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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

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4 ATOMIC SAFETY AND LICENSING BOARD PANEL

5 PREHEARING CONFERENCE

6 -----x

7 In the Matter of: :

8 SOUTHERN NUCLEAR COMPANY :

9 (Early Site Permit for : Docket No. 52-011-ESP

10 Vogtle ESP Site) :

11 -----x

12 Monday, April 28th, 2008

13
14 The above-entitled prehearing conference
15 was convened, pursuant to notice, at 5:00 p.m. at the
16 Doubletree Hotel and Conference Center, 2651 Perimeter
17 Parkway, Augusta, Georgia.

18 BEFORE:

19 G. PAUL BOLLWERK, III Chairman

20 NICHOLAS G. TRIKOUROS Administrative Judge

21 DR. JAMES F. JACKSON Administrative Judge

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11 ALSO PRESENT:

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P R O C E E D I N G S

5:00 p.m.

CHAIR BOLLWERK: Good afternoon. Today we are here to conduct a prehearing conference in this Early Site Permit, or ESP proceeding, under Part 52 of Title 10 of the Code of Federal Regulations, also referred to as the CFR.

In accord with the provisions of the Atomic Energy Act, and the regulations of the Nuclear Regulatory Commission, this Atomic Safety and Licensing Board was appointed to conduct an adjutory proceeding in connection with the August 2006 application of Southern Nuclear Operating Company, or Southern, for an Early Site Permit, which includes a limited work authorization request, and an associated site redress plan.

With this Early Site Permit application, Southern seeks to have the existing location, on which its two unit Vogtle Electric Generating Plant, is situated near Waynesboro, Georgia, approved as a site for two additional power reactor units, and to obtain permission to do some work to prepare the site for construction of the proposed units.

Relative to the ESP application, this Licensing Board is charged with hearing the currently

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1 pending challenge of several parties, who have
2 intervened jointly in the proceeding, including the
3 Center for a Sustainable Coast, Savannah River Keeper,
4 the Southern Alliance for Clean Energy, Atlanta
5 Women's Action for New Directions, and the Blue Ridge
6 Environmental Defense League, certain aspects of the
7 ESP application, as well as conducting a so-called
8 mandatory, or uncontested hearing, relative to the
9 safety and environmental aspects of the Southern
10 application, that are not the subject of Intervenor
11 challenges.

12 As it currently stands, both the
13 contested, and the mandatory, or uncontested portions
14 of this proceeding, are scheduled to go to hearing in
15 March of next year.

16 Subject to any scheduling changes, that
17 may accrue, as a result of the further postponement of
18 the NRC staff's issuance of its final safety
19 evaluation report, or its final environmental impact
20 statement, both of which are now scheduled to be
21 issued in August of 2008.

22 Very recently, however, two events
23 transpired that have some potential to impact this
24 proceeding. The first was the April 15th, 2008 public
25 release on the NRC's website of all non-sensitive

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1 portions of the March 31st, 2008, Southern application
2 for a combined operating license for two new AP1000
3 reactors, on the portion of the plant Vogtle site,
4 that is the subject of this Early Site Permit
5 proceeding.

6 This was followed, two days later, by the
7 Federal Register publication of the Commission's Final
8 Policy Statement regarding the conduct of new reactor
9 licensing proceedings, which can be found in Volume 73
10 of the Federal Register, at page 20,963.

11 As a consequence, in the context of its
12 authority to conduct the mandatory hearing for this
13 proceeding, in a telephone conference, held a week ago
14 today, the Board indicated to the parties that it
15 wished -- one second, excuse me.

16 (Pause.)

17 CHAIR BOLLWERK: As a consequence, in the
18 context of its authority to conduct the mandatory
19 hearing for this proceeding, in a telephone conference
20 held a week ago today, the Board indicated to the
21 parties that it wished to convene a prehearing
22 conference for this afternoon, just prior to the
23 public limited appearance sessions scheduled for this
24 evening beginning at 7 p.m., in this room, to
25 entertain presentations from Southern, and the NRC

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1 staff, regarding the interconnection, or interaction,
2 between the combined operating license, and Early Site
3 Permit processes, as they relate to the new reactors
4 planned for Plant Vogtle, as well as provide Southern,
5 and the staff, with an opportunity to respond to any
6 questions regarding those presentations, that the
7 Board may have.

8 Additionally, to the degree the Southern
9 or Staff presentation to raise matters that are
10 relevant to the contested portion of this proceeding,
11 the Board indicated the joint Intervenor would have
12 an opportunity to express their views on those
13 matters, and respond to any Board questions.

14 Before we begin hearing the Southern and
15 Staff presentations on this matter, I would like to
16 introduce the Board members.

17 To my left is Judge Nicholas Trikouros.
18 Judge Trikouros is a nuclear engineer, and a full-time
19 member of the Atomic Safety and Licensing Board panel.
20 To my right is Dr. James Jackson. Judge Jackson,
21 likewise, is a nuclear engineer, and a part-time
22 member of the panel. My name is Paul Bollwerk, I'm an
23 attorney, and the Chairman of this Licensing Board.

24 At this point I'd like to have counsel for
25 the various participants, identify themselves for the

1 record, as well. Why don't we start with the
2 Applicant, then move to the NRC Staff and, finally, to
3 the Joint Intervenors.

4 MR. BLANTON: Your Honor, I'm Stan
5 Blanton, I'm counsel for Southern Nuclear Operating
6 Company. The Applicant to my left is my co-counsel,
7 Ms. Kathryn Sutton, of Morgan, Lewis & Bockius.

8 And to my right is Chuck Pierce, who is
9 the licensing manager for Southern Nuclear.

10 CHAIR BOLLWERK: All right, thank you very
11 much. Can we hear from the staff, then, please?

12 MR. MOULDING: Good evening, Your Honor.
13 I'm Patrick Moulding, for the NRC Staff.

14 CHAIR BOLLWERK: All right. And from the
15 Joint Intervenors, please?

16 MR. SANDERS: Lawrence Sanders for the
17 Intervenors.

18 CHAIR BOLLWERK: All right, thank you very
19 much. I would note that while this proceeding is in
20 session all cell phones should be turned off, or
21 placed on vibrate. And any cell phone conversations
22 should be conducted outside of this room.

23 That all being said, before we begin with
24 the presentations regarding the interconnection
25 between the combined operating license, and ESP

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1 processes for the two proposed new Vogtle units, we'd
2 like to visit, very briefly, the not unrelated
3 question of the current status of the Staff's Final
4 Safety Evaluation Report, and the Environmental Impact
5 Statement.

6 In a previous communication with the
7 Board, the Staff had indicated that it likely would
8 have an update on the issuance of the SER by the end
9 of April.

10 I'm wondering if, at this point, if there
11 is anything you are prepared to share with the Board,
12 and the Parties, regarding the schedule for issuance
13 of either the Final SER, or the Final EIS?

14 MR. MOULDING: Thank you, Your Honor.
15 With respect to the Final Environmental Impact
16 Statement, the Staff has no change in the estimated
17 date, to report at this time. It is, still, August
18 22nd.

19 With respect to the Final Safety
20 Evaluation Report, the Staff is still reviewing the
21 responses that it received to RAIs, and it hopes, very
22 shortly, to be able to give an updated report on what
23 the schedule for issuance of that would be. But it is
24 not ready to give that estimate at this time.

25 CHAIR BOLLWERK: And is very shortly the

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1 end of April, or are we now beyond the end of April?

2 MR. MOULDING: I think it may be a couple
3 more weeks, Your Honor.

4 CHAIR BOLLWERK: So sometime before the
5 middle of May?

6 MR. MOULDING: That is our hope, yes.

7 CHAIR BOLLWERK: Do any of the Board
8 members have any comments on that?

9 (No response.)

10 CHAIR BOLLWERK: All right. And I should
11 mention, I think, currently the SER is scheduled for
12 August 6th, correct?

13 MR. MOULDING: That is correct.

14 CHAIR BOLLWERK: All right. At this
15 point, then, why don't we turn, then, to Southern?
16 And you had indicated, in our phone conversation,
17 there are some things that you would like to say about
18 the interconnection/interaction association,
19 relationship, however you want to put it, between the
20 combined operating license process, and the early site
21 permit process. So we will turn it over to you at
22 this point.

23 MR. BLANTON: Yes, Your Honor, thank you.
24 And we appreciate the opportunity to visit with the
25 Board about our view of how these proceedings should

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1 go along in parallel with each other, for some period
2 of time, before the Early Site Permit is granted.

3 As you noted, Your Honor, on March 31 of
4 this year, Southern Nuclear filed, in a separate
5 proceeding, from this ESP proceeding, a Combined
6 Operating License Application.

