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

10:04 a.m.

1  
2  
3 JUDGE BOLLWERK: If we could go on the  
4 record please. Good morning, everyone. We are here  
5 today for a pre-hearing conference in the combined  
6 operator license case for the Bellefonte Nuclear Power  
7 Plant Units 3 and 4. We are going to be talking today  
8 about some matters relating to scheduling in an effort  
9 to put out an initial scheduling order for the  
10 proceeding.

11 Let me go ahead and have the parties  
12 introduce themselves if they would. Let's start with  
13 the Applicant for the Tennessee Valley Authority  
14 please.

15 MR. FRANTZ: This is Steven Frantz for  
16 Morgan Lewis and I have with me my associates, Steven  
17 Burdick and Mauri Lemoncelli. Also on the call are  
18 in-house counsel for TVA Ed Vigluicci and Scott Vance.

19 JUDGE BOLLWERK: All right. Thank you.  
20 For the NRC then please.

21 MS. HODGDON: Ann Hodgdon and with me I  
22 have Jody Martin. And my project managers have not  
23 yet arrived. It's 15 flights.

24 JUDGE BOLLWERK: All right. For the Joint  
25 Interveners then please.

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1 MR. ZELLER: Good morning. This is Lou  
2 Zeller representing Blue Ridge Environmental Defense  
3 League for the Joint Interveners. Also in a separate  
4 office in her office in Savannah, Georgia is Sara  
5 Barczak with the Southern Alliance for Clean Energy.

6 JUDGE BOLLWERK: All right. And I'm Judge  
7 Paul Bollwerk. I'm the Chairman of the Licensing  
8 Board. With me here in our Rockville facility is  
9 Judge Tony Baratta, Judge Anthony Baratta, as well as  
10 our law clerk, Erica LaPlante, and Judge William Sager  
11 is participating by telephone from Texas A&M.

12 At this point, let's go ahead and sort of  
13 move through some of the items that we put in our  
14 order of September 12<sup>th</sup> as well as I guess the recent  
15 order that we put out relating to discovery process  
16 and sort of move through these items and in the end  
17 what we will hope to come up with given the  
18 information that we discussed would be a general  
19 order, a general scheduling order, for the proceeding.  
20 Then we would continue to update as circumstances  
21 might change. There are obviously some dates on it  
22 that the staff has provided us that only have month  
23 and a year So we really can't move forward from  
24 those dates any of that.

25 Let's start with the discovery process.

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1 The Section 2.336 of 10 CFR, the initial disclosures  
2 were covered by the Board in October 14<sup>th</sup> order. Let  
3 me raise a question first. Were there any problems  
4 with the staff's hearing file or the initial  
5 disclosures that were made on October 29<sup>th</sup> from any of  
6 the parties? Anything that TVA has to say?

7 MR. FRANTZ: This is Steve Frantz. No, we  
8 have no problems with the disclosures.

9 JUDGE BOLLWERK: All right. Anything from  
10 the staff's perspective?

11 MS. HODGDON: Nothing.

12 JUDGE BOLLWERK: All right and then with  
13 the Joint Intervenors?

14 MR. ZELLER: No problem, Your Honor.

15 JUDGE BOLLWERK: All right. I'm glad that  
16 all went smoothly. I guess in the order you have  
17 based on the stipulation that you had given us we've  
18 moved the update process for those. I believe it's  
19 now every 30 days rather than every 14 and that's  
20 something we'll follow at least for some time until we  
21 begin to get more -- things begin to get a little  
22 closer in terms of the hearing process starting. And  
23 I think if there's no problems with anybody. You all  
24 agreed to that anyway.

25 MR. FRANTZ: That's correct. Judge

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1 Bollwerk, I'd also like to raise one other issue that  
2 I have not had a chance to discuss with the  
3 Interveners yet.

4 JUDGE BOLLWERK: All right.

5 MR. FRANTZ: What we've planned to do is  
6 every 30 days file an update and what we'd like to do  
7 is have this as a rolling 30-day period which would  
8 encompass all the new documents that we have received  
9 or obtained or created up to two weeks before that 30-  
10 day update.

11 We have approximately a dozen or more  
12 different companies we have to go to for these updates  
13 and it really is not practical to give you an update  
14 or give the Interveners an update up to the minute in  
15 that 30-day period. So what we'd like is a rolling  
16 30-day period and we will file everything that's new  
17 within two weeks of that 30-day update.

18 JUDGE BOLLWERK: Any problems from the  
19 Joint Interveners' perspective on using that process?

20 MR. ZELLER: Your Honor, this is Lou  
21 Zeller. I believe that's fine.

22 JUDGE BOLLWERK: All right.

23 MR. FRANTZ: Thank you, Mr. Zeller.

24 JUDGE BOLLWERK: And with respect to the  
25 staff, anything you want to say on the subject?

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1 MS. HODGDON: No. That's fine with the  
2 staff.

3 JUDGE BOLLWERK: All right. Okay. In  
4 terms of the -- I wanted to raise one question.  
5 Excuse me. On paragraph three of the October 14<sup>th</sup>  
6 order, we indicated that the parties had agreed to  
7 waive the obligation to provide a privilege log that  
8 might otherwise be required by Section 2.336(a)(3) and  
9 (b)(5) of Title X of the Code of Federal Regulations  
10 other than for proprietary information.

11 Was there any discussion of when or if  
12 there will be request to produce a privilege log for  
13 the remainder of any privileged information or do you  
14 anticipate that it isn't going to be needed at any  
15 point? I'll hear from the Applicant first if that's  
16 possible.

17 MR. FRANTZ: Right now, in terms of  
18 privilege documents, we don't anticipate any need  
19 given the agreement among the parties. We had  
20 produced a log of proprietary documents for use by the  
21 NRC staff and the Interveners.

22 JUDGE BOLLWERK: All right. Anything that  
23 the other parties, either the staff or the Joint  
24 Interveners, want to add with respect to that?

25 MR. ZELLER: This is Lou Zeller. This

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1 seems to be a good way to proceed, Your Honor. I  
2 don't have anything to say about it right now.

3 JUDGE BOLLWERK: All right. And again I  
4 appreciate it. You all are identifying yourselves.  
5 Actually, you're doing a better job than I am as you  
6 come on of the line and that would be a good thing and  
7 I would ask the court reporter if at some point you  
8 don't know who's speaking go ahead and stop us because  
9 we want to make sure we have a clear record. So  
10 again, when you start to speak, if you could try to  
11 remember to identify yourself, that would be useful  
12 for the purposes of this telephone conference.

13 Let me ask one other question. Mr.  
14 Zeller, I know at one point you had indicated that you  
15 probably would not seeking a protective order at any  
16 point to see any kind of proprietary information. Is  
17 that still your position?

18 MR. ZELLER: Yes, we have not changed on  
19 that, Your Honor.

20 JUDGE BOLLWERK: Okay. All right.  
21 Anything else that any of the parties have on the  
22 discovery process at this point? Let me start with  
23 TVA.

