHAIRMAN BECHHOEFER: Yes.

17 MR. DAMBLY: I agreed to not even object  
18 to putting in the summary page as Exhibit 83.

19 CHAIRMAN BECHHOEFER: Well, what about 93?

20 MR. DAMBLY: Well, 93 and 94 have been  
21 admitted. They're going to have to redact those. We  
22 didn't object to those being admitted in total, so  
23 somebody's going to have to redact. They've got to go  
24 through all the Social Security numbers and whatever  
25 on those.

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1 MR. MARQUAND: What we suggested was we  
2 have our copy of those exhibits. We'll make it -- I  
3 guess we should withdraw from the record the first  
4 page of that that has the stamp on it.

5 JUDGE YOUNG: The first page of which one  
6 are you talking about?

7 MR. MARQUAND: Ninety-three and four.

8 CHAIRMAN BECHHOEFER: Ninety-three and 94.

9 JUDGE YOUNG: Okay. So back on 109 and  
10 110, you're going to combine those into --

11 MR. MARQUAND: Each of those exhibits will  
12 have a one-page summary document.

13 JUDGE YOUNG: Substituted with the same  
14 numbers on them?

15 MR. MARQUAND: Yes.

16 JUDGE YOUNG: Okay. What was the  
17 reference to 83?

18 MR. DAMBLY: That was the first document.

19 MR. MARQUAND: Eighty-three through 92  
20 will have a one-page -- and 95 and 96 and 109 and 110  
21 will have a one-page summary document for each of  
22 those exhibits.

23 JUDGE COLE: As replacements.

24 MR. MARQUAND: As replacements.

25 CHAIRMAN BECHHOEFER: Okay.

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1 MR. MARQUAND: And 93 and 94, which were  
2 admitted into the record, we will simply withdraw the  
3 first page so that we can -- and it doesn't have any  
4 personal identification on it. We'll withdraw the  
5 first page, and then we have copies of the rest of  
6 that, and we will go through and redact out the  
7 privacy information and send that back in, three sets  
8 of it, to replace the ones you have so that they can  
9 go into ADAMS or wherever you need to put them.

10 JUDGE YOUNG: Well, there need to be three  
11 official copies and then three copies for us. That  
12 makes six.

13 MR. MARQUAND: Okay, six copies. Okay.

14 MR. DAMBLY: But your copies you don't  
15 care if it has a Social Security number on it.

16 JUDGE YOUNG: Well, I think it's better to  
17 have the same thing.

18 MR. MARQUAND: That's not a problem. Once  
19 we redact one, we'll just xerox five copies from that.

20 CHAIRMAN BECHHOEFER: Okay. I mean I have  
21 no preference at all about -- I'm not going to reveal  
22 anybody's Social Security number personally, so --

23 MR. MARQUAND: We will need some guidance  
24 in what needs to be redacted, what types of things  
25 need to be redacted. And if there are particular

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1 utensils that need to be used to do that redaction,  
2 which I understood from Counsel yesterday a magic  
3 marker or whatever is not adequate --

4 JUDGE YOUNG: Is there anything besides  
5 Social Security number and home addresses?

6 MS. EUCHNER: Social Security numbers,  
7 home addresses and phone numbers and dates of birth.

8 JUDGE YOUNG: You can tell him the right  
9 kind of pencils to get?

10 MR. MARQUAND: Well, what if we black it  
11 out on an original and then they could xerox? It's  
12 not going to show through then.

13 MS. EUCHNER: With a black marker we tried  
14 that. You can actually read the typewritten number  
15 through the black marker when you photocopy it, so it  
16 does have to be marked out with a special pencil.  
17 Because that was the first thing we tried and when we  
18 went and photocopied, you could read right through the  
19 marker.

20 JUDGE COLE: So how do we identify the  
21 kind of marker that has to be used? Do you have that  
22 information?

23 MS. EUCHNER: I have one. I can show it  
24 to them so they can see. You should be able to get  
25 them at any office supply store. That's how we got

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1       them. I had our administrator order them from like  
2       Staples or something.

3               JUDGE COLE: Can you provide them with an  
4       example of that?

5               MR. MARQUAND: Why don't you just give us  
6       one of them? Why don't you just give us one and we'll  
7       tell our administrator.

8               MR. DAMBLY: Basic grease pencil. This is  
9       the official redaction tool.

10              CHAIRMAN BECHHOEFER: Can we requisition  
11      one from the supply room?

12              MS. EUCHNER: They don't carry them in the  
13      supply room, so you'd have to have them ordered, but  
14      it should be a problem ordering them if you explain  
15      what you need them for. That's how I got mine.

16              JUDGE COLE: How many of those do you  
17      have?

18              MS. EUCHNER: I have three additional ones  
19      other than the one I just gave to TVA. If Your Honors  
20      each would like one just for your own use --

21              JUDGE COLE: Why don't you give them all  
22      to TVA? They're going to need them.

23              (Laughter.)

24              MR. DAMBLY: Yes. They're going to need  
25      more than that.

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1 MS. EUCHNER: Oh, yes. These things go a  
2 lot quicker than they look.

3 MR. MARQUAND: How long -- okay. So would  
4 we do 90 days from the date that 83 through 110 are  
5 submitted and then we get all the exhibits back in the  
6 record?

7 CHAIRMAN BECHHOEFER: Can we set a  
8 particular date so we don't hit Sundays or Saturdays?

9 MR. DAMBLY: How about Friday the 13th of  
10 December?

11 CHAIRMAN BECHHOEFER: What day is that?

12 MR. DAMBLY: A Friday.

13 CHAIRMAN BECHHOEFER: Is that a Friday?  
14 Oh, yes.

15 JUDGE COLE: I thought we were going to  
16 close the record when the documents come in, so it  
17 would --

18 MR. DAMBLY: Well, we could set a date  
19 now. I mean --

20 CHAIRMAN BECHHOEFER: Well, how about  
21 Christmas Day?

22 MR. MARQUAND: You sound like a former  
23 supervisor I used to have.

24 MR. DAMBLY: If you want the Friday before  
25 Christmas, I guess the 20th, it doesn't matter to me.

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1 JUDGE COLE: Is that okay with you?

2 MR. MARQUAND: We can live with that?

3 JUDGE COLE: December 20?

4 MR. MARQUAND: I think we can live with  
5 that.

6 CHAIRMAN BECHHOEFER: For the initial  
7 brief.

8 JUDGE YOUNG: And then February 19?

9 CHAIRMAN BECHHOEFER: Wait a minute.  
10 Let's -- there's a holiday around there sometime. I  
11 don't know when it is.

12 MR. DAMBLY: Which holiday is that?

13 MS. EUCHNER: Probably that weekend.

14 MR. MARQUAND: Why don't we make it  
15 February 28. We know there's not a holiday, and it's  
16 a Friday, so it's easy. Because we're all going to  
17 lose ten days from December 20 to the 1st of the year.

18 MR. DAMBLY: I'm sure we'll be working  
19 after Christmas.

20 JUDGE YOUNG: So December 18 -- or 20th?

21 JUDGE COLE: December 20 and Friday,  
22 February 28 for the reply brief.

23 JUDGE YOUNG: Twenty-eighth?

24 JUDGE COLE: Twenty-eighth.

25 JUDGE YOUNG: What about the 21st because

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1 it's 60 days?

2 MR. MARQUAND: Well, Judge, we just said  
3 we would lose ten days between the 20th and the 1st of  
4 January. And also there's a holiday in there  
5 somewhere.

6 CHAIRMAN BECHHOEFER: Yes. There's a --  
7 I guess President's Day it's called now, something  
8 like that.

9 MS. EUCHNER: Probably the 17th.

10 CHAIRMAN BECHHOEFER: Given the fact that  
11 we like these filings to be helpful for us to --

12 MR. DAMBLY: Gives you more time to --

13 JUDGE YOUNG: Pare them down, yes.

14 MR. DAMBLY: We use time to make them  
15 shorter.

16 CHAIRMAN BECHHOEFER: No. I think --

17 MR. DAMBLY: Use that "make it fit"  
18 function on your word processor.

19 CHAIRMAN BECHHOEFER: By the way, these  
20 documents should be double-spaced and whatever the  
21 standard margins are.

22 MR. MARQUAND: Since there's not a page --  
23 we're not putting a page number on it, nobody's going  
24 to try to cram a lot of type into a page, I don't  
25 think.

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1 CHAIRMAN BECHHOEFER: No, but it's a lot  
2 harder to read --

3 MR. MARQUAND: I understand that.

4 CHAIRMAN BECHHOEFER: -- at least the  
5 paper copies are harder to read if they're single-  
6 spaced.

7 MR. MARQUAND: Understand.

8 CHAIRMAN BECHHOEFER: Do we need to make  
9 an exhibit out of this?

10 MR. MARQUAND: Out of what?

11 CHAIRMAN BECHHOEFER: Next year's  
12 calendar.

13 MR. MARQUAND: I thought we were talking  
14 about 2004.

15 JUDGE COLE: Yes. We better say February  
16 28, 2003.

17 CHAIRMAN BECHHOEFER: Now, what about the  
18 various briefs that we were talking about? Would they  
19 be filed with the initial filing since everybody's  
20 doing it together?

21 JUDGE YOUNG: That's part of it.

22 CHAIRMAN BECHHOEFER: So all the briefs on  
23 the various questions that we've asked you to address  
24 --

25 JUDGE YOUNG: That's part of what they're

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1 filing both times.

2 CHAIRMAN BECHHOEFER: Okay. I guess we're  
3 through with that. We will establish those particular  
4 dates, and I guess we're ready to proceed to  
5 documents.

6 JUDGE YOUNG: I would suggest that we just  
7 start and go through them one by one and just try to  
8 move it along as quickly as possible. And do it an  
9 order like that I think will make more sense than  
10 trying to do it in categories where we're all on  
11 different pages in terms of how to do it. If we go  
12 through them one by one and just move it along, I  
13 think that should be fairly efficient. We can start  
14 with TVA, the Staff or Joint.

15 MR. DAMBLY: Well, the Joint is shorter.

16 CHAIRMAN BECHHOEFER: Pardon?

17 MR. DAMBLY: Joint is shorter.

18 CHAIRMAN BECHHOEFER: Yes, but isn't that  
19 a nice way to finish up? No, I'm just kidding. Take  
20 your pick. We should go through each number that has  
21 been proffered or has been supplied to -- made  
22 available to the Board and determine whether they have  
23 been admitted or whether they should be formally  
24 admitted or not as the case may be, or withdrawn.

25 JUDGE YOUNG: And to the degree I can help

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1 by use of this computer and doing searches for  
2 exhibits, that might speed us up some too. Judge  
3 Bechhoefer, do you mind if I just start going through  
4 them one by one?

5 CHAIRMAN BECHHOEFER: No.

6 JUDGE YOUNG: All right.

7 MS. EUCHNER: Your Honors? Before we get  
8 started, would it be helpful as we do this to have the  
9 set in front of us and we can pull out the documents  
10 that we all agree have not been admitted or proffered?

