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NUCLEAR REGULATORY COMMISSION

Title: First Energy Nuclear Operating Co. **DOCKETED**
Davis Besse Nuclear Power Station May 25, 2011 (8:30 a.m.)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Docket Number: 50-346-LR

ASLBP Number: 11-907-01-LR-BD01

Location: (telephone conference)

Date: Thursday, May 19, 2011

Work Order No.: NRC-899

Pages 240-274

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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.
FIRSTENERGY NUCLEAR : 50-346-LR
OPERATING COMPANY : ASLB No.
(Davis-Besse Nuclear : 11-907-01-LR-BD01
Power Station, Unit 1) :

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Thursday, May 19, 2011

The above-entitled matter came on for pre-hearing conference, pursuant to notice, at 1:00 p.m Eastern Daylight Time, via teleconference.

BEFORE:
WILLIAM J. FROEHLICH, Chairman
DR. WILLIAM E. KASTENBERG, Administrative Judge
NICHOLAS G. TRIKOUROS, Administrative Judge

1 APPEARANCES:

2 On Behalf of NRC:

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9 On Behalf of Dominion FirstEnergy Nuclear

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1 On Behalf of the Intervenors, Citizens
2 Environment Alliance of Southwestern Ontario, Don't
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10 On Behalf of the Intervenor, Beyond Nuclear:

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17
18
19 ALSO PRESENT:

20 HILLARY CAIN, US NRC
21 RICHARD HARPER, US NRC

22
23
24
25

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

(1:04 p.m.)

1
2
3 CHAIRMAN FROEHLICH: Good afternoon,
4 parties. This is Judge Froehlich. Today we are
5 conducting the telephone pre-hearing conference in
6 Docket 50-346-LR, the FirstEnergy Nuclear Operating
7 Company case involving the Davis-Besse Power Station
8 Unit 1.

9 It is about five minutes after one here in
10 Rockville, Thursday, May 19th.

11 This is Judge Froehlich, and with me in
12 the room here in Rockville are Judge Trikouros and our
13 Law Clerk Hillary Cain. And by telephone we have with
14 us Judge Kastenberg.

15 Judge Kastenberg, are you with us?

16 JUDGE KASTENBERG: Yes, I am.

17 CHAIRMAN FROEHLICH: Thank you. For the
18 record, at this point, I wonder if the parties could
19 identify themselves and any of their colleagues who
20 are with them on the line today. Could I hear first
21 from the Applicant?

22 MR. POLONSKY: This is Alex Polonsky with
23 Morgan Lewis. On the line is David Jenkins from
24 FirstEnergy and Kathryn Sutton from Morgan Lewis.

25 CHAIRMAN FROEHLICH: Thank you. And for

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1 the Intervenors?

2 MR. LODGE: This is Terry Lodge for the
3 Intervenors, Your Honor. And with me in my office
4 here in Toledo is Kevin Kamps.

5 CHAIRMAN FROEHLICH: Thank you. And for
6 the NRC staff?

7 MR. SUBIN: For the staff it's Lloyd
8 Subin, and I have Richard Harper here with me.

9 CHAIRMAN FROEHLICH: Thank you. Then, let
10 us begin. This call is being transcribed by the Court
11 Reporter. Therefore, I would ask that when you speak
12 please identify yourself to assist in the preparation
13 of the transcript.

14 Members of the public and consultants to
15 the parties may listen to our proceedings, but only
16 counsel for the parties to the case, and, in the case
17 of Beyond Nuclear, Mr. Kamps, may speak.

18 The purpose of this call is to discuss the
19 matters related to the management and scheduling of
20 this case. The Commission's regulations, specifically
21 10 CFR Section 2.332, require the Board to develop a
22 scheduling order to govern this proceeding. And in
23 that regard, we issued a notice and order on May 10th,
24 which identified a number of specific items that we
25 should discuss today.

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1 We are certainly not limited to just those
2 items, but what I would suggest at this point is that
3 we go through the items listed in our May 10th order
4 and discuss them one after another to get our -- pull
5 together our schedules for this case.

6 In that order, the Board had suggested
7 that it would be helpful if the parties and the NRC
8 staff spoke among themselves prior to this conference
9 for the purpose of reaching agreement on some, or all
10 hopefully, of the issues listed. I would ask the
11 parties at this time, have you had such a meeting or
12 a discussion? And has a spokesperson been designated?