24 MR. FRANTZ: This is Steve Frantz. No, we  
25 have no other questions or issues.

1 JUDGE BOLLWERK: All right. NRC staff?

2 MS. HODGDON: No, we have nothing.

3 JUDGE BOLLWERK: All right and then the  
4 Joint Intervenors?

5 MR. ZELLER: This is Lou Zeller. We're  
6 updating our information. I know that there was a  
7 communication with our experts on this. So we'll  
8 continue to update with some of the information that  
9 was used in the development of our petition and we're  
10 doing the best we can and I think it's fairly complete  
11 so far. So I don't anticipate any problems on our  
12 side.

13 We will be sharing the disclosure  
14 agreements from both TVA and the Applicant, I mean,  
15 the NRC and the Applicant with our experts and we will  
16 be probably be asking for some of those documents.  
17 But right now, we're looking very good.

18 JUDGE BOLLWERK: All right. One of the  
19 things I should mention is you had filed, I guess,  
20 your initial disclosure request. You put it into the  
21 record of the proceeding. It's not necessary that you  
22 do that. The only people that need to know about it  
23 actually are the staff and TVA. So that's not a  
24 document you necessarily have to put into the docket  
25 of the proceeding. And the same with TVA or -- The

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1 staff hearing file does go into the docket of the  
2 proceeding. That's under the rules, but again, the  
3 disclosures that are exchanged between TVA and the  
4 Joint Interveners and the staff in terms of Joint  
5 Intervener document or TVA documents do not  
6 necessarily have to make part of the record, just so  
7 that's clear for everyone.

8 Eventually, if you do evidentiary  
9 materials obviously you would need to see them at that  
10 point. But at least in terms of the document  
11 disclosure, the exchange, those don't have to be made  
12 publicly available or don't have to be made part of  
13 the docket. Any questions about that from anyone?

14 MS. HODGDON: If I may interrupt. This is  
15 not a question. Ann Hodgdon for the staff. Mallecia  
16 Hood has just arrived.

17 JUDGE BOLLWERK: Okay.

18 MS. HOOD: Hi.

19 JUDGE BOLLWERK: Hi there.

20 MS. HODGDON: Having walked up the stairs.

21 JUDGE BOLLWERK: All right. Have a seat  
22 and cool down for a couple of minutes.

23 MS. HOOD: Thank you.

24 JUDGE BOLLWERK: Hopefully, we don't have  
25 anything we'll need your help with. All right.

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1 MR. ZELLER: Judge Bollwerk.

2 JUDGE BOLLWERK: Yes.

3 MR. ZELLER: This is Lou Zeller.

4 JUDGE BOLLWERK: Yes.

5 MR. ZELLER: In response to your question,  
6 I think we are filing the disclosures through the  
7 electronic information exchange. It's an easy way to  
8 handle those documents and I assume there's nothing  
9 wrong with that. I understand that actual documents  
10 themselves wouldn't have to go through that system.

11 JUDGE BOLLWERK: That's correct and, in  
12 fact, the documents you're sending it's a fast and  
13 easy way for you. It's not a bother to us. I just  
14 want to make clear you don't have to do that. You  
15 could email it. You could do whatever works between  
16 you and the Applicant. You don't have to make it part  
17 of the public record is all I'm trying to pass along.

18 MR. ZELLER: I understand that. I  
19 appreciate that.

20 JUDGE BOLLWERK: Okay. All right.  
21 Anything else on discovery then? One more time  
22 through? TVA/

23 MR. FRANTZ: We have nothing.

24 JUDGE BOLLWERK: Okay. Staff?

25 MS. HODGDON: Nothing.

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1 JUDGE BOLLWERK: All right. And Joint  
2 Interveners?

3 MR. ZELLER: No, that's all.

4 JUDGE BOLLWERK: All right. Let's move on  
5 then to the filing of new and amended contentions.  
6 This may not need much of a discussion since we've  
7 actually already dealt with this in one respect. But  
8 let me just move through a couple points.

9 I think as we made clear in our initial  
10 pre-hearing order that triggering generally 30 days  
11 after whatever the triggering event is for filing  
12 either a new or amended contention would be the  
13 general time frame for timeliness and that would again  
14 absent something else from the Board be generally what  
15 we're looking for. If it's filed within 30 days of  
16 that triggering event, then it's probably going to be  
17 viewed by the Board as being timely filed at least in  
18 terms of the time that it needs to get in. Whether  
19 the triggering event is an appropriate one or not,  
20 that's a different question. That's not what I'm  
21 addressing here, but rather 30 days from that event  
22 would be when things would need to be timely filed.

23 In terms of the answers and replies, I  
24 believe 14 and seven days will be the general rule.  
25 In terms of a page limitation, a page limitation does

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1 apply to new or amended contentions, but that is on a  
2 per contention basis and does include any supporting  
3 materials. So, for instance, if for whatever reason  
4 you try to put in two or three new or amended  
5 contentions, each one of those would be subject to the  
6 page limitation.

7 And having said that, if there was a plan  
8 or the prospect of filing a number of new contentions  
9 at the same time, probably the better thing for you to  
10 do would be to simply ask the Board for a waiver of  
11 the page limit and go ahead and file just one pleading  
12 rather than filing four or five different pleadings.  
13 As we indicated before, you could always ask for a  
14 waiver of the page limit and we would certainly be  
15 willing to consider that. But the page limit does  
16 apply absent a waiver just to make that clear.

17 And in terms of any new or amended  
18 contentions that happen to be admitted, the mandatory  
19 disclosure and any updates, any mandatory disclosure  
20 updates, relative to those would generally be due  
21 within 14 days. That will be their standard rule  
22 unless we do something different or we get a request  
23 from the party to do something else.

24 Any questions about new or amended  
25 contentions? Anything from the Applicant?

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1 MR. FRANTZ: No.

2 JUDGE BOLLWERK: All right. Anything from  
3 the staff?

4 MS. HODGDON: Nothing.

5 JUDGE BOLLWERK: All right, and the Joint  
6 Interveners?

7 MR. ZELLER: Nothing, Your Honor.

8 JUDGE BOLLWERK: All right. Thank you  
9 very much.

10 Let's then move to the subject of summary  
11 disposition. Let me ask first. Does any party have  
12 any intention of filing a summary disposition motion  
13 prior to the draft environmental impact statement  
14 being issued?

15 MR. FRANTZ: This is Steve Frantz for TVA.  
16 We would anticipate filing a motion for summary  
17 disposition on contentions FSER D and NEPA G, both of  
18 which appear to be contentions of omission related to  
19 storage of low-level waste.

20 JUDGE BOLLWERK: And that's before the  
21 environmental impact statement is issued?

22 MR. FRANTZ: Most likely. We'd like to at  
23 least keep that option open. Additionally, we have  
24 not made a decision yet, but we might submit a motion  
25 with respect to contention NEPA N on the cost of

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1 nuclear power.

2 JUDGE BOLLWERK: All right. Normally, the  
3 process would be after the DEIS comes out there would  
4 be an opportunity for filing for summary disposition  
5 based on what's in the DEIS. Since that -- If you're  
6 talking about before that triggering event, what time  
7 frame are you looking at?

8 MR. FRANTZ: We have not made that  
9 determination yet. It would not probably be until I  
10 would expect some time next year.

11 JUDGE BOLLWERK: And just let me pull --  
12 The draft EIS is due in March. March 6<sup>th</sup> is what the  
13 staff gave us. So what are we talking about in terms  
14 of the motion? Because if at some point the motion is  
15 going to come right before the DEIS, it might be  
16 better just to wait for the DEIS to be issued?

