

RAS 13115

# Official Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

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February 28, 2007 (8:30am)

Title: American Centrifuge Plant  
Pre-Hearing Conference

OFFICE OF SECRETARY  
RULEMAKINGS AND  
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Docket Number: 70-7004-ML

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Date: Monday, February 12, 2007

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

PRE-HEARING CONFERENCE CALL

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IN THE MATTER OF:	:	
USEC INC.	:	Docket No.
(American Centrifuge Plant	:	70-7004-ML
	:	

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Monday, February 12, 2007

Teleconference

The above-entitled matter came on for hearing, pursuant to notice, at 3:00 p.m.

BEFORE:

- LAWRENCE G. McDADE, Chair, Administrative Judge
- RICHARD E. WARDWELL, Administrative Judge
- PETER S. LAM, Administrative Judge

## 1 APPEARANCES:

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11 OTHER BOARD PERSONNEL PRESENT:

12 JARED LINDSAY

13

14 OTHER NRC STAFF PRESENT:

15 STAN ECHOLS

16 BRIAN SMITH

17

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

2:57 p.m.

1  
2  
3 CHAIR McDADE: Okay. This is Lawrence  
4 McDade. With me are Judge Lam and Judge Wardwell.  
5 For the NRC staff, would you please indicate who's on  
6 the line?

7 MS. BUPP: This is Margaret Bupp of  
8 Counsel for the NRC staff. I'm joined by a couple of  
9 staff members, Brian Smith and Stan Echols, and also  
10 Brett Klukan from the Office of General Counsel.

11 CHAIR McDADE: And for USEC?

12 MR. SILVERMAN: This is Don Silverman from  
13 Morgan, Lewis, and I'm joined by Martin O'Neill who  
14 filed a Notice of Appearance today in this case.

15 CHAIR McDADE: Okay. And we have received  
16 that. Thank you.

17 MR. SILVERMAN: Thank you.

18 CHAIR McDADE: Is Mr. Scott from USEC on  
19 the line?

20 MR. SCOTT: Yes. This is Dennis Scott,  
21 Counsel to USEC. And I also have Pete Miner here,  
22 also with USEC.

23 CHAIR McDADE: Okay. We're here in the  
24 matter of USEC. It's Docket No. 70-7004-ML. The  
25 ASLBT No. is 05-838-01-ML. What we're here to do is

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1 to answer some questions to try to move this thing  
2 along as quickly as possible, understanding that the  
3 NRC staff and USEC are under significant time  
4 constraints in responding to our order of February  
5 6th. So we thought that the quickest way of responding  
6 to your request for clarification, dated February 9th,  
7 was to have this pre-hearing conference to be able to  
8 give our immediate reaction to it, and then be able to  
9 answer any questions that you might have as well.

10 I would just ask, given the fact that the  
11 stenographer's here, remotely, that if you do make a  
12 statement, just preface it with your name so that the  
13 court reporter will know to whom to attribute the  
14 particular comment.

15 The first are relatively easy. The first  
16 has to do with whether or not the cite was intended to  
17 be 28 U.S. Code, Section 1746, and the answer is yes.  
18 I don't believe there is an 18 U.S. Code, Section  
19 1746. But it is 28 U.S. Code as far as attesting to  
20 the written direct testimony under penalty of perjury.

21 With regard to the availability of expert  
22 witnesses during the week of March 13th, the answer to  
23 the question -- the easy answer is yes, it was not our  
24 intent to begin the taking of testimony on the 13th.  
25 So we don't need to have the expert witnesses

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1 available that week, if they would be available  
2 beginning on the 19th. There is one exception to that  
3 that Judge Wardwell wanted to raise. And I think we  
4 probably will be able to get it just simply through  
5 representations of counsel. And then, to the degree  
6 that we need additional testimony on it and to the  
7 degree that we do need testimony on it, it can begin  
8 on the 19th.

9 We are starting with the understanding  
10 that, in our review and the staff's review, that it  
11 allows a enrichment of up to 10 percent uranium 235,  
12 and that, for all purposes, we should consider that it  
13 would be up to uranium 10 percent 235. And likewise  
14 with the SWU, that it can be up to seven million. And  
15 I just want to make sure that that's the premise that  
16 the staff is working under and that USEC is working  
17 under that, for the purposes of our review, we should  
18 be using those figures. Am I correct there?

19 MS. BUPP: Judge McDade, this is Margaret  
20 Bupp. For your -- your assumptions as to the 10  
21 percent number are correct. But for the seven million  
22 SWU, it is correct that the EIF was done assuming up  
23 to seven million SWU, but the SER was only up to three  
24 and a half million SWU.