7 That COLA references the ESP application,
8 and the draft environmental impact
9 statement/environmental report, in this proceeding, as
10 well as the AP1000 certified design.

11 In addition, as you noted, the NRC
12 finalized its policy statement on the conduct of new
13 reactor licensing proceedings on April 17, and
14 addresses, to some extent, the conduct of dual
15 proceedings like the one we will have started as soon
16 as the COLA is docketed.

17 Let me, before I get into the details of
18 how we view the process from here forward, touch on a
19 question you might have, which is why are we doing
20 this, this way? Why not wait until after the Early
21 Site Permit is granted, to file our COLA.

22 Or, on the other hand, why not wait and
23 just file the COLA and include all the site
24 information in the COLA, rather than having a separate
25 ESP proceeding.

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1 The answer, quite simply, is Georgia, in
2 order to meet the needs of Georgia, for the
3 electricity to be produced by this plant, we needed to
4 do it this way.

5 If we had waited until the Early Site
6 Permit was issued, based on the schedule we are on
7 now, to submit the COLA, the plant could not have been
8 ready by the summer of 2016, which is the date
9 identified by the owners of the plant, which are not
10 only Georgia Power Company, but Oglethorpe Power
11 Corporation, which is a membership organization of
12 electric membership cooperatives, Municipal Electric
13 Authority of Georgia, which is an organization of
14 municipal electric authorities in the city of Dalton,
15 Georgia.

16 They have identified their need for the
17 power as 2016. Had we waited until this Early Site
18 Permit was actually issued and then filed referencing
19 the Early Site Permit, based on the current
20 projections on schedules for reviewing COLAs, and
21 constructing the public, we couldn't have made the
22 2016 date.

23 At the same time, had we waited until,
24 essentially, March of '08, which is when we did file
25 the COLA, in order to file anything, again, the review

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1 time for that COLA without a headstart on all the site
2 issues, which is what, and environmental issues, which
3 is what we have now, because we filed the ESP
4 application, we again would not have been able to meet
5 the 2016 date based on our projections.

6 So even before we, or probably as much as
7 a year before we filed our ESP application, we
8 notified the NRC that our intended licensing approach
9 would be to file an application for an Early Site
10 Permit, in approximately August of 2006, which we did.
11 And to file a COLA referencing that application in the
12 first quarter of 2008, and we filed it on March 31st
13 of 2008.

14 And that when the ESP was issued, that we
15 would, then, revise the COLA to update that, to
16 reflect the issuance of the ESP, and the resolution of
17 the issues within the scope of the ESP.

18 And all this is being done in order to
19 have the plant available when the customers of Georgia
20 Power and the other co-owners need the electricity.

21 What I will do, now, is as I said, address
22 to the Board our vision of how these two proceedings
23 will go forward from here on out, particularly with
24 respect to mandatory hearing issues.

25 But I think just about everything I'm

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1 going to say also would apply to any contested issues
2 that were raised in either proceeding. And where
3 there is a difference I will try to note that.

4 At the outset I want to do the conclusion
5 first. In our view the filing of the COLA, and the
6 pendency of that proceeding, should not have any
7 significant impact on this ESP proceeding.

8 The issues that are within the scope of
9 this ESP proceeding, and the schedule for the
10 resolution of those issues, should not be affected by
11 the COLA.

12 This ESP proceeding should proceed just
13 like any other ESP proceeding, and it should proceed
14 as it would if the COLA had not been submitted. The
15 NRC policy statement just issued provides some helpful
16 guidance in this regard, first of all, by
17 acknowledging the validity of this approach.

18 The Policy Statement acknowledges that
19 COLAs may be filed consistent with the NRC rules,
20 referencing docketed ESP applications. The Policy
21 Statement also provides that ESP issues, that are
22 raised in the COLA proceedings, should be referred to
23 the ESP proceeding.

24 So in that way I think the NRC has
25 clarified, for all of us, that the scope of those

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1 proceedings are distinct and separate from each other.
2 And the ESP proceeding should be the forum for all
3 site suitability issues, including the environmental
4 issues raised in our environmental report, and the
5 COLA proceeding should be limited to those issues that
6 are not in the ESP proceeding.

7 That being operational programs, and the
8 question of whether or not the site, as it is
9 permitted, fits within the design parameters of the
10 design referenced in the COLA.

11 Now, I have passed out a simple chart that
12 has the two proceedings superimposed on each other to
13 illustrate how we view the process going forward.

14 Now I want to, at the outset, say that we
15 have not, in this handout, attempted to define a
16 precise schedule. The COLA is still under a
17 sufficiency review by the NRC staff.

18 We don't have a hearing notice, we don't
19 have a schedule. To the extent that there are dates
20 on here, they are for illustrative purposes only, and
21 to the extent there are dates on the COLA timeline,
22 they are for illustrative purposes only, and based on
23 the generic milestones in the NRC's rules and
24 guidance.

25 On the ESP we do have some more specific

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1 dates, from the NRC, regarding the FEIS, and the ASLB
2 decision, and the hearing. We do acknowledge that the
3 SER is somewhat in flux right now, and so we've
4 identified that as a "to be determined" date.

5 Let me talk, first, just to review how we
6 got to where we are, with the ESP application, and the
7 LWA request. The ESP application was submitted in
8 August of 2006, and docketed in September.

9 The ESP application, unlike those previous
10 to that, included a comprehensive environmental report
11 that addressed every environmental site suitability
12 issue. It referenced a specific design. It did not
13 utilize plant parameter envelope approach.

14 It specifically references the AP1000.
15 And it had a complete emergency plan. So we think the
16 ESP application provides a basis for a comprehensive
17 review of all site suitability issues, by the Board,
18 when it issues the Early Site Permit.

19 The draft environmental impact statement,
20 on the ESP application, has been issued. The draft
21 SER has been issued. Comments on the draft
22 environmental impact statement have been taken by the
23 NRC, and they are reviewing those comments.

24 The ACRS has reviewed the draft SER. In
25 August of '07 Southern Nuclear submitted a request for

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1 a limited work authorization, requesting -- and as the
2 Commission's rules have evolved, so has the scope of
3 that limited work authorization.

4 But as we stand here today the scope of
5 the limited work authorization is to perform
6 subsurface foundation work, at the site, consisting of
7 installing engineered backfill into the excavated
8 site, upon the issuance of the ESP.

9 As you can see the schedule date for the
10 FEIS is reflected as August of '08. The SER and the
11 Mandatory Hearing to be determined with the ultimate
12 decision, or the Board decision in July of '09. And
13 we are projecting the ESP, based on the Atomic Safety
14 and Licensing Board decision, of July of '09, the ESP
15 and the LWA in September of '09.

16 Again, the purpose of that is not to try
17 to say these are the dates but to show when the major
18 milestones, in ESP space, will occur, relative to the
19 major milestones in COLA space.

20 In other words, the sequence of those
21 events. And the point being that the sequence of the
22 major milestones in COLA space, follow the
23 corresponding milestone in ESP space by a sufficient
24 amount of time to allow the ESP work to be done, the
25 milestone to be completed.

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1 And then, in the COLA proceeding, the
2 Staff and the Board in that COLA proceeding will be
3 informed by what happens in this proceeding.. And let
4 me use an example.

5 Under the Commission rules the COLA will
6 require an Environmental Impact Statement regardless
7 of whether any new and significant information is
8 identified subsequent to the ESP Environmental Impact
9 Statement.

10 In this case, obviously, the Environmental
11 Impact Statement for the ESP is going to be extremely
12 current at the time the COLA is granted. So we would
13 expect that we are not going to have any new and
14 significant information.

15 But, nevertheless, the work on the FEIS,
16 in the ESP proceeding, is predicted to be complete,
17 and that FEIS should be available at the time the
18 Staff in the COLA proceeding, has to do the FEIS for
19 the COLA.

20 The same is exists with the SER. So the
21 work on the SER, in this proceeding, will be complete.
22 It will therefore inform the Staff's work in the COLA
23 proceeding.

24 We do not foresee a situation in which the
25 milestones in the COLA proceeding would overtake the

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1 milestones in this proceeding.

2 So this Board's work would not be
3 affected, and the Staff's work in this case, would not
4 be affected by what is going on in the COLA
5 proceeding. The COLA proceeding will be informed by
6 this proceeding, not the other way around.

7 At the same time the issues in the -- as
8 I mentioned a minute ago, the Draft Policy Statement
9 makes clear that the issues, relating to the
10 suitability of the site, are confined to the ESP
11 proceeding.

12 By the same token the issues that are
13 properly in the COLA proceeding, should be confined to
14 the COLA Proceeding. For that reason we don't foresee
15 a situation where this Board, or the Staff in this ESP
16 proceeding will be called on to deal with what are
17 properly COLA issues.