17 MR. FRANTZ: That's correct and also  
18 another complicating factor here is both of these  
19 contentions on the low-level waste issue are subject  
20 to the Board's order on certification up to the  
21 Commission.

22 JUDGE BOLLWERK: That's correct.

23 MR. FRANTZ: Which could affect our  
24 decision of whether or not to file.

25 JUDGE BOLLWERK: All right. Why don't we

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1 do it this way? Let's go ahead and set the  
2 Commission's ruling on the certification request from  
3 the Board as the, say, triggering date for summary  
4 disposition relative to the low-level waste  
5 contentions. Would that be something we could work?

6 MR. FRANTZ: Yes, that makes a lot of  
7 sense, Judge Bollwerk.

8 JUDGE BOLLWERK: All right. How soon  
9 after that ruling comes down would you be prepared to  
10 file your motion?

11 MR. FRANTZ: I would think within one or  
12 two months.

13 JUDGE BOLLWERK: All right. Why don't we  
14 say 30 days then?

15 MR. FRANTZ: Okay.

16 JUDGE BOLLWERK: All right. And that may  
17 be subject also. If that ruling doesn't come down  
18 until basically the time for the draft EIS coming out,  
19 we may well just roll that all into one rather than --

20 MR. FRANTZ: That makes an awful lot of  
21 sense also.

22 JUDGE BOLLWERK: Can you hold on one  
23 second please?

24 (Off the record discussion.)

25 Let me raise one other question. If the

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1 certification should be delayed past the DEIS, what  
2 would you prefer to do?

3 MR. FRANTZ: I would prefer to go ahead  
4 and submit the motion for summary disposition even  
5 though we had not heard from the Commission.

6 JUDGE BOLLWERK: All right. I should let  
7 you know that based on the schedule that I'm looking  
8 at probably once the DEIS comes out that motion will  
9 due in relatively short period of time, probably  
10 within, hold on one second here, probably several  
11 weeks. So you should count on that.

12 MR. FRANTZ: Okay.

13 JUDGE BOLLWERK: All right. But for the  
14 time being, we'll say that in terms of the certified,  
15 I believe we also -- Let me just check one thing  
16 here,. Yes, I believe -- Okay. The low-level waste  
17 ones are the two that we certify that it sounds like  
18 you're interested in moving for summary disposition.  
19 So why don't we assume then that within 30 days after  
20 the Commission makes a ruling on the certified  
21 question if you're going to file a summary disposition  
22 motion you would do so.

23 MR. FRANTZ: Yes, we will do so.

24 JUDGE BOLLWERK: All right. In terms of,  
25 let me see here once, post DEIS and post FEIS time

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1 limits for both non-amended and amended admitted  
2 contentions and any new contentions, again I think I  
3 just mentioned this, but probably the time frame for  
4 filing for summary disposition motion probably seven  
5 days after the mandatory disclosure update. So if  
6 that's 14 days assuming there's a new contention  
7 admitted, another seven will be 21 days just to  
8 clarify that.

9 For summary disposition motions just so  
10 you're aware, we're going to treat them somewhat  
11 differently in terms of the responses. For any  
12 response that supports the motion, that would be filed  
13 within ten days. If any response that opposes the  
14 motion, that would be due within 20 days from the  
15 response that supports the motion. So, in other  
16 words, the motion comes. Generally, if the Applicant  
17 files it, often the staff will file a supporting  
18 response. Sometimes they do. Sometimes they don't.  
19 But if they should, that would be due ten days after  
20 the motion is filed.

21 Then the Joint Intervener if they were  
22 going to oppose the motion would have 20 days from the  
23 staff's response supporting the motion to file their  
24 response to the motion in opposition to it. And if  
25 there were no responses supporting the motion, in

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1 other words the staff or anyone else did not file a  
2 response supporting the motion, the response in  
3 opposition would be due 20 days from the date of the  
4 motion.

5 When I set up the schedule, I'll lay this  
6 out, but just so you'll know. This is slightly  
7 different than it's done under the Subpart G rules but  
8 the Subpart L rules don't have any provisions dealing  
9 with timing and so we've done this in another location  
10 and it's worked out. It was an early site permit case  
11 and it's worked out fairly well. So we'll continue it  
12 here.

13 All right. If you have any questions  
14 about that, just when you see the schedule, I think it  
15 will become clear what we're talking about. But  
16 again, generally there is a response supporting the  
17 motion which is filed first within ten days. Then the  
18 response opposing the motion comes after the response  
19 supporting the motion.

20 In terms of page limitation on the motions  
21 and responses in summary disposition, would 25 pages  
22 per contention be sufficient?

23 MR. FRANTZ: Judge Bollwerk, this is Steve  
24 Frantz. I've discussed this with the other parties  
25 and I believe all the parties are in agreement that at

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1 this time it's probably premature to set a page limit.  
2 Some of these contentions may be easy and we can do it  
3 within 25 pages. Others may be more difficult and may  
4 require more pages both for the initial motion and for  
5 the responses to the motion.

6 JUDGE BOLLWERK: All right. One thing you  
7 should be aware of, in setting any page limitations we  
8 don't intend to include any exhibits or any affidavits  
9 to accompany the motion. So it's basically the motion  
10 itself.

11 MR. FRANTZ: Yes, we understand.

12 JUDGE BOLLWERK: All right. I'll take  
13 that under advisement. We may well set a 25 page  
14 limit and allow the parties then to come in and ask  
15 for additional pages if they need to. But I will bear  
16 that in mind as we're looking at this.

17 Also just as a heads-up for the parties,  
18 as is the case with summary disposition motions under  
19 the formal rules under Subpart G which is Section  
20 2.710(a) of the Title X of the Code of Federal  
21 Regulations, the Board will require a separate  
22 statement of material facts not in dispute from the  
23 motion filer as well as a statement of disputed  
24 material facts from the opposing party and those are  
25 not subject to any page limitation we might set. So

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1 those are standard under the Subpart G rules and we  
2 will ask those also be filed with respect to any  
3 summary disposition motions that might be filed under  
4 this case which currently is under Subpart L.

5 Any questions then about summary  
6 disposition? Let me go through and ask the Applicant  
7 first.

8 MR. FRANTZ: We have no questions.

9 JUDGE BOLLWERK: All right. Anything from  
10 the NRC staff?

11 MS. HODGDON: No, nothing on summary  
12 disposition. Ann Hodgdon. But I would like to  
13 address something else that we spoke about before and  
14 I didn't interrupt to make my point at that time about  
15 the March 2009 schedule for the DEIS.

16 JUDGE BOLLWERK: Okay. If you want to say  
17 something at this point, why don't you go ahead and do  
18 that.

19 MS. HODGDON: Yes, I do. I want to say  
20 that that date will slip and we do not at this time  
21 know by how much. That is for various reasons that  
22 are explained in the letter that we've written to TVA  
23 in answer to the letter from TVA on October 29, 2008.  
24 We could give that letter to the Board.

25 It's about the fact that the slip in the

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1 hydrology schedule on the safety side is going to  
2 result in some kind of a slip in hydrology on the  
3 environmental side as well and we don't know how much  
4 at this time. Would the Board like that letter?