25 CHAIR McDADE: Okay. But, for our

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1 purposes, if the license goes through at the  
2 application is currently written, as the staff is  
3 reviewing it, would it authorize USEC up to three and  
4 a half million? Or would it authorize up to seven  
5 million?

6 MS. BUPP: It -- it will authorize up to  
7 -- we'll adjust this some more in our responses to our  
8 -- to your questions, because I believe there was a  
9 question on this. But it will authorize it actually  
10 up to 3.8 million SWU because there was a slight  
11 change in the application within the last few months  
12 from 3.5 million SWU to 3.8 million SWU. And an  
13 authorization up to seven million SWU would require a  
14 license amendment. So this license will only be for  
15 3.8 million SWU.

16 CHAIR McDADE: And Mr. Silverman, that's  
17 your understanding, as well?

18 MR. SILVERMAN: Absolutely, Your Honor.

19 CHAIR McDADE: Okay. So, for our  
20 purposes, we can work with the 3.8 million figure?

21 MR. SILVERMAN: For the safety analysis.  
22 As Ms. Bupp pointed out, the Environmental Impact  
23 Statement was done to assume even a larger capacity  
24 facility. But that is not being requested in this  
25 current licensing action.

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1 CHAIR McDADE: Okay.

2 MR. SILVERMAN: In other words, the  
3 Environmental Impacts considered the full seven  
4 million SWU plan.

5 CHAIR McDADE: Right. But if we were to  
6 just simply authorize the issuing of the license as  
7 currently requested, USEC would be able to go up to  
8 3.8 million SWU. Then, if you wanted to do something  
9 more than that, you would need to submit a supplement.

10 MR. SILVERMAN: That's correct.

11 ADMIN. JUDGE WARDWELL: This is Judge  
12 Wardwell speaking. But if you did, that wouldn't  
13 require any change in the EIS? Or would it? Is that  
14 the reason why you did use seven million in the EIS?

15 MS. BUPP: Margaret Bupp. It wouldn't  
16 require any change in the EIS. It might require some  
17 sort of updating to the EIS, but it wouldn't require  
18 an entirely new EIS because the EIS has been performed  
19 up to seven million SWU. We did that because USEC had  
20 indicated in their application that in the future they  
21 might plan to go up to seven million SWU, and it was  
22 a more efficient use of staff resources to do the EIS  
23 up to seven million SWU.

24 ADMIN. JUDGE WARDWELL: I have a few more  
25 questions on that. But I know we've raised it as one

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1 of the hearing issue items. Or I forgot whether it's  
2 a hearing issue item or whether it's just a regular  
3 question. So we'll see your response to that and then  
4 we'll go from there.

5 CHAIR McDADE: Okay. Next up to do, the  
6 staff had a question with regard to our question S2-  
7 1.A4, whether we intended to refer to the position of  
8 the Office of Nuclear Material Safety and Safeguards  
9 Management, as reflected in the August 4, 2006  
10 memorandum from Robert Pearson or, in the alternative,  
11 to the position of individual Nuclear Regulatory  
12 Commission staff members reflected in the Memoranda  
13 voted, cited in footnote 13 from Mrs. Tripp and  
14 Burroughs. Judge Wardwell, do you want to respond to  
15 that? I believe what we're looking for is both.

16 ADMIN. JUDGE WARDWELL: Yes. That's what  
17 we are looking for. We'd like to hear or see, at  
18 least for a response initially, what the positions of  
19 each are and to what degree each position was used in  
20 the review of USEC's application, and then the  
21 justification as to why that approach was adequate and  
22 sufficient to make any findings that the staff had to  
23 make.

24 MS. BUPP: Okay. That is something the  
25 staff can provide in our response.

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1 CHAIR McDADA: Okay. And this is Judge  
2 McDade again. Just to make sure that you all  
3 understand, this here today is intended as a  
4 discussion. We understand the time constraints that  
5 you're under. And, if there's something we're asking  
6 from you that's going to require an inordinate amount  
7 of time that you think is probably going to take more  
8 time that it ultimately is going to be worth, if you  
9 could initially raise that with us today and explain  
10 why. And, if not, don't feel shy about requesting a  
11 subsequent pre-hearing conference in order to work  
12 that out. What we don't want you to do, given the  
13 limited amount of time, is to waste any of that time  
14 running down something that perhaps is simply because  
15 we didn't understand something relatively simple.

16 So. Okay. The next has to do with our  
17 question S2-1.B, criticality safety, inquiring about  
18 the phrase "the most critical criticality accident."  
19 And if anyone can say that three times really quickly,  
20 they get an extra prize. But Judge Wardwell, do you  
21 want to explain exactly what that is?