18 At the same time, if issues, the Staff and
19 the Board, in the COLA Proceeding, should not be
20 treading on this Board's jurisdiction, relative to
21 site suitability, or environmental issues.

22 ADMINISTRATIVE JUDGE TRIKOUROS: So you
23 don't see any circumstance under which the COLA can
24 inform the ESP? You only see circumstances in which
25 the ESP informs the COLA? Is that what you are

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1 saying?

2 MR. BLANTON: I hate to ever be that
3 absolute. But that is my view at this time. I mean,
4 I'm sure if somebody could come up with a situation to
5 make me pause and think about that.

6 But I think, certainly, the approach we
7 intend to take is that, uniformly, the ESP will inform
8 the COLA. And when the ESP is issued, we would then
9 revise the COLA to reflect the issuance of the ESP,
10 and create those issues in the COLA proceeding, as
11 resolved.

12 The issues that were resolved in the ESP
13 proceeding will be resolved for purposes of the COLA.

14 ADMINISTRATIVE JUDGE TRIKOUROS: So, let
15 me ask what your opinion is regarding certain issues
16 that we see. For example, the ESP that we are
17 currently reviewing references DCD REV 15. The COLA
18 references DCD REV 16.

19 We know, from the available COLA
20 information, that those sections of the ESP
21 application, that are referenced in the COLA, de-
22 reference, if you will, the sections of the ESP that
23 deal with DCD REV 15.

24 Would you expect this Board, in doing the
25 mandatory hearing review, to review the ESP including

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1 the sections of DCD REV 15, as if REV 16 were not
2 involved at all?

3 MR. BLANTON: We have, that is a good
4 question. And when we talked about it, and if I
5 stumble answering this, I'm going to ask Chuck Pierce
6 to help.

7 But we have submitted, to the Staff, for
8 the purposes of the environmental review, and the
9 safety review?

10 MR. PIERCE: The environmental review.

11 MR. BLANTON: The environmental review,
12 DCD REV 15, plus all the topical reports that comprise
13 REV 16. So they have that information available to
14 them for the purpose of doing the FEIS.

15 To the extent they utilize that
16 information in doing the FEIS, for instance, the delta
17 between the FEIS for the ESP, and the FEIS for the
18 COLA, will be essentially zero.

19 To the extent they use REV 15 there will
20 be a delta between REV 15, between the FEIS for the
21 ESP, and the FEIS, or the COLA application. And we
22 will need to address that as new information in the
23 COLA Proceeding, whether or not it is new and
24 significant we will have to decide.

25 But that would be treated as new

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1 information. And, also, say that in the ESP space, in
2 our comments on the Draft EIS, we identified all of
3 the deltas between REV 15 and REV 16, in our comments,
4 so that that information is available to the Staff in
5 preparing the FEIS.

6 ADMINISTRATIVE JUDGE JACKSON: I would
7 like to ask the Staff regarding that issue. Would it
8 be more appropriate, Judge Bollwerk, to wait until the
9 Staff has had a chance to --

10 CHAIR BOLLWERK: Let's wait, let's let him
11 finish --

12 ADMINISTRATIVE JUDGE JACKSON: I will
13 defer that comment until later, then.

14 MR. BLANTON: Let me turn, now, to the
15 COLA. The COLA, as I said, was submitted on March 31,
16 2008. It references this ESP application, and the
17 draft EIS, and it references, as Judge Trikouros
18 noted, REV 16 of the AP1000 DCD.

19 We've got, sort of, straw man dates in
20 there for docketing and intervention. And the other
21 major milestones are really there to reflect what I
22 just mentioned a minute ago, that those milestones
23 will be expected to trail the ESP, the corresponding
24 ESP milestones in sequence.

25 So that the COLA proceeding is informed by

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1 the ESP proceeding. As events occur, in this ESP
2 proceeding, that have the effect of changing what is
3 either in the FEIS, a change from the DEIS to the
4 FEIS, for instance, or a change from the Draft SER to
5 the final SER, or if there are conditions, ultimately,
6 in the permit issued by the Commission that are not
7 reflected in the ESP application and, therefore, in
8 the COLA, we would propose to then go back into the
9 COLA proceeding and either supplement, or revise the
10 COLA to reflect those changes.

11 So that, again, what is happening in this
12 proceeding informs the COLA, and the COLA will be
13 consistent with this proceeding. And, ultimately, the
14 COL will be consistent with the ESP.

15 Again, I would note that the result of
16 this is that the ESP will proceed on its own schedule,
17 and be focused on the ESP issues, regardless of what
18 is happening in the COLA proceeding.

19 I've touched on this, but I will touch on
20 it again. The Final Policy Statement expressly
21 addresses COLA Proceedings that reference ESP
22 applications, with particular emphasis on what happens
23 if an issue is raised in the COLA Proceeding that is
24 properly within the scope of the ESP.

25 The Policy Statement makes clear that

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1 those issues should be referred to the ESP, and we
2 believe that those contentions, or issues, can be
3 addressed by this Board using the same rules you would
4 use if the contention had been raised in this
5 proceeding in the first place.

6 And by doing that this Board will control
7 its own agenda, and the scope of the issues that it
8 addresses. Similarly the COLA should proceed like a
9 COLA Proceeding that references an ESP in a standard
10 design, with the exception when and to the extent this
11 Board, or the Commission, issues either an ESP, or an
12 EIS, or an SER in the ESP proceeding that somehow is
13 at variance with what we have referenced in the COLA,
14 we will go revise or supplement the COLA to reflect
15 the current state of affairs in the ESP proceeding.

16 The issues addressed in the COLA
17 Proceeding shouldn't be any different than they would
18 if the COLA referenced an ESP. And the issues in this
19 ESP proceeding shouldn't be any different than they
20 would if the COLA has not been submitted.

21 We believe this approach allows for full
22 public participation in all of the issues involved in
23 the issuance of the ESP, and the COLA. But, at the
24 same time, avoids duplication of effort by the Staff,
25 the Applicant, and the Board.

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1 It ensures that issues are resolved in the
2 appropriate proceeding. It does not enlarge or
3 restrict any issues in either of the proceedings. And
4 that is true, I think, whether we are talking about
5 the mandatory hearing, or a contested hearing.

6 ADMINISTRATIVE JUDGE JACKSON: Mr.
7 Blanton, you referred to the Final Policy Statement,
8 and misquoted from it. In that statement it does say
9 the Board presiding over the proceeding, on the COL
10 application, should refer contentions within the scope
11 of the ESP back.

12 It is worded in terms of contentions. But
13 you interpret that as covering all the issues that
14 would be dealt with in a mandatory hearing as well?

15 MR. BLANTON: I do, Judge Jackson. I
16 think the statement we are both referring to is in the
17 context of the "design centered approach" that is used
18 by the Commission for an application that references
19 a design certification application, and they say, and
20 the same thing should apply in the ESP.

21 And I think they use the contention as an
22 example, probably, because the comments on the Rule
23 used contentions as an example, rather than mandatory
24 hearing issues.

25 But I think it is clear that the

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1 Commission, in both -- both in the context of a COLA
2 that references a design certification application, or
3 a COLA that references an ESP application, intend for
4 the scope of those proceedings to be limited to the
5 unique thing about that particular action.

6 So all the design issues would be referred
7 to the design certification proceeding, in the context
8 of a design -- whether it is a mandatory hearing
9 issue, or a contested hearing issue.

10 And I think the same thing is true of a
11 COLA that references the ESP application.

12 ADMINISTRATIVE JUDGE TRIKOUROS: So, for
13 example, in the ESP you end at a COL action item? So
14 this will be addressed in the COL?

15 MR. BLANTON: Correct.

16 ADMINISTRATIVE JUDGE TRIKOUROS: You are
17 saying that this Board should be looking at the way
18 that that COL action item is then dealt with in the
19 COL, to complete its review? Or you are saying not?

20 MR. BLANTON: No, sir, I'm saying not.
21 I'm saying that it should be treated just like you
22 would have treated it in the Grand Gulf proceeding,
23 where they had a COL action item, and they deferred it
24 until the COL proceeding.

25 ADMINISTRATIVE JUDGE TRIKOUROS: So what

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1 are these non-contention aspects of the COL that would
2 be referred back to the ESP; and who would refer them,
3 necessarily?

4 MR. BLANTON: I'm not sure anything would
5 be referred, if it is a non-contention. I think what
6 the Policy Statement is telling the boards, that the
7 mandatory hearing should be confined, in its scope, in
8 the COLA Proceeding, to those issues that are not
9 mandatory hearing issues in the ESP proceeding.