5 JUDGE BOLLWERK: I don't think we need it.  
6 I think you've given us the information. How soon do  
7 you think you'll have some idea of how long the  
8 slippage will be?

9 MS. HODGDON: I can ask -- I think I  
10 already did ask Mallecia Hood and she doesn't know.

11 JUDGE BOLLWERK: Are we talking about two  
12 weeks? Are we talking about month?

13 MS. HODGDON: One second. I go on mute  
14 for one second so I can ask her.

15 JUDGE BOLLWERK: Surely. Yes.

16 (Off the record discussion.)

17 MS. HODGDON: Are we on?

18 JUDGE BOLLWERK: Yes.

19 MS. HODGDON: Judge Bollwerk, yes.  
20 Mallecia Hood says that there is a meeting of the RMB.  
21 That's the Resource Management Board. They are  
22 concerned with the staff's schedule and there's a  
23 meeting on Friday and they will determine after that  
24 meeting what the schedule is or they'll try to reach  
25 some kind of an accommodation in the schedule. So we

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1 should know that on Friday or Monday, hopefully on  
2 Friday.

3 JUDGE BOLLWERK: Okay.

4 MS. HODGDON: So we can let you know. We  
5 can let everybody know at that time what those dates  
6 are.

7 JUDGE BOLLWERK: Okay. Assuming you knew  
8 on Friday, how soon would it take for you to prepare  
9 and send a letter to the Board?

10 MS. HODGDON: Well, we're going to have to  
11 do it on Friday because we are not going to be, Mr.  
12 Martin and I are not going to be, or Ms. Hood either  
13 for that matter, here next week.

14 JUDGE BOLLWERK: Right.

15 MS. HODGDON: So we'll do it on Friday.

16 JUDGE BOLLWERK: All right. So then we  
17 should anticipate hearing something from you on Friday  
18 in terms of the schedule.

19 MS. HODGDON: I think it will be a very  
20 simple letter.

21 JUDGE BOLLWERK: That's fine.

22 MS. HODGDON: And if that's decision is  
23 made early enough in the day we should be able to get  
24 this letter out, "Yes. Thank you."

25 JUDGE BOLLWERK: All right. It's

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1 basically one line in your September 22<sup>nd</sup> letter. So  
2 it doesn't need to be much more than that or whatever  
3 explanation it requires as well. It will be up to you  
4 obviously.

5 MS. HODGDON: Yes. Thank you.

6 JUDGE BOLLWERK: All right. Thank you.

7 MR. ZELLER: Judge Bollwerk.

8 JUDGE BOLLWERK: Yes.

9 MR. ZELLER: This is Lou Zeller. Can I  
10 say something?

11 JUDGE BOLLWERK: Yes. Absolutely. I was  
12 about to get to you. You were the next. In terms of  
13 summary disposition or with respect to the schedule  
14 change?

15 MR. ZELLER: Well, respect to the schedule  
16 change. I understand that TVA requested that the  
17 review of the hydrology section of the application  
18 could be resumed in 2010 and it would come under the  
19 sections under the standard review plan, Section 2.4.  
20 I've not seen this very long. First, the letter that  
21 Ms. Hodgdon just mentioned just came out last  
22 Wednesday.

23 But I have -- We are looking at this with  
24 regards to the motion to clarify and some of the  
25 issues that we brought up in our original petition as

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1 well with regards to NEPA B, for example, and perhaps  
2 as well as NEPA M, the cost consideration as well as  
3 the fish and Guntersville Reservoir areas. These  
4 items include cooling water as well as low water  
5 considerations as you well know under the standard  
6 review plan.

7 And I would just want to throw this into  
8 the discussion right now. It seems like we have an  
9 opportunity here because we have concerns in terms of  
10 having the application stretched out to the period and  
11 at the same time an ongoing, contested proceeding  
12 going on. So in plain English what I'm saying is that  
13 we have a delay on an important matter here regarding  
14 safety and environmental issues and a proceeding which  
15 depends on the outcome of that review by the Nuclear  
16 Regulatory Commission. So I'm wondering if there  
17 isn't some method of dealing with that kind of a delay  
18 with regards to this proceeding should this proceeding  
19 be held in abeyance until that review is finished.

20 MR. FRANTZ: This is Steve Frantz for the  
21 Applicant. I might point out that the issue concerns  
22 solely FSER Section 2.4 on hydrology and the issue  
23 really is an issue related to the prediction of the  
24 flood levels and it has nothing to do with the  
25 Contention NEPA B on the aquatic impacts. It is

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1 nothing to do with the other contentions that have  
2 been admitted by the Board. We believe that these  
3 other contentions can be litigated independently  
4 whatever happens on the hydrology issue.

5 JUDGE BOLLWERK: Is there anything the  
6 staff wants to say with respect to what Mr. Zeller has  
7 just raised?

8 MS. HODGDON: No. I will address one  
9 point made and that is with regard to the DEIS.  
10 Everything that Mr. Frantz said regarding the FSER 2.4  
11 is correct. This letter has a statement that says to  
12 TVA, "Your ability to resolve issues associated with  
13 the safety issue in this area is likely to impact the  
14 schedule for the issuance of the draft and final  
15 environmental impact statement."

16 So it doesn't make an prediction as to  
17 what impact that's going to have. Of course, it will  
18 be negative. It will take longer, but how much longer  
19 we don't know. It won't take as long as the issue  
20 regarding the FSER presumably, but we don't know that.  
21 And we will have that in our letter on Friday to the  
22 extent that that information is available.

23 MR. ZELLER: This is Lou Zeller again.  
24 There are some qualifiers with regards to the safety  
25 review. There are some assumptions, for example, in

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1 the review that Ms. Hodgdon just mentioned under  
2 Section 2.4. In other words, there's an assumption.  
3 They are working on the assumption I understand that  
4 the site does not flood, but that the letter that was  
5 written to GBA on the 29<sup>th</sup> talks about the fact that  
6 if it is determined that the site does flood then the  
7 review will have to be redone. That was their words.  
8 So there is a working assumption here which I  
9 understand, but I don't think we know what the outcome  
10 of that will be yet.

11 JUDGE BOLLWERK: If you could hold on one  
12 second please. This is Judge Bollwerk. Just hold on.

13 (Off the record discussion.)

14 This is Judge Bollwerk again. Mr. Zeller,  
15 I think I understand what you're saying. But in terms  
16 of the staff's safety review process as opposed to the  
17 process under which the Board operates in conducting  
18 this adjudication, I mean in the ultimate what  
19 triggers the contentions that have been admitted going  
20 to an evidentiary hearing which is what our focus is  
21 at this point absent the resolution before that by  
22 means of summary disposition is the issuance of the  
23 staff's final environmental impact statement and the  
24 staff's final safety evaluation report.

25 So anything that comes before those points

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1 whether it's the draft EIS or the SER with open items  
2 or the advanced SER, all those may well be  
3 opportunities for someone that was concerned about the  
4 proceeding to file either a new or amended contention.  
5 That's a different matter.