11 JUDGE YOUNG: Yes.

12 MS. EUCHNER: So that way we're doing two  
13 things at once.

14 JUDGE YOUNG: Yes. Yes.

15 MR. MARQUAND: We're doing what now?

16 JUDGE YOUNG: What I think we need to do  
17 is we need to get all the copies so that someone has  
18 a copy in front of them. We're going to through them  
19 volume by volume, take out the ones that have not been  
20 introduced. If they have been introduced, the record  
21 should show that or you should be aware of it or it  
22 should be on the list. If they have been proffered  
23 and either admitted or rejected, they will stay in and  
24 they would be marked to that effect. And if as we go  
25 through you see any of the type of information that

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1 needs to be redacted and we can do that quickly on  
2 short exhibits, I suggest we go ahead and do that  
3 today. There's enough -- there are three other -- we  
4 can do it with our copies. There are three other  
5 copies that we need to do it with. If we need to with  
6 the official copy we may want to get --

7 MR. MARQUAND: Well, I think as long as  
8 we're all doing it simultaneously, we won't have -- it  
9 doesn't matter who's going to be that one. As long as  
10 everybody is on the same page with respect to the same  
11 exhibit at the same time, I think it's fine.

12 CHAIRMAN BECHHOEFER: Well, let's --

13 JUDGE YOUNG: Let's go off the --

14 CHAIRMAN BECHHOEFER: -- start with, what,  
15 Joint?

16 JUDGE YOUNG: Let's go off the record for  
17 a second.

18 CHAIRMAN BECHHOEFER: Well --

19 JUDGE YOUNG: I just want to ask the court  
20 reporter something.

21 CHAIRMAN BECHHOEFER: Oh, okay.

22 JUDGE YOUNG: And she can't answer while  
23 she's doing it.

24 CHAIRMAN BECHHOEFER: Right.

25 JUDGE YOUNG: So let's go off the record

1 so we can talk to the court reporter about her  
2 preferences.

3 (Whereupon, the foregoing matter went off  
4 the record at 9:53 a.m. and went back on  
5 the record at 10:11 a.m.)

6 JUDGE YOUNG: We're on the record. Okay.  
7 What we're going to do with regard to the exhibits is  
8 we have Law Clerk Susan Lynn here who is going to be  
9 handling the official original copy. We're going to  
10 go through the exhibits one by one and make sure that  
11 everyone's all on the same page in terms of whether  
12 the exhibit was first proffered and then if proffered  
13 whether it was admitted or rejected and to the degree  
14 possible identify the dates and page numbers.

15 At the same time, TVA Counsel and Staff  
16 Counsel are going to be handling the other two  
17 official copies and doing the same thing. Exhibits  
18 that were not proffered are going to be taken out of  
19 the books and placed in either recycling or a pile to  
20 be burned if they have some kind of sensitive  
21 information, such as Social Security numbers and so  
22 forth. If we come to small exhibits that have just a  
23 relatively few things that need to have identifying  
24 information redacted, we'll do that as we go. If we  
25 come to longer ones, we'll handle that on a case by

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1 case basis. And in this fashion, we're going to try  
2 to get through all the exhibits including the volumes  
3 that were originally provided to us on April 23 as  
4 well as those that have been introduced separately  
5 from that.

6 I also ask if either party had any  
7 objection -- I'm going to be taking mine out as well.  
8 I ask if either party had any objection to Judge Cole  
9 and Judge Bechhoefer not taking the unproffered  
10 exhibits out of their notebooks at this time --

11 CHAIRMAN BECHHOEFER: At this time,  
12 emphasize that.

13 JUDGE YOUNG: -- and they assured everyone  
14 that they will do that later. We also, when we were  
15 off the record, several exhibits were identified as  
16 having been introduced prior to this week that should  
17 have been on the list and will be added to the list  
18 that we'll place in the record that was prepared by  
19 our office on exhibits. Namely, on the TVA list,  
20 Exhibits 56 and 132 were not included on that list and  
21 should have been. Both were introduced on June 18.  
22 Fifty-six at Page 4014; 132 at Page 4062.

23 Then on the Joint Exhibit lists, Exhibits  
24 28, 29, 33, 58 and 67 should have been on the list of  
25 exhibits that were proffered and I believe all

1 accepted into evidence prior to this week. Twenty-  
2 eight was admitted on May 8 at Page 2369. Exhibit 29  
3 was admitted on May 8 at Page 2381. Exhibit 33 was  
4 admitted on April 30 at Page 1041. Exhibit 58 was  
5 admitted on June 12 at Page 3007. And 67 again, did  
6 you say?

7 JUDGE COLE: Yes. That was just  
8 identified --

9 JUDGE YOUNG: I'm sorry. That --

10 JUDGE COLE: -- on this list as missing.  
11 I have copies, the record copies of Exhibit 67, along  
12 with some others, which when we get to we'll insert  
13 them in the official documents.

14 JUDGE YOUNG: Okay. And that was --

15 CHAIRMAN BECHHOEFER: We're referring to  
16 exhibits that the court reporters filed with us or  
17 sent to us.

18 JUDGE YOUNG: I don't see any need --

19 CHAIRMAN BECHHOEFER: And which we  
20 received I think just yesterday or the day before.

21 JUDGE YOUNG: Does any party have any  
22 preference on whether we do this on the record or off  
23 the record? It seems to me it would make more sense  
24 to go off the record unless we get to a point where  
25 something needs to be on the record. That would be

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1 easier on the court reporter.

2 MR. DAMBLY: Off the record's fine.

3 JUDGE YOUNG: Okay. So we're going to  
4 start with --

5 CHAIRMAN BECHHOEFER: TVA agree?

6 JUDGE YOUNG: -- Joint Exhibits --

7 CHAIRMAN BECHHOEFER: Does TVA agree with  
8 that?

9 MR. DAMBLY: Before we go off the record,  
10 there's one other TVA exhibit, Exhibit 103, that we  
11 have reflected that 103 was ID'd on 425 and also  
12 admitted on 425, but it's not listed on --

13 MS. EUCHNER: Is that our interrogatories,  
14 because I thought we replaced 103 with 113. Well, I  
15 believe we withdrew objections to 113, not to 103,  
16 because 103, if I'm not mistaken, was incomplete. Or,  
17 I'm sorry, no. I think 103 is the complete one and we  
18 decided to only put in the ones that you were asking  
19 about.

20 MR. SLATER: I think both 103 and 113 are  
21 actually in.

22 MS. EUCHNER: You said 425?

23 JUDGE YOUNG: Okay. Mr. Marquand, you  
24 tendered that on Page -- somewhere around Page 655  
25 Dambly appears to have made an objection.



1 MR. MARQUAND: I think it took two days.

2 MR. DAMBLY: My objection was not two  
3 days. It was one of the shorter ones.

4 MR. MARQUAND: I think he objected for one  
5 day and the next day he said, "Well, it doesn't make  
6 any difference, I'll let it in."

7 JUDGE YOUNG: There are a lot of  
8 references to it. I'm trying to get to a place where  
9 -- oh, thanks, sorry. Around Page 848 or 9 is where  
10 you tendered it formally.

11 MS. EUCHNER: And, Your Honor, it looks  
12 like at the beginning of the next day we took up  
13 discussion of it again, and Mr. Marquand said where  
14 having prepared a document that specifically  
15 identifies a cut and past of their answers to  
16 interrogatories.

17 JUDGE YOUNG: What date are you looking  
18 at?

19 MS. EUCHNER: I'm looking at April 26.

20 JUDGE COLE: What page?

21 MS. EUCHNER: Page 870, it's the very  
22 beginning of the day when we first got started.

23 JUDGE COLE: Yes. At 847, it's Mr.  
24 Marquand, "Your Honor, we talked at length about TVA  
25 Exhibit 103," and that's on Page 847.

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1 MR. MARQUAND: Right. Now, as I recall --

2 JUDGE COLE: I think it's first identified  
3 in the transcript at Page 844.

4 MR. MARQUAND: Right. But then we --

5 JUDGE YOUNG: First, actually, it was  
6 identified well before that. But there was a long  
7 discussion in between, and I can go back to find --  
8 what was the first page I gave you?

9 MS. EUCHNER: Six-fifty-five maybe.

10 MR. MARQUAND: Right. But then the next  
11 day we got into talking about, again, as Counsel  
12 pointed out, at Page 870.

13 MS. EUCHNER: Because I believe we had a  
14 lengthy discussion about the NRC regulations as to  
15 when our interrogatory responses could be used.

16 JUDGE YOUNG: Okay. On 463 was where it  
17 was first mentioned.

18 MR. DAMBLY: That would have been the  
19 second day of the hearing, I think.

20 JUDGE COLE: That would be --

21 MR. DAMBLY: For some reason, there was  
22 like a 300-page gap in the record, for some reason.

23 JUDGE YOUNG: The first day's transcript  
24 has been corrected with the page numbers. The first  
25 version of April 23 that you got started with Page 1.

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1 The gap was because the second day we started on the  
2 correct page in the transcript. There's a newly  
3 paginated April 23 transcript now available that  
4 starts on the day it should have started, which would  
5 have followed the last telephone conference that was  
6 in the transcript.

7 MR. DAMBLY: Oh. So you numbered the  
8 telephone conferences as part of the --

9 JUDGE YOUNG: Right.

10 MR. DAMBLY: -- record.

11 JUDGE YOUNG: They're done sequentially.

12 MR. MARQUAND: So the correct version is  
13 going to begin on Page what for April 23? Will it  
14 begin at Page 262? We have to have the same  
15 pagination you do.

16 MR. DAMBLY: Yes. We don't have it that  
17 way.

18 JUDGE YOUNG: The correct version --

19 CHAIRMAN BECHHOEFER: Two-six-two.

20 JUDGE YOUNG: Two-sixty-two.

21 MR. MARQUAND: So that's the way the final  
22 version is going to be.

23 JUDGE YOUNG: Right.

24 MR. MARQUAND: Okay.

25 JUDGE YOUNG: So you probably want to make

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1 sure you get that when you're doing your citations.  
2 All right. So somewhere around 462 is where it first  
3 came up, and then we got down to 655 you tendered it,  
4 Mr. Dambly objected --

5 MS. EUCHNER: And, Your Honor, it looks  
6 like it was discussed again at the very end of the day  
7 on April 25. The discussion goes on for quite a  
8 while.

9 JUDGE YOUNG: April 25 or 24?

10 MS. EUCHNER: Yes, April 25.

11 CHAIRMAN BECHHOEFER: Where does the  
12 discussion --

13 MS. EUCHNER: I'm trying to find where it  
14 starts, because it's a very lengthy discussion at the  
15 end of the day. It looks like it starts at the bottom  
16 of Page 847 and that's where Mr. Marquand tenders 103  
17 again. And then it goes through the end of that day,  
18 and it looks like at the end of the day it was decided  
19 that we would take it up in the morning, and no ruling  
20 was ever made on April 25 as to whether it should be  
21 admitted or not.

22 JUDGE YOUNG: So it was tendered -- what  
23 page do you show it first being tendered?

24 MS. EUCHNER: I show -- well, I don't know  
25 whether it was tendered any earlier, but I show it

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1 being either tendered for the first time or tendered  
2 again starting at the very bottom of Page 847 on line  
3 24, going to the top of 848. And then Mr. Dambly  
4 objects to it again on Page 849.

5 JUDGE YOUNG: Did you look around Page 655  
6 to see the first time it was tendered?

7 MS. EUCHNER: I believe I did, and I think  
8 that's where we objected to it the first time.

9 JUDGE YOUNG: Probably the record should  
10 reflect the first time it was tendered. The problem  
11 is the computer changes the page numbers, so it's a  
12 little hard for me to --

13 MS. EUCHNER: Are you using summation,  
14 Your Honor, to do that or a different program?

15 JUDGE YOUNG: Just WordPerfect.

16 MS. EUCHNER: Oh, okay.

17 JUDGE YOUNG: But the pagination sometimes  
18 changes.

19 JUDGE COLE: At 655, Mr. Marquand says, "I  
20 am going to tender the TVA 103." On transcript, Page  
21 655, Mr. Marquand says, "Your Honors, at this time, I  
22 am going to tender into the record TVA Exhibit 103."