13 MR. POLONSKY: This is Mr. Polonsky. Yes,
14 the parties have all been able to speak on the phone.
15 We did so this -- earlier this week, on Tuesday
16 afternoon. And we did circulate amongst ourselves
17 what we thought was a consensus on input to the
18 scheduling order. I am happy to speak to that on
19 behalf of the parties and identify where there is any
20 disagreement.

21 CHAIRMAN FROEHLICH: Thank you, Mr.
22 Polonsky. I want to thank you, and I commend the
23 parties for discussing these matters beforehand. I
24 think it will help expedite the case and make it
25 easier on the Board to come up with an order

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1 scheduling the upcoming events. And I am glad that
2 the parties have had an opportunity to discuss that
3 and, from the sound of it, have reached some agreement
4 on the date.

5 Why don't we work our way through the
6 enumerated list? And we'll take the items as they
7 came. And the first item on that is the FirstEnergy
8 unopposed motion to defer the initial disclosures,
9 which you filed on behalf of all the parties on
10 May 6th.

11 Could you clarify a little bit for me what
12 the intent was as to the duration of this deferral?
13 Is it open-ended? How did you plan to -- you know, to
14 pick it up to meet the dates spelled out in the
15 regulations and in the milestones, given that we have
16 really no idea when the Commission might act?

17 MR. POLONSKY: This is Mr. Polonsky. Yes,
18 Your Honor. The unopposed motion itself articulated
19 an open-ended update. It simply said "until after the
20 planned appeal is resolved." We are mindful that in
21 other proceedings boards have been uncomfortable with
22 that open-ended nature, so the parties have proposed
23 a -- the following language, that the initial
24 disclosures would be deferred until the earlier of the
25 Commission issuing a ruling or six months after the

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1 Board issues its scheduling order.

2 CHAIRMAN FROEHLICH: Or six -- okay. So
3 the -- all right. And all parties concur in that
4 recommendation? Is that right, then, Mr. Lodge?

5 MR. LODGE: Yes, it is.

6 CHAIRMAN FROEHLICH: Okay. And Mr. Subin?

7 MR. SUBIN: Yes, that is correct.

8 CHAIRMAN FROEHLICH: Mr. Kamps?

9 MR. KAMPS: Yes.

10 CHAIRMAN FROEHLICH: Okay. All right.

11 Other than the language that was in the unopposed
12 motion, this was just -- this is predicated solely on
13 the belief that it may not be necessary for any
14 disclosures, because the Commission may reverse the
15 Board's decision and throw out the contentions,
16 therefore, terminating or eliminating the hearing. Is
17 that the theory behind it?

18 MR. POLONSKY: Yes, Your Honor. Sorry,
19 this is Mr. Polonsky.

20 CHAIRMAN FROEHLICH: Thank you. All
21 right. I think sometimes boards are a little
22 uncomfortable with deferring initial disclosures in a
23 Subpart L proceeding, because this is really the only
24 form of discovery available to the parties.

25 I just want to make sure that our

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1 Intervenor here understand that material that may be
2 helpful or useful to them, and, likewise, material
3 that may be useful to the Applicant in the possession
4 of the Intervenor is going to be delayed, forcing the
5 parties to do more work -- and probably a little bit
6 more furiously -- as we get closer to the hearing as
7 opposed to getting a head start on what, you know --
8 what will be the discovery available to the parties in
9 this case.

10 Does everyone understand that?

11 MR. LODGE: This is Terry Lodge. Yes, we
12 do, Your Honor.

13 CHAIRMAN FROEHLICH: Mr. Kamps?

14 MR. KAMPS: Yes, I do.

15 CHAIRMAN FROEHLICH: Okay. All right.
16 Thank you for your input. I'm glad the parties did
17 have this discussion prior to our conference.

18 The second item on the list of -- May 6th
19 order was a definition of what -- was a definition of
20 electronically stored information and how to handle
21 that. Have the parties had discussions regarding
22 that?

