

NUCLEAR REGULATORY COMMISSION

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ADJUDICATIONS STAFF

Title: Seabrook Station, Unit 1

Docket Number: 50-443-LR

ASLBP Number: 10-906-02-LR-BD01

Location: (telephone conference)

Date: Monday, March 14, 2011

Work Order No.: NRC-792

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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:	:
NEXTERA ENERGY	:Docket No. 50-443-LR
SEABROOK, LLC	:ASLBP No 10-906-02-LR-BD01
(Seabrook Station,	:
Unit 1)	:

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Monday, March 14, 2011

The above-entitled matter came on for prehearing conference, pursuant to notice, via teleconference at 10:30 a.m.

BEFORE:

PAUL RYERSON, Chairman, Administrative Judge
 MICHAEL KENNEDY, Administrative Judge
 RICHARD WARDWELL, Administrative Judge

1 APPEARANCES:

2 On Behalf of NRC:

3 MARY SPENCER, ESQ.

4 EMILY MONTEITH, ESQ.

5 MAXWELL SMITH, ESQ.

6 MEGAN WRIGHT, ESQ.

7 of: Office of the General Counsel

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10 Washington, DC 20555-001

11

12 On Behalf of the Applicant:

13 STEVEN C. HAMRICK, ESQ.

14 of: NextEra Energy Seabrook, LLC

15 801 Pennsylvania Avenue, NW

16 Washington, DC 20004

17

18 ANTONIO FERNANDEZ, ESQ.

19 of: NextEra Energy Seabrook, LLC

20 700 Universe Boulevard

21 Juno Beach, FL 33408

22 On Behalf of Beyond Nuclear:

23 PAUL GUNTER

24 6930 Carroll Avenue, Suite 400

25 Takoma Park, MD 20912

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1 On Behalf of Seacoast Anti-Pollution League:

2 DOUG BOGEN

3 Seacoast Anti-Pollution League

4 P.O. Box 1136

5 Portsmouth, NH 03802

6

7 On Behalf of Friends of the Coast/New England

8 Coalition:

9 RAYMOND SHADIS

10 P.O. Box 98

11 Edgecomb, ME 04556

12

13 On Behalf of the State of Massachusetts:

14 MATTHEW BROCK, ESQ.

15 Assistant Attorney General

16 Office of the Attorney General

17 State of Massachusetts

18 One Ashburton Place

19 Boston, MA 02108

20

21 ALSO PRESENT:

22 HILLARY CAIN, Law Clerk to the ASLBP

23

24

25

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P R O C E E D I N G S

10:33 a.m.

1
2
3 CHAIRMAN RYERSON: On the record. Good
4 morning, everybody. This is Judge Ryerson. Let's go
5 on the record. I think what happened earlier was
6 really not necessarily on the record.

7 I'm here with Judge Kennedy in Rockville
8 along with Hillary Cain, the Law Clerk to this Board.
9 And, Judge Wardwell, are you on?

10 JUDGE WARDWELL: I am. I was wondering
11 whether anyone was going to care whether I was or not.
12 And I was pleased to be invited.

13 CHAIRMAN RYERSON: We now have you on the
14 record as a participant. As Ms. Cain explained, the
15 rules seems to change on these calls for some reason.
16 I'm not sure why it happened, but --

17 JUDGE WARDWELL: I might add that they
18 didn't ask one way or the other. That never came up
19 during when you signed in. So just for your
20 information.

21 CHAIRMAN RYERSON: Yes. We'll try to fix
22 that in the future. Okay. We obviously have the
23 reporter on line and just for the record let's at
24 least have those participants who expect to speak
25 identify yourselves once again starting with the

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1 Applicant.

2 MR. HAMRICK: Yes, this is Steven Hamrick
3 for the Applicant and also on the line I believed is
4 Antonio Fernandez.

5 MR. FERNANDEZ: I'm here as well. Can you
6 hear me?

7 (Chorus of yeses.)

8 CHAIRMAN RYERSON: Yes. All hear you.
9 Thank you.

10 And for the Beyond Nuclear I think I heard
11 Mr. Gunter.

12 MR. GUNTER: Yes, this is Paul Gunter.

13 CHAIRMAN RYERSON: And I think I heard Mr.
14 Shadis for -- And, Mr. Gunter, who are you
15 representing?

16 MR. GUNTER: I am representing the New
17 Hampshire Sierra Club and, Mr. Bogen, you can speak.

18 MR. BOGEN: I'm with Seacoast Anti-
19 Pollution League, but Mr. Gunter will be speaking for
20 our group.

21 CHAIRMAN RYERSON: Okay. Thank you. And,
22 Mr. Shadis, who are you representing today?

23 MR. SHADIS: Friends of the Coast and New
24 England Coalition.

25 CHAIRMAN RYERSON: Okay. Welcome. Let's

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1 see the NRC -- Oh, and Mr. Brock is on. Massachusetts
2 is not yet been admitted as a participant. I'm not
3 aware that anyone is going to object to that. And
4 unless there's an objection we'll certainly have him
5 speak today if he would like to.

6 MR. BROCK: Thank you, Your Honor.
7 Matthew Brock representing Commonwealth of
8 Massachusetts.

9 CHAIRMAN RYERSON: And that leaves the NRC
10 staff I believe.

11 MS. SPENCER: Yes, this is Mary Spencer
12 for the NRC staff and I have Max Smith, Emily Monteith
13 and Megan Wright and the Project Manager for Safety
14 Rick Plasse with me.

15 CHAIRMAN RYERSON: Okay. Thank you.

16 All right. And it is possible that there
17 are additional members of the public. Our intent was
18 to allow members of the public to call in but not
19 speak. And I take the fact we've had everybody now as
20 a speaker that nobody did call in. So if there is
21 that remote possibility that someone else is listening
22 we had made that opportunity available.

23 The purpose of the call today is set forth
24 in our February 24 Order which is essentially to help
25 the Board develop a scheduling order for this

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1 proceeding. And what I propose to do unless there is
2 a consensus to the contrary is just go through the
3 items in that order in the order in which they are
4 listed.

5 I know we did ask the parties to see
6 whether they might reach agreement or perhaps at least
7 a consensus on some of these. And if that is the case
8 we can discuss that as we go through item by item.

9 Any comments before we begin? First from
10 my fellow judges? Judge Kennedy, is there anything?

11 JUDGE KENNEDY: I have nothing to add.
12 Thank you.

13 CHAIRMAN RYERSON: Judge Wardwell.

14 JUDGE WARDWELL: I have nothing.

15 CHAIRMAN RYERSON: Okay. Any of the
16 parties want to say anything before we start with Item
17 1?

18 MR. GUNTER: Judge Ryerson, this is Paul
19 Gunter, Beyond Nuclear.

20 CHAIRMAN RYERSON: Yes.

21 MR. GUNTER: Is there an opportunity on
22 the agenda to address the fact that I am going to be
23 out of the country on business and family obligation
24 at some point during April? If I could just put that
25 into the schedule.

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1 CHAIRMAN RYERSON: Well, we can certainly
2 consider that. I have a feeling that April will not
3 be a particularly busy time at least from the Board's
4 standpoint. We haven't ruled yet on the motion, the
5 agreed-upon motion, to postpone the disclosures. But
6 I suspect that we will be giving at least another
7 month on that. So, yes, if you would just keep your
8 schedule in mind as we talk through these things and
9 remind us of that if it's necessary.