23 JUDGE YOUNG: So that's the first time.  
24 And then again 800 and something, and then you're  
25 saying that's where the discussion started?

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1 MS. EUCHNER: The discussion -- on Page  
2 656, Mr. Dambly objected to it the first time on  
3 grounds of relevance, and then when he retendered it  
4 again on Page 847 and 48, then on Page 849, we  
5 objected to it again. And throughout the rest of that  
6 day's transcript, through Page 866, there was a legal  
7 argument about it, and it looks like --

8 JUDGE YOUNG: What was the last page you  
9 mentioned?

10 MS. EUCHNER: Eight-sixty-six. And then  
11 it looks like there was no decision made and towards  
12 the very end, on 865, Judge Young, you say, "Tomorrow  
13 morning, could both of you bring us any case law on --  
14 NRC case law or other case law on a particular way in  
15 which interrogatories are used in NRC proceedings. So  
16 you withheld decision on that day for us to argue it  
17 further the next day. And then if you look at the  
18 beginning, Page 870 of April 26, we pick up on that  
19 date right away with the same argument.

20 And then that's where Mr. Marquand states  
21 that they're going to do the cut and paste and only  
22 come up with a document that includes the ones that  
23 they discussed with their witnesses. And that I  
24 believe is what eventually became TVA 113.

25 JUDGE YOUNG: Does that look right to you,

1 Mr. Marquand and Mr. Slater?

2 MR. MARQUAND: I was looking over at Page  
3 -- in the beginning of Page 979 through 983, and, yes,  
4 113 is a cut and paste of 103.

5 JUDGE YOUNG: What date are you on?

6 MR. MARQUAND: If you go to April 30, Page  
7 979 to 983, at that point, we were tendering 113 which  
8 is a cut and paste of 103. I'm not even sure that I  
9 see a ruling at that point. It did happen at some  
10 point, but from my recollection, and I may be wrong,  
11 but my recollection is at some point in time, even  
12 after 113 came in, that 103 -- the issue of 103 came  
13 up and there was -- it may have been placed in the  
14 record as well.

15 MS. EUCHNER: What I recall is after they  
16 proffered 113, which was the redacted version, we  
17 objected further, because it excluded a couple of  
18 supplemental responses that the Staff had provided.  
19 And then they went and added those supplemental  
20 responses. And then we withdrew our objection to 113.  
21 I don't know that Your Honors ever made a ruling on  
22 103 because it was my understanding 113 was done to  
23 replace 103.

24 MR. MARQUAND: Initially, you're correct,  
25 but I'm thinking that at some point in time that when

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1 the issue with respect to 113 you all kept looking at  
2 it, and my recollection is that that may have been one  
3 of those situations that you all objected for a long  
4 time and then Mr. Dambly said, "Well, never mind.  
5 Let's just put it in."

6 JUDGE YOUNG: Well, look back on Page 872  
7 -- actually, 871 and then 872. The bottom of 871, Mr.  
8 Marquand, you -- okay, we were talking about -- this  
9 was the next morning of April 26. We were talking  
10 about 103, although you don't mention it by number,  
11 and then you said -- the light here is terrible.

12 MR. MARQUAND: Yes. We said we were going  
13 to do it over the weekend, and then we went to April  
14 30, the pages I was talking about.

15 JUDGE YOUNG: Right. We made it -- we  
16 didn't make a ruling because you were going to work on  
17 it over the weekend.

18 MR. MARQUAND: Right. And then we moved  
19 to April 30, the next Monday, beginning about Page,  
20 let's see, in the 970 to 73 area. And we were talking  
21 about 113, and as Ms. Euchner mentioned, Staff wanted  
22 to look at it some more. We're talking about 974,  
23 they wanted to look at it some more. At some point,  
24 113 came in, but I'm thinking at some point they threw  
25 up their hands and said, "Let's put 103 in too."

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1 JUDGE YOUNG: Let me see if I can find 103  
2 again. Okay. On Page 977, you mentioned 103. You  
3 say, "We had Exhibit 103 which was their entire  
4 discovery responses. We've simply gone through and  
5 identified the specific responses that we wish to call  
6 to the Court's attention, and we've excised, if you'll  
7 turn over several pages, you'll see where several  
8 pages are blank." And then there's some discussion  
9 about what you had done with 103. Let me look and see  
10 if there's another reference to it anywhere. Ten-  
11 seventy-six.

12 Okay. Ms. Euchner, you said on Page 1076  
13 did you want to discuss 103, which was excerpts, or  
14 did you want to deal with that issue at the end of the  
15 day?

16 MR. MARQUAND: And Judge Bechhoefer said,  
17 "Let's deal with it at the end of the day."

18 JUDGE YOUNG: Okay. Let me find the next  
19 one. Okay. Page 1156.

20 JUDGE COLE: Eleven-fifty-seven.

21 JUDGE YOUNG: And I asked if you could  
22 tell us the next day what you agree and disagree on.  
23 And Judge Bechhoefer made a reference to, he said,  
24 "What is it, 103?" And then you said, "The redacted  
25 version is 113." And then you were to let us know the

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1 next morning what you agree on and what you don't  
2 agree on, which would take us to May 1.

3 MR. MARQUAND: Judge Bechhoefer had the  
4 impression at that point, on page 1158, that even  
5 though Staff might have some disagreement about what  
6 should be in it, he had the impression, he says, "I  
7 guess we've admitted the exhibit already." One-  
8 thirteen, I think, in the ruling it should be  
9 admitted, subject to it being -- the Staff making  
10 whatever supplements to it that they wanted to have  
11 made.

12 MS. EUCHNER: And I think that's correct,  
13 that 113 was going to be admitted subject to the  
14 supplementation, because if you look at the first page  
15 of Wednesday, May 1, Page 1162, we pick up with TVA  
16 113, which was appropriately supplemented, and then  
17 Your Honors admitted it.

18 MR. MARQUAND: Page 1163 on May 1, there's  
19 a definitive ruling that 113 was admitted.

20 MS. EUCHNER: That is correct. But there  
21 was never a definitive ruling on 103, and I think that  
22 might be the problem is that there never was a ruling  
23 that definitely stated TVA 103 rejected; 113 in its  
24 place, because we are just arguing back and forth.

25 JUDGE YOUNG: The discussion, as I think

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1 was occurring, was that you were substituting 113 for  
2 103 and that that was done by agreement. And all  
3 these references to you all tell us where you agree  
4 and disagree that finally we ended up with 113 and  
5 that there was no longer any need to rule on 103. Mr.  
6 Marquand, is that not -- I'll see if I can find  
7 another reference to 103, but -- there are no further  
8 references to 103.

9 CHAIRMAN BECHHOEFER: Should we treat 103  
10 as --

11 MR. MARQUAND: Identified, apparently not  
12 admitted.

13 JUDGE YOUNG: And we indicated the page  
14 number, what was it, six --

15 MS. EUCHNER: Six-fifty-five maybe.

16 JUDGE YOUNG: -- 655?

17 MS. EUCHNER: I think that was the first  
18 time it was offered.

19 CHAIRMAN BECHHOEFER: At Page 1162, we  
20 admitted 113.

21 MS. EUCHNER: It looks like --

22 CHAIRMAN BECHHOEFER: Which is as we were  
23 supposed to be supplemented.

24 MS. EUCHNER: It was supplemented at that  
25 time.

1 JUDGE YOUNG: So all the record needs to  
2 reflect that -- all my pens are --

3 CHAIRMAN BECHHOEFER: One-thirteen was  
4 admitted on 1162.

5 JUDGE COLE: No, 1163, I believe: "So,  
6 okay, it will be admitted," said Chairman Bechhoefer,  
7 1163.

8 JUDGE YOUNG: And 103 was identified on  
9 655, was it?

10 MS. EUCHNER: Sorry?

11 JUDGE YOUNG: Six-fifty-five?

12 MS. EUCHNER: Six-fifty-five was, I  
13 believe, the first time Mr. Marquand offered it.

14 JUDGE YOUNG: And so it never was admitted  
15 or rejected.

16 MS. EUCHNER: Because Mr. Dambly objected.

17 JUDGE COLE: Should we identify that as  
18 the substitute and submit it as 113 -- modify it and  
19 submit it as 113?

20 MR. MARQUAND: That's true. I'd just say  
21 103 was just identified but not -- there was no ruling  
22 on it. So it was identified. It wasn't rejected, it  
23 wasn't admitted.

24 JUDGE YOUNG: You all need to tell us when  
25 we get to it whether you want it in or out of the

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1 record.

2 CHAIRMAN BECHHOEFER: Correct.

3 JUDGE YOUNG: Okay.

4 CHAIRMAN BECHHOEFER: This would be one of  
5 the occasions where somebody reviewing the record  
6 might want to have available 103 to see what the  
7 difference between what was in the record and what is  
8 not in the record. So perhaps it should be treated as  
9 rejected.

10 MR. MARQUAND: Well, I'm not sure that  
11 even if somebody who was reviewing the record might  
12 want to see it. It wasn't ruled on. Even if somebody  
13 wanted to see it, if it wasn't ruled on, just like  
14 anything else, I would not -- I guess we shouldn't  
15 include it in the record to satisfy somebody's idle  
16 curiosity and invite --

17 CHAIRMAN BECHHOEFER: Well, should we rule  
18 on it now?

19 MR. MARQUAND: No. I think if it's not  
20 rejected, it shouldn't travel with the record. If  
21 it's not rejected or admitted. If it's only  
22 identified and not part of the record, it shouldn't be  
23 part of the record.

24 CHAIRMAN BECHHOEFER: I mean should we  
25 reject it now?

1 MR. MARQUAND: No, because then it would  
2 require to go with the record, and I don't know that  
3 if there wasn't a ruling on it, I don't know that Mr.  
4 Dambly --

5 JUDGE YOUNG: Do you disagree?

6 MS. EUCHNER: Oh, no. I actually think --  
7 what I was going to say is that all of the sections,  
8 those specific interrogatories with which Mr. Marquand  
9 questioned witnesses about, are in 113. So there is  
10 no reason for 103 --

11 CHAIRMAN BECHHOEFER: Oh, okay.

12 MS. EUCHNER: -- to travel with the  
13 record. They can look at 113 and see the same thing.

14 MR. MARQUAND: I don't think we want to  
15 invite somebody to go outside the record that's been  
16 compiled here.

17 CHAIRMAN BECHHOEFER: Well, it would not  
18 be outside the record if we rejected it now.

19 JUDGE YOUNG: One-thirteen was  
20 substituted, and I think it was done by agreement,  
21 from everything I can tell, and we admitted 113, so  
22 there's no reason for 103 to be in. The parties seem  
23 to agree on that.

24 MR. MARQUAND: Now, before we go off the  
25 record, we did note that there were a number of

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1 documents which were identified which apparently  
2 through oversight were not tendered into the record,  
3 and I think that we need to go through those before we  
4 go off the record. But we need to go through those  
5 and get a ruling as to the admission of those  
6 documents.

7 JUDGE YOUNG: Okay. Let me suggest how we  
8 do that. I think that the most efficient way of doing  
9 that is we go through the volumes one by one. As we  
10 get to those, we go back on the record. If you've got  
11 a list of them, we'll get to them.

12 MR. MARQUAND: I've got a list of them.  
13 And I was just going to say let's go ahead and get the  
14 ruling on the list and have one list and then go off  
15 the record for a long period of time.