6 But in terms of the ultimate resolution of  
7 the contentions that have already been admitted what  
8 we're concerned about and what our timing is keyed on  
9 is the final environmental impact statements and the  
10 final SER. Absent some agreement by the parties that  
11 they believe we can hold the hearing earlier than that  
12 based on, for instance, the draft EIS or one the SER  
13 with the open items or the advanced SER, we did that  
14 back in the Louisiana Energy Services' case, but again  
15 it takes the agreement of the parties to do that.

16 I hear what you're saying in terms of the  
17 delay and we will -- you'll see as we set the schedule  
18 there will be at least with respect to the DEIS and  
19 the advanced SER and the final SER and the final EIS  
20 that there will be schedules that will be set based on  
21 those different points where things will need to occur  
22 if they're going to happen, for instance, the filing  
23 of new or amended contentions based on those different  
24 documents.

25 But in the ultimate for us to go to an

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1 evidentiary hearing you will have to resolve the  
2 contentions that have been admitted. At this point,  
3 we wouldn't be doing anything other than waiting to  
4 hear from the parties relevant to the different  
5 deadlines that we might set based on these other  
6 interim documents. That's a long-winded explanation,  
7 but basically it means that we will be watching what  
8 happens as the staff issues its updates as will you  
9 and if you file a motion of some kind, then we will be  
10 responding to that in some way as will the other  
11 parties.

12 MR. ZELLER: Yes. Thank you, Your Honor.  
13 This is Lou Zeller again. I appreciate that, the  
14 response. I understand that it's up to us to make our  
15 case whether it affects the admitted contentions or  
16 not and all the other things that you just mentioned.  
17 I take that into consideration, of course.

18 I just wanted to flag it to the Board's  
19 attention that we have some concerns with regards to  
20 this and if that has any impact on the scheduling or  
21 the proceeding, we would want to let you know that as  
22 soon as possible and see what are the Judges' wishes  
23 on this.

24 JUDGE BOLLWERK: Right. And again, one of  
25 the ways you would let us know you have a concern is

1 to file a motion of some kind with us and let us know  
2 that we need to amend our contention and we need to  
3 file a new contention or we have some other concern.

4 MR. ZELLER: Yes sir.

5 JUDGE BOLLWERK: That would be the way to  
6 do that.

7 MR. ZELLER: Yes sir.

8 JUDGE BOLLWERK: And hopefully again, the  
9 schedule that you'll receive, the draft general  
10 schedule or the schedule that we'll put out, you'll  
11 begin to get a sense of how this proceeding will be  
12 structured in terms of the different deadlines. And  
13 if you're interested, if you want -- It's an early  
14 site permit case, if you went into the agency's docket  
15 and looked at the Volvo case you would see several  
16 schedules that have been set on the same basic premise  
17 and you'd get a sense of how things will probably be  
18 going forward in this case as well.

19 MR. ZELLER: Thank you.

20 JUDGE BOLLWERK: Okay. Anything you have  
21 to say about summary disposition? I don't want to  
22 forget that.

23 MR. ZELLER: No. Nothing further, Your  
24 Honor.

25 JUDGE BOLLWERK: All right. Let me just

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1 then check. We discussed a couple of things.  
2 Anything that the Applicant wants to say on whatever  
3 we've discussed up to this point?

4 MR. FRANTZ: We have no further comments.

5 JUDGE BOLLWERK: All right. And anything  
6 from the staff?

7 MS. HODGDON: Nothing.

8 JUDGE BOLLWERK: All right. Let's then  
9 move and I recognize that given our discussion we just  
10 had talking about a pre-hearing schedule may be a  
11 little premature, but let's at least go through a few  
12 of the things that I have so that you'll have some  
13 sense of where the Board is at.

14 The final list of potential witnesses for  
15 each contention pursuant to Section 2.336(a)(1),  
16 generally that would be due after either the final EIS  
17 or the SER that the admitted or the new or the amended  
18 contention relates to and after the mandatory  
19 disclosures have happened for that as well. So those  
20 final witness lists would not be due for some period  
21 of time in this case.

22 We will also in terms of the schedule that  
23 we set any motion for these Subpart G hearing  
24 procedures you'll see a date for that pursuant to 10  
25 CFR 2.31310(b). If at any point the parties are

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1 considering using Subpart N which is under Part 2  
2 which is an expedited procedure which basically  
3 involves an oral hearing with no written information  
4 involved, that has to be a unanimous request under the  
5 rules. We will set a date for that to be filed as  
6 well. So it's something the parties can bear in mind  
7 if one of the contentions would seem to be appropriate  
8 for Subpart N.

9 MR. FRANTZ: Judge Bollwerk, this is Steve  
10 Frantz for the Applicant.

11 JUDGE BOLLWERK: Yes.

12 MR. FRANTZ: The parties have discussed  
13 this and I think we're all in agreement that we did  
14 not desire to use Subpart N.

15 JUDGE BOLLWERK: Okay. Well, again, we'll  
16 probably put the date in the schedule. Obviously, if  
17 you all wish to use it and it sounds like you don't  
18 that will be up to you. But we will have a date in  
19 there by which you can file such a motion if for some  
20 reason your approach were to change.

21 MS. HODGDON: Ann Hodgdon for the staff.  
22 I believe that the parties also agreed that we did not  
23 believe that Subpart G would be appropriate.

24 JUDGE BOLLWERK: Okay. That's fine, too.  
25 You may see a date, but you don't have to use it.

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1 Things change and I don't want to catch anyone off  
2 guard by having something when they were waiting for  
3 something to happen or thinking about something.  
4 We'll set the date and if you don't use them, that's  
5 perfectly all right.

6 MS. HODGDON: I misspoke about that  
7 actually. The Applicant and the staff felt that  
8 Subpart G was not appropriate, but the Interveners  
9 thought that they hadn't reached that conclusion yet.

10 JUDGE BOLLWERK: All right.

11 MS. HODGDON: Or they haven't reached that  
12 conclusion.

13 JUDGE BOLLWERK: Okay. Again, there's  
14 nothing in our schedule that would preclude them from  
15 reaching that conclusion and taking some action on  
16 that regard.

17 Again, there will be -- Within the  
18 schedule you will see times for the filing of motions  
19 for cross examination, to engage in cross examination,  
20 under Section 2.1204(b). Generally, we'll have in  
21 limine motions that would be filed and that generally  
22 would be due about five days after in limine rulings.

23 You will also see within the schedule  
24 aspects of it dealing with the timing of the parties'  
25 initial written statements of position and their

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1 written direct testimony with supporting affidavits  
2 pursuant to Section 2.1207(a)(1) generally about 14  
3 days after summary disposition rulings and whether the  
4 parties should -- A question would be with respect to  
5 your written direct testimony, would the parties  
6 prefer to file simultaneously or sequentially and, if  
7 sequentially, which party would file first? Did you  
8 have any discussion about that?

9 MR. FRANTZ: This is Steve Frantz again.  
10 The parties did discuss this and I know it's TVA's  
11 position and the Intervener's have a slightly  
12 different recommendation that we follow the process  
13 that's laid out in 10 CFR 2.1207(a) which says that  
14 the parties file simultaneously and then they also  
15 file a rebuttal testimony simultaneously. I think the  
16 only issue and I'll be leave the floor to Lou Zeller  
17 on this one that the Interveners may want more time to  
18 file their responsive testimony or their rebuttal  
19 testimony. But I think we all agree to file  
20 simultaneously.