23 MR. POLONSKY: This is Mr. Polonsky.

24 CHAIRMAN FROEHLICH: Thank you.

25 MR. POLONSKY: Yes. Yes, we have. We

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1 have discussed entering into a separate agreement,
2 which identifies the type of electronic documents that
3 we agree will be searched. We did also circulate a
4 draft agreement regarding the mandatory disclosure
5 obligations, and the parties had some very preliminary
6 discussions about that. But our intent is, frankly,
7 for many of the questions that the Board will pose
8 today, to memorialize the parties' consensus on those
9 and present them to the Board in a separate agreement.

10 CHAIRMAN FROEHLICH: Oh, that would be
11 very helpful. Thank you. I guess that will take in
12 not only point two but point three of the May 6th
13 order. Am I correct, Mr. Polonsky?

14 MR. POLONSKY: Yes. Three, four, and
15 five.

16 CHAIRMAN FROEHLICH: Okay. Can I have the
17 benefit of the thinking on five, if indeed you have
18 any preliminary thoughts on the timeframes for
19 updating mandatory disclosures?

20 MR. POLONSKY: Yes. All of the parties
21 were very uncomfortable with the burden placed on them
22 in the current regulations that there will be 14 days.
23 We discussed disclosures no later than every 60 days
24 rather than the 14 days that the rule requires. That
25 being said, a party may voluntarily update more

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1 frequently.

2 CHAIRMAN FROEHLICH: So the proposal will
3 state from the parties there's a 60-day update of the
4 mandatory disclosures once mandatory disclosures
5 begin?

6 MR. POLONSKY: Correct.

7 CHAIRMAN FROEHLICH: As opposed to 14 or
8 30 or some other number. Thank you.

9 As to number six, has there been
10 discussions? And can you speak for the parties as to
11 a motion for leave to file new or amended contentions?

12 MR. POLONSKY: I cannot speak to the
13 consensus for the time limits, because there is not a
14 current consensus. The Applicant is proposing that
15 new or amended contentions be filed within 30 days of
16 the availability of new information. And I will let
17 Petitioners speak for themselves, but I believe they
18 have proposed 90 days.

19 CHAIRMAN FROEHLICH: Okay. At this point,
20 why don't the Intervenors give me their proposals as
21 to the timeframe for new or amended contentions and
22 their filing?

23 MR. KAMPS: Okay. This is Kevin Kamps
24 with Beyond Nuclear. Our proposal is for a 90-day
25 deadline for new contentions based upon new

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1 information, and our reasons for asking for that were,
2 first, workloads we are currently under. We are
3 engaged in multiple NRC proceedings, ASLB proceedings,
4 including this one, Fermi 3, Seabrook, to name but a
5 few.

6 Another reason is that for our severe
7 accident mitigation alternatives contentions that
8 Fukushima seems to be a case in point. Information to
9 be gleaned from that nuclear catastrophe seems to
10 change by the hour, and so with a 30-day deadline we
11 would very likely be filing partial contentions that
12 would have to be supplemented. And we think that with
13 a 90-day time window we could do a better job of
14 comprehensive new contentions.

15 And the same rationale really applies to
16 renewable energy alternatives, those contentions,
17 because, again, the late-breaking news on the
18 renewables front is ever-changing, almost by the day,
19 certainly by the week, and we would -- we would also
20 like to have a 90-day limit, so that we can make more
21 comprehensive contentions come together, instead of
22 disjointed ones in that regard.

23 CHAIRMAN FROEHLICH: Mr. Lodge, anything
24 to add?

25 MR. LODGE: No, sir. That's an effective

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1 statement of our -- our underlying reasoning, too.

2 CHAIRMAN FROEHLICH: Mr. Subin, on behalf
3 of the NRC staff, what is your take on this issue?

4 MR. SUBIN: Our take is 30 days is
5 adequate. We agree with the Applicant on that.

6 CHAIRMAN FROEHLICH: Okay. All right. Is
7 there any divergence on the follow-up filings to new
8 material becoming available, the 25 days I think --
9 well, the amount of time to answer and for the reply?
10 Was there any discussion among the parties or any
11 agreement perhaps?

12 MR. POLONSKY: This is Mr. Polonsky.

13 CHAIRMAN FROEHLICH: Yes, sir.

14 MR. POLONSKY: Yes, we have reached
15 consensus on that aspect. Regardless of whether a
16 filing is titled as a motion or a petition, if it
17 seeks to introduce a new or amended contention, the
18 parties agree that the Applicant and the staff would
19 have 25 calendar days to respond, if it were filed
20 under 2.309(h). And the Petitioners would have seven
21 days to file a reply and would not need to file a
22 motion seeking leave to file such a reply.