16 JUDGE YOUNG: Have you got them easily  
17 accessible for us to do that?

18 MR. MARQUAND: Yes.

19 CHAIRMAN BECHHOEFER: Do we have to haul  
20 out a lot of documents --

21 MR. MARQUAND: I think when we tell you  
22 what they are, everybody's going to say, "Oh, yes,  
23 that needs to be in the record."

24 JUDGE YOUNG: How many volumes are you  
25 talking about?

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1 MR. MARQUAND: They're documents.

2 JUDGE YOUNG: I know, but how many  
3 different volumes are they in?

4 MR. MARQUAND: I don't know.

5 MS. EUCHNER: Your Honor, the list is at  
6 the beginning of each of their volumes, so to the  
7 extent --

8 JUDGE YOUNG: Right. Just tell us what  
9 the exhibits are and what volumes they're in. And if  
10 you want to do it that way, let's do that quickly.

11 MR. MARQUAND: The first one is Joint  
12 Exhibit 9. It should be in Volume 1. It is one of  
13 the NSRB minutes that was discussed. It's the  
14 February 1992 NSRB minutes. If you recall --

15 JUDGE YOUNG: Was there any objection to  
16 that?

17 MR. MARQUAND: No, it wasn't offered.

18 JUDGE YOUNG: You're offering them now, I  
19 presume.

20 MR. MARQUAND: Yes, we're offering it now.

21 JUDGE YOUNG: Is there any objection to  
22 it?

23 MR. DAMBLY: Let me look at it. We don't  
24 object.

25 CHAIRMAN BECHHOEFER: Without objection,



1 Joint Exhibit 9 will be admitted.

2 (Whereupon, the above-referred  
3 to document, previously marked  
4 as Joint Exhibit No. 9 for  
5 identification, was admitted  
6 into evidence.)

7 JUDGE YOUNG: Now.

8 CHAIRMAN BECHHOEFER: Now.

9 JUDGE YOUNG: Okay. What's next?

10 CHAIRMAN BECHHOEFER: But it can be  
11 identified whenever it was identified.

12 JUDGE COLE: Somewhere in Mr. McGrath's  
13 testimony.

14 JUDGE YOUNG: Did the record reflect that  
15 it was ever identified, Mr. Marquand?

16 MR. MARQUAND: Yes, it was. And that was  
17 because there was Joint Exhibit 4, which was an  
18 extract and Mr. Dambly objected to the extracts  
19 without the complete documents, so we went and said,  
20 "Okay, here is the complete document."

21 JUDGE YOUNG: All I want to know is was it  
22 identified?

23 MR. MARQUAND: Yes, it clearly --

24 JUDGE YOUNG: If it indicates that it was  
25 identified, we don't need to worry about it.

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1 MR. MARQUAND: It was clearly identified  
2 on April 24.

3 JUDGE YOUNG: Okay. Next one.

4 MR. MARQUAND: Next one. We have -- it's  
5 a TVA exhibit, I believe. TVA Exhibit 57. I can't  
6 tell you which volume -- Volume 2?

7 MS. EUCHNER: Three.

8 MR. MARQUAND: Volume 3? It is a  
9 memorandum that was identified by Wilson McArthur and  
10 has to do with the issues that Employee Concerns found  
11 in Mr. Fiser's Department of Labor complaint or the  
12 Sasser letter, and it addresses the fact that Dr.  
13 McArthur had addressed those issues. And we're  
14 offering TVA 57.

15 JUDGE YOUNG: TVA 57, objection?

16 MR. DAMBLY: No objection.

17 JUDGE YOUNG: So when we go off the record  
18 the first thing we're going to need to do is get these  
19 marked. Judge Bechhoefer, can we admit 57, correct?

20 CHAIRMAN BECHHOEFER: Yes.

21 (Whereupon, the above-referred  
22 to document, previously marked  
23 as TVA Exhibit No. 57 for  
24 identification, was admitted  
25 into evidence.)

1 MR. MARQUAND: All right. The next  
2 exhibit is TVA Exhibit 70. It is the complete -- it  
3 was identified on April 24 by Mr. McGrath. It is the  
4 complete minutes of the NSRB meeting, Number 136, held  
5 on November 21 and 22.

6 CHAIRMAN BECHHOEFER: Which exhibit is  
7 that?

8 MR. MARQUAND: TVA Exhibit 70.

9 CHAIRMAN BECHHOEFER: Seventy?

10 MR. MARQUAND: Yes. It was identified on  
11 April 24, and it is the complete minutes, the extract  
12 of the same minutes --

13 MR. DAMBLY: We won't object, whatever it  
14 is.

15 JUDGE YOUNG: Admit, Judge Bechhoefer?

16 CHAIRMAN BECHHOEFER: Yes. But I'd like  
17 to look at it and see what we're talking about.

18 (Whereupon, the above-referred  
19 to document, previously marked  
20 as TVA Exhibit No. 70 for  
21 identification, was admitted  
22 into evidence.)

23 MR. MARQUAND: Is it admitted?

24 CHAIRMAN BECHHOEFER: The minutes -- TVA  
25 70 is admitted.

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1 JUDGE YOUNG: Okay. Next? We can catch  
2 these up as we go.

3 MR. MARQUAND: I've got one here, and I'm  
4 just looking --

5 JUDGE YOUNG: No, I'm just saying in terms  
6 of marking them.

7 MR. MARQUAND: Oh, yes. TVA Exhibit 81.  
8 It was identified on June 19 by the Acting Inspector  
9 General Don Hickman.

10 MR. DAMBLY: This is the OIG report on Mr.  
11 Grover that you specifically, I think, excluded. We  
12 object to that.

13 MR. MARQUAND: I don't have a record  
14 whether it was excluded or not.

15 JUDGE YOUNG: Okay. TVA Exhibit 81?

16 MR. MARQUAND: Yes.

17 JUDGE YOUNG: Hold on just a second.  
18 Let's see what I can find.

19 MR. MARQUAND: And it may have already  
20 been ruled on. I just don't have a record of it.

21 JUDGE YOUNG: Eighty-one?

22 MR. MARQUAND: Yes. It would have been on  
23 June 19.

24 MR. DAMBLY: This is the Grover OIG report  
25 that was the subject of stipulation, and we objected.

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1 JUDGE YOUNG: It's tendered on Page 4266  
2 or somewhere around that page. Let me see what the  
3 ruling was. I don't see anymore reference to it, so  
4 what was the page number I just gave you?

5 MR. MARQUAND: You gave us 4266.

6 JUDGE YOUNG: What date is that?

7 MR. MARQUAND: June 19.

8 MS. EUCHNER: Okay. It starts on Page  
9 4239 at the bottom. I presume this is Mr. Marquand  
10 questioning Mr. Hickman: "Let me ask you to identify  
11 TVA Exhibit 81." He identifies it. On 4240, he asks  
12 a number of questions about it. He tenders it on  
13 4241.

14 JUDGE YOUNG: This is June 20, right?

15 MS. EUCHNER: June 19, according to my  
16 page numbers. I have it on June 19. And on 4241, he  
17 tenders it, Mr. Dambly objects because the whole point  
18 of the stipulation regarding Mr. Grover was to avoid  
19 entering this exhibit into evidence. And on Page  
20 4243, Judge Bechhoefer says, "Yes. The Board  
21 unanimously will sustain the objection to that  
22 document."

23 CHAIRMAN BECHHOEFER: Okay. So it's  
24 rejected, so it needs to go with the record, the  
25 rejected document.

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1 JUDGE YOUNG: Rejected, Page 4263.

2 JUDGE COLE: No, 4243.

3 MS. EUCHNER: Yes. It was rejected on  
4 4243.

5 JUDGE YOUNG: I'm sorry, 4343.

6 JUDGE COLE: Forty-two forty-three.

7 JUDGE YOUNG: Okay. Any others?

8 MR. MARQUAND: There is a TVA Exhibit 112,  
9 which was identified on April 30, and it was a bench  
10 memorandum that we submitted. I don't care whether  
11 it's admitted as an exhibit, but it needs to be part  
12 of the record. I don't remember how we handled it.

13 JUDGE YOUNG: One-twelve?

14 MR. MARQUAND: Yes.

15 MR. DAMBLY: Yes. That is a legal brief  
16 they filed on staff depositions. I don't see that  
17 being admitted as an evidentiary exhibit, but --

18 MR. MARQUAND: It has to be part of the  
19 record.

20 MR. DAMBLY: -- it should be part of -- I  
21 don't know how you put briefs in the record here.

22 JUDGE YOUNG: Let me find what might  
23 happen to it.

24 MR. MARQUAND: There's discussion of it at  
25 Page 972.

1 JUDGE YOUNG: What date is that?

2 MR. MARQUAND: April 30.

3 JUDGE YOUNG: I see Judge Cole saying, "I  
4 thought it was admitted." What's the page, 9 --

5 MR. MARQUAND: Nine-seventy-two and three,  
6 and we didn't ask the Board to rule as to whether or  
7 not -- as to its admissibility but we asked that it be  
8 placed in the record.

9 (Judges confer.)

10 JUDGE YOUNG: It could be filed as a  
11 pleading. If you want to admit it as an exhibit, we  
12 can do that now, if there's no objection to that.

13 JUDGE COLE: I've got a problem here. I'm  
14 looking at our list of TVA exhibits and TVA Exhibit  
15 112 was identified in our list deposition of Philip  
16 Reynolds, November 8, which is identified in --

17 MS. EUCHNER: You sure that's not Staff  
18 112, Your Honor?

19 MR. MARQUAND: That would be Staff 112.

20 JUDGE YOUNG: It says it's identified at  
21 Page 972.

22 MS. EUCHNER: Staff 112 is Mr. Reynolds.

23 MR. MARQUAND: I think that we submitted  
24 TVA Exhibit 112, but we weren't submitting it as  
25 evidence, but we did ask that it be placed in the

1 record. I don't know whether you want to -- how you  
2 want to designate it in order to ensure that it is  
3 part of the record, whether it needs to be simply  
4 admitted or simply, as you say, as a pleading or  
5 whatever.

6 JUDGE COLE: Yes. I misspoke. I'm  
7 looking at the Staff's list.

8 MR. MARQUAND: It's an addendum to the  
9 record, whether you call it an exhibit or not.

10 JUDGE YOUNG: What Judge Bechhoefer is  
11 saying is that the simplest way may be to just go  
12 ahead and admit it.

13 MR. DAMBLY: It may be simple but --

14 JUDGE YOUNG: If you have an objection to  
15 that, we can do it another way. I don't think that  
16 this is a matter of great dispute. If you want to  
17 file it as an attachment to your proposed findings,  
18 you can do that.

19 MR. MARQUAND: Well, I mean it was a  
20 matter that we considered at that time, not with the  
21 proposed findings.

22 MR. DAMBLY: May I? My only problem with  
23 having it admitted as an exhibit I don't want to see  
24 any citations in the post-hearing brief to this is  
25 some kind of evidentiary document.

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1 MR. MARQUAND: It's obviously not  
2 evidentiary. Like I said, It's an addendum. It's  
3 appended to the record regardless of what you call it.

4 JUDGE YOUNG: Okay. If it's an exhibit to  
5 the transcript, it will get into the record that way.  
6 It has not yet been entered into the record, because  
7 in order for it to be officially part of the record,  
8 it has to be filed with SECY. The only way to do that  
9 would be to do that now.

