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NUCLEAR REGULATORY COMMISSION

Title: Tennessee Valley Authority
Watts Bar Unit 2

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

Location: (telephone conference)

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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

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

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

APPEARANCES:

On Behalf of the Applicant:

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NRC STAFF PRESENT:

LAKSHIMINARASIMH RAGHAVAN, DORL

PATRICK MILANO, DORL

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

(9:01 a.m.)

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

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

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

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

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

CHAIRMAN McDADE: And from TVA?

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

CHAIRMAN McDADE: And from the intervenor?

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

Energy.

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

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

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

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

MR. ROTH: David Roth for the staff.

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

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

CHAIRMAN McDADE: From the standpoint of the TVA?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Also, I would suggest that approximately

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

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

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

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

MS. CURRAN: Great.

CHAIRMAN McDADE: Is that agreeable?

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

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

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

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

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

(No response.)

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

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

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

protective orders submitted and approved by orders.

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

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

CHAIRMAN McDADE: Yes.

MR. BESSETTE: We'll do that.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIRMAN McDADE: Okay. Judge Arnold --

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

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

JUDGE ARNOLD: I have nothing further. Judge Arnold.

JUDGE ABRAMSON: Judge Abramson. Nothing further for me.

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

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

CHAIRMAN McDADE: From the standpoint of

the TVA, Mr. Bessette?

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

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

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

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

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

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

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

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

JUDGE ABRAMSON: I'm all set.

CHAIRMAN McDADE: Judge Arnold?

JUDGE ARNOLD: I'm set also.

CHAIRMAN McDADE: Mr. Roth?

MR. ROTH: Nothing further, Your Honors.

CHAIRMAN McDADE: Mr. Bessette?

MR. BESSETTE: Nothing further, Your Honors.

CHAIRMAN McDADE: Ms. Curran?

MS. CURRAN: Nothing from SACE.

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

Is there any other matter that is out

there on this particular case? I'm not aware of any. Mr. Roth, are you?

MR. ROTH: No, Your Honor.

CHAIRMAN McDADE: Mr. Bessette?

MR. BESSETTE: No, Your Honor.

CHAIRMAN McDADE: Ms. Curran?

MS. CURRAN: No.

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

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

CERTIFICATE

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

Watts Bar Unit 2

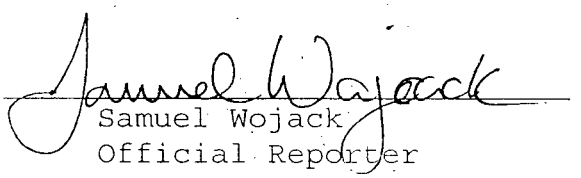
Name of Proceeding: Pre-Hearing Conference

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 transcript is a true and accurate record of the foregoing proceedings.



Samuel Wojack
Official Reporter
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