

**NUCLEAR REGULATORY COMMISSION**

Title: Tennessee Valley Authority  
Watts Bar Unit 2

Docket Number: 50-391-OL  
ASLBP Number: 09-893-01-OLBD01

DOCKETED  
USNRC

March 25, 2010 (11:45am)

Location: (telephone conference)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Date: Friday, March 19, 2010

Work Order No.: NRC-134

Pages 25-42

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UNITED STATES OF AMERICA

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NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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PRE-HEARING CONFERENCE CALL

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In the Matter of: : Docket No. 50-391-OL  
TENNESSEE VALLEY AUTHORITY : ASLBP No.  
(WATTS BAR UNIT 2) : 09-893-01-OLBD01

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Friday, March 19, 2010

The above-entitled conference was convened telephonically, pursuant to notice, at 9:00 a.m.

BEFORE:

LAWRENCE G. McDADE, Administrative Law Judge, Chair  
PAUL B. ABRAMSON, Administrative Law Judge  
GARY ARNOLD, Administrative Law Judge

## 1 APPEARANCES:

2 On Behalf of the Applicant:

3 PAUL BESSETTE, Esquire; and

4 KATHRYN M. SUTTON, Esquire

5 of: Morgan, Lewis &amp; Bockius, LLP

6 1111 Pennsylvania Avenue, N.W.

7 Washington, D.C. 20004

8 (202) 739-5796

9 and

10 EDWARD VIGLUICCI, Esquire; and

11 CHRISTOPHER CHANDLER, Esquire

12 of: Tennessee Valley Authority

13 Office of General Counsel

14 400 W. Summitt Hill Drive, WT 6A-K

15 Knoxville, Tennessee 37902

16 On Behalf of the Nuclear Regulatory Commission:

17 DAVID ROTH, Esquire

18 of: Office of the General Counsel

19 Mail Stop - O-15 D21

20 U.S. Nuclear Regulatory Commission

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1 APPEARANCES (Continued):

2 On Behalf of the Intervenor:

3 DIANE J. CURRAN, Esquire

4 of: Harmon, Curran, Spielberg & Eisenberg, LLP

5 Suite 600

6 1726 M Street, N.W.

7 Washington, D.C. 20036

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9

10 NRC STAFF PRESENT:

11 LAKSHIMINARASIMH RAGHAVAN, DORL

12 PATRICK MILANO, DORL

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

(9:01 a.m.)

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2  
3 CHAIRMAN McDADE: We are here in the  
4 matter of the Tennessee Valley Authority Watts Bar  
5 Nuclear Plant Unit 2, docket number 50-391. Judge  
6 McDade, Judge Abramson, Judge Arnold are here.

7 For the staff, would you please identify  
8 who is representing the staff at this status  
9 conference?

10 MR. ROTH: David Roth, counsel for the  
11 staff.

12 CHAIRMAN McDADE: And who is with you from  
13 the staff, Mr. Roth?

14 MR. ROTH: With the staff, we have Patrick  
15 Milano and also Rags Raghavan. That would be the  
16 project manager and the Branch Chief for Watts Bar.

17 CHAIRMAN McDADE: And from TVA?

18 MR. BESSETTE: Your Honor, this is Paul  
19 Bessette, Your Honor. And with me is Kathryn Sutton,  
20 S-u-t-t-o-n, from Morgan Lewis. And Ed Vigluicci and  
21 Chris Chandler representing TVA are on the line as  
22 well.

23 CHAIRMAN McDADE: And from the intervenor?

24 MS. CURRAN: Good morning. This is Diane  
25 Curran representing Southern Alliance for Clean

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1 Energy.

2 CHAIRMAN McDADE: Okay. Good morning.  
3 There were a few matters we want to cover here this  
4 morning. The first question I have to the staff, at  
5 our last status conference, you indicated that the  
6 estimated date for the publication of the FEIS and  
7 FSER was January of 2011. Does that date remain  
8 current?

9 MR. ROTH: Those dates remain current,  
10 Your Honor.

11 CHAIRMAN McDADE: Okay. With regard to  
12 the status on mandatory disclosures, that there had  
13 been an agreement --

14 THE REPORTER: Excuse me. I need you to  
15 state your name every time you speak.

16 MR. ROTH: David Roth for the staff.

17 CHAIRMAN McDADE: When last we spoke,  
18 there had been an agreement with regard to the  
19 mandatory disclosures. At that point everything was  
20 proceeding to the satisfaction of the parties. From  
21 the standpoint of the staff, have any problems arisen  
22 since then with regard to mandatory disclosures? Are  
23 they still proceeding appropriately?

24 MR. ROTH: David Roth for the staff.  
25 They're still proceeding appropriately.

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1 CHAIRMAN McDADE: From the standpoint of  
2 the TVA?