10 MR. MARQUAND: Right. Then we'll tender  
11 as --

12 JUDGE YOUNG: Well, you would need to --  
13 if you're not going to tender it as an exhibit --

14 MR. MARQUAND: I'm tendering it as an  
15 exhibit.

16 JUDGE YOUNG: Well, you --

17 MR. MARQUAND: Not as evidence, but as an  
18 exhibit.

19 JUDGE YOUNG: Then you need to file that  
20 separately.

21 CHAIRMAN BECHHOEFER: I don't think he  
22 does. I think --

23 MR. MARQUAND: I am tendering it as an  
24 exhibit.

25 CHAIRMAN BECHHOEFER: I think we

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1 technically could consider it as an exhibit, not as an  
2 evidentiary matter but as a legal brief that was  
3 before us --

4 MR. MARQUAND: Consider it for what it is.

5 CHAIRMAN BECHHOEFER: -- at the time.

6 JUDGE YOUNG: If the Staff has no  
7 objection to that, then I don't see any problem with  
8 that. If the Staff has an objection, then we need to  
9 consider their objection.

10 CHAIRMAN BECHHOEFER: It could be cited  
11 not as a factual matter but in preparing your  
12 conclusions of law. It could be referenced. The fact  
13 that it would have an exhibit number, that's just a  
14 location number really.

15 MR. MARQUAND: I agree. I mean the record  
16 is replete with all sorts of legal arguments that  
17 nobody suggests are evidentiary in nature either.

18 MR. DAMBLY: None of them have been  
19 admitted as exhibits. I don't know what the basis for  
20 wanting to admit some non-evidentiary material as an  
21 exhibit for the record.

22 MR. MARQUAND: I think it's just an  
23 appendix.

24 JUDGE YOUNG: Well, Mr. Dambly, you  
25 admitted a brief and a decision in the Department of

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1 Labor case, so I mean we can argue about this. It's  
2 really not worth that much argument. I can either be  
3 admitted as an exhibit, which obviously would not be  
4 relied upon for facts because there are no facts  
5 apparently in it, or it could be filed with SECY.

6 MR. MARQUAND: If it were so relied on, we  
7 wouldn't follow it.

8 JUDGE COLE: Also, if we're going to put  
9 it in as an exhibit, we need three copies.

10 MR. MARQUAND: I thought we had -- did not  
11 have three at the time?

12 JUDGE YOUNG: They're probably already  
13 there.

14 CHAIRMAN BECHHOEFER: I don't know.

15 JUDGE YOUNG: Maybe not.

16 MR. DAMBLY: As long as everybody knows  
17 it's not something can be cited as part of any  
18 evidentiary matters, then fine. If that's the easiest  
19 way to get it in, I don't think we need to refile with  
20 SECY or anything like that at this point.

21 CHAIRMAN BECHHOEFER: That was my only  
22 suggestion -- reason for my suggestion was that it be  
23 for a locational purpose.

24 JUDGE YOUNG: So it's admitted but not to  
25 be relied upon as evidence.

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1 CHAIRMAN BECHHOEFER: Right.

2 JUDGE YOUNG: But it's admitted as an  
3 exhibit at this point.

4 (Whereupon, the above-referred  
5 to document, previously marked  
6 as TVA Exhibit No. 112 for  
7 identification, was admitted  
8 into evidence.)

9 JUDGE COLE: I found three copies of it.

10 CHAIRMAN BECHHOEFER: All right.

11 JUDGE COLE: That's the stuff we got the  
12 other day.

13 CHAIRMAN BECHHOEFER: Okay. So do you  
14 want to have that marked?

15 JUDGE YOUNG: Next?

16 MR. MARQUAND: The next two exhibits, I  
17 think we can handle quickly, are TVA Exhibits 118 and  
18 121. They are -- the first one is a June 30, 1994  
19 page from Mr. Fiser's planner. The next one is a June  
20 29, 1994 page from Mr. Fiser's planner. They were  
21 both identified on May 7.

22 JUDGE YOUNG: Hold on just one second.

23 CHAIRMAN BECHHOEFER: TVA 118 and 121?

24 MR. MARQUAND: Yes, Your Honor.

25 MS. EUCHNER: Staff has no objection to

1 those exhibits.

2 JUDGE YOUNG: They were part of a series  
3 that were admitted, and we overlooked admitting these,  
4 so if there's no objection, shall we admit them, Judge  
5 Bechhoefer?

6 CHAIRMAN BECHHOEFER: Yes. Let me get to  
7 them just to make sure they are there.

8 JUDGE YOUNG: They're not in the book.

9 CHAIRMAN BECHHOEFER: They are in the  
10 book. They're in my book.

11 JUDGE YOUNG: Oh, you made a copy.  
12 They're not in the original books.

13 CHAIRMAN BECHHOEFER: Without objection,  
14 TVA Exhibits 118 and 121 will be admitted.

15 (Whereupon, the above-referred  
16 to documents, previously marked  
17 as TVA Exhibit Nos. 118 and 121  
18 for identification, were  
19 admitted into evidence.)

20 JUDGE COLE: And I have three copies of  
21 121.

22 MR. MARQUAND: You've been holding out on  
23 us.

24 JUDGE COLE: We got them in the mail the  
25 other day.

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1 JUDGE YOUNG: When we get to them, we can  
2 put them in the book. Next?

3 MR. MARQUAND: TVA Exhibit 132. I was out  
4 of the room. You all may have discussed this earlier.  
5 It's not on the list that was prepared earlier by the  
6 Panel.

7 MS. EUCHNER: The two I had as not on the  
8 list were 56 and 132.

9 MR. MARQUAND: And so that was included?

10 MS. EUCHNER: Yes.

11 MR. MARQUAND: Okay.

12 JUDGE YOUNG: Pardon? I didn't hear what  
13 you said.

14 MR. MARQUAND: It's already been dealt  
15 with.

16 MS. EUCHNER: We discussed earlier TVA  
17 Exhibits 56 and 132 as having been admitted but not on  
18 your master list, right?

19 JUDGE YOUNG: Correct.

20 CHAIRMAN BECHHOEFER: They were both  
21 admitted earlier but merely left off the list.

22 MS. EUCHNER: That's correct.

23 MR. MARQUAND: The next one we have --

24 CHAIRMAN BECHHOEFER: We don't have to  
25 take any action now.

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1 MS. EUCHNER: Correct.

2 MR. MARQUAND: -- is Staff Exhibit 55.

3 JUDGE YOUNG: Staff 55?

4 MR. MARQUAND: Right. That's a computer  
5 printout from the HRIS System of the Employee Action,  
6 reasons for Ron Grover. It was identified on June 18  
7 by Mr. Boyles.

8 MS. EUCHNER: Staff has no objection to  
9 that.

10 JUDGE YOUNG: Staff says they have no  
11 objection. Do you have --

12 CHAIRMAN BECHHOEFER: I was just  
13 recollecting that I thought the Staff objected because  
14 we weren't supposed go into any of the details  
15 concerning Mr. Grover.

16 MR. MARQUAND: No. That wasn't -- the  
17 stipulation was narrower than that, Your Honor.

18 MS. EUCHNER: Yes. The stipulation  
19 related to an Office of Inspector General  
20 investigation of Mr. Grover that happened four years  
21 after the events in this case. This document simply  
22 relates to his employee --

23 MR. MARQUAND: Employment history.

24 MS. EUCHNER: Employment history. We have  
25 no objection to this document. It's not within the

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1 scope of the stipulation.

2 JUDGE YOUNG: So we admit Staff Exhibit  
3 55, correct?

4 CHAIRMAN BECHHOEFER: Yes. Staff 55 will  
5 be admitted.

6 (Whereupon, the above-referred  
7 to document, previously marked  
8 as Staff Exhibit No. 55 for  
9 identification, was admitted  
10 into evidence.)

11 JUDGE YOUNG: Next?

12 MR. MARQUAND: Staff Exhibit 128 is a --  
13 it's head count numbers from 1996. It was identified  
14 on April 23 by Mr. McGrath.

15 MR. DAMBLY: No objections.

16 CHAIRMAN BECHHOEFER: Which number?

17 JUDGE COLE: One-twenty-eight, Staff 128.

18 CHAIRMAN BECHHOEFER: Okay. The Board  
19 will admit Staff Exhibit 128.

20 (Whereupon, the above-referred  
21 to document, previously marked  
22 as Staff Exhibit No. 128 for  
23 identification, was admitted  
24 into evidence.)

25 MR. MARQUAND: All right. The next

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1 exhibit is Staff Exhibit 166. It is a record of  
2 interview by TVA's Inspector General of Kathy Welch,  
3 and it was identified by Ms. Welch on April 23.

4 MR. DAMBLY: No objection.

5 CHAIRMAN BECHHOEFER: Without objection,  
6 Staff 166 will be admitted.

7 (Whereupon, the above-referred  
8 to document, previously marked  
9 as Staff Exhibit No. 166 for  
10 identification, was admitted  
11 into evidence.)

12 MR. MARQUAND: That's it.

13 JUDGE YOUNG: All right. Anything else  
14 that we need to put on the record before we start  
15 going through the exhibits with the understanding that  
16 if we come to something in our discussion that needs  
17 to be placed on the record, all anyone has to do is  
18 say, "We request to go on the record." We'll go back  
19 on the record, put whatever needs to be on the record  
20 and then go back to going through the exhibits as  
21 quickly as possible.

22 MS. EUCHNER: That's fine, Your Honor.

23 JUDGE YOUNG: Is that all right with you  
24 all?

25 MR. MARQUAND: Yes, Your Honor.

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1 JUDGE YOUNG: Great. Okay. Let's go off  
2 the record. Come back in 15 minutes and start going  
3 through the exhibits.

4 MR. MARQUAND: Well, if Judge Bechhoefer  
5 is not going to -- if we're not going to tear into his  
6 set, we could actually get started without him,  
7 couldn't we?

8 CHAIRMAN BECHHOEFER: Yes. I'll be back  
9 in 15 minutes.

10 JUDGE COLE: But we can continue working.

11 MS. EUCHNER: Yes, but I think everybody  
12 needs at least a quick five-minute break.

13 JUDGE COLE: Yes. We all need a break.

14 MR. MARQUAND: We'll give you five  
15 minutes.

16 CHAIRMAN BECHHOEFER: Let's make it 15.

17 (Whereupon, the foregoing matter went off  
18 the record at 11:01 a.m. and went back on  
19 the record at 11:30 a.m.)

20 JUDGE YOUNG: Let the record reflect that  
21 we have taken out Joint Exhibit 6, 8, 10, 11, 12, 13,  
22 14, 15, 16, 17, 18 and 19. We are also taking out  
23 Exhibits 20 through 23, and we'll be, before those are  
24 destroyed, redacting --

25 CHAIRMAN BECHHOEFER: They were all

1 admitted.

2 JUDGE YOUNG: I'm sorry.

3 CHAIRMAN BECHHOEFER: We're not taking  
4 those out, we're --

5 JUDGE YOUNG: Thank you. We're going to  
6 --

7 CHAIRMAN BECHHOEFER: -- taking them aside  
8 and making sure that privacy information, et cetera,  
9 is deleted.

10 JUDGE YOUNG: Thank you. All right. And  
11 probably from time to time we'll just stop like that  
12 and just indicate for the record what we've done.

13 MR. MARQUAND: We're off the record now?

14 JUDGE YOUNG: Off again.

15 (Whereupon, the foregoing matter went off  
16 the record at 11:31 a.m. and went back on  
17 the record at 11:45 a.m.)