10 MR. GUNTER: Yes, sir.

11 CHAIRMAN RYERSON: Okay then. Let's begin
12 with Item 1 which is the unopposed motion to defer
13 initial disclosures. I'll tell you. My sense and I
14 think it may be the sense of the Board, although we
15 haven't finally talked about all these things, is that
16 some delay to allow the Commission to rule upon the
17 appeals would probably make sense as long as it's not
18 going to interfere in any way with achieving a hearing
19 within the time frame of the milestones. And I guess
20 that depends to some extent on what the staff's
21 schedule is for the SER and the EIS.

22 Now the staff has indicated -- I think,
23 Ms. Spencer, you sent a letter on March 7 which says
24 there will be a final SEIS in January of 2012 and also
25 says that there will be a final SER for submittal to

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1 the ACRS. That's the Advisory Committee on Reactor
2 Safeguards in the same month.

3 And I guess that my first question to you,
4 Ms. Spencer, is do you see that as the version of the
5 SER that triggers the milestones under the rules or is
6 there a later version that we also should be aware of.

7 MS. SPENCER: No. I would -- The final
8 version is the one that normally triggers the
9 milestones for the hearing on safety contentions.

10 CHAIRMAN RYERSON: I mean when you say the
11 final version the version --

12 MS. SPENCER: The version the one that we
13 intend to have -- that we scheduled for January of
14 2012. The one that gets submitted to the ACRS.

15 CHAIRMAN RYERSON: Okay.

16 MS. SPENCER: That would be the final that
17 would trigger the deadline.

18 CHAIRMAN RYERSON: Yes. And if you can,
19 and I know this may be difficult, do you have a sense
20 of the confidence limits on your projection for both
21 of these staff documents in January of 2012? Very
22 likely. Somewhat likely. Really not sure at this
23 point.

24 MS. SPENCER: You know I would say we're
25 not sure at this point. You know I could have said --

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1 In my experience is that these things can change and
2 that we will have to update the parties as we move
3 along in our process.

4 CHAIRMAN RYERSON: Right. And you've
5 committed to do that in a timely fashion in your March
6 7 letter.

7 MS. SPENCER: That's correct. And that
8 would probably be part of our monthly update if
9 there's any change once we start doing disclosures and
10 before that if there's any significant change. But
11 once we start doing our disclosures we would include
12 any changes to that anticipated schedule in that
13 document.

14 CHAIRMAN RYERSON: Okay. Thank you.

15 Here is my -- And I'm speaking for myself
16 at the moment -- preliminary thinking about what to do
17 with the initial disclosures. We have an unopposed
18 motion in front of us. At the same time, we don't
19 want to build in any immediate delay in the process.
20 Delays seem to rear their ugly heads from time to time
21 without any help from us.

22 So I guess I would be myself interested in
23 what the parties might think would be a reasonable
24 time period to allow the Commission potentially to
25 decide the appeal without getting us into a point

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1 where assuming we have staff documents February 2012
2 that we would be interfering with a timely milestone
3 compliant hearing process.

4 Let me -- Who filed that motion actually?
5 Was it NextEra?

6 MR. HAMRICK: Yes. Judge Ryerson, this is
7 Steven Hamrick for NextEra. That was our motion.

8 CHAIRMAN RYERSON: Yes. If we were to say
9 that initial disclosures are due 30 days from the
10 Commission's ruling on the appeals but no later than
11 X, what do you think a good date would be for X?

12 MR. HAMRICK: And I understand the
13 concern. I know it's judging or trying to guess at
14 how long a Commission appeal will take is a very
15 difficult game. So I think I am comfortable with the
16 idea that you're proposing of putting some sort of cap
17 on the suspension of discovery.

18 I believe that the appeal was filed right
19 around March 1st. And six months from March 1st would
20 be around I believe --

21 JUDGE WARDWELL: September 1st.

22 MR. HAMRICK: September 1st?

23 JUDGE WARDWELL: Yes. Six and three is
24 nine, anyhow.

25 MR. HAMRICK: Right. It's always easier

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1 to do math when you don't talking.

2 CHAIRMAN RYERSON: This is Judge Ryerson
3 if I may interrupt. I forgot to mention this at the
4 beginning. Please when you speak for the benefit of
5 the reporter who is going to have a very hard time
6 otherwise please identify who you are. I'm sorry.
7 Continue.

8 MR. HAMRICK: Sure. And this is Steven
9 Hamrick again for NextEra. I think perhaps giving the
10 Commission six months to issue a decision by September
11 1st and then giving the parties 30 days from that date
12 would be approximately October 1st.

13 CHAIRMAN RYERSON: October 1st is a
14 Saturday. So it would be October 3.

15 MR. HAMRICK: Okay.

16 CHAIRMAN RYERSON: That's -- Anybody have
17 a problem with that. Anybody see that that is
18 unnecessarily long delay? Staff in particular?

19 MR. SHADIS: Judge Ryerson.

20 CHAIRMAN RYERSON: Yes.

21 MR. SHADIS: This is Ray Shadis speaking
22 and I have a concern. I'm not sure I can clearly
23 articulate it. But if there are no disclosures until
24 October 1st it really compresses the amount of time
25 that we have to investigate the issues prior to the

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1 issuance of the SER. We're looking at two or three
2 months max where normally there would be much closer
3 to a year to review that material.

4 CHAIRMAN RYERSON: Okay. Now, Mr. Shadis,
5 if I understand things, you agreed to the motion to
6 defer initial disclosures and the motion frankly did
7 not have a cap on how long the extension might go
8 simply keyed to completion of the appeal. So I'm a
9 little surprised at your view on this at this point.

10 MR. SHADIS: Yes, Your Honor. Ray Shadis
11 again. It's understandable and I think that we're at
12 fault for not clearly thinking through the
13 ramifications. But at the same time -- I guess that's
14 it. I really was not looking at the SER milestone for
15 triggering the remainder of the hearing process.

16 And we will, of course, do what the Board
17 orders, but I am raising this as an issue. I just
18 really now recognized it as an impediment.

19 In addition, we had begun to think about
20 the effect of holding on disclosures on potential
21 motions for summary disposition. And we raised this
22 issue with NextEra and the staff in our -- We did have
23 a conference call on Friday to talk about these
24 issues. And the issue is that if motion for summary
25 disposition are filed in advance of disclosures or

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1 immediately upon the initial disclosures, we are at a
2 disadvantage of not having been able to review the
3 relevant evidence.

4 CHAIRMAN RYERSON: This is Judge Ryerson.
5 I think that's clear. If there hasn't been discovery,
6 normally we would never grant summary disposition.

7 MR. HAMRICK: Steven Hamrick from NextEra.
8 There's -- We do not dispute that either.

9 CHAIRMAN RYERSON: I think there's been --

10 MR. HAMRICK: There is general consensus
11 that summary disposition motions would need to wait
12 beyond a reasonable period beyond when discovery
13 commences.