23 CHAIRMAN FROEHLICH: Okay. And this is --
24 what you've just articulated is the consensus proposal
25 among all the parties, is that correct?

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1 MR. POLONSKY: Yes, that's my
2 understanding.

3 MR. LODGE: Yes, Your Honor. This is
4 Terry Lodge.

5 CHAIRMAN FROEHLICH: Mr. Kamps?

6 MR. KAMPS: Yes.

7 CHAIRMAN FROEHLICH: Thank you. All
8 right. Then, we can move quickly to point seven.

9 MR. POLONSKY: Well, Judge Froehlich, if
10 I could --

11 CHAIRMAN FROEHLICH: Sure.

12 MR. POLONSKY: -- perhaps give some
13 rebuttal on the Petitioners' point that 90 days is
14 adequate or appropriate. We think that 90 days is
15 extreme and not warranted. From a legal perspective,
16 we are not aware of a board entering 90 days as the
17 default.

18 We are not aware of the Commission finding
19 that 90 days is -- has been timely, and there are a
20 number of policy reasons why we think that that's not
21 an adequate amount of time. They said initially that,
22 you know, they are involved in many proceedings.

23 I think the Commission has been very clear
24 in its 1981 Statement of Policy on the conduct of
25 licensing proceedings that a party may have personal

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1 or other obligations, or possess fewer resources than
2 others to devote to a proceeding. But that doesn't
3 relieve that party of its hearing obligations.

4 And there are, you know, other reasons,
5 frankly, for fairness for the applicant, but there is
6 no reason we should be waiting 90 days to receive a
7 contention that could be timely brought months before.
8 And the kind of issues that Petitioners seem to
9 anticipate bringing in this proceeding seem to be, at
10 least with respect to Fukushima events, much more
11 generic. And the generic concerns are clearly not to
12 be brought in a specific licensing proceeding, but the
13 Commission has directed that those be brought through
14 Petitions for Rulemaking or 2.206 petitions or other
15 generic processes.

16 So we note that Beyond Nuclear has already
17 availed itself of the 2.206 petition process by filing
18 such a Fukushima-specific 2.206 petition.

19 In addition, other petitioners in other
20 proceedings seem to be fully capable of filing
21 contentions in a timely manner regarding Fukushima
22 with site-specific support. And so, therefore, we
23 think 90 days is not appropriate.

24 CHAIRMAN FROEHLICH: Okay. Thank you, Mr.
25 Polonsky.

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1 MR. KAMPS: Judge Froehlich, could I make
2 a comment on that?

3 CHAIRMAN FROEHLICH: Yes. Please identify
4 yourself.

5 MR. KAMPS: This is Kevin Kamps with
6 Beyond Nuclear.

7 CHAIRMAN FROEHLICH: Thank you.

8 MR. KAMPS: Part of our reasoning for
9 asking for the 90 days is that NRC itself, as an
10 agency, set up a 30-, 60-, and 90-day review of the
11 Fukushima situation, and so that's where we first
12 started considering a 90-day time window for ourselves
13 to review the unfolding events.

14 And I will just reemphasize that
15 information is now coming out about the earliest hours
16 and days certainly of the nuclear catastrophe, and
17 it's nine weeks later. So there really seems to be a
18 nature of uncharted territory with this Fukushima
19 situation, and that's -- it gets to the heart of our
20 SAMA contentions.

21 CHAIRMAN FROEHLICH: Okay. Thank you.
22 Anyone else want to be heard on Item 6?

23 MR. LODGE: This is Terry Lodge. I would
24 point out that other intervenors may not have had the
25 benefit post-Fukushima of having an opportunity to

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1 make a presentation to their licensing boards about
2 what would be an appropriate timeframe.