22 ADMIN. JUDGE WARDWELL: Yes. To answer  
23 your one question, that wasn't taken from any  
24 document. That was my creative writing that generated  
25 that particular phrase. Basically, what we're

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1 striving for here is to -- you know, it's our  
2 understanding that the accident involving a liquid  
3 transfer of UF-6 would have the greatest impact and  
4 have the highest potential for criticality. We just  
5 want to verify that that understanding is correct on  
6 our part. And, if so or if not, either way for  
7 whatever situation is the most significant or whatever  
8 phrase we want to use besides critical, demonstrate  
9 why that particular situation would lead to the most  
10 impact and the highest likelihood for criticality.  
11 Does that make more sense to you?

12 MS. BUPP: Okay. For the staff answering  
13 the question in terms of which accident has the  
14 greatest potential impact and also the highest  
15 potential for criticality makes sense.

16 ADMIN. JUDGE WARDWELL: Okay. Yes.  
17 That's all we're after.

18 MR. SMITH: This is Brian Smith. I just  
19 want to make sure we're clear. You want to know which  
20 of all the criticality accidents is the most likely to  
21 occur. Is that correct?

22 ADMIN. JUDGE WARDWELL: That's correct.

23 MR. SMITH: Okay.

24 ADMIN. JUDGE WARDWELL: And then, you  
25 know, to add to that though, it's also we're

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1 interested in which one has the highest degree of  
2 impact and that which has the greatest potential for  
3 criticality. And then that potential would probably  
4 be based on -- that potential for criticality, I  
5 guess, would be based on the most likely to occur.

6 MR. SMITH: Yes. Same thing.

7 ADMIN. JUDGE WARDWELL: Right.

8 MR. SMITH: Okay.

9 CHAIR McDADE: Okay. The next has to do  
10 with the difference, if any, between the words  
11 exemptions and exceptions. And, as you pointed out in  
12 your memo of February 9th, Section 5.3.6 of the Safety  
13 Evaluation Report addresses an exemption request with  
14 regard to uranium hexafluoride in the cylinder storage  
15 yards. It indicates that that is the only exemption  
16 requested. And what we're looking for is verification  
17 of that and also that, I believe at some points, the  
18 word exception may have been used instead of  
19 exemption. And just to make sure that there isn't a  
20 distinction between those two and whether it's  
21 characterized as an exception or an exemption, the  
22 only one that we're talking about at this point has to  
23 do with the one for the cylinder storage yards. Does  
24 that clarify?

25 MS. BUPP: Yes. That's -- that's fair

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1 now.

2 CHAIR McDADE: Okay. And Mr. Silverman,  
3 do you have nothing further?

4 MR. SILVERMAN: Yes. I think I understand  
5 that. Well, actually, let me just verify it. You're  
6 suggesting there's some language in the SER that  
7 sometimes uses the word exception rather than the word  
8 exemption in the context of the cylinder storage yard?

9 CHAIR McDADE: Well, at this point, I'm  
10 not 100 percent certain.

11 MR. SILVERMAN: Okay.

12 CHAIR McDADE: Since we got this, we've  
13 gone back and tried to find exactly the reference that  
14 we had and whether or not it was our sloppiness in  
15 writing it down differently in our notes as we read  
16 through it and write it down as exception as opposed  
17 to exemption. I'm afraid that I can't tell you  
18 whether or not it is there or it's just simply  
19 something that was created through my sloppy note  
20 keeping.

21 But what we're looking for is just to make  
22 sure, verify that at this point the only exemption in  
23 play is the one having to do with the cylinder storage  
24 yards. And if that is incorrect, if there are any  
25 other exemptions or exceptions in play, just to

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1 highlight those for us.

2 MR. SILVERMAN: This is Don Silverman.

3 Thank you, Your Honor. I understand.

4 CHAIR McDADE: Okay.

5 MR. SILVERMAN: Great.

6 CHAIR McDADE: And again, part of this is  
7 we got this out a little bit quicker than we expected  
8 to, wanting to give you all as much time to work with  
9 it as possible. And so, to the degree that we may  
10 have led you astray there, I apologize. And just, you  
11 know, the purpose, we don't want to lead you further  
12 astray looking for one as opposed to the other.

13 ADMIN. JUDGE LAM: And this is Judge Lam.  
14 Let me further clarify that remark. I think the  
15 exception and exemption issue here has to be focused  
16 on criticality safety. Please do not confuse the  
17 numerous exception requests that the Board is  
18 interested in the pre-file testimony. Am I clear?