14 CHAIRMAN RYERSON: Yes. Let me ask this.
15 Since you did have a call to discuss this, who is
16 happy with the October 3 deadline? I take it
17 obviously the Applicant has proposed an October 3
18 deadline to submit initial disclosure regardless of
19 the status of the appeal at this point.

20 MR. FERNANDEZ: Your Honor, this is
21 Antonio Fernandez for NextEra. Can we have -- I don't
22 know that -- Can we have an opportunity to confer?
23 Co-counsel for the Applicant is located at different
24 locations. Before this idea of October 3rd gets much
25 more discussion I want to make sure that internally

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1 the Applicant has aligned on that date.

2 CHAIRMAN RYERSON: Okay. I was attempting
3 to see whether any other parties were happy with that
4 date. So the Applicant is not necessarily proposing
5 October 3.

6 MR. FERNANDEZ: Since it's the first time
7 that it's come up, I think it would be helpful if I
8 could just talk to Mr. Hamrick separate from the group
9 if that's something that the Board intends to do today
10 so that we can give you our final position on that
11 issue.

12 CHAIRMAN RYERSON: Okay.

13 MR. FERNANDEZ: But we can -- We have the
14 possibility of putting you on mute and then him and I
15 talking on a different line if that's what you would
16 like us to do.

17 CHAIRMAN RYERSON: Okay. Let's see where
18 other parties are. Mr. Shadis, did you have a date of
19 your own that you were prepared to propose as an
20 absolute cutoff for the deadline for initial
21 disclosures?

22 MR. SHADIS: Ray Shadis again. No, Your
23 Honor. I didn't. And again this is a new
24 consideration for us. I would only ask that the Board
25 consider and deliberate on the question of how this

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1 might affect the remainder of the calendar in order to
2 provide a real opportunity to go through the
3 information prior to triggering the milestones at the
4 end of the calendar.

5 CHAIRMAN RYERSON: Well, that's why I was
6 proposing a limit to the extension. And the question
7 is what's an appropriate limit.

8 Does the NRC staff have a view as to what
9 an appropriate time period would be assuming we allow
10 several months in order not to have any likely effect
11 on the milestones?

12 MS. SPENCER: This is Mary Spencer for the
13 staff. I was not on the conference call on Friday.
14 But as I've been reported by co-counsel who
15 participated in the call, I don't think this
16 particular issue came up in the call. So I concur
17 with Mr. Shadis on that.

18 I think the staff agrees that some limits
19 should probably be placed. We all know that
20 predicting when the Commission will handle an appeal
21 is not possible to do that. I guess one point that
22 the staff would make is that obviously our documents
23 as we go through this process, our REIs and the REI
24 responses, all those things are going out in public
25 and are provided to the electronic ListServe and are

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1 available on ADAMS as we go along.

2 But we do think that there is a potential
3 that if we wait too long to start initial disclosures
4 we would be getting rather close to the trigger dates
5 for a hearing. I don't know that we have a specific
6 view about whether October is too late. I don't think
7 we were prepared to take a position on that at this
8 point.

9 But I would be hopeful that we could hear
10 from the Commission sometime during the summer or
11 August/September time frame.

12 CHAIRMAN RYERSON: Yes. All right. Well,
13 this somewhat ties in with one of the last issues
14 which I was going to discuss which is after we've gone
15 through all these issues where do we go from here. I
16 must say tentatively I was thinking it might be most
17 efficient after we've discussed these items orally for
18 the Board to prepare a draft scheduling order and then
19 submit that to all the parties for comment before we
20 finalize it.

21 Maybe in this instance it would be helpful
22 if the parties could attempt to discuss a specific
23 date for initial disclosures, again but the concept
24 would be 30 days after a decision by the Commission on
25 appeal but no later than this date. And if the

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1 parties can agree upon that, perhaps if you can submit
2 that in writing within the next ten days we'll work
3 that into our draft order. And if there is not
4 agreement, then within the next ten days any party is
5 free to file a statement of what they think the
6 appropriate cutoff date should be.

7 MR. SHADIS: Judge Ryerson, this is Ray
8 Shadis again.

9 CHAIRMAN RYERSON: Yes.

10 MR. SHADIS: If I may suggest. I cannot
11 foresee that even with long meditation on this we
12 could come up with a better date. I would suggest
13 that perhaps it would be possible to conclude this
14 issue now if we were to allow NextEra a brief recess
15 to confirm that October 3rd would be the date. And I
16 know that I would agree on behalf of Friends/NEC that
17 we would go with that date.

18 MR. SMITH: Your Honor, this is Max Smith
19 from the NRC staff.

20 CHAIRMAN RYERSON: Yes.

21 MR. SMITH: I would like to point out,
22 too, that based on a reading of the model milestones
23 the direct testimony won't be filed until 155 days
24 after the issuance of the SER.

25 CHAIRMAN RYERSON: We'll get to that

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1 however.

2 MR. SMITH: October's deadline. That
3 would provide until January and then another five
4 months after that. So it would be almost eight months
5 of disclosures up until the time of testimony. So I
6 think the October deadline might actually be a good
7 balance between giving the Commission enough time to
8 rule and at the same time making sure the parties
9 adequate time to prepare. So the staff thinks that
10 October might actually be a good time.

11 CHAIRMAN RYERSON: All right. Here's what
12 I'd like to say about that. I would like to do
13 something that has some support by the parties if we
14 do anything here. But don't count on having that long
15 for direct testimony because under the milestone
16 direct testimony comes in I believe 20 days before the
17 hearing which I think is almost certainly
18 unrealistically a short period of time in this kind of
19 contested case.

20 So I think we will probably be striving to
21 move that date forward a bit for initial testimony in
22 front of the hearing which can be much more efficient
23 if the Board has an opportunity to look at the written
24 testimony, if there's an opportunity for a rebuttal
25 written testimony. And the Board may not find it

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1 necessary to bring in some of the authors of the
2 testimony if we have an adequate time to consider it.
3 That's another issue which we may get to today.

4 But I do agree that the overall milestones
5 contemplate about roughly six months after the staff
6 documents before holding a hearing and another three
7 months to decide. So I think that if, myself, the
8 initial disclosures were available to everyone around
9 October 1 that might be adequate.

10 But I'd like to see if we're going to
11 decide that tentatively today, again we have to
12 discuss this with Judge Wardwell and Judge Kennedy.
13 But if we were to decide it right now, does Beyond
14 Nuclear have an objection? I think if the staff does
15 not have an objection and the Applicant would like to
16 confer and make sure that's okay with them, Mr. Shadis
17 is okay with that as I understand it if it's okay with
18 the Applicant, I haven't heard from I guess Beyond
19 Nuclear or not yet a party or not yet a participant
20 officially, Massachusetts. Do either of you have
21 comments on that?

22 MR. GUNTER: This is Paul Gunter with
23 Beyond Nuclear. You know, since Mr. Shadis is
24 carrying the burden of addressing safety contentions
25 we're going to defer to his call on this.

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1 CHAIRMAN RYERSON: Okay. And, Mr. Brock,
2 do you have any comments?

3 MR. BROCK: No, Your Honor. I don't think
4 at this time Massachusetts is considering filing
5 direct testimony, although we have some questions
6 about that as we get to some of these other issues
7 identified in your order. So again we don't have a
8 direct stake in that decision.