3 MR. BESSETTE: This is Paul Bessette for  
4 TVA, Your Honor. They're proceeding appropriately.  
5 And the parties submitted yesterday a proposed  
6 protective order, which everyone agreed to, to Your  
7 Honor. So I believe they're proceeding appropriately.

8 CHAIRMAN McDADE: Okay. And we'll talk  
9 about that protected protective order a little bit  
10 later. From the standpoint of Southern Alliance?

11 MS. CURRAN: Southern Alliance is  
12 satisfied with the process so far.

13 CHAIRMAN McDADE: Okay. One of the things  
14 we discussed last time had to do with the position of  
15 the TVA, whether or not they intended to attempt to  
16 correct the alleged efficiencies and then file motions  
17 for summary disposition.

18 Has a decision been made by the TVA on  
19 that? Do you anticipate filing any motions for  
20 summary disposition?

21 MR. BESSETTE: Your Honor, this is Paul  
22 Bessette. I'll respond to that for TVA. With regard  
23 to the contention on the permit table in the  
24 environmental report, we expect to submit something to  
25 the NRC, hopefully by the end of April, that cures

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1 that omission. And we would expect to file a motion  
2 to dismiss or a motion for summary disposition on  
3 that. And our proposed date would be by the end of  
4 May.

5 With regard to the other admitted  
6 contention on various aquatic deficiencies, where TVA  
7 is currently evaluating potential additional aquatic  
8 studies to be conducted, in the future those studies  
9 are being evaluated internally. But we do expect at  
10 least some of those to be completed, those studies to  
11 be completed, before the FSEIS is issued.

12 And, therefore, we would plan to submit,  
13 our current plan would likely be to submit, a motion  
14 for summary disposition or at least a partial motion  
15 for summary disposition based on results of those  
16 studies.

17 Because those studies are still being  
18 evaluated, we don't have a date for that motion yet.

19 CHAIRMAN McDADE: Okay. One of the  
20 concerns that the Board expressed last time and still  
21 has, we are proceeding on the assumption at this point  
22 we're going to be going under subpart L.

23 Oftentimes late-filed motions for summary  
24 disposition when you have a subpart L proceeding,  
25 rather than expedite, tend to slow down the

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1 resolution. What we would like to do is to set a  
2 deadline for the submission of motions for summary  
3 disposition so that we, the parties, are not  
4 responding to those motions and we're not ruling on  
5 those motions at the same time everybody is preparing  
6 for the hearing itself.

7 What I propose to do during the course of  
8 this conversation here this morning is to sort of set  
9 out some general concepts to allow the parties once  
10 they have had an opportunity to review the transcript  
11 to offer in writing any other questions or objections  
12 they might have.

13 What I would propose is something along  
14 the line of this, to set a deadline of approximately  
15 May 30th for the submission of motions for summary  
16 disposition based on any existing information, that  
17 any motions for summary disposition that would be  
18 filed after that date would have to be based on new  
19 information, would have to explain that the  
20 information is, in fact, new, demonstrate that, and  
21 then to be filed within 30 days after that new event  
22 or new information became available.

23 So that would be sort of the  
24 predisposition for the Board to do. I would just  
25 indicate that if you have any further suggestions or

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1 objections, within ten days after the end of this  
2 conference today to submit those additional views to  
3 the Board so we can take it into consideration before  
4 we issue a revised scheduling order in this particular  
5 case.

6 The trigger date for a hearing here is  
7 going to be publication of the FEIS and the FSER.  
8 What I am thinking is that probably within 45 days  
9 after the submission of those documents, it would be  
10 appropriate to submit the written statements of  
11 position, written testimony, and exhibits on a  
12 contention by contention basis, figuring that  
13 approximately 45 days would be appropriate for that,  
14 that any rebuttal would then be submitted within 20  
15 days after that, again rebuttal on statement of  
16 position, rebuttal testimony and rebuttal exhibits.

17 I would also think that at approximately  
18 that time any request for a subpart G proceeding would  
19 be appropriate, again at the same time that the  
20 rebuttal was submitted.

21 By that time you would have an idea of who  
22 the witnesses are going to be and what the nature of  
23 the hearing is going to be and if it was necessary for  
24 subpart G, that that would be the time to submit it.

25 Also, I would suggest that approximately

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1 ten days thereafter would be an appropriate time for  
2 any motions to strike or motions in limine to be  
3 submitted, also any proposed questions that you would  
4 ask for the Board to ask during the course of the  
5 hearing if it was to be a subpart L under 2.1207.  
6 Also any requests for cross-examination would be  
7 appropriate.

8 The question then is just whether or not  
9 that time frame is appropriate or whether or not you  
10 would request additional time. What I would ask you  
11 do is to think about that in which the ten days if you  
12 believe the total time is necessary to make those  
13 suggestions to us.