21 JUDGE BOLLWERK: All right. Mr. Zeller,  
22 anything you want to say in that regard?

23 MR. ZELLER: Your Honor, yes. This is Lou  
24 Zeller. Yes. Mr. Frantz is correct. We did -- With  
25 our limited resources we were hoping to have a little

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1 bit of extra time. I don't recall what the time was,  
2 but I know that he characterized that correctly. And  
3 so if it's possible to have additional time with  
4 regards to rebuttal, then whether it was simultaneous  
5 or not I wouldn't care about that. But you  
6 understand.

7 JUDGE BOLLWERK: All right. We'll take  
8 that under advisement then. Again, one of the things  
9 about it, there are guidelines that we are asked to  
10 follow by the Commission that are in the rules under  
11 Appendix B, I believe it is. I may have the wrong  
12 appendix letter. And one of the things that drives  
13 that is after the -- Let me grab the appendix here to  
14 make sure I don't misrepresent what it says.

15 Under Appendix B -- That's the wrong one.  
16 Appendix -- Hold on here. A, is it A I'm looking for?  
17 Yes. Maybe it is A. A.2 I believe it is which are  
18 for Subpart L proceedings, within 155 days of the  
19 issuance of the SER or the NEPA document, the direct  
20 testimony is supposed to be filed. That's a fairly  
21 short time frame. We need to do the best we can to  
22 bear in mind that Commission guidance and taking into  
23 account the other things which are going to occur  
24 including the filing of in limine motions which the  
25 Boards I've been chairman of generally have provided

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1 for as well.

2 So I'll take into account, Mr. Zeller,  
3 what you're telling me, but it tends to get -- Once  
4 you get closer to the evidentiary hearing, things tend  
5 to get rather tight in terms of the filing deadlines.  
6 So you should be aware of that.

7 As I mentioned, there will be in limine  
8 motions both as to the direct and rebuttal testimony  
9 if the parties choose to use those, use those  
10 opportunities. It's really up to them in terms of  
11 whether they want to have anything excluded relative  
12 to the testimony that any of the other parties file  
13 and there will be an opportunity to file those as  
14 well.

15 One thing we would ask you to begin to  
16 think about although obviously there is nothing you  
17 can do about it at this point but stipulations with  
18 respect to any factual information that parties can  
19 reach as well as the authenticity or admissibility of  
20 the exhibits, the pre-filed exhibits, that you intend  
21 to use. I would mention that with respect to the EIE  
22 process, the E filing process, as the rules indicate  
23 any of your exhibits that relate to an evidentiary  
24 hearing should be filed as separate files within the  
25 EIE system rather than being sent as one file that

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1 includes all the different exhibits. So that's  
2 important to allow us to process them properly and, in  
3 fact, the E filing system is in the process of being  
4 revised somewhat and probably by the time this case  
5 does go to hearing, assuming it does, it will have  
6 been changed to make that process a little simpler  
7 than it is under the existing system.

8 But it does need to be -- You need to bear  
9 in mind that each of your exhibits unlike a normal  
10 pleading or, in fact, we encourage the parties to send  
11 their pleading in as one file with respect to the pre-  
12 file testimony as well as the pre-file exhibits. We  
13 ask that those be sent in as separate files so they  
14 can be utilized by our systems here as separate files.  
15 We'll be reminding you about that again. But also  
16 again any agreement you can reach on the authenticity  
17 or admissibility of those exhibits prior to the  
18 hearing will be very useful and we'll be reminding you  
19 about that as well.

20 And then there will be an opportunity to  
21 obviously propose questions for the Board to posit to  
22 the parties. Again, this is a Subpart L proceeding  
23 regarding both the direct and the rebuttal testimony.  
24 The schedule will reflect dates for those  
25 opportunities as well.

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1           Let me move on then briefly to the  
2           contested hearing. Let me stop there. Any questions  
3           about the pre-hearing filings that we talked about up  
4           to this point? Anything from the Applicant?

5           MR. FRANTZ: No.

6           JUDGE BOLLWERK: All right. Anything from  
7           the staff?

8           MS. HODGDON: No.

9           JUDGE BOLLWERK: All right. And anything  
10          for the Joint Intervenors?

11          MR. ZELLER: Nothing, Your Honor.

12          JUDGE BOLLWERK: All right. Let's move  
13          then briefly to the evidentiary hearing and again  
14          we're talking about something that could be some  
15          period of time down the road. But let's at least  
16          visit it at this point. Recognizing that the Board is  
17          doing the questioning, did you all have any  
18          discussions or any thoughts about how long you believe  
19          the hearing may take on each of the admitted  
20          contentions?

21          MR. FRANTZ: This is Steve Frantz.  
22          Looking at the four contentions in total, the parties  
23          have various estimates ranging from three to five  
24          days. I think the upshot is we're looking at  
25          approximately one week for the most part at most.

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1 JUDGE BOLLWERK: All right. Anything any  
2 of the other parties want to say about that at this  
3 point?

4 MS. HODGDON: No. We said three to five  
5 days.

6 JUDGE BOLLWERK: All right. Mr. Zeller?

7 MR. ZELLER: Your guess is as good as  
8 mine, Your Honor.

9 JUDGE BOLLWERK: All right. We're a ways  
10 away from that yet, but it's good to get a sense at  
11 least from the beginning where the parties believe  
12 that the proceeding might be at.

13 Let me at least solicit your suggestions  
14 and if you haven't got any now to be thinking about it  
15 about how the parties would want to submit additional  
16 Board questions during the hearing. This always  
17 becomes an issue. The Board asks questions. It has  
18 been the practice in other Subpart L proceedings to  
19 provide the parties with sort of a real-time  
20 opportunity as the proceeding goes on to provide the  
21 Board with other proposed questions that they think  
22 might be relevant or useful as the witnesses are  
23 questioned by the Board.

24 And one of the things, obviously, there  
25 are logistical questions about that as well as timing.

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1 If you have anything you want to say about it now,  
2 we'll be glad to listen or we've asked that you think  
3 about it and bear it in mind because it does raise  
4 questions about things as simple as word processing  
5 and handwriting. I hate to say it, but it gets down  
6 to that in terms of being able to get the questions to  
7 the Board.

8 Anything TVA wants to say at this point?

9 MR. FRANTZ: Nothing really. I do believe  
10 that it's helpful to allow the parties to submit  
11 questions during the hearing itself and presumably we  
12 can take care of the handwriting by requiring parties  
13 to submit typed questions to the Board.

14 JUDGE BOLLWERK: All right. But timing  
15 has raised the question about where you're going to  
16 print it. So you have to think all this through.  
17 But you're right. That would be obviously -- Not  
18 having to read folks' handwriting, at least if it were  
19 mine, that would be certainly the better approach  
20 though.

21 All right. Anything the staff wants to  
22 say about that?

23 MS. HODGDON: No, we can print.

24 JUDGE BOLLWERK: All right. And anything  
25 Joint Intervenors want to say?

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1 MR. ZELLER: Nothing to add, Your Honor.

2 JUDGE BOLLWERK: All right. Again, I'm  
3 just raising some issues to begin thinking about.  
4 We'll be exploring these again in the future.