9 CHAIRMAN RYERSON: Okay. All right. So
10 let's see. Does the Applicant want to just take a
11 minute and have a private call on this subject and the
12 rest of us if you don't mind waiting for just a minute
13 or two.

14 MR. HAMRICK: Yes, Your Honor. This is
15 Steve Hamrick from NextEra. That would be
16 appreciated.

17 CHAIRMAN RYERSON: Okay.

18 MR. HAMRICK: And we may be able to reach
19 an agreement here today. Thank you.

20 JUDGE WARDWELL: And this is Judge
21 Wardwell just quickly interrupting with another mass
22 comment that if we project the rate at which we're
23 going we'll be done with this conference call in five
24 and a half hours. I just thought I would interject
25 that.

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1 CHAIRMAN RYERSON: I'm very aware of that,
2 Judge Wardwell. But thanks for pointing that out.

3 Well, just wait for a moment here. We
4 probably should say something so that this doesn't
5 kick out automatically or something like that.

6 (Off the record discussion.)

7 MR. HAMRICK: Your Honor, this is Steve
8 Hamrick for the Applicant. We are back and we can
9 report that we can agree to the date that I proposed
10 myself. So the concept that if the Commission has not
11 issued a ruling by September 1st that discovery
12 disclosure obligations would kick in on October 3rd.

13 CHAIRMAN RYERSON: Okay. Thank you.

14 MR. SHADIS: Judge Ryerson, before we
15 proceed if -- This is Ray Shadis again. If I might
16 just step back to on the question of motions holding
17 off on motions for summary disposition, we had in our
18 discussion proposed a number there that they might not
19 be filed prior to 30 days after the initial
20 disclosure. So it would give us time to have a look
21 at the information.

22 CHAIRMAN RYERSON: Okay. And that moves
23 us right into the second item. And, Judge Wardwell,
24 I apologize, but this will take a little longer than
25 some of the others I think.

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1 And I am speaking -- This is Judge Ryerson
2 -- for myself, not for the full Board. But when you
3 have a panel of judges deciding the facts and the law
4 -- you don't have a jury -- I am skeptical of the
5 advantage in many, many cases of summary disposition
6 motions. And you will see that the Commission's rules
7 do not even require us to entertain them.

8 Summary disposition is based on summary
9 judgment which makes an awful lot of sense often when
10 you have a jury trial and you've got an extraordinary
11 expense and delay and complications and trying facts
12 in front of a jury. When the same people who would be
13 reviewing the summary disposition motions are
14 reviewing what is mostly written testimony
15 particularly in an L hearing the efficiencies of
16 summary disposition I think are much more debatable.

17 Basically, whenever a Board entertains
18 summary disposition three things can happen and two of
19 them are bad. One is that the Board goes through all
20 this and the parties go through all this, filing
21 papers, and the Board decides there's a disputed issue
22 of fact and so it's all for naught.

23 The second thing that can happen which is
24 probably even worse is that Board decides that summary
25 disposition is appropriate, but on appeal the

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1 Commission disagrees. And the case comes back to the
2 Board again to do it over after a substantial delay.

3 So the only, if you will, good outcome is
4 that the Board decides summary disposition is
5 appropriate and confirmed on appeal, but the savings
6 in terms of time and efficiency compared to conducting
7 an L hearing is often not very large I think.

8 So I approach with some skepticism about
9 summary disposition motions. They certainly have
10 their place if you have a pure legal contention and
11 they certainly have their place if the parties can
12 agree, all parties agree, there is no dispute as to a
13 genuine issue of material fact. But if any party says
14 there is a factual issue, it is troublesome to me at
15 least whether it is sufficient to proceed on summary
16 disposition.

17 So that said I guess what I'm suggesting
18 is that at least this member of the Board will be very
19 skeptical if there are summary disposition motions on
20 every single contention that's been admitted. I would
21 be surprised at that. So that's sort of a framework
22 perhaps for our discussion.

23 But I certainly think the proposal, again
24 speaking for myself, that no summary disposition
25 motion be filed until 30 days after initial disclosure

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1 was the suggestion.

2 MR. SHADIS: Yes, Your Honor. Ray Shadis.
3 Thirty days.

4 CHAIRMAN RYERSON: And I think perhaps the
5 more or an equally important date is what is the
6 latest that summary disposition motions can be filed.
7 Again, under the milestones which perhaps were
8 prepared by somebody who has not tried a lot of cases,
9 summary disposition motions can be entertained as late
10 as 45 days before the hearing.

11 And then I think there's a 20 day response
12 period. And then the Board is supposed to decide them
13 no later than 15 days before the hearing which gives
14 the Board all of ten days to decide a summary
15 disposition motion which again strikes me as perhaps
16 a little unrealistic and also diverting everybody's
17 time and attention at the very time that they ought to
18 be preparing for the hearing.

19 So I guess I'm suggesting that we will
20 probably want to impose a limit for summary
21 disposition motions that is somewhat earlier, perhaps
22 quite a bit earlier, that the milestones provide. And
23 I was, again not speaking for the whole Board at this
24 point, thinking of something like 30 days after the
25 staff documents.

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1 MR. SMITH: The SER, Your Honor.

2 CHAIRMAN RYERSON: Yes.

3 MR. HAMRICK: This is Steve Hamrick for
4 the Applicant. I didn't hear the amount of days that
5 was in your suggestion.

6 CHAIRMAN RYERSON: I was -- Again,
7 speaking for myself, I was just contemplating maybe 30
8 days following issuance of the staff documents as a
9 cutoff for summary disposition. So if they are filed,
10 they don't really interfere with direct preparation
11 for hearing.

12 MR. SHADIS: Your Honor, may I interject?
13 This is Ray Shadis. The parties discussed this.
14 NextEra's proposal was 120 days prior to the hearing.
15 And that would coincide with 30 days after the SER I
16 believe. One hundred and fifty days minus 30.

17 MR. HAMRICK: It would roughly coincide.
18 This is Steven Hamrick. Under the model milestones,
19 the hearing is to begin 175 days after the issuance of
20 the SER and EIS. So this wouldn't be exactly the
21 same, but we're in the same ball park.

22 CHAIRMAN RYERSON: Yes. All right. It
23 sounds like there's at least among the parties
24 substantial agreement that a summary disposition
25 motion should not be filed too soon or too late. And

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1 it sounds like we have at least a consensus if not
2 total agreement on what those times should be.

3 Is there anybody who wants to speak to
4 that now? Again, I think our plan will be from the
5 Board's standpoint to put some of these dates into a
6 proposed order. And then we'll submit it for comments
7 before we finalize it.

8 MR. SHADIS: Your Honor, Ray Shadis again.
9 With small editorial comment, the parties did agree
10 with NextEra's proposal including a proposal on
11 rulings on summary disposition. And I would leave it
12 to NextEra to present that to you. Again, all parties
13 agreed.

14 MR. HAMRICK: Sure. This is Steven
15 Hamrick again. Our suggestion that we circulate it
16 again was to have motions filed within 120 days prior
17 to the initiation of a hearing. And then kind of
18 copying the framework from 2.1205 which asks the Board
19 to decide within 15 days of the hearing our proposal
20 that the other parties agreed with was that the Board
21 would decide within 60 days of hearing. So motions
22 filed within 120 days and then the Board has 60 days
23 to rule which leaves another 60 days prior to the
24 hearing. That was our suggestion that we floated and
25 received positive feedback from the other parties.