19 MR. SILVERMAN: Don Silverman. Yes, sir.

20 ADMIN. JUDGE LAM: Thank you.

21 CHAIR McDADE: Okay. The next having to  
22 do with the facility description and possible  
23 reference to classified information. I guess what we  
24 would like to indicate is we are looking for something  
25 here to a degree of specificity that would not involve

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1 classified information. That, if you believe it is  
2 necessary in order to properly do this, to get in the  
3 classified information, you should highlight that.  
4 Don't include it in the pre-file testimony. Just  
5 simply indicate to use at the time you file the pre-  
6 file testimony or before that there is additional  
7 information that would be classified that you believe  
8 should be highlighted for us. But what we had in mind  
9 here in this presentation would not involve the degree  
10 of detail that would involve classified information.  
11 Does that clarify and does that present a problem for  
12 anybody? Ms. Bupp?

13 MS. BUPP: No. That is clear. I just  
14 want to double check with the Board while we're  
15 discussing this that while we can certainly answer all  
16 of the questions that you've posed without classified  
17 information, that there may be some ECI, Expert-  
18 Controlled Information or other non-publicly available  
19 information. So, during this presentation, the  
20 hearing room would still have to be closed to the  
21 public for the information that you've requested.

22 CHAIR McDADE: Yes. And let me also  
23 emphasize two things. One, if it is going to be, in  
24 your view, appropriate to include that information,  
25 make sure that it is filed separately in the pre-file

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1 testimony so that it can be easily segregated, so  
2 that, you know, there would be an addendum to the pre-  
3 filed testimony that then could be filed under sealed  
4 to make sure that it doesn't get into the public  
5 records. And also then, when we get to the hearing,  
6 you know, if at the time you wish to bring that  
7 forward so that we can close the courtroom and make  
8 sure that no inappropriate people are present during  
9 the presentation of testimony on those points.

10 MS. BUPP: We're already planning separate  
11 addendums for both the question answers and for the  
12 pre-file testimony that would include the different  
13 levels of non-publicly available information.

14 CHAIR McDADE: Okay. And Mr. Silverman,  
15 is that agreeable to USEC? Do you perceive many  
16 problems going that way?

17 MR. SILVERMAN: I do not, Your Honor.

18 CHAIR McDADE: Okay. Okay. Next, having  
19 to do with financial --

20 ADMIN. JUDGE WARDWELL: Can I just  
21 interject a question or a comment. I'm not sure how  
22 it will come out. This is Judge Wardwell.

23 During the course of the oral hearing, I  
24 assume that the staff will caution us if, in fact, we  
25 get into similar areas during our discussions, so that

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1 the courtroom can be cleared in order for us to  
2 continue on with those lines of questioning if, in  
3 fact, we start probing into those particular areas  
4 that meet the same criteria. Is that a correct  
5 assumption on my part?

6 MS. BUPP: Yes. We'll have the  
7 appropriate staff members in the hearing room at all  
8 times to warn us if we're veering into non-publicly  
9 available information. If the Board does think that  
10 we'll need to get into classified information, we  
11 should probably plan now to have time available, at  
12 least on one of the hearing days, in an appropriate  
13 room in the NRC complex. There are a couple rooms  
14 that we could use. And if the Board thinks that we  
15 really are going to get into that information, we  
16 should probably plan now, just for space purposes.

17 JUDGE WARDWELL: I can't imagine needing  
18 to get into classified information. I could see it  
19 being advantageous to get into non-public information.  
20 I just want to make sure that I don't lead or anyone  
21 else on the panel leads us into those areas with that.  
22 We are responsible for knowing whether or not we're  
23 getting into that area, that the staff will caution us  
24 if we start getting into those areas.

25 CHAIR McDADE: And also, I mean, that

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1 would be something I would hope, in the preparation of  
2 the witnesses, would be discussed. So that they would  
3 have in their minds the distinction of, you know,  
4 public and non-public information. So that, as  
5 they're testifying, obviously, it's difficult for  
6 anybody else ahead of time to know what's going to  
7 come out of their mouths. You know, that they are  
8 just aware of the issue and sensitive to the issue.  
9 So that, if they believe they are getting into  
10 information that should not be in the public domain,  
11 that they will pause before they do it and inquire as  
12 to how that should properly be taken care of.

13 Now, because again, you know, it's  
14 difficult to withdraw once it's already out there,  
15 obviously. You can do things with regard to redacting  
16 the transcript and all. But it's better to just, you  
17 know, prevent the problem in the first instance. And  
18 I'm sure, if the witnesses are advised of that, you  
19 know, that they will be sensitive to it. They're all  
20 used to handling this kind of information on a daily  
21 basis in their jobs.

