

**Official Transcript of Proceedings**  
**NUCLEAR REGULATORY COMMISSION**

Title: Nuclear Innovation North America  
South Texas Project, Units 3 & 4

Docket Number: 52-012-COL and 52-013-COL

Location: (telephone conference)

Date: Tuesday, March 8, 2011

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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PRE-HEARING CONFERENCE

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IN THE MATTER OF:                   :    Docket No.  
NUCLEAR INNOVATION                :    52-012-COL  
NORTH AMERICA, LLC                 :    52-013-COL  
(South Texas Project                :  
Units 3 and 4)                       :

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Tuesday, March 8, 2011

Teleconference

The above-entitled matter came on for hearing,  
pursuant to notice, at 10:45 a.m.

BEFORE:

MICHAEL M. GIBSON                   Administrative Judge  
DR. GARY S. ARNOLD                  Administrative Judge  
DR. RANDALL J. CHARBENEAU         Administrative Judge

1 APPEARANCES:

2 On Behalf of Nuclear Regulatory Commission:

3 MICHAEL SPENCER, ESQ.

4 ANDREA SILVIA, ESQ.

5 of: Office of the General Counsel

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11 On Behalf of the Applicant, Nuclear Innovation

12 North America:

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14 STEPHEN J. BURDICK, ESQ.

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1 APPEARANCES: (CONT.)

2 On Behalf of the Intervenors, Sustainable  
3 Energy and Economic Development (SEED) Coalition,  
4 South Texas Association for Responsible Energy, and  
5 Public Citizen:

6 ROBERT V. EYE

7 of: Kauffman & Eye

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11

12 ALSO PRESENT: JESSE MUIR - NRC,

13 Environmental Project Manager

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

(10:47 a.m.)

1  
2  
3 JUDGE GIBSON: This is Judge Gibson. With  
4 me is Judge Arnold and on speaker with us is Judge  
5 Charbeneau.

6 If I could, I believe we have already  
7 gotten appearances of counsel. But if you would just  
8 please for the record do that again, I would  
9 appreciate it so we will have it on the transcript.

10 MR. FRANTZ: This is Steve Frantz,  
11 representing Nuclear Innovation of North America.  
12 With me are my co-counsel, Steve Burdick and John  
13 Matthews.

14 MR. SPENCER: This is Michael Spencer,  
15 counsel for the NRC Staff. Also with me is Counsel  
16 Andrea Silvia, and also Jessie Muir, who is an  
17 Environmental Project Manager for the, I guess, NINA  
18 STP project.

19 MR. EYE: Good morning, this is Robert Eye  
20 and I represent the Intervenors.

21 JUDGE GIBSON: Thank you. We just have a  
22 couple of things we wanted to cover with everyone  
23 because the Final Environmental Impact Statement has  
24 just been issued. We got notice of that availability  
25 on March the first and I wanted to discuss the

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1 scheduling of the case.

2 As you all know, the scheduling order  
3 provides that there are two trigger dates. The one  
4 trigger date is the date that the Final Environmental  
5 Impact Statement is issued. The other trigger date is  
6 when the ACRS issues its final report on the  
7 application.

8 Now there are no safety contingents in  
9 this case and so I wanted to know if there is any  
10 problem with proceeding to trial on the two  
11 environmental contingents that they have. So I just  
12 need to find out what your views are on that.

13 Let's start with you, Mr. Frantz.

14 MR. FRANTZ: Yes, Judge Gibson. Not only  
15 don't we see a problem, we would strongly urge the  
16 Board to proceed to hearing as soon as practical. We  
17 believe that is consistent with the Board's discussion  
18 at transcript page 541, where the Board said that if  
19 there is no safety contention the Board would proceed  
20 to trial as soon as possible on the environmental  
21 contentions based upon the date of the EIS.

22 JUDGE GIBSON: Mr. Eye, your views?

23 MR. EYE: I concur with Mr. Frantz.

24 JUDGE GIBSON: Okay. Mr. Spencer?

25 MR. SPENCER: I agree that there is --

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1 that hearing can proceed on the environmental  
2 contentions, since there are only environmental  
3 contentions.

4 I would just point out that currently the  
5 Board order has the trigger date as being the later of  
6 the ACRS report being issued or the Environmental  
7 Impact Statement being available. Our opinion is that  
8 a reasonable trigger date should be based on an  
9 indication from the Board that that date is going to  
10 be changed to essentially proceed imminently. And so  
11 we think the trigger date shouldn't be before the date  
12 of this call, if the Board wants to go forward now.