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1 CHAIRMAN RYERSON: Okay.

2 MR. HAMRICK: And I will leave that with
3 the Board for its consideration.

4 CHAIRMAN RYERSON: All right. Thank you.
5 I think we're up to Item 3 which is much shorter or
6 hopefully will be much shorter. Time limits for
7 motions to file new or amended contentions. The usual
8 rule I think is 30 days. It's not in the NRC
9 regulations, but it seems to be informally adopted.
10 And that's what we were tentatively thinking.

11 Is there any other? Any agreement to the
12 contrary on that?

13 MR. HAMRICK: No, this is Steven Hamrick
14 for NextEra. That's the time limit that the parties
15 agreed to in our conference call as well.

16 CHAIRMAN RYERSON: Excellent.

17 MR. HAMRICK: And I don't know if the
18 staff wants to get into its suggestion for dealing
19 with the various regulatory requirements for new or
20 late filed contentions on that issue.

21 MS. SPENCER: Your Honor, this is Mary
22 Spencer for the staff. The staff proposed some
23 language that comes from a number of scheduling
24 orders, Diablo Canyon, Watts Bar Unit 2 and Vermont
25 Yankee scheduling order that just clarifies the

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1 relationship for the parties. Thirty days, yes, but
2 also the (f)(2) and 2.309(c) requirement. So we
3 proposed some language.

4 And then Friends of the Coast/New England
5 Coalition had a modification to that language. So we
6 were going to say "A motion and proposed new
7 contention shall be deemed timely under
8 2.309(f)(2)(III) if it's filed within 30 days of the
9 date when the new and material information on which it
10 is based first becomes available to the moving party
11 through service, publication or other means; if filed
12 thereafter the motion and proposed contention shall be
13 deemed non-timely under 2.309(c); if the movement is
14 uncertain it may file pursuant to both sections,
15 namely 2.309(f)(2) and 2.309(c)."

16 CHAIRMAN RYERSON: Yes, that's out of
17 Vermont Yankee's scheduling order I think.

18 MS. SPENCER: It is. But striking the
19 last after --The last sentence is "If the movement is
20 uncertain and may file to both sections." And the
21 rest of the paragraph was deleted by NEC's, New
22 England Friends of the Coast, suggestion.

23 CHAIRMAN RYERSON: Okay. Now who has
24 signed onto this language? Who is happy with it?

25 MS. SPENCER: I believe there was a

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1 general agreement that this was acceptable to the
2 parties.

3 CHAIRMAN RYERSON: Okay. I think it would
4 probably be helpful if you would submit that as a
5 proposal in writing.

6 MS. SPENCER: Okay.

7 CHAIRMAN RYERSON: We may have sort of a
8 laundry list at the end of things that would be
9 helpful to get in writing before we put together an
10 overall order. But let's make that one of them.

11 MS. SPENCER: Okay. I will do that, Your
12 Honor.

13 CHAIRMAN RYERSON: Okay. Thank you.

14 All right. Item 5 is --

15 JUDGE WARDWELL: Excuse me. Judge
16 Wardwell here. We're still on three, correct, before
17 you move onto five.

18 CHAIRMAN RYERSON: That actually was four.
19 But go on.

20 JUDGE WARDWELL: No. Three was suggested
21 time limits to file new or amended contentions.
22 Right?

23 CHAIRMAN RYERSON: That is correct, Judge
24 Wardwell. But then the participants started talking
25 about four.

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1 JUDGE WARDWELL: Okay.

2 CHAIRMAN RYERSON: Which is cleaning up
3 the -- Cleaning up. Simplifying the rules on new
4 contentions. If you literally read the rules, it
5 appears --

6 JUDGE WARDWELL: I understand. We have to
7 cut to the chase. I understand that. Under four, I
8 would like to also bring up then. Does anyone have
9 any response to or suggestions for the amount of time
10 for answers and the amount of time for replies? And
11 the reason I'm saying this is that I'm going through
12 and it's been my experience that it takes more time to
13 go through some of these than what's generally allowed
14 and we're getting a tremendous number of requests for
15 extensions of time. I want to make sure people have
16 enough time to do what's needed to file answers and
17 replies.

18 MS. SPENCER: Your Honor, this is Mary
19 Spencer for the staff. The parties discussed -- This
20 is Item 4 on your list.

21 JUDGE WARDWELL: Right.

22 MS. SPENCER: And I believe everyone was
23 agreeable to the general language that has been used
24 by a number of boards including the Diablo Canyon
25 license renewal board, the Watts Bar Unit 2 and the

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1 Vermont Yankee board in their November 2006 scheduling
2 order. Although there was some discussion among the
3 parties about the time for answers, for replies to
4 answers. So 25 days for answers to new contentions.

5 And then there was some discussion about
6 allowing ten days for replies to answers. And I
7 believe that the parties were going to think about
8 that issue. But otherwise we were agreeable to the
9 language that's been used by previous boards, the 25
10 days for answers.

11 CHAIRMAN RYERSON: All right. This is
12 Judge Ryerson. Ms. Spencer, you were going to submit
13 a written proposal that I thought represented the
14 consensus of the participants. And does that have
15 seven days or ten days?

16 MS. SPENCER: It will have -- I guess
17 there should be some discussion on that, on the ten
18 days. I believe it was Beyond Nuclear and the New
19 England Coalition that were proposing ten days. And
20 I don't think that there was significant objection.
21 I mean the staff is find with giving ten days. And I
22 don't know that NextEra was opposed. I will submit
23 this in writing for the Board's consideration because
24 it was a consensus.

25 CHAIRMAN RYERSON: Yes. I mean the 25 and

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1 seven would simply mirror what the regulations provide
2 for new contentions. Ten would give a little longer
3 for the reply.

4 MS. SPENCER: That's correct, Your Honor.

5 MR. SHADIS: If I may, Your Honor. This
6 is Ray Shadis. Our reasoning on that stems from the
7 fact that we are obligated individually to consider
8 the answers of two adversarial parties, so staff and
9 NextEra. And it really is quite a burden to get
10 through that in seven days and compose a reply.

11 CHAIRMAN RYERSON: Okay. Judge Ryerson
12 here. So you're happy with ten though, Mr. Shadis.

13 MR. SHADIS: Ten is what we suggested.

14 CHAIRMAN RYERSON: Okay. All right.
15 Well, let's move on then.

16 JUDGE WARDWELL: Thank you.

17 CHAIRMAN RYERSON: Item 5 is suggested
18 time frame for updating the mandatory disclosures and
19 updating the hearing file. Again, I don't think this
20 is really necessarily very controversial but it's a
21 continuing obligation under the regulations. But we
22 can make it a more -- We can make it monthly or
23 something like that so you know exactly when you have
24 to do it.

25 Is a monthly update satisfactory to

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1 everyone? Have you talked about that?

2 MR. HAMRICK: This is Steven Hamrick for
3 NextEra. Yes, we have discussed that and we proposed
4 and the other parties I believe agreed to a monthly
5 update frequency and a suggestion that updates be made
6 on the first Thursday of every month. And that would
7 include documents created up until the 15th of the
8 previous month.