10 I don't know that they would defer
11 anything by, sort of by definition, if the Board in
12 the COLA Proceeding decides something should be
13 referred to the ESP proceeding, it just won't consider
14 it in the mandatory hearing for the COLA.

15 CHAIR BOLLWERK: It gets complicated
16 because this Board is doing the mandatory hearing for
17 this ESP, but the Commission has made it clear, at
18 least with respect to the initial COLs, that they are
19 going to do the mandatory hearing.

20 So you actually not only got potentially
21 one proceeding to another proceeding, but you have one
22 body to another body, not necessarily on the same
23 level in terms of the adjudicatory structure of the
24 agency, either.

25 MR. BLANTON: Yes, sir. And I would note,

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1 and if I failed to, but I meant to, and I think you
2 know this, but our COLA application is a standard
3 application that is based on, and as far as the
4 standard plant goes, virtually in just about every
5 respect identical to the Bellafont referenced
6 application.

7 Obviously with the exception of site-
8 specific issues, and a few little exceptions. So the
9 COLA Proceeding will follow in the wake of that
10 Bellafont proceeding on those standard plant issues.

11 ADMINISTRATIVE JUDGE TRIKOUROS: Which is
12 just another level of complication for us. But the --
13 I want to be specific, because it is a lot easier to
14 give specific examples than to speak in abstractions
15 in such a complicated process.

16 Water utilization, there is one water
17 utilization identified in the early site permit.
18 There is another water level utilization, a different
19 value, identified in the COLA application.

20 In the COLA application there is this
21 significant information evaluation that is done. And
22 it concludes that it is not significant. You are
23 suggesting that this Board then look at only the water
24 utilization that is in the ESP, and reach conclusions
25 regarding that, and ignore the water utilization

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1 evaluation numbers in the COLA, and ignore looking at
2 your significance evaluation?

3 MR. BLANTON: Your Honor, I don't have the
4 detail, precise detail, in front of me that you are
5 referring to, about the delta between, and I assume
6 these are differences between the environmental
7 report?

8 ADMINISTRATIVE JUDGE TRIKOUROS: Well, for
9 example, water blow-down flows are different between
10 the COLA and the Early Site Permit. So water
11 utilization from the river is somewhat different.

12 Our view is the issue before this Board,
13 are the issues raised in the environmental report, and
14 the DEIS for the Early Site Permit. And to the extent
15 there are differences, we will have to address those
16 in the COLA proceeding.

17 But that we --

18 MR. BLANTON: Well, that --

19 ADMINISTRATIVE JUDGE TRIKOUROS: Will you
20 have issues before this Board, are the issues in the
21 ESP application, not the COLA application, not the COL
22 application.

23 Well, that question is also for the Staff,
24 and I would be anxious, at some point, to hear what
25 they have to say about all of these issues.

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1 MR. BLANTON: I understand, and on
2 specifics like that, Judge Trikouros, I would like to
3 be able, and I will, go back and look at the specific
4 issue. And, if the Board pleases, respond in writing
5 on that specific thing, and give you our views on
6 that.

7 ADMINISTRATIVE JUDGE TRIKOUROS: Well, but
8 I'm offering some specifics, but I'm very interested
9 in the abstraction, as well. I mean, I would like to
10 understand the rules, in general for, you know, how we
11 move back and forth between COLA and ESP.

12 I refer to the wall between them as a
13 semi-permeable membrane.

14 MR. BLANTON: And I think we are saying
15 that it is slightly higher and more solid than that.
16 And that the data presented in the ESP defines the
17 scope of the ESP proceeding, and that is the data that
18 this Board should review and rule on.

19 MS. SUTTON: May I? Your Honor, we also
20 understand that given that difference between the COL
21 and the ESP, that in comments on the DEIS, in the ESP
22 proceeding, Southern provided the additional
23 information that is now available for the Staff, and
24 it is at the EIS for the ESP.

25 So, again, that cuts down on the

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1 permeability. And for that particular example we
2 think that it is addressed in the ESP.

3 CHAIR BOLLWERK: In that regard why did
4 you decide to give them your comments on the draft
5 EIS, rather than simply revising the environmental
6 report?

7 MR. BLANTON: That was a process that was
8 discussed with the Staff, and the parties just viewed
9 that to be the most efficient way of bringing to light
10 the differences between REV 15 and REV 16.

11 CHAIR BOLLWERK: Well, given, I would say
12 -- you talked about revising and supplementing the
13 COLA. I take it you see that as an amendment process,
14 as opposed to simply, I don't know, in terms of the
15 supplement, I don't know what that would --

16 MR. BLANTON: Yes, sir. I mean, that
17 would essentially constitute an amendment to that
18 application.

19 CHAIR BOLLWERK: All right. Any other
20 questions at this point?

21 ADMINISTRATIVE JUDGE TRIKOUROS: There are
22 many specific questions along the same lines as we
23 have been discussing. So I think we can frame the
24 general concern that way.

25 MR. BLANTON: Well, again, I think the

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1 answer to the abstraction is that the Board should be
2 guided by, and the Staff should be guided by the
3 information in the ESP application, and the ER, and
4 the DEIS.

5 And, as Kathryn correctly points out, our
6 comments on the DEIS, which the Staff in this
7 proceeding now has, that identify any changes that are
8 the result of the shift from REV 15 to REV 16, or any
9 other new information we've developed, we filed on
10 March 31, concurrent with the COLA ESP REV4.

11 Which, among other things, updates the
12 seismic and the hydrology information in the COLA.
13 The seismic information is information developed in
14 the course of supporting the LWA application.

15 So there is new information coming forward
16 that we have added to the, into the ESP process, as
17 well.

18 ADMINISTRATIVE JUDGE TRIKOUROS: In prior
19 ESPs we've done evaluations where we have indicated
20 that when the COLA is issued, that if you build
21 certain size plants, in an alternatives analysis, for
22 example, for Grand Gulf specifically, we said, if you
23 build a regular AP1000, for example, or SBWR, that we
24 agreed in the ESP portion, that that would be
25 considered new and significant information.

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1 I'm not going to go into the details of
2 that. But that might occur here, as well, which is
3 another complication, given that the COLA is already
4 in place.

5 In a situation where the bifurcation is
6 total it is, frankly, much easier to deal with.

7 MS. SUTTON: Yes, Your Honor, you are
8 correct. There have been examples, for example, in
9 the Grand Gulf proceeding, where we did acknowledge
10 that there may be new and significant information.

11 And, like Mr. Blanton said, we expect in
12 this case that there will probably be new information.
13 And then the determination will have to be made as to
14 its significance in the context of the COL proceeding.

15 CHAIR BOLLWERK: Judge Jackson, anything
16 further?

17 ADMINISTRATIVE JUDGE JACKSON: I would
18 defer until we have had an opportunity to hear from
19 the Staff.

20 CHAIR BOLLWERK: Let me ask another, and
21 recognizing it is a hypothetical question, do you see
22 any instance where this Board would refer anything to
23 the COL Board, once one is appointed in, perhaps,
24 August, September time frame, assuming things move
25 forward in that schedule that they've done in other

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1 proceedings?

2 MR. BLANTON: Given that this is an ESP
3 proceeding, and is limited by regulation, if a
4 contention were filed that was outside the scope of
5 the ESP proceeding, but within the scope of the COLA
6 Proceeding, it seems to me that the appropriate thing
7 to do would be just to deny the contention as being
8 outside the scope of this proceeding, and then they
9 could go file it in the COLA.

10 I don't -- you know, whether or not that
11 is a reference, or not, I don't know. But it doesn't
12 seem to me that this Board needs to refer anything to
13 the COLA that is outside the scope of the ESP
14 proceeding, they would just deny it.

15 CHAIR BOLLWERK: All right. Anything from
16 the other Board members at this point?

17 (No response.)

18 CHAIR BOLLWERK: All right, then let's
19 hear from the NRC Staff, please.

20 MR. MOULDING: Thank you, and good
21 evening, again. Again, I'm Patrick Moulding, counsel
22 for the NRC Staff. And, thank you for giving us the
23 opportunity to speak to you tonight.

24 Given what the Applicant has already
25 discussed, in its presentation, I will try and avoid

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1 repeating some of the background information that you
2 have already heard.

3 Instead I will just briefly reiterate a
4 couple of points about the ESP and COL reviews, and
5 the conduct of the ESP mandatory hearing, and then try
6 and address some of the questions that you have
7 already identified.

8 Can you hear me okay?

9 CHAIR BOLLWERK: Yes.

10 MR. MOULDING: Great. The first point is
11 that the submittal of the COL application, referencing
12 the ESP application does not supersede, or absorb, the
13 ESP review.