18 JUDGE YOUNG: Are you ready? Check me to  
19 make sure I'm right.

20 MR. MARQUAND: Do you want me to read it  
21 in and then anybody can chime in and say -- since I've  
22 kept a list.

23 JUDGE YOUNG: Okay. I have too. Go  
24 ahead. Go ahead.

25 MR. MARQUAND: All right. We have,

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1 beginning with Joint Exhibit 24, we have left in Joint  
2 Exhibits 24 through 34. We've taken out Joint Exhibit  
3 35, taken out Joint Exhibit 37 and 38 and 40. We've  
4 taken out Joint Exhibit 50, 52, 54, 56 and 57, Joint  
5 Exhibit 61 and 62 and Joint Exhibit 64, and we have  
6 left in the ones that I haven't mentioned through  
7 Joint Exhibit 67.

8 JUDGE YOUNG: That coincides with my list.  
9 Very good. Ms. Euchner, you nodded yes too?

10 MS. EUCHNER: Yes. Staff agrees.

11 JUDGE YOUNG: So that takes care of the .  
12 Joint exhibits. Go off the record and start --

13 CHAIRMAN BECHHOEFER: Where do we want to  
14 go, Staff or TVA?

15 JUDGE YOUNG: It looks like TVA is next in  
16 line.

17 (Whereupon, the foregoing matter went off  
18 the record at 11:47 a.m. and went back on  
19 the record at 12:01 p.m.)

20 JUDGE YOUNG: If you're ready, go ahead.

21 MR. MARQUAND: We have just looked through  
22 Volume 1 of the TVA exhibits, and we have removed  
23 Exhibit Numbers 1, 2, 3, 6, 7, 8, 10, 1, 16, 17, 19  
24 through 23, 25, 28, 29, 30, 32, 33, 34 and 35.

25 JUDGE YOUNG: Does that coincide with

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1 yours?

2 MS. EUCHNER: Yes.

3 (Whereupon, the foregoing matter went off  
4 the record at 12:02 p.m. and went back on  
5 the record at 12:09 p.m.)

6 CHAIRMAN BECHHOEFER: Back on the record.

7 MR. MARQUAND: we've just gone through  
8 Volume 2 of the TVA exhibits, and we removed Exhibits  
9 36, 37 and 38 and Exhibits 40 through 47. We left in  
10 Volume 2 only Exhibits 39 and 48.

11 (Whereupon, the foregoing matter went off  
12 the record at 12:10 p.m. and went back on  
13 the record at 12:22 p.m.)

14 MR. MARQUAND: We've just gone through  
15 Volume 3 of the TVA exhibits, and we have left in TVA  
16 Exhibits 51, 55 through 57 and TVA Exhibit 61, and I  
17 have marked it as rejected. We have taken out of  
18 Volume 3 TVA Exhibits 49 and 50, TVA Exhibits 52 to 54  
19 and TVA Exhibits 58 through 60.

20 JUDGE YOUNG: Pardon me, what about 53?

21 MR. MARQUAND: I said 52 through 54.

22 JUDGE YOUNG: Okay. I didn't hear  
23 "through."

24 MR. MARQUAND: Moving on to Volume 4.

25 (Whereupon, the foregoing matter went off

1 the record at 12:22 p.m. and went back on  
2 the record at 12:29 p.m.)

3 CHAIRMAN BECHHOEFER: Mr. Marquand, would  
4 you cover Volume 4?

5 MR. MARQUAND: All right. We've just gone  
6 through Volume 4 of the TVA exhibits, and we have left  
7 in it TVA Exhibits 62, 65, 66, 70 and 73. We have  
8 removed from it TVA Exhibits 63, 64, 67, 68, 69, 71  
9 and 72.

10 JUDGE YOUNG: And none of the ones left in  
11 require redacting?

12 MR. MARQUAND: I thought one of them did.

13 MS. EUCHNER: No, I don't think so.

14 MR. MARQUAND: No, not in Volume 4; you're  
15 correct.

16 (Whereupon, the foregoing matter went off  
17 the record at 12:30 p.m. and went back on  
18 the record at 12:45 p.m.)

19 JUDGE YOUNG: Okay. Let me read this off  
20 and see if I'm correct, and then I'll read the wording  
21 for the ones that were changed. Ready? And then I'll  
22 have Mr. Marquand indicate which ones were taken out.  
23 All right. For the record, TVA Exhibits 81, which was  
24 rejected, 82, which was admitted, and 83, which was  
25 originally rejected but subsequently, by agreement of

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1 the parties, pages were substituted for original  
2 exhibit pages. This was admitted as such in lieu of  
3 the original. Those three exhibits stay in.

4 And the same original rejection but  
5 subsequent agreement of the parties to substitute  
6 summary pages for the original exhibit pages and to  
7 have those admitted in lieu of the original pages also  
8 applies to Exhibits 84 and 85. Then, Mr. Marquand --  
9 is that correct, does everyone agree?

10 MR. MARQUAND: You missed TVA Exhibit 80,  
11 it stays in as well.

12 MS. EUCHNER: That's correct, Your Honor.

13 JUDGE YOUNG: Did I leave out 80?

14 MR. MARQUAND: Yes.

15 JUDGE YOUNG: So 80, 81, 82, 83, 84, 85  
16 are in.

17 MR. MARQUAND: Right. And we're going to  
18 also --

19 JUDGE YOUNG: Eighty-one was the only one  
20 that was rejected in the end.

21 MR. MARQUAND: Right.

22 MS. EUCHNER: Exactly.

23 MR. MARQUAND: Now that was -- Volume 5  
24 was Exhibits 74 through 83.

25 JUDGE YOUNG: Do you want to indicate the

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1 ones that -- were any taken out of this volume?

2 MR. MARQUAND: Exhibit 74 through 79 were  
3 taken out of Volume 5.

4 JUDGE YOUNG: Correct.

5 MR. MARQUAND: We've go ahead of  
6 ourselves. Actually, Volume 6 is Exhibits 84 and  
7 following.

8 JUDGE YOUNG: I just indicated that they  
9 were the same since --

10 MR. MARQUAND: Right.

11 JUDGE YOUNG: -- the same thing applied.  
12 And we can go off the record at this point as long as  
13 everyone's in agreement.

14 MS. EUCHNER: Actually, it might not be a  
15 bad idea to have the court reporter remark all of  
16 these retention registers now. That way we don't have  
17 to keep doing it. I think the next couple of volumes  
18 there are just two --

19 JUDGE YOUNG: We can do those all at once,  
20 rather than --

21 MR. MARQUAND: Right.

22 JUDGE YOUNG: So are we done with Volumes  
23 5 and 6?

24 MR. MARQUAND: Yes.

25 MS. EUCHNER: Yes.



1 JUDGE YOUNG: Okay.

2 CHAIRMAN BECHHOEFER: So we've been asked  
3 to do what? Seven and eight, collectively.

4 JUDGE YOUNG: The same thing applies to  
5 both 86 and 87?

6 MR. MARQUAND: All the way through 92. We  
7 can go off the record.

8 (Whereupon, the foregoing matter went off  
9 the record at 12:48 p.m. and went back on  
10 the record at 1:01 p.m.)

11 CHAIRMAN BECHHOEFER: Mr. Marquand, if  
12 you'd like to just read for the reporter what we did  
13 with Exhibits through 92.

14 MR. MARQUAND: All right. From 83 through  
15 92, TVA Exhibits 83 through 92, we have left the first  
16 page in. The court reporter has marked that first  
17 page as saying that it was admitted by stipulation, by  
18 agreement today. And the pages following the first  
19 page have been removed and by agreement a substitution  
20 -- a single-page summary document is going to be  
21 provided for each of those exhibits.

22 JUDGE YOUNG: Just so the record will be  
23 clear, they were originally rejected --

24 MR. MARQUAND: Yesterday.

25 JUDGE YOUNG: -- and this is a

1 substitution and admission of all of them with those  
2 provisos.

3 MR. MARQUAND: Those were originally the  
4 working documents and extensive documents, and there's  
5 going to be a summary at the page in their place  
6 substituted.

7 JUDGE YOUNG: And, Ms. Euchner, you agreed  
8 with that.

9 MS. EUCHNER: Yes.

10 CHAIRMAN BECHHOEFER: I assume the staff  
11 will want to look at the summary pages that are  
12 received --

13 MS. EUCHNER: Yes, Your Honor.

14 CHAIRMAN BECHHOEFER: -- to decide whether  
15 that falls within the area or the general scope of  
16 what was agreed to. Make sure the summary pages have  
17 some relationship to what was in the other document.

18 MS. EUCHNER: Yes, Your Honor. When we  
19 get them, we'll review them and let the Board know  
20 whether we have an objection or no objection.

21 CHAIRMAN BECHHOEFER: Right.

22 JUDGE YOUNG: We set a -- what was the  
23 deadline we set for that?

24 MR. MARQUAND: We set ten days, I think.

25 JUDGE YOUNG: So do you want to set a

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1 subsequent deadline for you to notify us if there's  
2 any problems?

3 MS. EUCHNER: Well, what is ten days from  
4 now, the 23rd?

5 JUDGE YOUNG: Did we set an actual date?

6 MR. MARQUAND: We didn't. We just  
7 generalized.

8 JUDGE YOUNG: Today's the --

9 MR. MARQUAND: Thirteenth.

10 JUDGE YOUNG: -- 13th, Friday the 13th.  
11 So the 23rd, is that --

12 CHAIRMAN BECHHOEFER: What day is the --

13 MR. MARQUAND: That's a weekday.

14 CHAIRMAN BECHHOEFER: Pardon?

15 MR. MARQUAND: That's a weekday.

16 MS. EUCHNER: It is a weekday. I'm trying  
17 to figure out what we can --

18 JUDGE YOUNG: I don't have a calendar with  
19 me.

20 MS. EUCHNER: I shouldn't need --

21 JUDGE YOUNG: It's a Tuesday, so by that  
22 Friday?

23 MS. EUCHNER: Yes, that should be fine.

24 MR. MARQUAND: That's a Monday. Let's  
25 make it 11 days. Mondays are always bad.

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1 MS. EUCHNER: So the 22nd is Monday?  
2 Then, yes, that Friday should be more than enough.

3 JUDGE YOUNG: Now wait a minute. You said  
4 the --

5 MR. SLATER: The 23rd is Monday.

6 JUDGE YOUNG: Okay. So the --

7 MR. MARQUAND: The 23rd's a Monday, and  
8 the 24th will be better.

9 JUDGE YOUNG: Okay. The 23rd is Tuesday.

10 MR. MARQUAND: Right. No, the 24th is a  
11 Tuesday.

12 JUDGE YOUNG: The 24th you're going to get  
13 us the substitute pages.

14 MR. MARQUAND: Right.

15 JUDGE YOUNG: The 27th you're going to  
16 tell us if you have any problems with any of them.

17 MS. EUCHNER: Is the 27th Friday?

18 MR. MARQUAND: Yes.

19 MS. EUCHNER: Okay. Then no later than  
20 that Friday.

21 JUDGE YOUNG: All right. So the record  
22 reflects that.

23 CHAIRMAN BECHHOEFER: And I think the  
24 documents should be -- will there be any problem  
25 scanning the documents to --

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1 MR. MARQUAND: No. We'll have the thing  
2 typed up and e-mail it to you.

3 CHAIRMAN BECHHOEFER: Okay. Or at least  
4 fax it to us, either way.

5 MR. MARQUAND: We'll e-mail it and hard  
6 copy, just like we do everything else.

7 CHAIRMAN BECHHOEFER: Right. Okay.

8 JUDGE YOUNG: So September 27 objections,  
9 and this is for -- just for the record, 83.

10 MR. MARQUAND: Actually, it's going to be  
11 more than -- 83 through 92, 95 and 96 and 109 and 110.

12 JUDGE YOUNG: Okay. Very good. Anything  
13 more for the record before we --

14 MR. MARQUAND: Actually, 93 and 94 also  
15 are the same types of documents. We didn't say  
16 anything about this and the whole thing's admitted,  
17 but it might be helpful to the Board if we went ahead  
18 and prepared a summary document that can be appended  
19 to those two exhibits as well.