5 One other thing I should mention in terms  
6 of the evidentiary hearing, again, recognizing we're  
7 some ways away is it may well be that the hearing will  
8 be located in Huntsville, although we will obviously  
9 bear Scottsboro in mind as a possible venue. We need  
10 to frankly look and see what's available. We have  
11 some time before we get to that. But I would not in  
12 our minds at least preclude the possibility that the  
13 hearing might be in Huntsville as opposed to  
14 Scottsboro. Either one is a possibility at this  
15 point.

16 Let me raise a couple other things. I  
17 think we're just about done here. In terms of  
18 settlement, is there any possibility of settlement or  
19 the need for a settlement judge? Did the parties  
20 discuss that with respect to any of the admitted  
21 contentions?

22 MR. FRANTZ: Yes, the parties did discuss  
23 this and basically we're willing to work with the  
24 Interveners to arrive at mutually acceptable revisions  
25 to our application to address our concerns and again

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1 Mr. Zeller can speak for the Interveners. But I  
2 believe at this point they do not want to pursue that  
3 avenue. The Applicant will keep that open as an  
4 option if they change their minds.

5 JUDGE BOLLWERK: All right. Anything the  
6 staff wants to say?

7 MS. HODGDON: The staff is always willing  
8 to talk settlement.

9 JUDGE BOLLWERK: All right. And Mr.  
10 Zeller?

11 MR. ZELLER: I have nothing to add, Your  
12 Honor. Thank you.

13 JUDGE BOLLWERK: Okay. Very good. Well,  
14 if at any point you believe that a settlement judge  
15 will be useful, please come to the Board. We'll be  
16 glad to discuss it with the Chief Administrative Judge  
17 and try to get someone appointed for you if you  
18 thought that was appropriate. That's certainly  
19 something we'd be glad to do and the earlier the  
20 better frankly because we would want to make sure that  
21 any settlement we're not given the amount of time  
22 particularly we have given the schedule for the FEIS  
23 and the SER that we wouldn't want that impinging, if  
24 possible, once we get closer to the evidentiary  
25 hearing. But again, let us know if we can help you in

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1 that regard.

2 Let me raise then the question about the  
3 possibility at some point of a site visit. Did the  
4 parties discuss that? Do they have any feeling one  
5 way or the other in terms of whether a site visit by  
6 the Board and the parties would be useful?

7 MR. FRANTZ: This is Steve Frantz for the  
8 Applicant. On the contentions on low-level waste and  
9 cost, there probably isn't much value to a site visit.  
10 However, on the contention on aquatic impacts, we  
11 believe there would be value and would encourage the  
12 Board to have a site visit.

13 JUDGE BOLLWERK: All right. Anything the  
14 staff wants to say?

15 MS. HODGDON: No. We would welcome the  
16 site visit as well.

17 JUDGE BOLLWERK: All right. And Mr.  
18 Zeller?

19 MR. ZELLER: Yes, we agree.

20 JUDGE BOLLWERK: All right. We'll bear  
21 that in mind that it may well be with respect to a  
22 site visit as frankly we did recently with the Volvo  
23 case that we might be able to incorporate some limited  
24 appearance sessions with respect to that if we decide  
25 to do that earlier rather than later.

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1                   Just so I know, Mr. Frantz, how much  
2 timing, how much planning time, do you all need if the  
3 Board were to decide to have a site visit? How much  
4 notice would you want in terms of being able to set  
5 things up? I know there are certain processes and  
6 procedures with security checks and other things that  
7 have to be done.

8                   MR. FRANTZ: I've not discussed that with  
9 my client. Judge Bollwerk. I can't imagine we'd need  
10 much notice.

11                   JUDGE BOLLWERK: All right. We'll bear  
12 that in mind. I think -- Surely we can give you at  
13 least 60 days. I take it that would be sufficient.

14                   MR. FRANTZ: Yes.

15                   JUDGE BOLLWERK: All right. We'll bear  
16 that in mind and again if we did one of those  
17 particularly in the, let's say, next six months to a  
18 year probably we would include limited appearance  
19 sessions at the same time and those again might be  
20 held in either Scottsboro or Huntsville or both places  
21 depending on what was appropriate and what was  
22 available. So I know that those are members of -- The  
23 citizens in the local area appreciate the opportunity  
24 as a Board appreciate to hear from folks there about  
25 their concerns, about the proceeding. So we will

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1 definitely be doing some limited appearance sessions  
2 I think at some point.

3           The last thing I have on my list is the  
4 question about periodic either status reports or pre-  
5 hearing conferences with the parties. Again, we're  
6 looking at -- Potentially, we'll have to see what the  
7 staff spillage is on the FEIS, but some period of time  
8 before we begin to generate potentially additional  
9 documentation or motions in this case. Nonetheless I  
10 don't want things to fall by the wayside.

11           Do you have any suggestions about either  
12 periodic status reports or pre-hearing conferences  
13 that you would like to hold with the Board?

14           MR. FRANTZ: This is Steve Frantz. I've  
15 not had a chance to discuss this with the other  
16 parties. Such conferences I think probably would be  
17 useful. I don't know whether it's best to have it on  
18 a periodic basis or on some milestone basis. But I  
19 think it is helpful for all the parties to be on the  
20 same page as we move forward with the proceeding.

21           JUDGE BOLLWERK: All right. Anything the  
22 staff wants to say about that?

23           MS. HODGDON: No. Nothing to add.

24           JUDGE BOLLWERK: All right. Mr. Zeller,  
25 anything from the Joint Interveners?

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1 MR. ZELLER: I think keeping up with  
2 things is always a good idea, Your Honor. So, yes, we  
3 think that would be fine and the scheduling of it, I  
4 don't know. It would be at everyone's convenience I'm  
5 sure.

6 JUDGE BOLLWERK: All right. Let me -- Can  
7 you hold on for one second please?

8 (Off the record discussion.)

9 Let's see what the draft EIS schedule  
10 looks like and then we may well be coming back to you  
11 with a quest for maybe a joint suggestion about how  
12 soon you think it would be useful to hold another pre-  
13 hearing conference, where to file a status report with  
14 us. But let's wait until Friday or early next week  
15 and we'll see what the schedule looks like at that  
16 point. But I think it is a good idea even if it's  
17 only every other month or every three month basis  
18 depending on the time frames involved that we at least  
19 get together or hear something from you in terms of  
20 where things stand. So we will definitely be looking  
21 toward doing that.

22 At this point, that's everything I have on  
23 my list. Let me go around and see if the parties have  
24 anything and also, Judge Sager, I'll give you an  
25 opportunity if you want to say anything about anything

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1 to go ahead and chime in as well. Anything for the  
2 Applicant at this point?

3 MR. FRANTZ: Yes, Judge Bollwerk. We had  
4 sent the motion for clarification on the contention on  
5 aquatic impacts and on costs and the Board ruled on  
6 that and we thought that was very useful for all of  
7 the parties to understand exactly what the parameters  
8 of the contentions are as admitted by the Board and we  
9 were willing to proceed on that basis.