14 As the Commission's Final Policy Statement
15 on the conduct of reactor licensing proceedings
16 indicates, the regulations in 10CFR Part 52 do permit
17 a combined license application to reference an ESP
18 application that has been docketed but not yet
19 granted.

20 And that is, in fact, what Southern COL's
21 application does, it references the information in the
22 ESP application. However, whether the COL application
23 can then be ultimately granted becomes contingent on
24 the results of the ESP review.

25 So even though the COL application becomes

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1 dependent on an eventual determination, by the
2 Commission, on the ESP, the two proceedings do not
3 merge into a single review.

4 And one consequence of this approach is
5 that the COLA Applicant will certainly need to update
6 its application to reflect the results of the Early
7 Site Permit issuance.

8 And, for example, as the Applicant has
9 acknowledged, this would include updating the COL
10 application to address any significant environmental
11 issues not resolved in the ESP application, to address
12 new and significant information with respect to even
13 the resolved issues in the ESP, and also to
14 demonstrate that the terms and conditions of the ESP
15 have been met.

16 All of these requirements emphasize the
17 independent significance of the Early Site Permit
18 review. The second point I want to emphasize, and not
19 what Judge Trikouros would like to hear, but the
20 Staff's review, the acceptance review of the COL
21 application is ongoing.

22 The application came in on March 31st, and
23 the acceptance review, typically, takes less than 60
24 days, but it is still ongoing. And, consequently, the
25 Staff is not in a position, at this time, to state any

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1 opinion on the completeness of the COL application.

2 And, similarly, the Staff has not yet
3 determined whether any information included in the COL
4 application would be necessary for the Early Site
5 Permit review.

6 Also, until the acceptance review is
7 complete the Staff is not in a position to determine
8 what review schedule would be appropriate for the COL
9 application, or how that review schedule would take
10 account of the ongoing Early Site Permit review.

11 So I would just like to reiterate the note
12 that is in the Applicant's slide, that those dates,
13 the dates that are included on that slide, with
14 respect to the COL review are Southern's estimates,
15 but the Staff is still conducting its acceptance
16 review on the COL.

17 Thirdly, because the COL review depends on
18 the outcome of the Early Site Permit review, and not
19 vice versa, the Staff believes that the receipt of the
20 COL application should have minimal significance for
21 the conduct of the ESP mandatory hearing.

22 This is mainly because, in reaching its
23 conclusions on the Early Site Permit, the NRC Staff
24 will rely on what is in the Early Site Permit record,
25 and not on the contents of the COL application.

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1 That said the ESP application, and the
2 Staff's Final Environmental Impact Statement, must be
3 sufficient to support issuance of the Early Site
4 Permit, and make all necessary findings with respect
5 to site safety, and compliance with the National
6 Environmental Policy Act.

7 Accordingly, if information in the COL
8 application is considered necessary to the Staff's ESP
9 review, that information must also be submitted and
10 documented for the ESP record, not simply provided in
11 the COL applications.

12 Finally, let me briefly discuss how the
13 recent Final Policy Statement speaks to the division
14 between the Early Site Permit and the COL proceedings.

15 As the Applicant has already noted, the
16 Policy Statement does say that where a COL application
17 references an ongoing Early Site Permit application
18 review, and contentions are filed on the COL
19 application the COL Board should refer those
20 contentions, if they are within the scope of the ESP
21 proceeding, to the ESP Board for its consideration.

22 And the Staff believes that that policy
23 reinforces the understanding that these two
24 proceedings are distinct and that issues within the
25 scope of the ESP proceeding do need to be resolved

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1 there, and not duplicated in the COL proceeding.

2 So, for the same reason, as we have
3 already discussed here, for the same reason that the
4 Policy Statement would have contentions referred to
5 the -- from the COL Board, to the Early Site Permit
6 Board, for contentions within the scope of that
7 proceeding, the scope of the ESP Board's mandatory
8 hearing really needs to focus on whether the ESP
9 standards have been met on the ESP record.

10 And, in summary, the Policy Statement, and
11 the arrival of the COL application, should not impact
12 how the Board conducts its Early Site Permit mandatory
13 hearing.

14 This is mainly because the mandatory
15 hearing continues to focus on the ESP record, rather
16 than on the contents of the COL application. But,
17 ultimately, the Board must be satisfied that the
18 record in the Early Site Permit proceeding is
19 sufficient for it to make the determinations on both
20 safety and environmental issues that are specified in
21 the Notice of Hearing.

22 And if an ESP is subsequently issued, the
23 Applicant will have an obligation to update its COL
24 application to reflect the results of that review.

25 That concludes the primary points I wanted

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1 to make. So which of the previous questions would you
2 like me to approach first?

3 ADMINISTRATIVE JUDGE JACKSON: I will
4 restate a question. You may have answered it, and I
5 may have missed it, but it is your intent, then, the
6 Staff's intent, to incorporate the comments on the
7 DEIS, and use that as a mechanism, then, to update the
8 issuance of the FEIS, to include current information
9 that would be consistent with the COLA, is that what
10 you are saying?

11 MR. MOULDING: Yes, sir. And as you may
12 be aware, based on the comments that were submitted,
13 by Southern, on the draft environmental impact
14 statement, the Staff did issue some requests for
15 additional information to clarify how that information
16 would need to be addressed in the ESP review
17 documents.

18 So the fact that that information has been
19 brought before the Staff, on the ESP record, the Staff
20 needs to reflect the results of that information in
21 its review.

22 That information is now before the Staff
23 in its review of the Early Site Permit.

24 ADMINISTRATIVE JUDGE JACKSON: Thank you.

25 MR. MOULDING: And that, in some degree,

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1 relates to your question about information in the COL
2 application, and I do need to reiterate the statement
3 that the Staff is still reviewing the information that
4 is in the COL application to determine if any of that
5 information is necessary in making its site safety and
6 --

7 ADMINISTRATIVE JUDGE TRIKOUROS: So the
8 question with respect to, say, river water
9 utilization, the Staff is going to restrict themselves
10 to the review of the Early Site Permit information
11 only, and a separate group in the Staff, who is
12 responsible for the COLA review will review the
13 numbers in the COLA, and they won't communicate? How
14 does that work?

15 MR. MOULDING: No, Your Honor, that is not
16 how I would characterize it. There is the possibility
17 that the information submitted in the COL application
18 may be necessary for the Staff to consider in the ESP
19 review.

20 But I'm hesitant to express any position
21 on that, at this point, because the Staff is still
22 reviewing that information. But we cannot rule out
23 that possibility at this time.

24 My statement is mainly to focus on what is
25 in the Early Site Permit record, is what the Staff

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1 will be basing its Early Site Permit determination on.

2 And the Board does need to be satisfied
3 that all the necessary information has been addressed
4 in the Early Site Permit record.

5 ADMINISTRATIVE JUDGE TRIKOUROS: So your
6 focus is on the record in the Early Site Permit?

7 MR. MOULDING: That is correct. Well, my
8 -- well, what I'm getting at is that the information
9 in the Early Site Permit record needs to be sufficient
10 to support the Staff's determination on the Early Site
11 Permit.

12 And the Board's review, in the mandatory
13 hearing, is whether the Staff's review of the
14 application has been adequate. But the Board, in
15 doing so, would be focusing on the contents of the
16 Early Site Permit record, not just what is in the
17 application but, of course, what is in the Staff's
18 review documents, the FSER and the FEIS.

19 And, as has been indicated already,
20 information that has been brought to the Staff's
21 attention, specifically by Southern, for example, in
22 the form of the comments on the draft EIS, the Staff
23 will need to consider that information in its, in
24 finalizing its review documents for the Early Site
25 Permit.

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1 ADMINISTRATIVE JUDGE TRIKOUROS: But,
2 clearly, the Applicant could have amended the Early
3 Site Permit, for example, instead of including numbers
4 in the, new numbers in the COLA, they could have
5 amended the Early Site Permit and then just reflected
6 that in the COLA.

7 But the choice was to not do that, but to
8 include changes in the COLA, and then do a new and
9 significance evaluation using the process that has
10 been identified in the COLA for how to do that?

11 MR. MOULDING: Yes, Your Honor. I believe
12 the intention was to, it is my understanding, that the
13 intention was to bring as much new information as
14 possible to the -- into the ESP record, so that that
15 information could be addressed in the Staff's
16 analysis.

17 But, as we have discussed here, there is
18 a practical matter of the timing of the Early Site
19 Permit and the COL reviews, that there always be some
20 new information that will not be reflected as of the
21 date the Early Site Permit is issued.

22 And that is why there are a number of
23 mechanisms by which new and potentially significant
24 information can be reflected from the time of an ESP
25 being issued, to the determination on the COL

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1 application.