20 JUDGE YOUNG: To add to them. Any  
21 objection?

22 MS. EUCHNER: No. Staff has no objection.

23 CHAIRMAN BECHHOEFER: Does the Staff not  
24 have certain questions about particular pages of those  
25 documents?

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1 MR. DAMBLY: Yes. But we won't remove  
2 anything from 93 or 94.

3 MS. EUCHNER: Oh, yes, 93 and 94 are going  
4 to stay in their entirety and on top of that we'll do  
5 -- we'll have them supplemented, yes.

6 MR. DAMBLY: Right, right.

7 JUDGE YOUNG: And do either of those  
8 require any redactions?

9 MS. EUCHNER: Actually, 92, 93 and 94, the  
10 front page, all need to be redacted. Well, 93 and 94,  
11 the entire documents are going to need to be redacted.  
12 But for 92, that front page, the Social Security  
13 number at the top needs to be redacted. And I guess  
14 we can just mark 93 and 94 for later, as those are  
15 going to take quite a while to redact.

16 JUDGE YOUNG: So there's just the one  
17 Social Security number on 92 for Page 1.

18 MS. EUCHNER: Correct.

19 CHAIRMAN BECHHOEFER: We can do it right  
20 now.

21 MS. EUCHNER: Yes.

22 JUDGE YOUNG: Okay. And then 93 and 94 --

23 CHAIRMAN BECHHOEFER: Well, wait, whoa,  
24 whoa. What about -- I see a Social Security number on  
25 Page 2.

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1 MS. EUCHNER: We're getting rid of Page 2.

2 CHAIRMAN BECHHOEFER: That's part of  
3 everything that will be substituted?

4 MS. EUCHNER: Yes.

5 CHAIRMAN BECHHOEFER: Okay.

6 MR. MARQUAND: If it's Exhibit 92, you're  
7 taking out Page 2.

8 CHAIRMAN BECHHOEFER: It's 93 that we --

9 JUDGE YOUNG: Ninety-three and 94 coming  
10 in completely with additional pages to be appended,  
11 and we're going to need to redact.

12 MR. MARQUAND: Your Honor, what we told  
13 you earlier was 93 through 94. We would redact in our  
14 office and make numerous copies and send them to you  
15 all.

16 JUDGE YOUNG: Thank you. Did we get that  
17 on the record.

18 MR. SLATER: You can keep the first page  
19 in.

20 MR. MARQUAND: Well, yes. Let's remove  
21 everything but the first page.

22 JUDGE YOUNG: Remove everything else.  
23 Okay.

24 MR. MARQUAND: Go ahead and remove  
25 everything behind the first page in 93 and 94 and

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1 redact them and submit them back to you.

2 JUDGE YOUNG: Are we still on the record?  
3 Okay. So we'll add those to the list of ones, but  
4 you're going to do the whole thing on 93 and 94.

5 MR. MARQUAND: Yes. Ninety-five and 96  
6 also --

7 MS. EUCHNER: Well, 95 is in the same  
8 notebook.

9 MR. MARQUAND: Right. Ninety-five and  
10 ninety-six remove everything but the first page.

11 MS. EUCHNER: Any anyone with the  
12 originals needs to have 92 and 95 remarked by the  
13 court reporter.

14 JUDGE YOUNG: Anything else we need to put  
15 on the record right now?

16 MR. MARQUAND: Not beyond 96.

17 MS. EUCHNER: No.

18 MR. MARQUAND: We ought to go ahead and  
19 redact the first pages of those that need to be  
20 redacted but we're living in, though.

21 MS. EUCHNER: Looks like 92 and 94 have a  
22 first page that needs to have a Social redacted.

23 JUDGE YOUNG: I think I've got 92. We  
24 just did 92 a minute ago, didn't we?

25 MS. EUCHNER: Yes.



1 JUDGE YOUNG: We're off now? We can go  
2 off? Off the record.

3 (Whereupon, the foregoing matter went off  
4 the record at 1:09 p.m. and went back on  
5 the record at 2:37 p.m.)

6 JUDGE YOUNG: Out of an abundance of  
7 caution, I want to thank Judge Cole, Mr. Marquand and  
8 Mr. Slater for coming down to the parking basement  
9 with me to make sure that my tire was not flat.  
10 during the lunch break I went, it had lost not half  
11 the air, but it still had enough to drive to a gas  
12 station, so I have gotten it fixed. Fortunately, I  
13 will report to you. I believe that Ms. Euchner  
14 indicated that she had no concern with Mr. Slater and  
15 Mr. Marquand going down to the basement with Judge  
16 Cole and myself to check on my car. I probably am  
17 going far beyond the call of duty to report this, but  
18 since it has been mentioned, I just want to thank you  
19 and indicate that if anyone has any problem about it,  
20 please bring it to my attention immediately.

21 MS. EUCHNER: The Staff has no problem  
22 with that, Your Honor.

23 JUDGE YOUNG: Thank you.

24 MR. MARQUAND: If Mr. Vigluicci was here,  
25 he would say, "Forget about it."

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1 (Laughter.)

2 JUDGE YOUNG: Right. I'm quite sure he  
3 would. Judge Bechhoefer had some concerns, and I  
4 wanted to allay his concerns, but I think we can move  
5 on now. So we can go off the record.

6 CHAIRMAN BECHHOEFER: Yes. Well, off the  
7 record, but which documents are we up to?

8 (Whereupon, the foregoing matter went off  
9 the record at 2:39 p.m. and went back on  
10 the record at 2:47 p.m.)

11 JUDGE YOUNG: Tell us when you're ready.

12 MS. EUCHNER: Ready.

13 JUDGE YOUNG: Mr. Marquand, you want to  
14 say what's in and out?

15 MR. MARQUAND: We have just finished  
16 Volume 10. TVA Exhibit 96 was changed. The first  
17 page was left in. The remaining pages were pulled,  
18 and we're going to substitute for those pages a  
19 summary document. TVA Exhibit 97 was pulled and  
20 trashed. TVA Exhibit 103 and 104 were pulled and  
21 trashed. The remaining documents were left in.

22 JUDGE YOUNG: Correct, Ms. Euchner?

23 MS. EUCHNER: Yes, that's correct.

24 JUDGE YOUNG: My goodness, are we to the  
25 last volume of TVA?

1 MR. MARQUAND: No. We brought you some  
2 extra volume books.

3 JUDGE YOUNG: Extra documents.

4 MR. MARQUAND: Yes.

5 JUDGE YOUNG: But not volumes.

6 MR. MARQUAND: No, we brought you some  
7 volumes to put them in when we're done.

8 (Whereupon, the foregoing matter went off  
9 the record at 2:48 p.m. and went back on  
10 the record at 3:39 p.m.)

11 CHAIRMAN BECHHOEFER: Mr. Marquand, would  
12 you like to record for the reporter --

13 MR. MARQUAND: Sure.

14 CHAIRMAN BECHHOEFER: -- the exhibits that  
15 were dealt with?

16 JUDGE YOUNG: Let's say first the ones  
17 that were left in and then the ones that were taken  
18 out of the last volume and then go through the loose  
19 ones maybe.

20 MR. MARQUAND: Go through what?

21 JUDGE YOUNG: In Volume 11 of TVA's  
22 exhibits -- are we on the record? Okay. Volume 11 of  
23 TVA, let me say which ones I have. People tell me if  
24 I'm missing any, and then, Mr. Marquand, you can tell  
25 us which ones were taken out. One-zero-five, 106,

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1 107, 108, 109, 110, 111 are in; 109 and 110 were  
2 originally rejected but then there was an agreement to  
3 take out all but the first page and then substitute  
4 summary pages.

5 MR. MARQUAND: Correct.

6 JUDGE YOUNG: All the others were admitted  
7 as they were. Were there any that were taken out of  
8 that Volume 11?

9 MR. MARQUAND: Nothing was taken out of  
10 Volume 11.

11 JUDGE YOUNG: That was admitted as is.

12 MR. MARQUAND: Yes.

13 JUDGE YOUNG: All right.

14 CHAIRMAN BECHHOEFER: Starting with 112.

15 JUDGE YOUNG: Ms. Euchner, did you hear  
16 the ones we went through so far?

17 MS. EUCHNER: Yes.

18 JUDGE YOUNG: Okay.

19 CHAIRMAN BECHHOEFER: Starting with 112  
20 now, do you want to reflect, Mr. Marquand?

21 MR. MARQUAND: All right. Starting with  
22 112, the documents that are in are TVA 112, 113, 114,  
23 116 through 126, 128 through 136, 138 --

24 JUDGE YOUNG: Hold on. Go ahead.

25 MR. MARQUAND: One-thirty-eight through

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1 142, 144 --

2 JUDGE YOUNG: Hold on. Everyone caught  
3 up? Go ahead.

4 MR. MARQUAND: One-forty-four through 152.

5 JUDGE YOUNG: And just for the record, 148  
6 is a CD.

7 MR. MARQUAND: Correct. And among the  
8 documents that were excluded were Documents 115 --

9 JUDGE YOUNG: Just to be clear, not  
10 excluded --

11 MR. MARQUAND: They were removed from the  
12 record -- 115 --

13 JUDGE YOUNG: Or were never in it.

14 MR. MARQUAND: -- 127, they've never been  
15 offered, 137 and 143.

16 JUDGE YOUNG: We can go off now, I think.

17 (Whereupon, the foregoing matter went off  
18 the record at 3:44 p.m. and went back on  
19 the record at 3:57 p.m.)

20 CHAIRMAN BECHHOEFER: Back on the record.

21 MS. EUCHNER: In that book, we have -- and  
22 that's Staff Volume 1, Exhibits 2, 4, 5, 6, 7 and 12  
23 were admitted. And then 1, 3, 8, 9, 10, 11 and then  
24 13, 14, 15, 16, 17, 18, 19 and 20 were excluded.

25 JUDGE YOUNG: Were not proffered.

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1 MS. EUCHNER: Were not proffered and  
2 removed from the volume. Okay.

3 JUDGE YOUNG: We can go back off.

4 (Whereupon, the foregoing matter went off  
5 the record at 3:58 p.m. and went back on  
6 the record at 4:05 p.m.)

7 JUDGE YOUNG: Ready? Go ahead, Ms.  
8 Euchner.

9 MS. EUCHNER: Volume 2 of the Staff  
10 Exhibits. Included are 21, 22, 24, 25, 26, 27, 29,  
11 30, 31, 32, 33, 34 and 37. Excluded are 23 --

12 JUDGE YOUNG: Let's say not proffered,  
13 because --

14 MS. EUCHNER: Okay, not proffered.

15 JUDGE YOUNG: -- sometimes excluded is  
16 interpreted to mean --

17 MS. EUCHNER: Not proffered are 23, 28,  
18 35, 36 and then 38, 39 and 40.

19 MR. MARQUAND: I agree.

20 JUDGE YOUNG: All right.

21 (Whereupon, the foregoing matter went off  
22 the record at 4:05 p.m. and went back on  
23 the record at 4:09 p.m.)

24 JUDGE YOUNG: Ms. Euchner.

25 MS. EUCHNER: All right. Volume 3 of the

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1 Staff Exhibits. Included are 43, 44, 45, 46, 47, 49,  
2 50 (a) and (b) --

3 JUDGE YOUNG: One of which is tape.

4 MS. EUCHNER: That's correct. I think  
5 50(a) is the tape. Okay. So 50(b) is in the book.  
6 Fifty-one, 52, 53, 54, 55 and 56. And then not  
7 proffered are 41 and 42, 48 and 57.