14 MS. CURRAN: Judge McDade, this is Diane  
15 Curran. I am just wondering. Sometimes it takes a  
16 little while for transcripts and other documents to  
17 get onto ADAMS. Is there any way you could send it to  
18 us or just make sure we get it at least seven days  
19 after it turns up on ADAMS?

20 CHAIRMAN McDADE: The answer is why don't  
21 we just leave it this way. Ten days after this  
22 transcript goes up on ADAMS is the date that it would  
23 be due.

24 MS. CURRAN: Great.

25 CHAIRMAN McDADE: Is that agreeable?

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1 MS. CURRAN: That's fine with SACE. This  
2 is Diane Curran.

3 MR. BESSETTE: This is Paul Bessette.  
4 That's fine with TVA.

5 MR. ROTH: Dave Roth. That's good.

6 CHAIRMAN McDADE: Okay. And, again, since  
7 we are looking at a hearing probably sometime in the  
8 Spring of 2011, it doesn't seem like taking an extra  
9 couple of days here to make sure you have an  
10 opportunity to look at the transcript is going to slow  
11 things down at all.

12 Okay. Are there any other issues with  
13 regard to scheduling that you believe we should take  
14 up at this point?

15 (No response.)

16 CHAIRMAN McDADE: And, again, based on  
17 that schedule, I would anticipate that we would be  
18 looking for a hearing sometime in the spring, sometime  
19 between April and June, of 2011.

20 Now, with regard to the motion for  
21 protective order, question, who was it who drafted  
22 this?

23 MR. BESSETTE: Your Honor, TVA took the  
24 laboring order on drafting it, but it had the input of  
25 both SACE and NRC. And it was based on prior

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1 protective orders submitted and approved by orders.

2 CHAIRMAN McDADE: That's fine. I just  
3 want to know whose word processor it was on so that  
4 you could send us a copy either in Word or WordPerfect  
5 so that we can then file it electronically.

6 MR. BESSETTE: Your Honor, we'll take care  
7 of that. And TVA will take the action. Should I send  
8 it directly to you, Your Honor?

9 CHAIRMAN McDADE: Yes.

10 MR. BESSETTE: We'll do that.

11 CHAIRMAN McDADE: Okay. Now, there were  
12 a couple of questions I had with regard to the  
13 protective order. The first, on page 3, it says that  
14 this agreement serves in lieu of the requirements for  
15 an affidavit under 10 CFR 2.390(b).

16 Basically I've got an issue with that or  
17 a question where it talks about in lieu of the  
18 requirements under the regulation.

19 My starting point on this would be that  
20 this protective order is in addition to, rather than  
21 instead of, the regulation, that this is an additional  
22 protection other than the regulation.

23 So the words "in lieu" there, could you  
24 enlighten me of why it's listed here as in lieu of,  
25 instead of it's in addition to?

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1 MR. BESSETTE: Your Honor, I don't have it  
2 in front of me. So I am going to have to pull it up.  
3 Chris, are you online?

4 MR. CHANDLER: I'm here. I don't have it  
5 in front of me either. I can run and grab it, though.

6 CHAIRMAN McDADE: And, again, if you all  
7 can respond, you know, at the same period of time with  
8 regard to this? My predisposition would be to strike  
9 out the words "in lieu" from the protective order.

10 So basically the protection would both be  
11 those protections provided for under 2.390(b) and the  
12 protections of this protective order so that it  
13 wouldn't be this order that is sort of on its face  
14 abrogating the regulations.

15 The next has to do with page 5. At the  
16 bottom of the page, it says nothing in the protective  
17 order shall be interpreted to waive the existing order  
18 and procedures described in TVA notice and also in the  
19 NRC notice setting up this notice of hearing. And it  
20 cites to the Federal Register notice.

21 And, again, it was a question of how  
22 anything could waive it. It's my understanding that  
23 those orders had to do with the availability of SACE  
24 and safeguards information for prospective parties,  
25 that at this point we now have not a prospective party

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1 but a real party as the access to that information  
2 would be through any orders that the Board issues  
3 and/or the regulations for disclosures during the  
4 course of a hearing, that those are no longer  
5 operative.

6           Again, you know, I would propose to strike  
7 that from the order and again would solicit the input  
8 of the parties to that prior to the time, again, the  
9 schedule that we had, ten days after the transcript of  
10 this status conference becomes available on the --  
11 through ADAMS.

12           The next has to do with just there are  
13 various points in the order that talks about other  
14 suitable conditions that the Board may establish. And  
15 I would propose adding to the protective order to make  
16 it very clear that there is nothing in this order that  
17 precludes the Board, the Commission, or a reviewing  
18 court from making any needed changes based on further  
19 future circumstances as may be warranted.