22 Okay. The next has to do with the  
23 financial capability. Judge Wardwell?

24 ADMIN. JUDGE WARDWELL: Yes. In this  
25 area, I think the Board was mostly just interested in

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1 a discussion of how the transition is going to occur  
2 between the Lead Cascade and operational situations  
3 associated with the ACP. It's, you know, specifically  
4 how this transition will occur. You know, when will  
5 it be determined that the Lead Cascade is terminated  
6 and when ACP operations are really in effect? What  
7 are those disposal options for the Lead Cascade? You  
8 know, and how is all of that going to be managed? And  
9 then just to verify, or at least show, how the  
10 construction funding and the decommissioning funding  
11 relates to that transitional period to assure that  
12 there's a seamless transition between the two  
13 functions. Does that clarify what we're after in this  
14 area?

15 MS. BUPP: What you're asking is clear.  
16 But the staff is a little concerned about the scope of  
17 what you're asking. All of the transitions from the  
18 Lead Cascade that becomes ACP operations is, of  
19 course, related to this license. But anything from  
20 the Lead Cascade that does not transition to ACP  
21 license operations, such as waste left over from the  
22 Lead Cascade, is really only under the scope of the  
23 Lead Cascade license. And so those issues aren't  
24 really within the scope of what -- of the license that  
25 they've asked for for the ACP.

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1 ADMIN. JUDGE WARDWELL: And I understand  
2 that. Is it possible to discuss or explain how one  
3 can be assured that any things like the leftover waste  
4 doesn't end up to be an ACP responsibility? Just so  
5 that we can clearly show what is a Lead Cascade  
6 activity and what is an ACP activity, so that it's  
7 clear in our minds that there won't be any confusion  
8 when this occurs, such that materials or processes or  
9 controls or responsibilities, for that matter, are not  
10 clearly delineated at any given time?

11 MS. BUPP: Could you give us just a  
12 second, Judge?

13 ADMIN. JUDGE WARDWELL: Sure.

14 MS. BUPP: Thank you.

15 (Whereupon, off the record from 3:20 p.m.  
16 until 3:21 p.m.)

17 MS. BUPP: This is Margaret Bupp from the  
18 staff. It's clear what the Board is asking for now.

19 CHAIR McDADE: Okay. Mr. Silverman, do  
20 you have any questions on that?

21 MR. SILVERMAN: No. I think I'm fine,  
22 Your Honor.

23 CHAIR McDADE: Okay. And again, if after  
24 this pre-hearing conference, after we get off the line  
25 here, if as you're putting this together with

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1 discussions between USEC and the staff, you have  
2 additional questions, please don't feel shy about, you  
3 know, trying to set up an additional pre-hearing  
4 conference. We don't want you wasting time trying to  
5 figure stuff out that is unnecessary.

6 Okay. The next has to do with the request  
7 to file a legal brief. And I guess the easy answer to  
8 that is yes. And let me explain a little bit. I  
9 think there is a possibility this is going to wind up  
10 involving mixed issues of law and fact. And, given  
11 the time that we have, what I would suggest is that  
12 legal briefs be filed.

13 Again, if you could coordinate it so that  
14 both the staff and USEC can file anything about the  
15 same time, and that USEC only file if they have an  
16 objection to or difference of opinion or need to  
17 clarify something that the staff does.

18 If that could be filed at the same time as  
19 the pre-file testimony, what we would then try to do  
20 is perhaps, if we are going to need additional  
21 testimony is, after reading your briefs, focus it  
22 more.

23 And then on the 13th, if not before, but  
24 not later than the 13th we would be able to identify  
25 for you what additional areas of testimony that we

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1 thought might be helpful. And then allow you either  
2 to present that in pre-file testimony, if time allows.  
3 Again, recognizing you've got a limited amount of time  
4 between the 13th and the 19th and other things to do.  
5 Or you could just simply identify witnesses and  
6 perhaps just present the direct testimony orally,  
7 rather than going through the exercise of preparing  
8 pre-filed written testimony on it.

9 But it would be to submit the briefs.  
10 Once the briefs have been read by us, we could then  
11 perhaps more directly focus additional oral testimony  
12 facts we would need in order to answer our questions  
13 here. Does that work for the staff?

14 MS. BUPP: That's fine with the staff,  
15 Your Honor.

16 ADMIN. JUDGE WARDWELL: I just want to  
17 clarify just one thing. This is Judge Wardwell again.  
18 That we don't see these legal briefs preempting or  
19 superceding any of the technical pre-file testimony  
20 addressing those questions, though. We see them as  
21 both taking place, at this point. And is there  
22 timing? Did I miss -- did you state the timing for  
23 that, Judge McDade?