3 Thank you. That's all I have.

4 CHAIRMAN FROEHLICH: Okay. Thank you.
5 Has there been discussion of point seven? I'll turn
6 to you, Mr. Polonsky.

7 MR. POLONSKY: Yes, I'm sorry. I thought
8 we had already addressed point seven with the --

9 CHAIRMAN FROEHLICH: And I think --

10 MR. POLONSKY: -- 25- and seven-day time
11 periods.

12 CHAIRMAN FROEHLICH: Twenty-five and
13 seven, okay. And how about the -- and that would
14 cover both motions and answers and answers and replies
15 no matter how it was styled.

16 MR. POLONSKY: If it is intending to
17 submit a new or amended contention, yes.

18 CHAIRMAN FROEHLICH: Okay. Anyone else
19 care to be heard on Item 7?

20 (No response.)

21 Hearing no one, we can move to the
22 possibility of settlement of the two contentions in
23 this case. I don't know if that is a realistic
24 possibility or if the parties have considered
25 settlement discussions or even asking the Board to

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1 make a settlement judge available to them, as
2 specified in 2.338. Has there been any discussion of
3 settlement?

4 MR. POLONSKY: This is Mr. Polonsky again.
5 Yes. The consensus of all the parties is that it
6 doesn't appear that settlement is likely in the near
7 future, and the parties do not recommend that the
8 Board appoint a settlement judge at this time.

9 CHAIRMAN FROEHLICH: Thank you. Please be
10 advised that you can bring such a request at any time
11 during the pendency of this proceeding.

12 All right. Gets us right down to Point 9.
13 That would be the time limits for filing potential
14 witnesses for contentions. And I guess this should be
15 triggered or set based on the staff EIS and SER
16 publications. Has there been discussion as to point
17 nine?

18 MR. POLONSKY: This is Mr. Polonsky again.
19 Yes, there was discussion, and we did not tie it to
20 the SER and the final SEIS, but, rather, to when
21 direct testimony would be due. And we recommended and
22 have reached consensus that a final witness list would
23 be submitted to the Board 90 calendar days before
24 direct testimony is due.

25 CHAIRMAN FROEHLICH: Okay. Okay.

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1 MR. POLONSKY: Is there --

2 CHAIRMAN FROEHLICH: I had not thought of
3 it -- doing it that way, but that would work as well.
4 And you were going to say, Mr. Polonsky?

5 MR. POLONSKY: Yes. There was discussion,
6 and we did not reach consensus, on the issue of
7 identifying potential rebuttal witnesses -- those
8 witnesses that could not have been identified until
9 reviewed -- until a party had reviewed the testimony
10 that they were opposing.

11 CHAIRMAN FROEHLICH: I see. I see. Let
12 me ask the staff at this point if the dates from where
13 I was -- if the dates of May 2012 and, what is it,
14 July 2012 are the current proposed dates for the SEIS
15 and SER respectively?

16 MR. SUBIN: That's correct. The SEIS
17 would be in May and the other would be in July.

18 CHAIRMAN FROEHLICH: Okay. Thank you.

19 MR. SUBIN: All right.

20 CHAIRMAN FROEHLICH: Let me take us out of
21 order maybe at this point and look at point 13. What
22 discussions did you have, or what consensus were you
23 able to reach on point 13, Mr. Polonsky?

24 MR. POLONSKY: We were able to reach
25 consensus. The parties wish to file testimony

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1 sequentially. That was unanimous.

2 CHAIRMAN FROEHLICH: Okay.

3 MR. POLONSKY: With the Petitioners filing
4 their direct testimony first.

5 CHAIRMAN FROEHLICH: Okay.

6 MR. POLONSKY: Followed 60 calendar days
7 later by FirstEnergy and the staff, rebuttal
8 testimony, and then 15 calendar days later Petitioners
9 filing surrebuttal testimony.

10 CHAIRMAN FROEHLICH: Okay. And the --

11 MR. POLONSKY: Yes, Your Honor.
12 Intervenors file first and last.

13 CHAIRMAN FROEHLICH: Okay. And that first
14 submission, the Petitioners' first submission, that
15 would be at what point in time? How do we calculate
16 or place that date in there to know when they start,
17 when that first submittal comes in?

18 MR. POLONSKY: Well, we did not discuss
19 that, Your Honor, but clearly we can't do that until
20 after -- knowing that these are NEPA contentions, we
21 can't have the hearing until after the SEIS is issued.
22 And we assume that Intervenors would want some period
23 of time to review the SEIS and potentially file late
24 contentions on that document.