2 The most obvious are the ones we have
3 discussed, already, the requirements to reflect new
4 and significant information, to resolve unresolved
5 issues, and to demonstrate that the terms and
6 conditions have been met.

7 But there are other very specific
8 circumstances under which if there are issues of
9 adequate protection, or regulatory compliance, there
10 are occasionally basis to disturb the finality of
11 Early Site Permit determinations.

12 So there are a number of mechanisms that
13 reflect that practical consideration, that by the time
14 an ESP is issued there will be information that is not
15 accounted for, and may or may not be significant.

16 ADMINISTRATIVE JUDGE TRIKOUROS: The
17 question that was raised regarding the DCD is a little
18 bit different than new numbers in the COLA. In the
19 sense that the parts of the Early Site Permit that
20 reference DCD REV 15, have been orphaned, if you will.

21 That they have been cut off from the COLA,
22 because the COLA de-references them. It says we are
23 not referencing those sections in the ESP. And we are
24 reviewing an ESP, we are reviewing those sections of
25 the Early Site Permit knowing that they have been

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1 orphaned.

2 So how would you suggest that we proceed
3 with that?

4 MR. MOULDING: Well, Your Honor, I think
5 that the discussion that we've had before, discussing
6 what was done in some of the other Early Site Permit
7 applications may be similarly instructive.

8 That in an Early Site Permit certain
9 assumptions about the design values that will be used
10 are included in the Early Site Permit, as part of the
11 terms and conditions of that Early Site Permit.

12 And to the extent that there are
13 differences that arise at the COL stage, there are a
14 number of mechanisms for dealing with that. And if
15 the design that is ultimately referenced in the COL
16 application does not -- is inconsistent with what was
17 reviewed in the Early Site Permit application, the COL
18 application will need to explain and defend those
19 differences.

20 But certain values can be used as the
21 basis for the Early Site Permit review. And as long
22 as those are sufficient to resolve the issues of site
23 suitability, the fact that those values may differ in
24 some ways at the COL stage is not necessarily
25 inconsistent.

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1 But, again, that is a -- it is a fact
2 specific determination.

3 CHAIR BOLLWERK: It is not inconsistent,
4 but it certainly makes things interesting.

5 Mr. Blanton indicated that there was a
6 discussion between, I guess, the Staff and the
7 Applicant about the need to revise the environmental
8 report, as opposed to bringing in the comments that
9 they had -- bringing it in as comments relative to the
10 draft DEIS.

11 What was the Staff's thinking, why rather
12 than having them amend their environmental report, did
13 you have them file comments on the draft EIS?

14 MR. MOULDING: I wouldn't say that the
15 Staff instructed the Applicant to do that, Your Honor.
16 This was an approach that --

17 CHAIR BOLLWERK: Well, you didn't tell
18 them not to do it?

19 MR. MOULDING: Yes, that is correct, Your
20 Honor.

21 CHAIR BOLLWERK: Okay. And if you
22 adopted, you are certainly not going to -- I mean, you
23 haven't disallowed it at this point. So, I mean, I
24 guess we will have to wait and see what happens to the
25 DEIS.

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1 But if, in theory, you incorporate those,
2 you obviously kept to that approach?

3 MR. MOULDING: Well, as I noted earlier,
4 Your Honor, the Staff did ask requests for additional
5 information about that information. So the Staff will
6 need to reflect the significance of that new
7 information in its environmental analysis.

8 And so that information, and how the Staff
9 has dealt with that new information, will be in the
10 record of the proceeding. And the Staff's analysis of
11 that information, and how it evaluated the responses
12 to its requests for additional information, will need
13 to be reflected in the final Environmental Impact
14 Statement.

15 CHAIR BOLLWERK: Do you see any
16 difference, procedurally, in allowing the Applicant to
17 make comments that the Staff then accepts, as opposed
18 to having the Applicant amend their environmental
19 report?

20 MR. MOULDING: What sort of procedural --

21 CHAIR BOLLWERK: Well, in terms of this
22 adjudication, for instance.

23 MR. MOULDING: Well, going back to the
24 point that the Board's review in the mandatory hearing
25 will need to focus on the contents of the Early Site

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1 Permit record, the Staff's review of that information,
2 and the information itself, and basically how the
3 Staff has dealt with that information will be
4 disclosed in the FEIS.

5 And the adequacy of the Staff's analysis
6 will then be subject to the Board's review in that
7 respect.

8 ADMINISTRATIVE JUDGE TRIKOUROS: There are
9 mechanisms by which we can bring COL information into
10 the ESP proceeding, simply by asking certain questions
11 that refer to the COL, and asking what you think of
12 that.

13 I mean, I'm not sure that we would
14 necessarily do that, or what the implications of that
15 are. But there are, also, we have a contested
16 hearing, and certain information that might be
17 presented in that contested hearing would likely be
18 from the COLA rather than, if it is newer information,
19 rather than from the ESP, if it is older information.

20 And, therefore, it would be in the ESP
21 record. There are -- there is a lot of ways, I think,
22 for newer information in the COLA to get into the ESP
23 record. In which case, then, we would then be
24 reviewing that as opposed to the ESP, the older
25 numbers in the ESP, or the older evaluations in the

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1 ESP? Is that correct?

2 MR. MOULDING: Yes, I would just emphasize
3 that in general the Board's review typically begins
4 with the record in the ESP proceeding, primarily the
5 information in the Staff's review documents.

6 And so if there are questions that are
7 raised for the Board, on those documents, that is
8 typically the starting point for the Board's review in
9 the mandatory hearing.

10 CHAIR BOLLWERK: Do you have any comments
11 on the hypothetical that I posed to Mr. Blanton about
12 should this, would this Board have any reason,
13 potentially, to refer an issue in this case, to the
14 COLA Board, whenever it is appointed?

15 MR. MOULDING: I guess my inclination
16 would probably be no, Your Honor, primarily because of
17 the structure of how new information would need to be
18 addressed in the combined license application
19 proceeding.

20 That would be the proper forum for issues
21 to be initially raised and contentions on the COL
22 application. So issues raised in the Early Site
23 Permit proceeding, about the COL application, would
24 simply be in the wrong forum.

25 CHAIR BOLLWERK: What about the discussion

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1 we had regarding the referral to the ESP, or to this
2 Board, of mandatory hearing issues from whoever, I
3 think it will be the Commission, within the COLA,
4 would be doing the mandatory hearing within the
5 context of the COLA, given that the Policy Statement
6 says similar considerations apply to, it suggests that
7 it applies to contentions?

8 MR. MOULDING: I am trying to speculate
9 what sort of issue would be involved that a COL Board
10 would believe would need to be referred to the ESP
11 Board for the purposes of a mandatory hearing. And I
12 believe that is your question, is that correct?

13 CHAIR BOLLWERK: Yes. I mean, obviously
14 someone contemplated it for contested issues there is
15 a possibility that we could have things referred to
16 us.

17 I guess the question is what about
18 uncontested issues? I mean, the Policy Statement
19 clearly references contested issues. What about
20 uncontested issues?

21 MR. MOULDING: Well, I guess I would just
22 have to say that the -- going back to the general
23 point that the record in the Early Site Permit
24 proceeding needs to be adequate for the Board to make
25 its determinations.

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1 The Board will have a full range of --
2 will be able, on the ESP record, to identify the full
3 range of issues that would be necessary for making its
4 findings.

5 And I guess without more detailed
6 specifics I don't know what sort of issue would be
7 referred that would be necessary for the Board, in the
8 ESP proceeding to consider, that would be identified
9 only in the first instance by the COL application
10 Board.

11 I can't rule out that possibility but I
12 don't know what scenario specifically that would
13 entail.

14 CHAIR BOLLWERK: Judge Jackson, anything
15 else?

16 ADMINISTRATIVE JUDGE JACKSON: I would say
17 you come down on the side that this semi-permeable
18 membrane is also fairly solid. Is that --

19 MR. MOULDING: Yes, Your Honor, that is a
20 fair characterization.

21 CHAIR BOLLWERK: I heard less solidity
22 than I think you did. Because it sounded like we may
23 see all kinds of things suddenly show up in the Final
24 EIS, or the final SER, I think I heard that.

25 Because, I mean, the reference here is to

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1 the ESP record, and the Staff in one sense is creating
2 the ESP record by whatever they put in the FEIS, and
3 the SER.

4 MR. MOULDING: Right.

5 ADMINISTRATIVE JUDGE JACKSON: I was
6 referring to some of his introductory comments. It
7 sounded like you were supporting that. I don't know
8 where you come down on it. I would like to hear your
9 summary view on that.