8 JUDGE YOUNG: Go off the record?

9 CHAIRMAN BECHHOEFER: Off the record.

10 (Whereupon, the foregoing matter went off  
11 the record at 4:10 p.m. and went back on  
12 the record at 4:17 p.m.)

13 MS. EUCHNER: All right. This is Volume  
14 4 of the Staff exhibits. Included are 60, 63, 64, 65,  
15 67, 70, 71, 72, 73 and 74. Not proffered were 58, 59,  
16 61 and 62, 66, 68, 69 and then 75, 76, 77, 78. 79, 80  
17 and 81.

18 JUDGE YOUNG: Off the record?

19 CHAIRMAN BECHHOEFER: Off the record.

20 (Whereupon, the foregoing matter went off  
21 the record at 4:18 p.m. and went back on  
22 the record at 4:20 p.m.)

23 CHAIRMAN BECHHOEFER: Are you ready to go  
24 on the record?

25 MS. EUCHNER: Staff exhibits Volume 5.

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1 Included are 84, 85, 86, 87, 88, 90, 91 --

2 JUDGE YOUNG: Excuse me, 90 was in?

3 MS. EUCHNER: Ninety is in.

4 JUDGE YOUNG: Hold on just a second. Ah,  
5 just was behind another tag. After 90, what comes,  
6 91?

7 MS. EUCHNER: Ninety-one, 93, 95, 96, 97,  
8 98, 99, 100, 101 and 102. And then not proffered were  
9 82 and 83, 89, 92 and 94.

10 JUDGE YOUNG: Okay. Off the record?

11 CHAIRMAN BECHHOEFER: Off the record.

12 (Whereupon, the foregoing matter went off  
13 the record at 4:21 p.m. and went back on  
14 the record at 4:22 p.m.)

15 MS. EUCHNER: Staff Volume 6. Included,  
16 107, 108, 110, 111, 112 and 115. Not proffered, 103,  
17 104, 105, 106, 109, 113 and 114.

18 JUDGE YOUNG: Off the record?

19 CHAIRMAN BECHHOEFER: Off the record.

20 (Whereupon, the foregoing matter went off  
21 the record at 4:23 p.m. and went back on  
22 the record at 4:26 p.m.)

23 MS. EUCHNER: Are you ready?

24 JUDGE YOUNG: Yes.

25 MS. EUCHNER: Okay. Staff Exhibits Volume



1 7 included, 122, 124, 126, 128, 130, 131, 133, 134 and  
2 135. Let's see if I can get the not proffered list  
3 right. Not proffered, 116, 117, 118, 119, 120, 121,  
4 123, 125, 127, 129, 132, 136, 137, 138, 139 and 140.

5 CHAIRMAN BECHHOEFER: Off the record.

6 (Whereupon, the foregoing matter went off  
7 the record at 4:28 p.m. and went back on  
8 the record at 4:49 p.m.)

9 CHAIRMAN BECHHOEFER: Why don't we go on  
10 the record. Ms. Euchner, you go.

11 MS. EUCHNER: We're on Book 8 of the Staff  
12 exhibits. Included, 147, 148, 152, 154, 160, 162 and  
13 166. Not proffered, 141, 142, 143, 144, 145, 146,  
14 149, 150, 151, 153, 155, 156, 157, 158, 159, 161, 163,  
15 164, 165 and 167.

16 CHAIRMAN BECHHOEFER: Off the record.

17 (Whereupon, the foregoing matter went off  
18 the record at 4:50 p.m. and went back on  
19 the record at 5:05 p.m.)

20 MS. EUCHNER: All right. Final volume of  
21 Staff exhibits. Included are Staff 170, Staff 173,  
22 174, pages 721 through 733 and then pages 628, 630 and  
23 631. Staff 178 and 179 are tapes, and then Staff 180  
24 is included in this volume. Staff 177 is included in  
25 a separate volume.

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1 JUDGE YOUNG: Okay, 180 was in the first  
2 volume.

3 MS. EUCHNER: Yes. And then not proffered  
4 are 171, 172, 174, pages 734 to 736, 175 and 176,  
5 three pages.

6 CHAIRMAN BECHHOEFER: Three pages?

7 MS. EUCHNER: Yes, Your Honor. And that's  
8 it for the Staff exhibits.

9 JUDGE COLE: And that's it for all the  
10 exhibits.

11 JUDGE YOUNG: Anything else that we need  
12 to put on the record before we close?

13 MR. MARQUAND: There are several large  
14 exhibits that have to be redacted.

15 JUDGE YOUNG: Redacted, okay.

16 MR. MARQUAND: And I would suggest that we  
17 divvy them up, like we said we'd take those 83 through  
18 110 exhibits and deal with those. And there was  
19 something else -- oh, we were taking 93 and 94, we  
20 were going to deal with those. TVA Exhibits 20, 21,  
21 22 and 23 are the selection notebooks, and I would  
22 suggest the Staff take two and we'll take the other  
23 two.

24 JUDGE YOUNG: Let me go through what's in  
25 my stack and make sure I've got them all. Okay. TVA

1 Volume 1, we're going to redact Exhibit 24? Is that  
2 something that --

3 MR. MARQUAND: Say that again.

4 JUDGE YOUNG: I have a note on 24 that  
5 there were things that needed to be redacted?

6 MS. EUCHNER: Yes.

7 JUDGE YOUNG: TVA 24.

8 MS. EUCHNER: Yes. Those are -- that's  
9 the VPA and the selection notebook for the 1994  
10 selection, and there's going to be a lot of Social  
11 Security numbers in there.

12 MR. MARQUAND: TVA Exhibit 24. I'm  
13 looking at the wrong exhibit.

14 JUDGE YOUNG: Is it Joint, I'm sorry? No,  
15 it's TVA 24.

16 MR. MARQUAND: TVA 24 has a large number  
17 of redactions that need to be made.

18 JUDGE YOUNG: Okay. Now, is that one that  
19 we want to do together?

20 MR. MARQUAND: Why don't we make a list  
21 and then divvy them up to do them that way?

22 JUDGE YOUNG: Let's make a list and then  
23 decide what to do.

24 CHAIRMAN BECHHOEFER: Let me inquire of  
25 the parties. Would they wish us to close the record

1 as of now but subject to the changes we've already  
2 identified and --

3 MR. MARQUAND: Well, we were going to wait  
4 until TVA submitted and the Staff agreed upon the  
5 summary documents to TVA Exhibits 83 through 92.

6 CHAIRMAN BECHHOEFER: Well, I'm saying  
7 technically we could still close the record, subject  
8 to those later filed documents coming in.

9 (Judges confer.)

10 JUDGE YOUNG: TVA 24, then TVA 149.

11 MR. MARQUAND: Well, we have to redact 93  
12 and 94.

13 JUDGE YOUNG: I'm going through them.

14 MR. MARQUAND: You're right, TVA 149.

15 JUDGE YOUNG: Okay. Let me -- could I  
16 just go through the ones that I've got, because  
17 they're falling off here.

18 MR. MARQUAND: Sure.

19 JUDGE YOUNG: We don't need to do this on  
20 the record.

21 CHAIRMAN BECHHOEFER: Go off the record  
22 for the moment.

23 (Whereupon, the foregoing matter went off  
24 the record at 5:10 p.m. and went back on  
25 the record at 5:19 p.m.)

1 CHAIRMAN BECHHOEFER: Back on the record.

2 JUDGE YOUNG: Shall I read these off?

3 CHAIRMAN BECHHOEFER: Well, I was having  
4 the sponsors of the particular documents read them  
5 off, which would be Mr. Marquand.

6 JUDGE YOUNG: Mr. Marquand, do you want to  
7 read off those documents that you were going to  
8 redact?

9 MR. MARQUAND: Sure.

10 JUDGE YOUNG: How about if I summarize  
11 them and you tell me if they're correct, okay?

12 MR. MARQUAND: Okay.

13 JUDGE YOUNG: Ninety-three and 93, TVA  
14 Exhibits 93 and 94, you have those exhibits --

15 MR. MARQUAND: Right.

16 JUDGE YOUNG: -- from all the volumes.  
17 You are going to redact them and send them back to us  
18 -- four copies to Judge Bechhoefer, one to Judge Cole,  
19 one to me. You are going to take your one copy of TVA  
20 Exhibits 24, 149, 39 --

21 MR. MARQUAND: Go slow, make sure I get  
22 them.

23 JUDGE YOUNG: I'm sorry, 24 --

24 MR. MARQUAND: Right.

25 JUDGE YOUNG: -- 149 --

1 MR. MARQUAND: Right.

2 JUDGE YOUNG: -- 39 --

3 MR. MARQUAND: Right.

4 JUDGE YOUNG: -- 55 --

5 MR. MARQUAND: Right.

6 JUDGE YOUNG: -- 56 --

7 MR. MARQUAND: Yes.

8 JUDGE YOUNG: -- and Joint Exhibits 22 and  
9 23.

10 MR. MARQUAND: Right.

11 JUDGE YOUNG: And you are going to send  
12 four copies to Judge Bechhoefer and one copy to me of  
13 each of those. The Staff did not require those,  
14 although, again, if you want to have an opportunity to  
15 object to them or observe to see if there's anything  
16 left out --

17 MS. EUCHNER: I'm not going to object.  
18 Yes, I would waive that objection.

19 JUDGE YOUNG: And the Staff is going to do  
20 the same thing with Joint Exhibits 20 and 21.

21 MS. EUCHNER: Four to Judge Bechhoefer,  
22 one to you. Judge Cole, you didn't want one?

23 JUDGE COLE: I don't need it.

24 MS. EUCHNER: Okay.

25 CHAIRMAN BECHHOEFER: Okay. The record

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1 that's -- three of the ones forwarded to me will be  
2 used as official --

3 MR. MARQUAND: Correct.

4 CHAIRMAN BECHHOEFER: -- copies. Is there  
5 anything further before we adjourn today?

6 MS. EUCHNER: Nothing for the Staff, Your  
7 Honor.

8 MR. MARQUAND: Nothing for us. We do  
9 appreciate the Board's patience through this and the  
10 Staff's attention to this case.

11 CHAIRMAN BECHHOEFER: We appreciate the  
12 efforts of each one of you in participating.

13 JUDGE YOUNG: We feel like we're old  
14 friends by now, almost family.

15 MR. MARQUAND: Even those attorneys who we  
16 didn't see fit to be here the entire time.

17 CHAIRMAN BECHHOEFER: Okay. Well, we'll  
18 close for the day.

19 JUDGE YOUNG: Thank you all.

20 MS. EUCHNER: Thank you.

21 MR. MARQUAND: Thank you, Judge.

22 JUDGE YOUNG: We can go off the record now.

23 CHAIRMAN BECHHOEFER: Off the record.

24 (Whereupon, at 5:22 p.m., the hearing was  
25 concluded.)

CERTIFICATE

This is to certify that the attached proceedings  
before the United States Nuclear Regulatory Commission  
in the matter of:

Name of Proceeding: Tennessee Valley Authority

Watts Bar Nuclear Plant,

Unit 1 Sequoyah Nuclear

Plant, Units 1 and 2 Browns

Ferry Nuclear Plant, Units

1,2,3

Docket Number: 50-390-CivP; ASLBP No: 01-

791-01-CivP

Location: Rockville, Maryland

were held as herein appears, and that this is the  
original transcript thereof for the file of the United  
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