25 CHAIRMAN FROEHLICH: I see.

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1 MR. POLONSKY: But we did not come up with
2 a specific date.

3 CHAIRMAN FROEHLICH: And although it was
4 an enumerated item in the list, I wonder if there was
5 any discussion or if the parties had any views on
6 whether this is likely to be a bifurcated hearing, or
7 we are likely to take environmental as well as safety
8 contentions in at the same time? A single hearing or
9 one that is in two parts. Were there any discussions
10 along those lines?

11 MR. POLONSKY: No, Your Honor, there were
12 not. But we don't view any of the contentions as
13 safety contentions. We view them all as environmental
14 contentions. They are all attacking or challenging
15 the environmental report.

16 CHAIRMAN FROEHLICH: Okay. Okay. Thank
17 you.

18 I guess we can go back. Did anyone else
19 care to be heard on any of the matters we just
20 discussed?

21 (No response.)

22 Hearing none, please --

23 MR. KAMPS: I will just say briefly --
24 this is Kevin Kamps with Beyond Nuclear -- that
25 although the severe accident mitigation alternatives

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1 analyses contentions are a challenge to the
2 FirstEnergy environmental report, they certainly have
3 bearing on safety, because any SAMA that is determined
4 to be cost beneficial could very well spell the
5 difference between having no accident take place or
6 having a catastrophic accident take place. That's the
7 whole purpose of the exercise, so it certainly has
8 bearing on safety issues.

9 CHAIRMAN FROEHLICH: Okay. Thank you.
10 For point 10, we did mention that -- a site visit. Do
11 any of the parties feel that would be helpful, useful,
12 in this case?

13 MR. POLONSKY: This is Mr. Polonsky. We
14 did not think the Board needed to have a site visit,
15 but clearly that is up to the Board.

16 CHAIRMAN FROEHLICH: Okay. Does any of
17 the Intervenors or the staff have a view on whether a
18 site visit would be helpful?

19 MR. SUBIN: This is Lloyd Subin for the
20 staff. We don't believe at this point in time it
21 would be helpful.

22 CHAIRMAN FROEHLICH: Thanks. And for the
23 Intervenors?

24 MR. KAMPS: This is Kevin Kamps for Beyond
25 Nuclear again. We actually -- I believe that the site

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1 visit may be beneficial to the three Judges,
2 especially considering issues like the sea-breeze
3 effects, but that also bears on wind power to an
4 extent, and then you can also get a feeling for the
5 surrounding topography, the surrounding demography.

6 CHAIRMAN FROEHLICH: Okay. Thank you.
7 We'll put any consideration of a site visit aside at
8 this point in time, and we can raise this later if
9 there is a need or a desire among the parties for a
10 site visit to be conducted.

11 As to summary disposition motions, was
12 there discussion or perhaps consensus among the
13 parties?

14 MR. POLONSKY: Yes, Your Honor -- this is
15 Mr. Polonsky -- there was. And I believe there was
16 consensus on summary disposition motions, that the
17 parties believe they are useful, that they may
18 expedite the proceeding, and that there is no need to
19 modify the time limits in the rules. And we did
20 specifically discuss what the existing rules are.

21 CHAIRMAN FROEHLICH: And that would be
22 2.1205(a) up to 45 days before the hearing, is that
23 what you are --

24 MR. POLONSKY: Yes, Your Honor.

25 CHAIRMAN FROEHLICH: Okay. And then,

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1 answers within 20 days.

2 MR. POLONSKY: Yes, Your Honor. The
3 parties felt that, frankly, they were unlikely to wait
4 that long to file any summary disposition motions.
5 They were fully aware of the Board's discretion to not
6 entertain them if they are filed that late, and that
7 was the thinking, that the rules are adequate the way
8 they are.

9 CHAIRMAN FROEHLICH: Okay. Was there
10 discussion of the venue for the evidentiary hearing in
11 this case?

12 MR. POLONSKY: This is Mr. Polonsky. Yes,
13 there was discussion. There is no consensus on it.
14 FirstEnergy requests Port Clinton. That's where the
15 plant site is. If it turns out that, you know, we end
16 up having 18 experts, and they're all based in, you
17 know Akron, then perhaps Akron, but our current
18 preference is where the site is, so that the members
19 of the public who live around the site and are most
20 affected can participate, and the plant personnel who
21 we likely would be using as witnesses can be not
22 inconvenienced.