9 And that is language that we have that we
10 can perhaps ask Ms. Spencer to include as proposed
11 language in her submittal. But I believe the parties
12 did reach agreement on that issue.

13 And just generally speaking there are a
14 number of discovery issues that the parties will need
15 to address once we get closer to September or whatever
16 date the Board determines is appropriate. And so we
17 plan to get much more specific on the discovery
18 obligations in a future conference call among the
19 parties and a future submittal to the Board closer to
20 that date.

21 CHAIRMAN RYERSON: Thank you. So, Ms.
22 Spencer, will you undertake to include that language
23 then in what you file?

24 MS. SPENCER: Yes, I will, Your Honor. I
25 will set forth the first Thursday proposal.

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1 CHAIRMAN RYERSON: Okay. Thank you.

2 MS. SPENCER: No further detail on that.
3 Just the 30 day frequency.

4 CHAIRMAN RYERSON: And also making it
5 current through the 15th of the prior month.

6 MS. SPENCER: Yes, that's correct. Also
7 that language.

8 CHAIRMAN RYERSON: Okay. We appreciate
9 that.

10 Let's see. Item 6 again doesn't seem like
11 a terribly controversial one I suspect. It's the
12 suggested time limit for filing the final list of
13 potential witnesses. Was there any agreement on that
14 among the parties?

15 MR. HAMRICK: Yes, this is Steven Hamrick
16 for NextEra. The agreement that my notes reflect from
17 our previous conference call would be that each party
18 is to file its witness list not later than 45 days
19 prior to the initiation of the evidence there at
20 hearing and that there also would be an agreement that
21 no witness may testify at the hearing who was not
22 identified as of that date unless there were extreme
23 circumstances such as a witness who has a health
24 condition or something like that and cannot appear.
25 But other than that, no witness may testify at the

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1 hearing who was not identified by that 45 day date.

2 MR. BROCK: Your Honor, this is Matt Brock
3 from Massachusetts. Just a clarification on that.
4 With respect to rebuttal testimony and I believe you
5 made reference to that earlier in this call I wanted
6 to understand where in this process that rebuttal
7 testimony, if any, that could be filed. And I just
8 did not want to preclude what seemed sort of this
9 broad statement that Mr. Hamrick just referred to
10 about no witness may testify unless you prefiled that
11 there either be an exception or an additional
12 accommodation for rebuttal testimony if that's
13 permissible.

14 CHAIRMAN RYERSON: Yes. I think that will
15 somewhat get into Item 10. The milestones don't
16 really talk about rebuttal testimony I believe. The
17 milestones seem to contemplate that there will be just
18 one set of testimony and then 20 days later there will
19 be a hearing.

20 And I think -- Well, the Board will
21 certainly consider whether that's the best way to
22 proceed or not. And we can talk a little bit about
23 that in 10. But I think you're absolutely right, Mr.
24 Brock. To the extent that rebuttal testimony cannot
25 be always anticipated, there has to be an exception to

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1 any cutoff, whatever it may be.

2 I must say again speaking for myself and
3 not the Board I think the 45 day rule may be mooted if
4 we, in fact, require initial written testimony at
5 least 45 days before the hearing so that we will in
6 fact know who the witnesses are because we'll actually
7 have their testimony. But we'll take that suggestion
8 of 45 days under advisement as we try to fashion a
9 draft which again we'll circulate for the parties'
10 comments before we finalize.

11 Item 8 if we can move onto that -- Well,
12 let's see.

13 JUDGE WARDWELL: You skipped 7.

14 CHAIRMAN RYERSON: Item 7. Yes.
15 Opportunities for settlement of issues including the
16 utility of appointing a settlement judge. Let me
17 first ask if the parties have any thoughts about that
18 or any agreement on that.

19 MR. HAMRICK: This is Steve Hamrick for
20 NextEra. We did discuss that and I think all of the
21 parties indicated some openness to settlement
22 discussions or mediation. But I don't believe felt
23 that the appointment of a settlement judge at this
24 point would be productive at this point.

25 CHAIRMAN RYERSON: Okay. Yes, I must say

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1 that some of the contentions that often appear at
2 these cases might seem amenable to settlement. And
3 I'm not pushing settlement. We're not the settlements
4 judges if you had them.

5 But one does wonder particularly on a NEPA
6 contention that essentially involves a challenge to
7 the adequacy of an analysis I don't think anybody is
8 suggesting that a NEPA contention even if proven
9 requires anyone to go out and build an offshore wind
10 farm system. But if proven it would require greater
11 analysis in the NEPA document.

12 So one wonders whether those sorts of
13 issues might be amenable to a voluntary resolution.
14 But I just make the comment. That's all I'll say on
15 it at this point.

16 Anybody else wish to comment on that item,
17 on Item 7?

18 MR. SHADIS: No, Your Honor. This is Ray
19 Shadis. I do just want to make it as clear as
20 possible that Friends/NEC is open to settlement
21 discussions at any time.

22 CHAIRMAN RYERSON: Okay. Thank you, Mr.
23 Shadis.

24 Item 8, whether any party expects to
25 assert a privilege or protected status for any

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1 information or documents that have to be disclosed,
2 and, if so, whether development of a protection order
3 or nondisclosure agreement is necessary or
4 appropriate.

5 I should distinguish obviously -- I'm not
6 sure the question really does -- between privileged
7 documents which the rule already cover in the sense
8 that if you withhold a document on the basis of
9 privilege the rules provide for the preparation of a
10 privilege log that provides some information about the
11 documents held. Non disclosure agreements really deal
12 with the situation where a document is produced, but
13 the producing party has concerns about limits on its
14 further disclosure beyond particular authorized
15 persons.

16 Any discussion or consensus among the
17 participants, the parties, on this item before we say
18 anything further?

19 MR. HAMRICK: This is Steven Hamrick again
20 from NextERA. We certainly expect that you have some
21 privileged documents or at least a potential as we go
22 through the responsive documents that some will be
23 proprietary and may require a protective order. And
24 I think this is one of those issues that we can set
25 aside perhaps for now and incorporate it into our

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1 global discovery agreement that we would like to reach
2 at some point prior to the disclosure obligations
3 beginning. And agreeing on a text of a protective
4 order could be one of those issues.

5 CHAIRMAN RYERSON: Yes. This is Judge
6 Ryerson again. Yes, I would urge you if you get to
7 the point of kind of what we agreed on October 3 that
8 it would be well to try to initiate discussions on
9 this subject on a protective order well before October
10 3.

11 MR. HAMRICK: Absolutely.

12 CHAIRMAN RYERSON: You don't need to do it
13 tomorrow. And you may not have done it. If the
14 Commission decides the appeals in the next 40 days,
15 you may not have reached it. But if it looks like
16 you're getting into the October time frame for
17 disclosure, I would urge that you try to negotiate a
18 protective order before that happens.

19 Anyone else wish to comment on this
20 subject?

21 MS. SPENCER: Your Honor, this is Mary
22 Spencer for the staff. Just to let everyone know I
23 believe the staff would think that if we need to do
24 this we would favor the non disclosure agreement just
25 recently put in place by the Diablo Canyon board. We

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1 find that as a good model. So I just wanted to put
2 that out here.