10 CHAIR BOLLWERK: But don't let us put
11 words in your mouth, I guess.

12 MR. MOULDING: I guess, as I emphasized
13 before, there are a number of mechanisms for ensuring
14 that issues are addressed in the COL application; to
15 the extent that there are unresolved issues in the
16 ESP; the extent that the terms and conditions of the
17 ESP may not have been met; the fact that there are
18 several mechanisms for ensuring those are addressed in
19 the COL application because it is the Applicant's
20 responsibility to update the application, that helps
21 reinforce the difference in scope between the Early
22 Site Permit and the COL proceedings.

23 That was what I was attempting to get
24 across.

25 ADMINISTRATIVE JUDGE TRIKOUROS: Just as

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1 a hypothetical, what if the two boards were the same?
2 What if the COLA Board and the ESP Board were the same
3 board?

4 Does everything we just said apply still?

5 MR. BLANTON: I think so, Your Honor. And
6 it is important, to us, in terms of schedule, and I
7 think the discipline of the process is important; that
8 even if the ESP Board and the COL Board were the same,
9 that the ESP proceed within its own footprint, and on
10 its own schedule, in order to get that licensing
11 proceeding resolved, so that, then, the COLA can
12 proceed on its own schedule.

13 But I would add to that, following on
14 Judge Bollwerk's comment, I think I agree with what I
15 heard him say, that the issues, to the extent they are
16 in this proceeding, as a result of the FEIS and SER,
17 even if they are in this proceeding because the
18 Applicant has provided comments on the DEIS, that
19 makes them part of this record.

20 So I'm not trying to suggest that anything
21 that is mentioned in the COL is automatically excluded
22 from this proceeding, because it is in the COL, just
23 the opposite. If it is in this proceeding, it is in
24 this proceeding. If we put it in this proceeding, it
25 is in this proceeding.

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1 So to the extent we have made comments on
2 the DEIS, that address some of these differences
3 between the information in the original ESP
4 application, and the COLA, those comments are in the
5 record of this proceeding.

6 And to the extent -- and, really, they are
7 in the record regardless of whether or not they are
8 cited in the FEIS. But, certainly, to the extent the
9 Staff relies on them in preparing the FEIS, they are
10 fair game for this proceeding.

11 And I don't want to come away from this
12 with the misapprehension that I have said, somehow,
13 those are not part of what this Board can and should
14 review.

15 CHAIR BOLLWERK: All right. Anything
16 further for the Staff, at this point?

17 ADMINISTRATIVE JUDGE JACKSON: No.

18 CHAIR BOLLWERK: Judge Trikouros?

19 ADMINISTRATIVE JUDGE TRIKOUROS: No.

20 CHAIR BOLLWERK: Do you want to take a
21 break at this point, or -- all right. Mr. Sanders,
22 have you heard anything you want to comment on?

23 MR. SANDERS: I would just say that we
24 share all of the concerns that the Board raised, and
25 this process is unnecessarily complex, in our view.

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1 But it seems also that I tend to agree
2 with both Mr. Blanton, and Mr. Moulding, that it seems
3 that this is exactly what the policy guidance
4 contemplated, and that is what the regs allow.

5 We have a big problem with it, but it
6 seems like this is what the Commission wants. So that
7 is about it.

8 CHAIR BOLLWERK: Do you want to make any
9 comment, at all, in terms of the, I guess, the
10 approach of providing comments on the FEIS versus
11 amending the environmental report?

12 MR. SANDERS: Well, that discussion, I
13 just put a note here, check the regulations. It seems
14 to me like it is better, it would be the more correct
15 approach to amend an application if there is new
16 information that the Applicant knows about.

17 But I'm not sure that that is what the
18 regulations require. I would assume that the Staff, in
19 consulting with the Applicant, if the regs require
20 them to submit a new application, I'm assuming that
21 the Staff would have told them that.

22 But to us this does seem problematic.
23 Though, again, it just -- it seems correct that
24 anything that the Applicant submits, whether it is
25 responses to questions, or whether it is comments on

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1 the DEIS, is now in the record, and the Staff and the
2 Board has a right to rely on that information.

3 So, again, I don't particularly like the
4 process, but I'm not sure that there is anything, you
5 know, wrong with it.

6 ADMINISTRATIVE JUDGE TRIKOUROS: You know,
7 I think from our perspective it is -- we are just
8 looking to understand the boundaries. This obviously
9 has never occurred before.

10 For example, if there is a quality
11 assurance program in the COLA, which specifically says
12 that it covers the Early Site Permit as well as the
13 COLA, and we are reviewing the quality assurance
14 program in the Early Site Permit, which is also there,
15 I haven't gone through and done a check to see if they
16 are the same or not, they may be.

17 But it adds some confusion for us in doing
18 our review, mandatory hearing review, especially. To
19 say that we really can't look at the quality, the
20 final quality assurance program in the COLA, which
21 also covers the Early Site Permit, but is not in the
22 Early Site Permit record.

23 CHAIR BOLLWERK: Could the Board and the
24 parties anticipate that whatever changes, revisions,
25 accommodations, supplementation, whatever you want to

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1 call it, that arises as a result of Southern's
2 comments, or other parts of the COL that are adopted,
3 quote, unquote, into the FEIS, or the SER, that is
4 going to be clearly reflected there, and we are not
5 going to have to try to do a line by line, or try to
6 find out reading all -- I mean, it is going to be
7 clear where these came from?

8 MR. MOULDING: You are talking about what
9 the basis for the Staff's conclusions are?

10 CHAIR BOLLWERK: Yes.

11 MR. MOULDING: Yes, that should be clear
12 from the Staff's review documents, the basis for its
13 conclusions in both the SER and the EIS.

14 CHAIR BOLLWERK: And so it would say, we
15 got these conclusions from these comments, or we got
16 them from the COL application after we looked at that?
17 I mean, that will be clear, in terms of whatever the
18 final SER or the FEIS look like?

19 MR. MOULDING: The basis for the Staff's
20 conclusions should be apparent from the review
21 documents. Are you talking about sort of the citation
22 format, or just the --

23 CHAIR BOLLWERK: Well, some way that folks
24 will know that this didn't necessarily spring from
25 the, you know, from the head of Zeus, it came from

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1 some place.

2 It was sort of -- I mean, we are talking
3 about creating a record here. And if the elements of
4 that record came from some place, like the COL
5 application, or the comments that were provided by the
6 Applicant, it would be good to know that, I think, it
7 would be consistent with whatever staff process you
8 now use, I guess that is the question.

9 This is an unusual situation, I admit,
10 particularly given -- unusual, but given that the ER
11 wasn't amended, but there was a process where they
12 provided comments.

13 Do Applicants often provide comments on
14 FEISSs?

15 MR. MOULDING: I'm not sure, Your Honor.

16 MS. SUTTON: Your Honor, if I may?

17 CHAIR BOLLWERK: Sure.

18 MS. SUTTON: Under NEPA, NEPA is a
19 process-driven statute, as you are well aware. And,
20 in this case, the first input is the environmental
21 report.

22 CHAIR BOLLWERK: Correct.

23 MS. SUTTON: But the Staff, it is their
24 evaluation of the significance of the impact.

25 CHAIR BOLLWERK: Right.

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1 MS. SUTTON: So at the point in time when
2 they issue the DEIS, they begin to engage in the
3 analysis of the environmental impact. So we would
4 contend that the proper forum is comments on the DEIS
5 at that point, not a revision to the ER.

6 It all is part of the record of the
7 proceeding.

8 CHAIR BOLLWERK: All right.

9 MS. SUTTON: Also, further to your
10 question here, it is our expectation that, clearly,
11 the Staff's, the basis for the Staff's findings will
12 be clear to the Board, and more of the ESP will be
13 reflected in the COL application after issuance,
14 through an amendment.

15 CHAIR BOLLWERK: All right. Anything else
16 the Board members have at this point?

17 ADMINISTRATIVE JUDGE JACKSON: No, thank
18 you.

19 CHAIR BOLLWERK: All right. We are going
20 to take about a five minute recess here, maybe caucus
21 among ourselves. I'm not sure we have anything else
22 to add to the record, but we thought we would take a
23 second, and let you all -- we have been going a little
24 over an hour now.

25 We are going to take a break, and we are

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1 going to talk, and we will come back on the record and
2 either have some more questions, or we will simply
3 convene this part of the prehearing conference at that
4 point.

5 But why don't we take a -- let's take a
6 ten minute recess at this point. Thank you very much.

7 (Whereupon, the above-entitled matter
8 went off the record at 6:15 p.m. and
9 went back on the record at 6:30 p.m.)

10 CHAIR BOLLWERK: If we could go back on
11 the record, please?

12 Let me do two things here. First of all
13 do any of the parties have any comments on anything
14 that they heard that we didn't somehow get your -- in
15 other words, did you all hear the Staff say anything,
16 did the Staff hear the Applicant say anything, or the
17 Intervenors, hear anybody say anything that they still
18 want to comment on, in terms of giving more
19 information to the Board on any matter that we've
20 talked about in the last hour or so?