13 JUDGE GIBSON: Okay. So you are fine with  
14 going forward then, Mr. Spencer?

15 MR. SPENCER: Yes.

16 JUDGE GIBSON: Okay. Well let's go over  
17 the dates. You all have probably done this as well  
18 but just to make sure that we are all on the same page  
19 of the same hymnal.

20 The initial statements are to be filed 60  
21 days after the Final Environmental Impact Statement.  
22 And my calculation would be that that would be May  
23 second. Are you all in agreement with that?

24 MR. FRANTZ: Judge, if your trigger is  
25 March first, that is correct.

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1 JUDGE GIBSON: Okay.

2 MR. EYE: And this is Bob Eye.

3 JUDGE GIBSON: Yes.

4 MR. EYE: I'm not exactly sure. I am  
5 trying to reconcile Michael Spencer's comments about  
6 the trigger date being either March 1 or today. And  
7 I think that perhaps that needs to be established as  
8 far as exactly what date we are working from. I  
9 assume from Your Honor's comments that that would be  
10 March 1 and not today's date.

11 JUDGE GIBSON: That was my understanding  
12 of what the initial scheduling order provided.

13 MR. EYE: Okay.

14 MR. SPENCER: Your Honor, this is Michael  
15 Spencer.

16 JUDGE GIBSON: Yes?

17 MR. SPENCER: The initial scheduling order  
18 currently provides that it is the later of two  
19 different dates and the ACRS report hasn't been  
20 issued.

21 So, my only point was that since Board  
22 action was necessary to change the trigger date to be  
23 based on the EIS, that the trigger date shouldn't  
24 perceive an indication from the Board that that was  
25 going to be changed, that the date was going to be

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1 changed.

2 JUDGE GIBSON: Well we don't have any  
3 safety contingents. And I guess I am really missing  
4 your point, Mr. Spencer. I don't understand what the  
5 issue is that you are raising.

6 MR. SPENCER: Well the issue is that under  
7 the current scheduling order the trigger date would be  
8 the later of the ACRS report or the EIS. So that  
9 hasn't happened.

10 And we didn't know until today that all  
11 parties and the Board were agreeable to proceeding  
12 imminently. And so if we use May second as the  
13 trigger date, I suppose that gives us seven less days  
14 for initial testimony and statements of position.

15 JUDGE GIBSON: Okay, well now I understand  
16 what your point is. I'm sorry. Now I see.

17 So your concern is that you are going to  
18 get squeezed because instead of having 60 days, you  
19 only have 53 or something, or 54 or something like  
20 that.

21 MR. SPENCER: Yes.

22 JUDGE GIBSON: Okay. Well, I certainly  
23 don't, you know, we don't want anyone to get squeezed  
24 here. If that is a problem, please let us know now.

25 But I will say at this point I think we

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1 are looking at two remaining contentions that we would  
2 be going to trial on. And I guess you have to assess  
3 for yourself whether you believe you are going to need  
4 a full 60 days from now in order to prepare your  
5 initial statement or whether 54 is going to be  
6 adequate.

7 And since you are the one who raised it,  
8 Mr. Spencer, I will let you tell us.

9 MR. SPENCER: Well if the Board and the  
10 other parties are amenable to the May second date, we  
11 will go along with that.

12 JUDGE GIBSON: Okay. Mr. Eye.

13 MR. EYE: Well obviously, we would rather  
14 have the benefit of a few extra days. But as you  
15 suggest, it is probably not a do or die situation. So  
16 if May second is the Board's preference, then we will  
17 work with that.

18 JUDGE GIBSON: Well, if it were -- I tell  
19 you what let's do. Let's hold that for just a second  
20 and let's look at the days that we would be looking at  
21 trying the case. And it may well be that that week  
22 won't make any difference.

23 The Board Members have looked at their  
24 calendars for the summer. And assuming that we are  
25 not going to need more than two days to try this case,

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1 there are three possible time slots that we could find  
2 two days together when the three of us could be in the  
3 same place at the same time. The first one is July 27  
4 and July 28; the second is August 17 and August 18;  
5 and the third is August 18 and August 19.

6 I guess if you all, the three of you all  
7 are convinced that we need three days to try this, we  
8 would have August 17 to August 19 if that would be  
9 necessary. But that is essentially what we are  
10 looking at.