3 CHAIRMAN RYERSON: Okay. Thank you.

4 Item 9 whether a site visit would be
5 helpful to the Board in resolution of the admitted
6 contentions. Any agreement on that?

7 MR. HAMRICK: This is Steven Hamrick again
8 for NextEra. I think there is a differing of opinion
9 among the parties as to whether a site visit would be
10 helpful or necessary. NextEra takes the position that
11 it probably would not be necessarily for resolution of
12 the contentions.

13 However, given that position, if the Board
14 determines that a site visit would be helpful, then we
15 will certainly make that happen. Obviously, there are
16 some scheduling issues at a nuclear power plant such
17 as outages that we would like to work around. But
18 assuming there is sufficient notice we would be happy
19 to make that happen if the Board feels that that's
20 necessary.

21 CHAIRMAN RYERSON: Okay. Thank you.

22 Any other parties have a feeling about
23 that one way or the other?

24 MR. SHADIS: This is Ray Shadis again for
25 Friends/NEC. We believe that a site visit is

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1 absolutely necessary to gain a sense of scale, really
2 to put a picture behind the words when it comes to the
3 electrical cable locations, the transformers and also
4 the site and local area features.

5 And I think this is especially important
6 now given the events in Japan. This is a site that's
7 just a few feet above sea level. So I would urge that
8 the Board schedule a site visit.

9 CHAIRMAN RYERSON: All right. Thank you.

10 Anyone else wish to comment?

11 MR. BROCK: Yes, Your Honor, from
12 Massachusetts. I think we would concur with Mr.
13 Shadis. We think that would be helpful to the Board
14 at least in providing a general framework for
15 considering the issues, again understanding that it
16 does take some time and effort. But hopefully we
17 think that would be worthy and ask the Board to
18 consider it.

19 CHAIRMAN RYERSON: Okay. Thank you, Mr.
20 Brock.

21 All right. Are we ready to move to Item
22 10? Ah. Item 10 is whether the parties should be
23 required to file their respective initial written
24 statements of position and written testimony with
25 supporting affidavits simultaneously or sequentially

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1 and, if sequentially, in what order.

2 Again, the milestones appear to
3 contemplate one round of testimony simultaneously 20
4 days before the hearing. And again speaking for
5 myself and not necessarily for the Board certainly the
6 opportunity for rebuttal testimony seems called for.
7 And my own sense would be perhaps simultaneous filing
8 from all parties on all contentions and then
9 simultaneous rebuttals some time later.

10 But was the -- Were the parties able to
11 reach any agreement on that issue or?

12 JUDGE WARDWELL: And can I -- This is
13 Judge Wardwell. Can I interject also that any
14 comments on the filing date would be appreciated, you
15 know, relative to either the start of the hearing
16 which personally I think is backwards? It should be
17 more in regards to what's been filed, either the last
18 docket to the staff's EIS or the SER or new or amended
19 contentions as a triggering date for when. What their
20 feelings are as to when should these filings be done.

21 MR. HAMRICK: This is Steven Hamrick for
22 NextEra. We were not able to reach an agreement last
23 week on this issue. The staff and NextEra I believe
24 both took the position that because an intervener has
25 the burden of going forward before the burden shifts

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1 to the applicant that it makes sense for staggered
2 filings where the interveners would file first such
3 that we can kind of narrow the issues and applicants
4 and potentially the staff aren't filing testimony at
5 the outset that may not prove to be necessary or may
6 be focusing on issues that the interveners don't focus
7 on and would become unnecessary. So staggered filings
8 may help to trim some of the fat, so to speak, on
9 those issues.

10 JUDGE WARDWELL: Okay. Where would the --
11 This is Judge Wardwell. Where would you see the
12 interested governmental bodies fitting in then this
13 process?

14 MR. HAMRICK: It depends on what position
15 those interested governmental bodies would take on the
16 contention. If they --

17 JUDGE WARDWELL: Wouldn't they have to see
18 both in order to make a decision?

19 MR. HAMRICK: Well, that's an interesting
20 question. I think by that time in the proceeding they
21 likely will have a position staked out. But that's
22 the first time I thought about that particular issue.

23 MR. BROCK: Your Honors, Mr. Brock for
24 Massachusetts. I appreciate your question. I think
25 again that at this time Massachusetts does not intend

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1 to file initial direct testimony but would like the
2 opportunity with a reasonable time of that filing or
3 those filings to file rebuttal. And we're open to
4 trying to work it with the other parties to reach some
5 agreement on a time frame or we're open to discuss
6 that. But we do think we would like that opportunity
7 to have the opportunity for rebuttal testimony after
8 the direct filings.

9 MS. SPENCER: Your Honor, this is Mary
10 Spencer for the staff. We were one of the proponents
11 of staggered filings just because of our experience in
12 other proceedings where the initial testimony of the
13 staff and applicant and the interveners was kind of
14 like ships passing in the night. It wasn't
15 necessarily directly on point and that it would be
16 better to stagger the filings.

17 Now I believe and unfortunately I don't
18 have it before me that in the Watts Bar proceeding the
19 board has operating license proceeding. I believe
20 that the board has established a staggered procedure
21 in which the interveners go first with initial
22 testimony. Then the staff and applicant file. And
23 then I believe the interveners and perhaps in this
24 case the interested state would have an opportunity to
25 provide some sort of rebuttal to that.

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1 CHAIRMAN RYERSON: So there would be
2 essentially three levels of filings, three stages.

3 MS. SPENCER: Yes, in a way.

4 MR. HAMRICK: And this is Steven Hamrick
5 for NextEra. I believe that same framework was the
6 approach that was taken in the Vermont Yankee license
7 renewal proceeding where the interveners went first
8 followed by the applicant and staff followed by an
9 opportunity for the interveners to rebut the applicant
10 or staff positions.

11 CHAIRMAN RYERSON: Anyone else want to
12 comment on that?

13 MR. BROCK: Your Honor, this is Matt Brock
14 from Massachusetts. Since we're not filing initial
15 testimony, I'm not going to comment on that part. I'd
16 leave it to the parties to address that. But as to
17 the rebuttal portion of the framework that was just
18 outlined which as I understood it would come after the
19 initial filings by all the parties that would be
20 acceptable to Massachusetts.

21 CHAIRMAN RYERSON: Okay. Thank you, Mr.
22 Brock.

23 MR. SHADIS: Your Honor, this is Ray
24 Shadis again for Friends/NEC. Actually as it happened
25 NextEra initially proposed the filings to be done

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1 simultaneously.

2 And NEC did agree with that position. And
3 our reasoning was that if there was simply going to be
4 one round of filings it would be patently unfair to
5 NEC to have to submit its or Friends/NEC to have to
6 submit its filings in advance for the critique of the
7 opposing party.

8 However, now that you've made the
9 proposition that there would simply be simultaneous
10 filings and simultaneous answers or rebuttal filings
11 that would from our point of view put it on a much
12 more even footing. You know, again this is not a
13 matter of just one adversarial party versus another.
14 We are basing on our particular issues we're facing
15 two adversarial parties. So it would do a great deal
16 to help level the playing field if we had filings and
17 answers simultaneously.