24 CHAIR McDADE: Well, it had been my -- it  
25 had been my thought that once, rather than them going

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1 through the exercise of trying to prepare pre-trial  
2 testimony at this point where they view much of this  
3 as a legal issues and we might agree with them, that  
4 if they filed the legal briefs along with the other  
5 pre-file testimony, that after reading those legal  
6 briefs we would be in a better position to focus the  
7 areas of testimony here that we are looking for. So  
8 that we could either provide them greater guidance at  
9 a pre-hearing conference prior to the 13th, or at the  
10 latest, on March 13th. So we could then allow them to  
11 prepare that testimony or have it ready by the 19th,  
12 or such later time during the hearing, as is  
13 practicable.

14 Judge Wardwell seems to think that that  
15 may not be workable.

16 MS. BUPP: This is Margaret Bupp. So what  
17 I am to understand is that we would file --

18 CHAIR McDADE: Well, Ms. Bupp, before you  
19 do that, apparently I had a misunderstanding here.  
20 Let me just hit the moot here for a second and allow  
21 us to have a brief discussion amongst ourselves. We  
22 will come back on the line in just a few minutes.  
23 What I want to do is make sure that we all have the  
24 same understanding as to what we're looking for so  
25 that you don't wind up doing something either more or

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1 less than necessary. So just hold on for a second and  
2 we'll be back on the line here.

3 (Whereupon, off the record from 3:25 p.m.  
4 until 3:27 p.m.)

5 CHAIR McDADE: This is Judge McDade back  
6 on the line. Is everyone still there?

7 MR. O'NEILL: Yes.

8 MS. BUYP: Yes.

9 CHAIR McDADE: Okay. Let me modify that  
10 a little bit. In your motion, you indicated that you  
11 wanted to provide a brief in addition to any pre-file  
12 testimony on the technical aspects of the staff's  
13 review in this area.

14 To the degree that you think it  
15 practicable, if you can supply technical pre-file  
16 testimony at the same time, those issues that you  
17 believe are appropriate fact issues for our  
18 consideration and that you can explain the nature of  
19 the technical review in that pre-file testimony, to do  
20 so. You know, to the degree that you think that the  
21 testimony needs additional clarification as to how we  
22 react to your legal briefs, to understand that you  
23 would then have an opportunity to augment that direct  
24 testimony after we have had an opportunity to read  
25 those briefs and have a discussion with you to

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1 explain, you know, where we come out as a legal matter  
2 as the result of having reviewed those briefs. Is  
3 that doable, Ms. Bupp?

4 MS. BUPP: We can provide some technical  
5 testimony on the issues, with the understanding of the  
6 reason why we wanted to file the legal briefs is that  
7 we think that our legal interpretation of these  
8 Commission orders narrows the scope of the review that  
9 we did in these areas. So our testimony may not be --  
10 may have a narrower scope than what the Board was  
11 initially looking for. But the justification for that  
12 narrower scope will be in the legal brief.

13 CHAIR McDADE: That's fine.

14 MS. BUPP: Okay.

15 CHAIR McDADE: Okay. And Mr. Silverman,  
16 that's agreeable with you all?

17 MR. O'NEILL: Yes. This is Mr. O'Neill.  
18 Yes. We agree with that.

19 CHAIR McDADE: Okay. Are there any other  
20 matters that we should take up?

21 ADMIN. JUDGE WARDWELL: Did you give the  
22 time for -- I'm sorry. I'm losing track of whether  
23 you mentioned when you'd like those legal briefs.  
24 This is Judge Wardwell who just spoke.

25 CHAIR McDADE: Okay. Well, I believe that

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1 we specified that they should be in at the same time  
2 as the pre-file testimony, which was specified in our  
3 February 6th order, which I would need to flip through  
4 really quick in order to get to that particular date.

5 MS. BUPP: I believe it's March 5th.

6 MR. O'NEILL: It is March 5th.

7 CHAIR McDADE: Okay. And that's doable  
8 for you guys, from the standpoint of the USEC and also  
9 from the staff, getting those legal briefs by the  
10 March 5th date?

11 MS. BUPP: Yes. The staff can get the  
12 briefs done by March 5th.

13 CHAIR McDADE: Thank you.

14 MR. O'NEILL: Certainly.

15 CHAIR McDADE: Is there anything else that  
16 we need to take up at this conference that you feel  
17 would be helpful from the NRC staff's standpoint?

18 MS. BUPP: If you can give us just a  
19 minute, Your Honor.

20 (Whereupon, off the record from 3:30 p.m.  
21 until 3:31 p.m.)

22 MS. BUPP: Your Honor, this is just a  
23 housekeeping sort of question. For the week of March  
24 19th, when we have the actual oral hearings, it says  
25 that it will continue on business days until it's

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1 finished. Just so that we can warn the witnesses as  
2 to what their availability will need to be, do we  
3 anticipate that the hearing will be continuing into  
4 the evening hours? Or will it be during normal  
5 business hours on those days?