11 Now certainly if we picked that time  
12 period in August, giving you guys another week on the  
13 front end I don't see is really going to prejudice  
14 anybody. On the other hand, if we have it July 27 to  
15 28, you all may feel that you will get a little  
16 squeezed on it. I don't know. Let's start with you,  
17 Mr. Eye.

18 MR. EYE: Okay, Your Honor, thank you.

19 I communicated with Mr. Frantz last week  
20 about some possible dates and I am committed to a  
21 family gathering for my mom's 87th birthday that is  
22 the third week of July.

23 JUDGE GIBSON: Okay.

24 MR. EYE: So if possible, I would prefer  
25 to go to one of the two August dates, just so I can

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1 stay on the good side of my mom.

2 JUDGE GIBSON: Well I think we are all in  
3 favor of that, Mr. Eye.

4 MR. EYE: Thank you. I haven't always  
5 been on her good side.

6 JUDGE GIBSON: All right. Mr. Frantz?

7 MR. FRANTZ: We have no objection to going  
8 to hearing August 17th, 18th or 19th.

9 JUDGE GIBSON: Okay, good. Mr. Spencer?

10 MR. SPENCER: We have no objection.

11 JUDGE GIBSON: Okay. All right, now if we  
12 are -- Mr. Frantz, you are the only one who didn't  
13 seem to be a little concerned about the 60 days versus  
14 54 days. If we are looking at doing this in August 17  
15 to 19 period, I assume you would not have any trouble  
16 with going to May 9 instead of May second for the  
17 initial statements.

18 MR. FRANTZ: That is correct.

19 JUDGE GIBSON: Okay. Well then, let's  
20 just go ahead and make it May 9 and then we won't have  
21 a problem with anybody getting squeezed on preparing  
22 this.

23 If that is correct, rebuttal statements  
24 will be due on May 30. Motions in limine and motions  
25 to strike will be due on June 9.

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1 I'm sorry. It is Memorial Day? Okay,  
2 what are we looking at? What is the date next going  
3 to be, the 31st? Okay, make that May 31st.

4 Okay, and motions in limine and motions to  
5 strike are going to be due on June 10.

6 MR. EYE: Your Honor, this is Bob Eye.

7 JUDGE GIBSON: Yes.

8 MR. EYE: I have a trial that is  
9 definitely a go that starts on the 6th of June and is  
10 expected to take that week. Is it possible if we  
11 could move that motion in limine and motion to strike  
12 date the following week so I can get my trial out of  
13 the way?

14 JUDGE GIBSON: Again, considering that we  
15 are looking at August 17 to 19 as being the period of  
16 time we are going to try this case, from the Board's  
17 standpoint I don't see a problem. Let me just make  
18 sure, Mr. Frantz, you wouldn't have any problem with  
19 extending that out to June 17?

20 MR. FRANTZ: No, we don't.

21 JUDGE GIBSON: Okay. So we will make that  
22 June 17th.

23 MR. EYE: Thank you.

24 JUDGE GIBSON: Sure.

25 Proposed questions for the Board would be

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1 June 29. Is that right? Sorry, someone was just  
2 speaking on July something. Would proposed questions  
3 for the Board be due on June 29th? Is that okay?

4 MR. SPENCER: I believe it probably would  
5 be in July sometime. They are -- Usually there is 20  
6 days between the motions to strike and the proposed  
7 questions, based upon the Board's scheduling order  
8 last in 2009.

9 JUDGE GIBSON: Okay, well let's look when  
10 that would be in July then. That is going to fall on  
11 the -- Is that going to be the -- Twenty days.

12 Okay, that will be July 12th? Yes, that  
13 would be. Yes, that is fine. Okay.

14 MR. FRANTZ: So it is July 12, Your Honor?

15 JUDGE GIBSON: Yes.

16 MR. FRANTZ: Okay.

17 JUDGE GIBSON: July 12 is fine. And the  
18 motions for cross-examination are going to be due also  
19 on July 12th.

20 Okay. Is that all clear and is that all  
21 agreeable to you guys?

22 MR. FRANTZ: That is agreeable to the  
23 Applicant.

24 MR. SPENCER: It is agreeable to the NRC  
25 Staff.

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1 JUDGE GIBSON: Okay. Unfortunately Mr.  
2 Spencer and Mr. Eye, you spoke at the same time. So  
3 let's start with Mr. Eye.