20           Again, you know, we would not do that sua  
21 sponte, but it may be necessary as we proceed further  
22 in this proceeding to monitor the protective order and  
23 just to use clarifying language of that and whether or  
24 not any of the parties would have any objections to  
25 that.

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1                   Those are the only comments that I had  
2 with regard to the protective order. Judge Arnold,  
3 Judge Abramson, do you have anything further on the  
4 protective order?

5                   JUDGE ARNOLD: This is Judge Arnold. No,  
6 I have not.

7                   JUDGE ABRAMSON: I'm okay with it, too.  
8 Judge Abramson.

9                   CHAIRMAN McDADE: Okay. Judge Arnold --

10                  JUDGE ABRAMSON: As I said to you earlier,  
11 Larry, I mean, I still don't think that this serves in  
12 lieu of.

13                  CHAIRMAN McDADE: Right. And, Judge  
14 Abramson, Judge Arnold, anything else with regard to  
15 scheduling that you wanted to address at this point?

16                  JUDGE ARNOLD: I have nothing further.  
17 Judge Arnold.

18                  JUDGE ABRAMSON: Judge Abramson. Nothing  
19 further for me.

20                  CHAIRMAN McDADE: From the standpoint of  
21 the staff, Mr. Roth, is there anything that the staff  
22 would like to discuss that hasn't been addressed yet  
23 during the status conference?

24                  MR. ROTH: David Roth. No, Your Honors.

25                  CHAIRMAN McDADE: From the standpoint of

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1 the TVA, Mr. Besette?

2 MR. BESSETTE: Your Honor, this is Paul  
3 Besette, We have nothing further. And we'll respond  
4 as requested on the protective order.

5 CHAIRMAN McDADE: Okay. And, again,  
6 likewise with regard to any comments you have during  
7 the proposals with regard to our issuing a revised  
8 scheduling order as well.

9 Ms. Curran, from the standpoint of  
10 Southern Alliance, is there anything further that you  
11 would like to have addressed during this status  
12 conference?

13 MS. CURRAN: Yes. It was one thing. And  
14 that is that we would like to request that if TVA  
15 submits documents to the NRC that it thinks resolve  
16 the contentions, the admitted contentions, whether  
17 they are amendments to the FSAR or environmental  
18 report or whether they're other documents, like  
19 studies, I would just like to ask if we could get some  
20 kind of notice, in addition to the mandatory  
21 disclosures, so that we know that we're alerted  
22 because the time clock starts to run with that.

23 I just want to make sure that we're aware  
24 of anything that they, that TVA, thinks is  
25 dispositive.

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1 CHAIRMAN McDADE: Mr. Bessette, do you  
2 have a problem with that?

3 MR. BESSETTE: No, Your Honor, we do not.

4 CHAIRMAN McDADE: Okay. Anything further,  
5 then, to be addressed at this status conference?  
6 Judge Abramson?

7 JUDGE ABRAMSON: I'm all set.

8 CHAIRMAN McDADE: Judge Arnold?

9 JUDGE ARNOLD: I'm set also.

10 CHAIRMAN McDADE: Mr. Roth?

11 MR. ROTH: Nothing further, Your Honors.

12 CHAIRMAN McDADE: Mr. Bessette?

13 MR. BESSETTE: Nothing further, Your  
14 Honors.

15 CHAIRMAN McDADE: Ms. Curran?

16 MS. CURRAN: Nothing from SACE.

17 CHAIRMAN McDADE: Okay. Well, thank you  
18 very much. And we do have one matter that is still  
19 pending. However, we thought that the pleadings with  
20 regard to the petition for waiver were very clear. So  
21 that none of the judges had any specific clarifying  
22 questions based on that. And we will be issuing an  
23 order with regard to the petition for waiver here  
24 shortly.

25 Is there any other matter that is out

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1 there on this particular case? I'm not aware of any.

2 Mr. Roth, are you?

3 MR. ROTH: No, Your Honor.

4 CHAIRMAN McDADE: Mr. Bessette?

5 MR. BESSETTE: No, Your Honor.

6 CHAIRMAN McDADE: Ms. Curran?

7 MS. CURRAN: No.

8 CHAIRMAN McDADE: Okay. That being the  
9 case, then, this status conference can be terminated.  
10 Thank you very much.

11 (Whereupon, the foregoing matter was  
12 concluded at 9:21 a.m.)

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CERTIFICATE

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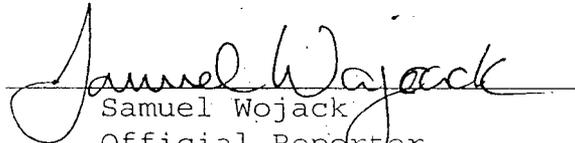
Name of Proceeding: Pre-Hearing Conference

Docket Number: 50-391-OL

ASLBP Number: 09-893-01-OLBD01

Location: (teleconference)

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