6 CHAIR McDADE: Well, I think we indicated  
7 probably from 10:00 a.m. until 6:00 p.m.

8 MS. BUPP: Okay.

9 CHAIR McDADE: And, you know, I would hope  
10 that we would get it done during the week of the 19th.

11 ADMIN. JUDGE WARDWELL: Certainly before  
12 April 13th.

13 CHAIR McDADE: But also, at this point,  
14 from the standpoint of your witnesses, I don't  
15 anticipate we would be going on the weekend. If we  
16 didn't get finished by 6:00 p.m. on Friday, probably  
17 we'd take up again at 10:00 a.m. on Monday, unless  
18 there was an objection from the staff or from USEC.

19 If there were witnesses who would be  
20 available or readily available on that Saturday, but  
21 wouldn't be available the following Monday, we'd try  
22 to accommodate them. But it would probably be from  
23 10:00 a.m. until 6:00 p.m., Monday through Friday.

24 I would hope we would be finished before  
25 Friday. Again, if witnesses have particular problems

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1 with regard to being here at a particular time, we  
2 could try to accommodate them by either starting  
3 earlier or staying later. But certainly the 10:00  
4 a.m. to 6:00 p.m. would be the goal. Any questions  
5 with regard to that?

6 MS. BUPP: No. None from the staff.

7 CHAIR McDADE: Okay. With regard to the  
8 -- any questions with regard to what we had in mind  
9 with regard to receipt of the pre-file testimony and  
10 the exhibits and, you know, that all exhibits will be  
11 pre-marked? And what we would envision doing, just  
12 simply, is receiving the pre-file testimony and the  
13 exhibits into evidence on the 13th.

14 I assume, you know, there would be few, if  
15 any, objections to any of the exhibits. Hopefully,  
16 you will be able to work out any problems you have  
17 between yourselves and reach a consensus. Any issues  
18 in that regard?

19 MR. O'NEILL: None from the Applicant,  
20 Your Honor.

21 MS. BUPP: None from the staff, Your  
22 Honor.

23 ADMIN. JUDGE LAM: This is Judge Lam. Let  
24 me provide a little bit more guidance to the staff as  
25 to how the pre-file testimony should be prepared.

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1 Since the Board is working under a great deal of time  
2 pressure, what I'd like to share with you very quickly  
3 is how the pre-file testimony questions were framed by  
4 the Board.

5 As you are well aware, there will be a one  
6 hour presentation at the very beginning of the hearing  
7 so that everybody will be properly oriented as to how  
8 the facility would look like. And then, from then on,  
9 what the Board is really interested in is that the  
10 pre-file testimony then has clarity and focus.

11 To that end, may I share with you what is  
12 the rationale of the structure of the questions that's  
13 been posed to you in Part 2 of the pre-file testimony  
14 requirements?

15 As you can see, it's basically a top down  
16 approach that the Board has put together. At the very  
17 beginning, you will see the MOU of issues that need to  
18 be addressed. And then, secondly, you will see the  
19 license condition issues the Board is interested in.  
20 And then, from then on, there is a hierarchy of safety  
21 significance.

22 As you can see, MOU ranked higher than the  
23 license conditions in terms of the safety significance  
24 implications. And then the license conditions were  
25 ranked higher than the exemption requests. And then

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1 the exemption requests were ranked higher than the  
2 licensee commitment. And then, from then on, the  
3 Board would be getting into a lot more specific areas  
4 of concern that would be of interest to all of the  
5 Board members; to Chairman McDade, Judge Wardwell, and  
6 then myself.

7 So I hope these comments will be useful to  
8 you in providing your responses.

9 CHAIR MCDADE: Okay. Now, one other  
10 thing. This is Judge McDade again. During the Grand  
11 Gulf hearing, when we took testimony, we had both the  
12 staff witnesses on a particular hearing issue, and the  
13 Applicant's witnesses on a particular hearing issue,  
14 sworn at the same time.

15 We heard initially from the staff  
16 witnesses and then the Applicant's witnesses had an  
17 opportunity to amplify, emphasize after that.

18 What we would like you all to do is to  
19 discuss that methodology between yourselves to discuss  
20 it with the counsel in Grand Gulf, who I believe are  
21 from the same law firm and certainly from the same NRC  
22 staff to get their impressions on how that worked and  
23 to be able to explain to us on the 13th whether or not  
24 you think that's a workable way of proceeding. If  
25 not, whether you have any objections and other

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1 suggestions on how we should go about the taking of  
2 the testimony.