21 MR. BLANTON: For the Applicant, Your
22 Honor, I think we wrapped what comments we had, based
23 on the Board's questions, and the Staff's answers
24 before the break, so I think we are good.

25 CHAIR BOLLWERK: Anything further from the

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1 Staff?

2 MR. MOULDING: Not at this time, Your
3 Honor. Although I would, if now is the time to
4 briefly make a clarification about the schedule for
5 issuance of the FSER, I just wanted to clarify.

6 You asked, earlier, whether August 6th is
7 still the date for issuance. And that is the Staff's
8 most recent estimate. But, as we indicated in our
9 earlier comments, on the Board's revised general
10 schedule, the Staff anticipates that there may be a
11 change because of the information that it is currently
12 reviewing.

13 But it is not prepared, at this time, to
14 say what the extent of that change would be. But
15 August 6th is on their most recent estimate. It is
16 unlikely to be the actual date for issuance of the
17 FSER.

18 CHAIR BOLLWERK: So it probably is going
19 to slip, you think?

20 MR. MOULDING: That is our estimate. But
21 we are not prepared, at this time, to say what the
22 extent of that would be. I just wanted to clarify
23 that.

24 CHAIR BOLLWERK: Okay, thank you. I will
25 go back to my question, or the comment I made, I think

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1 you agreed with it. It sounds like several weeks, the
2 middle of May is what you are looking at, at this
3 point, as far as another report?

4 MR. MOULDING: Yes, Your Honor, that is
5 correct.

6 CHAIR BOLLWERK: Okay. I did have just
7 one -- I'm sorry, did you have anything further?

8 MR. SANDERS: No, thanks. We are just
9 going to continue watching and observing, and we will
10 wait and see what happens.

11 CHAIR BOLLWERK: All right. Let me just
12 ask one clarifying question of the Staff. We got our
13 response from the Applicant, I think, on the question
14 of whether Applicants, as a normal or routine matter,
15 file comments on an FEIS, for instance.

16 But there is a distinction between a
17 comment that, for instance, says the Staff misread a
18 number that we gave them, or they mis-cited it, or
19 they mis-analyzed it, and a comment that says, oh by
20 the way, we are now changing a number that we had in
21 here, to a different number.

22 I'm just wondering, is there any
23 distinction in terms of the comments that you normally
24 see, as opposed to amendments to an ER, based on that
25 distinction?

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1 MR. MOULDING: Well, I guess I'm not aware
2 of other circumstances where the Applicants have
3 submitted comments on DEISS. I can find that
4 information for you.

5 However, with respect to the reliability
6 of the comments, the comments from the Applicant did
7 come in under oath and affirmation. So that is why
8 the Staff is treating them as information submitted by
9 an Applicant that the Staff would need to specifically
10 address in its review documents.

11 CHAIR BOLLWERK: Okay. Obviously that is
12 important to be able to rely on them, but it is not a
13 license application amendment, either. Do you need to
14 caucus with folks, anybody talk about my question, or
15 are you satisfied with your answer at this point?

16 I will give you a minute if you need to do
17 that.

18 MR. MOULDING: I should also introduce, at
19 this time, my co-counsel, Ann Hodgdon. If you will
20 just give me a moment?

21 CHAIR BOLLWERK: Okay.

22 (Pause.)

23 CHAIR BOLLWERK: And if you think there is
24 anything further you want to say on that, I will turn
25 to you next.

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1 MR. BLANTON: I don't think so, Your
2 Honor, other than I think there is Commission
3 precedent where even as late as the hearing the
4 Commission has taken evidence on issues that were not
5 in the original ESP application, and amended the FEIS
6 by its order in the mandatory hearing.

7 So I don't think there is anything
8 improper, certainly, about providing additional --
9 using the comment process under Part 51, on the draft
10 EIS to provide the Staff with additional information
11 that is relevant to the evaluation of the
12 environmental impact, under NEPA.

13 CHAIR BOLLWERK: I don't think there is
14 much question, particularly I think given the D.C.
15 Circuit Decision of LES, that the Commission can
16 certainly use the adjudicatory process to amend an
17 FEIS, or to supplement it, however you want to put it.

18 Anything further you all want to say on
19 the subject?

20 MR. MOULDING: All we can say at this
21 point, Your Honor, is that we believe there was an
22 appropriate approach for addressing this new
23 information, and that the Staff intends to address
24 that information fully in its review of the final
25 Environmental Impact Statement.

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1 CHAIR BOLLWERK: Okay, all right. Anything
2 further from the Intervenors?

3 MR. SANDERS: I would just point out that
4 on the same day that the COL application went in the
5 Applicant submitted a revised ESP application, and in
6 that revised ESP application, it clearly had incorrect
7 information.

8 I mean, it makes factual claims about the
9 amount of water that is going to be used, and then in
10 the COL application they say, oh it is actually a
11 little bit different.

12 Now, the reason for that is that in the
13 ESP application, somewhere they mentioned that because
14 the Staff has submitted, has already produced the
15 DEIS, that the ER is now considered a closed document,
16 so they couldn't amend, they couldn't put the new
17 information in at this point.

18 I'm not sure, you know, but the truth of
19 the matter is that I believe that that is true. But
20 it just strikes me as strange that you could submit an
21 application that you know has incorrect information in
22 it.

23 This is a little different from the
24 situation that Judge Bollwerk mentioned, where
25 responses, you know, where comments on the DEIS say

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1 things like, you know, we disagree with your
2 conclusions on this, or we think you got it a little
3 bit wrong, or what not, and something that is just
4 plain old fact, how much water is going to be used.

5 But, again, I just can't say -- I honestly
6 cannot say that what they did was wrong, even though
7 it strikes me as odd.

8 CHAIR BOLLWERK: All right.

9 MR. BLANTON: Your Honor, I have to say
10 that I don't think it is a fair characterization to
11 say that the ESP REV4 contains information we know is
12 wrong. The revisions to ESP REV 4 were limited to
13 certain specific areas.

14 We did not revise the ER. The ER, the
15 current ER is still REV 2 for exactly the reasons that
16 Ms. Sutton pointed out a minute ago, the DEIS has been
17 issued, and after the DEIS has been issued, we didn't
18 view it as appropriate to amend the ER.

19 The proper process would have been to
20 comment on the DEIS to correct whatever new
21 information was available through that process.

22 CHAIR BOLLWERK: So your position is once
23 the DEIS comes out then your ER is frozen, and the way
24 to interact with the Staff further, with respect to
25 that application, or the information in the

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1 application, is to file a comment with them?

2 MR. MOULDING: Certainly it is appropriate
3 to interact with the Staff in that fashion. I'm not
4 saying that it is -- would not be inappropriate to
5 revise the ER. But certainly it is appropriate to
6 interact with Staff through the comment process.

7 CHAIR BOLLWERK: So it is an either or,
8 your choice?

9 MR. BLANTON: Judge, I hadn't looked at it
10 quite --

11 CHAIR BOLLWERK: Okay, anything further
12 the Staff has to say?

13 MR. MOULDING: Not at this time, Your
14 Honor.

15 CHAIR BOLLWERK: Anything further from the
16 Applicant, or the Intervenor --

17 MR. SANDERS: I just want to thank you for
18 having this discussion. It was very helpful for me.

19 CHAIR BOLLWERK: We found it interesting
20 as well, I think. So these are interesting times we
21 are dealing with right now.

22 We appreciate, very much, you taking the
23 time to prepare this for us. I know it was a little
24 short notice, but the Board has certainly found it to
25 be very interesting.

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1 And, again, we do appreciate you taking
2 the time and putting together, and presenting it to us
3 today. Thank you very much.

4 I would mention that in about 15 or 20
5 minutes we are going to start the limited appearance
6 session at 7 o'clock. If you are here, and you
7 haven't pre-registered, there are sign-up sheets on a
8 table in the back.

9 Please do register out there so we will
10 have your name and can call you for the limited
11 appearance sessions. And, again, we will be starting
12 right around 7 o'clock for those limited appearance
13 sessions.

14 Again, thanks to the parties. And, at
15 this point, we stand adjourned in terms of this
16 prehearing conference. Thank you.

17 (Whereupon, at 6:40 p.m., the above-
18 entitled matter was adjourned.)
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CERTIFICATE

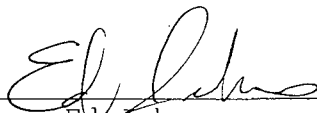
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Name of Proceeding: Pre-hearing Conference

Docket Number: 52-011-ESP

Location: Augusta, Georgia

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