4 MR. EYE: Okay, thank you, Your Honor.  
5 Yes, this is agreeable to the Intervenors.

6 JUDGE GIBSON: And Mr. Spencer.

7 MR. SPENCER: This is agreeable to the  
8 Staff.

9 JUDGE GIBSON: Good. Okay.

10 MR. FRANTZ: Judge Gibson, just one  
11 clarification.

12 JUDGE GIBSON: Yes.

13 MR. FRANTZ: Do you want hearings to begin  
14 on August 17th or 18th? Probably the 17th, I would  
15 guess, because that would enable additional  
16 flexibility in case it does extend one more day.

17 JUDGE GIBSON: Yes, I think that is fine.  
18 Let me just ask, since I have got him on the phone.  
19 Hold on just one second. Let me put you on mute for  
20 just a second.

21 (Pause.)

22 JUDGE GIBSON: Okay. So now since we have  
23 got our schedule for that, I want to, I know there are  
24 a couple of other housekeeping matters that fall out  
25 of this FEIS and I just want to be sure that again we

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1 are all thinking along the same lines here.

2 The Applicant and the Staff are going to  
3 have until March 21 to move for summary disposition on  
4 the two admitted contentions, based on any new  
5 information in the Final Environmental Impact  
6 Statement. And the Intervenors will have until March  
7 31 to file any new contentions that would be based on  
8 new information in the Final Environmental Impact  
9 Statement. And I just want to be sure that you all  
10 are aware of that; that is, effectively the motion for  
11 summary disposition cutoff for all purposes, of  
12 course, is on March 21.

13 So are there any other matters that we  
14 need to address, since we are all gathered together?  
15 Let's start with you, Mr. Frantz.

16 MR. FRANTZ: I have none.

17 JUDGE GIBSON: Mr. Eye?

18 MR. EYE: I don't believe so, Your Honor.

19 JUDGE GIBSON: Mr. Spencer.

20 MR. SPENCER: Well I will just bring up  
21 one final thing in terms of the schedule. For post-  
22 hearings there will be a date for proposed findings of  
23 fact and conclusion of law.

24 JUDGE GIBSON: Yes?

25 MR. SPENCER: And Section 2.1209 provides

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1 30 days after the close of the hearing or at such  
2 other time as the presiding officer directs. So I am  
3 just going to raise the question.

4 Do we want to go with 2.1209, the 30 days  
5 or does the presiding officer contemplate some other  
6 time?

7 JUDGE GIBSON: I thought that was in the  
8 original order. Maybe it wasn't.

9 Okay. Let's start with your, Mr. Spencer,  
10 since you are the one who raised it. Is that the time  
11 that you would like to see for the proposed findings?

12 MR. SPENCER: I don't think we have any  
13 specific time in mind. And we have no objection to  
14 the time provided by 2.1209, which is 30 days, within  
15 30 days of the close of the hearing.

16 JUDGE GIBSON: Okay. Mr. Eye?

17 MR. EYE: I believe that will work on our  
18 end as well, Your Honor. That is, making it -- I am  
19 looking at the calendar here for September and I  
20 believe the 30 days would fall, I think, on a weekend.  
21 So it would probably be Monday the 19th, I believe  
22 would be the operative date.

23 JUDGE GIBSON: Okay. And that is okay  
24 with you then, Mr. Eye?

25 MR. EYE: Yes, sir.

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1 JUDGE GIBSON: Mr. Frantz?

2 MR. FRANTZ: That is acceptable to us,  
3 too. And we would urge the Board to stick with the  
4 rules on the 30-day period.

5 JUDGE GIBSON: Okay. Well, thank you for  
6 raising that, Mr. Spencer. Is there anything else?

7 MR. SPENCER: I do not believe so.

8 JUDGE GIBSON: All right. Well, if there  
9 is nothing else, we will be looking forward to getting  
10 your initial statement on May 9th. Have fun.

11 MR. SPENCER: Thank you, Your Honor.  
12 Thanks, counsel.

13 (Whereupon, at 11:08 a.m., the foregoing  
14 proceeding was adjourned.)

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CERTIFICATE

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in the matter of:           South Texas Nuclear Co.

Name of Proceeding: Pre-Hearing Conference

Docket Number:           52-012-COL and 52-013-COL

Location:                 Telephone Conference

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