3 Any issue with regard to that?

4 MS. BUPP: None from the staff.

5 MR. O'NEILL: No, Your Honor. It's Marty  
6 O'Neill.

7 CHAIR McDADE: Okay. And the other matter  
8 is just, you know, having to do with the exhibits.  
9 You know, we've expressed how we want to get the  
10 exhibits from the standpoint of the Board. Ultimately  
11 there's both the Board and then we also to have to  
12 file stuff with SECY.

13 And after we've received the evidence on  
14 the 13th, admitted the exhibits, there may well be  
15 other exhibits that come in after that. And we would  
16 direct one -- we'll be giving you the sort of semi-  
17 official stamp in order to stamp your exhibits with  
18 between now and then. And just so we have an ongoing  
19 exhibit list and an ongoing list of exhibits, so that  
20 we will be able to, at the conclusion of the hearing,  
21 turn over to SECY.

22 So just make sure that your exhibit lists,  
23 you can add on to them. And we'll then have a  
24 finished exhibit list at the end.

25 Also we should note that, with regard to

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1 the hearing issues, we've identified those that we  
2 felt would be clearly, at least in our view, most  
3 likely hearing issues in our order of February 6th.  
4 When we get the answers to your questions -- your  
5 answers to our questions, we may identify additional  
6 hearing issues. And we will do that either by setting  
7 a pre-hearing conference prior to the 13th, or at the  
8 latest, on the 13th, so that you would be able to  
9 prepare additional witnesses to answer those  
10 additional questions, prior to the beginning of the  
11 hearing on the 19th.

12 Okay. Is there anything by way of  
13 clarification that either the NRC staff or USEC  
14 requests before we break today? Ms. Bupp?

15 MS. BUPP: Nothing from the staff.

16 CHAIR McDADE: Mr. O'Neill or Mr.  
17 Silverman?

18 MR. O'NEILL: I'd just like to make sure  
19 that Mr. Scott doesn't have anything he would like to  
20 add or that I should add at this point.

21 MR. SCOTT: No. This is Dennis Scott. I  
22 don't have anything to add. Thank you, Your Honor.

23 MR. O'NEILL: And nothing from the  
24 Applicant, Your Honor.

25 CHAIR McDADE: Okay. Judge Wardwell, do

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1 you have anything further?

2 ADMIN. JUDGE WARDWELL: The only think I'd  
3 like to add to the last statement Judge McDade made  
4 was that it would be useful on the 13th to have  
5 persons there that -- technical persons at project  
6 management level or something in that neighborhood,  
7 that could at least ask some questions, if in fact we  
8 start bringing up some additional oral hearing issues  
9 so that we help clarify to you what we're looking for  
10 at that point from the technical side. So that,  
11 certainly, we don't want witnesses there.

12 But it might be helpful to have someone  
13 there that could think of potential problems or  
14 questions that they might have to clarify what we're  
15 after if, in fact, we do come up with any additional  
16 oral hearing issues.

17 MR. SCOTT: This is Dennis Scott, Your  
18 Honor. For the Applicant, that would be no problem.  
19 We could have someone there that could be able to be  
20 more technically literate than either I or Mr.  
21 Silverman.

22 CHAIR McDADE: Okay. And Ms. Bupp, I  
23 assume that's not a problem for the staff?

24 MS. BUPP: No. That's not a problem for  
25 the staff, Your Honor.

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1 CHAIR McDADE: Okay. There being nothing  
2 further, I guess this pre-hearing conference will  
3 conclude. Again, if after we're done if you feel that  
4 you need further clarification, please -- time is of  
5 the essence here. Don't feel shy about just picking  
6 up the phone and calling Ms. Wolf to schedule another  
7 pre-hearing conference by telephone.

8 MR. O'NEILL: Your Honor, this is Marty  
9 O'Neill.

10 CHAIR McDADE: Yes?

11 MR. O'NEILL: I apologize. Just one quick  
12 question. I know in Grand Gulf, we also provided  
13 electronic copies of the exhibits, you know, on jump  
14 drives or CD ROMS. And I apologize if the order  
15 addressed that. But would you like electronic copies  
16 again?

17 CHAIR McDADE: Yes.

18 MR. O'NEILL: Okay. Thank you.

19 CHAIR McDADE: Okay. That's all. Thank  
20 you.

21 MR. O'NEILL: Thank you.

22 MS. BUPP: Thank you.

23 (Whereupon, the pre-hearing conference  
24 call was concluded at approximately 3:41 p.m.)  
25

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Name of Proceeding: American Centrifuge Plant  
Pre-Hearing Conference

Docket Number: 70-7004-ML

Location: (Telephone conference)

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.



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