10 I will bring to the Board's attention  
11 though that on October 30<sup>th</sup> last Thursday, the  
12 Licensing Board and the Sharon Harris proceeding  
13 issued an order on proposed contentions in that  
14 proceeding, one of which pertained to costs that was  
15 very similar to our contention in this proceeding and  
16 basically the licensing board in the Sharon Harris  
17 proceeding ruled that contentions on the cost as it  
18 pertains to alternatives was not admissible in that  
19 proceeding because the applicant had shown that the  
20 alternatives were not environmentally preferable to  
21 the proposed nuclear plant which is basically the same  
22 ground that we used for a motion for clarification  
23 with you.

24 In light of the Sharon Harris order on  
25 last Thursday, I was wondering whether the Board might

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1 be willing to entertain motions for reconsideration  
2 given the Sharon Harris decision.

3 JUDGE BOLLWERK: Hold on a second please.

4 MR. FRANTZ: Yes.

5 (Off the record discussion.)

6 Let me ask you one question with respect  
7 to what you brought up. My understanding from what  
8 was in the order was that they actually distinguished  
9 their case from ours. So do you think it's still  
10 appropriate given what you're raising?

11 MR. FRANTZ: Yes, and the grounds for the  
12 distinction raised by the Sharon Harris board was  
13 their belief that the application in Bellefonte  
14 concluded that the combination of alternatives might  
15 be environmentally preferable to the proposed nuclear  
16 plant at Bellefonte. We believe that the board in  
17 Sharon Harris has misconstrued and misread our  
18 application in Bellefonte.

19 We believe the environmental report for  
20 Bellefonte is quite clear. I think it states in at  
21 least three places that the combination of  
22 alternatives is not environmentally preferable to the  
23 proposed nuclear plant. We believe that that  
24 distinction is just factually incorrect as raised by  
25 the board in Sharon Harris.

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1 JUDGE BOLLWERK: Let me find out if either  
2 of the other parties have any comments on what Mr.  
3 Frantz has raised. Anything from the staff?

4 MS. HODGDON: That's very interesting.  
5 This is Ann Hodgdon. I've been on leave and haven't  
6 yet read the Harris decision. I mean I looked at it  
7 but I didn't have a chance to read it. But I think  
8 that when Mr. Frantz asked you whether he could file  
9 for reconsideration certainly we have no objection to  
10 that.

11 JUDGE BOLLWERK: Anything Mr. Zeller wants  
12 to say?

13 MR. ZELLER: I think that the motion for  
14 clarification plainly we did not agree with that and  
15 I think the issues that this Board in this matter  
16 concluded on the contention NEPA were correct. We  
17 think that the Board did a good job there and did not  
18 limit the original contention which we look forward to  
19 exploring.

20 If the Atomic Safety Licensing Boards  
21 across the spectrum are going to be compared side by  
22 side, then would that offer a problem with regards to  
23 the proceeding? In other words, is that advisable?  
24 Is that something we should consider looking at what  
25 all Atomic Safety Licensing Boards in all combined

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1 operating license applications, the issues that they  
2 are looking at and compare them side by side and to  
3 which one is either the most restrictive, the least  
4 restrictive, the most correct or the most incorrect?  
5 So that's kind of ball park question I'm asking is if  
6 we really want to go down that road.

7 I don't agree that environmental issues or  
8 that the preferability of the alternatives in this  
9 case are as they were characterized by Mr. Frantz.  
10 Plainly we have a disagreement there. But I've just  
11 come back with the question as to how far would this  
12 Board like to go down that road.

13 JUDGE BOLLWERK: This is Judge Bollwerk.  
14 I mean the only thing I would say is obviously what  
15 one board does versus another board unless the  
16 Commission affirms or reverses or does whatever to one  
17 board that's not binding precedent on us. Obviously,  
18 the boards do look at one board does or another board  
19 does. We're aware of it and take it into account  
20 obviously. But again it doesn't bind us in any way  
21 until at least the Commission has come down with  
22 something that would be akin to a precedent.

23 I guess back to Mr. Frantz's question.  
24 You can certainly file whatever you'd like to. I  
25 guess the Board can't keep you from filing whether you

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1 think it's appropriate to ask for further  
2 clarification, for reconsideration, for summary  
3 disposition. I mean, in theory, as long as it's  
4 timely under the rules in whatever way and the rules  
5 talk about ten days as a triggering event for motions.  
6 If you feel you got ten days and something's happened  
7 that you want to bring something to the Board's  
8 attention I guess you can certainly do that and we'll  
9 have to obviously allow a response to it and then rule  
10 on it. So I guess that would be to the degree you're  
11 asking for our advice that would be what I would  
12 suggest at this point.

13 MR. FRANTZ: Thank you, Judge Bollwerk.

14 JUDGE BOLLWERK: All right.

15 MR. ZELLER: Thank you.

16 JUDGE BOLLWERK: Let's see. Anything else  
17 you want to raise with the Board, Mr. Frantz?

18 MR. FRANTZ: No.

19 JUDGE BOLLWERK: Okay. Anything from the  
20 staff?

21 MS. HODGDON: Nothing.

22 JUDGE BOLLWERK: All right. Anything from  
23 the Joint Interveners?

24 MR. ZELLER: I have nothing, Your Honor.  
25 Sara.

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1 MS. BARCZAK: No, I do not:

2 JUDGE BOLLWERK: All right. I'm sorry.

3 MS. BARCZAK: This is Sara. I was just  
4 saying "No, I do not have anything to add."

5 JUDGE BOLLWERK: Okay. I appreciate it.  
6 Thank you.

7 Let me see if Judge Sager has anything.

8 JUDGE SAGER: No, nothing from here.

9 JUDGE BOLLWERK: All right. Let me just  
10 see if our court reporter has anything.

11 COURT REPORTER: No. Everything is fine.

12 JUDGE BOLLWERK: All right. Then at this  
13 point, if -- Judge Baratta, anything from you?

14 JUDGE BARATTA: No. This is Judge  
15 Baratta. I have nothing to add.

16 JUDGE BOLLWERK: All right. At this  
17 point, if the parties don't have anything else, we'll  
18 be awaiting the staff's letter, hopefully, by the end  
19 of the week or the beginning of next week on the date  
20 for the draft environmental impact statement. The  
21 Board will attempt to issue a draft schedule to begin  
22 to flush out the case with whatever dates we can,  
23 again, because some of the dates we're looking in  
24 terms of what the staff gave us previously months and  
25 years. That makes it a little difficult to go forward

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1 with a very detailed schedule. But we will certainly  
2 attempt to fill in those dates as we can on our  
3 general schedule that we put forth for the parties.  
4 And hopefully you'll be receiving that sometime next  
5 week or early the week afterward. And we will then  
6 probably be going back to you once we see that date  
7 and asking about the possibility of additional  
8 periodic either conferences or status reports and  
9 we'll be coming back to you with that as well.

10 At this point, I believe we've done the  
11 business we came together today for. I appreciate  
12 very much you making yourselves available to the Board  
13 this morning and we stand adjourned. Thank you very  
14 much.

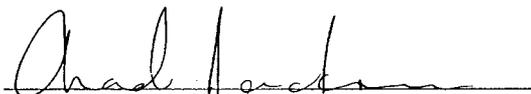
15 (Whereupon, at 11:05 a.m., the above-  
16 entitled matter was concluded.)  
17  
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CERTIFICATE

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

Name of Proceeding: Pre-Hearing Conference  
Docket Number:           52-014-COL and 52-015-COL  
Location:                    (teleconference)

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