18 CHAIRMAN RYERSON: Okay.

19 JUDGE WARDWELL: Could I ask a question?
20 This is Judge Wardwell. Mr. Shadis, how is that any
21 more level than if the interveners file first, the
22 applicant and staff then respond, and then the
23 interveners have rebuttal? Doesn't that still achieve
24 the same goal?

25 MR. SHADIS: It would achieve the same

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1 goal provided there were not page limits that were too
2 restrictive on the interveners' reply or rebuttal.
3 And it would in fact tip the playing field slightly in
4 our direction if the staff and NextEra were not
5 permitted to file rebuttal.

6 JUDGE WARDWELL: Has anyone -- This is
7 Judge Wardwell again. Any other comments from the
8 other parties in regards to whether or not they've
9 seen page limits on the testimony or what page limits
10 they have seen or the rebuttal of that testimony?

11 MR. SMITH: Your Honor, this is Max Smith
12 on behalf of the NRC staff. I have not ever seen page
13 limits in regard to initial testimony not only because
14 it's so dependent I think on the issues that are
15 involved and in this case there are several issues at
16 stake still. So I'm not sure that page limit would be
17 the best way to develop these issues.

18 JUDGE WARDWELL: Have you seen any page
19 limits on rebuttals?

20 MR. SMITH: No, Your Honor.

21 JUDGE WARDWELL: Thank you.

22 CHAIRMAN RYERSON: Staff?

23 MR. HAMRICK: This is Steve Hamrick for
24 NextEra. And I don't recall any cases with page
25 limits off the top of my head on testimony.

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1 CHAIRMAN RYERSON: Now this is Judge
2 Ryerson. I'm not sure where that concept of page
3 limits on testimony comes from because I'm not
4 familiar with it and it's usually something that
5 applies to briefs, if at all.

6 But in any event, I think this is probably
7 an issue that the Board will give some thought to. We
8 appreciate your comments. And again we will -- it's
9 our intent to circulate our proposed order in draft
10 form for comments before we finalize it. So you'll
11 have another crack at whatever we come up with to let
12 us know what you think of it.

13 I think we're ready for Issue 11 which is
14 another short one I suspect. Issue 11 is suggested --

15 JUDGE WARDWELL: Can we go back to 10 for
16 just a second? I'm sorry. This is Judge Wardwell.
17 Maybe I missed it. But are there any suggestions for
18 when the date for filing these should be predicated
19 on?

20 MR. SMITH: Your Honor, this is Max Smith
21 on behalf of the NRC staff again. The parties did
22 discuss this issue in our Friday conference call and
23 thought that the appropriate thing would be to tie it
24 to the initiation of the evidentiary hearing. We
25 talked about 30 days prior or 45 days prior. But the

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1 more we talked about it the more we realized a lot has
2 to happen between initial statement and position and
3 testimony, rebuttal, motions for cross examination,
4 motions in limine, a final evidentiary conference and
5 thought maybe a 60 day prior to the evidentiary -- the
6 initiation of the hearing would be the most
7 appropriate deadline.

8 CHAIRMAN RYERSON: Thank you. Obviously
9 whether we have a two-step or a three-step submission
10 would impact that somewhat.

11 MR. SMITH: I agree, Your Honor.

12 CHAIRMAN RYERSON: I think probably
13 everybody agrees that the milestone 20 days is a
14 difficult concept. It is much better to do it
15 substantially earlier. The Board will discuss that
16 and we appreciate your comments. And we will come up
17 with a proposal that will be circulated.

18 Anyone else have any comments on Issue 10?

19 MR. SHADIS: Only for what it's worth we
20 agree with NextEra's comments.

21 CHAIRMAN RYERSON: I'm sorry. Who is
22 speaking?

23 MR. SHADIS: I'm sorry. This is Raymond
24 Shadis for New England Coalition/Friends of the Coast.

25 CHAIRMAN RYERSON: Shadis. Thank you.

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1 MR. SHADIS: For what it's worth we agree
2 with NextEra's comments on that.

3 CHAIRMAN RYERSON: Thank you.

4 All right. Item 11 suggested time limits
5 for the filing of motions for cross examination. Any
6 agreement on that among the parties?

7 Mr. Hamrick, you often --

8 MR. HAMRICK: This is Steven Hamrick for
9 NextEra. The agreement that I believe we reached on
10 our phone call last week was a suggestion of 20 to 30
11 days after the rebuttal testimony. And that was based
12 on some of the same scheduling orders from other
13 procedures that Ms. Spencer has referenced earlier
14 today.

15 And I suppose it's obvious that the 20 to
16 30 days after the rebuttal testimony that sort of
17 assumes that the rebuttal testimony is scheduled at
18 some point with that much time remaining before the
19 hearing. So that obviously if there is 20 to 30 days
20 then that would be the time limit or it may need to be
21 shortened I suppose if the rebuttal testimony is filed
22 closer than that to the hearing.

23 CHAIRMAN RYERSON: Yes. And I suppose we
24 could have different days possibly for cross
25 examination questions on direct testimony which would

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1 by definition be filed much earlier. But we'll give
2 some thought to that. We appreciate your suggestion
3 of 20 to 30 days.

4 All right. Well, I think that covers the
5 11 issues that we put forward. Again, I've said this
6 before. The Board's intent is to try to take what
7 we've talked about and come up with a proposed order
8 which we will circulate in confidence.

9 Ms. Spencer, you have kindly volunteered
10 to send us some proposed language on I think it's was
11 Items 4 and 5. Am I correct?

12 MR. SMITH: Your Honor, this is Max Smith
13 on behalf of the NRC. Ms. Spencer stepped out of the
14 room. I'll step in for her. I believe we agreed to
15 submit language on questions 3, 4 and 5 addressing
16 time limits or filing motions, to file new or amended
17 contentions, specifications of completing rules for
18 those motions and then a language on updating the
19 mandatory disclosures.

20 CHAIRMAN RYERSON: Okay. That's fine.
21 The third item was simply agreeing on 30 days, but it
22 would work into the same language. So that's fine.
23 Thank you.

24 Okay. Let's see. Anything else from the
25 parties that we should be talking about today while

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1 we're here together?

2 MR. SMITH: No, Your Honor. The NRC staff
3 has nothing to add.

4 CHAIRMAN RYERSON: All right.
5 Speak now or forever hold your peace?

6 MR. SHADIS: Friends/NEC has nothing to
7 add at this point.

8 MR. HAMRICK: And nothing from NextEra.

9 MR. GUNTER: And nothing from Beyond
10 Nuclear.

11 CHAIRMAN RYERSON: Thank you.

12 Judge Wardwell, do you have anything else?

13 JUDGE WARDWELL: No.

14 CHAIRMAN RYERSON: Judge Kennedy?

15 JUDGE KENNEDY: I have nothing to add.
16 Thank you.

17 CHAIRMAN RYERSON: All right. Well, thank
18 you. We stand adjourned. Off the record.

19 (Whereupon, at 11:47 a.m., the above-
20 entitled matter was concluded.)

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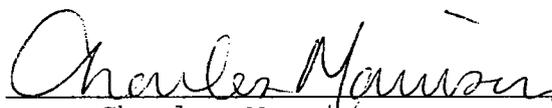
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Docket Number: 50-443-LR

ASLBP Number: 10-906-02-LR-BD01

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