23 CHAIRMAN FROEHLICH: And for the
24 Intervenor, what are your views on the venue for the
25 evidentiary hearing, if I could?

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1 MR. LODGE: Your Honor, this is Terry
2 Lodge. Our views were that Toledo would be a -- in
3 the area of the city of Toledo would be a more
4 convenient forum for the reason that we, as the panel
5 knows, have Canadian intervenors who, of necessity,
6 would have to cross at the international crossing,
7 which is some sort of time problem, or can be,
8 depending on time of day, and that Port Clinton area
9 adds an hour to travel time, and we believe that there
10 are many potential sites here in the Toledo area.

11 Plus, of course, Toledo Edison, which is
12 certainly a big part of FirstEnergy, is situated here
13 -- its regional offices.

14 CHAIRMAN FROEHLICH: Mr. Kamps, what is
15 your view on the venue?

16 MR. KAMPS: Yes, we agree with Toledo as
17 being the best place.

18 CHAIRMAN FROEHLICH: Counsel Subin, what
19 is the view of the NRC staff?

20 MR. SUBIN: The view is the staff has no
21 preference, but would like to remind that we have
22 wonderful hearing rooms right here in Rockville.

23 CHAIRMAN FROEHLICH: You're suggesting --

24 MR. SUBIN: I'm suggesting, but we have no
25 preference other than that, other than we have hearing

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1 rooms here. I'm not saying one way or the other.

2 CHAIRMAN FROEHLICH: Thank you.

3 MR. SUBIN: -- the Judges.

4 CHAIRMAN FROEHLICH: What were your other
5 thoughts? I missed your last point there, sir.

6 MR. SUBIN: I just said I was leaving it
7 to the Judges.

8 CHAIRMAN FROEHLICH: All right. All
9 right. Was there discussion of point 14?

10 MR. POLONSKY: Yes, Honor. This is Mr.
11 Polonsky. We did reach --

12 CHAIRMAN FROEHLICH: Thank you.

13 MR. POLONSKY: We did reach consensus, and
14 motions for cross-examination, which is what your
15 Question Number 14 was about --

16 CHAIRMAN FROEHLICH: Right.

17 MR. POLONSKY: -- should be filed no later
18 than seven calendar days after the surrebuttal
19 testimony is filed.

20 CHAIRMAN FROEHLICH: Okay. And that's
21 seven days after consensus among all the parties.

22 MR. POLONSKY: I believe so, Your Honor.

23 CHAIRMAN FROEHLICH: Okay.

24 MR. LODGE: This is Terry Lodge. It is,
25 Your Honor.

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1 CHAIRMAN FROEHLICH: Thank you. Were
2 there any other issues or items that the parties
3 discussed or that the parties would like to bring
4 before the Board at this time?

5 MR. POLONSKY: Your Honor, this is Mr.
6 Polonsky. I think I may have misspoke before when you
7 asked were there any other questions about your
8 Question Number 7.

9 CHAIRMAN FROEHLICH: Oh, okay.

10 MR. POLONSKY: And although we did discuss
11 the 25 calendar days and the seven calendar days for
12 a reply, we did not address the standards that would
13 need to be met in addition to 2.309(f)(1) for a new
14 contention.

15 So, and our understanding is that other
16 boards and scheduling orders have specifically
17 addressed what standards need to be met, whether it's
18 2.309(f)2) or 2.309(c), and our recommendation is that
19 if Petitioners file within the -- whatever the --
20 within the 30 days or whatever timeframe the Board
21 sets out to be a timely contention, then they need to
22 only meet the standards of 2.309(f)(2).

23 And if they file outside of that time
24 period -- again, whatever it is -- then they would
25 need to meet the standards of 2.309(c). And if they

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1 are unsure whether they are within that timeframe,
2 then they should address both.

3 CHAIRMAN FROEHLICH: On its face, that
4 sounds reasonable. Is there a response or a reaction
5 from the Intervenors?

6 MR. LODGE: Your Honor, we rather
7 anticipate that that would be the policy of the Board
8 in any event. I'm sorry, this is Terry Lodge.

9 CHAIRMAN FROEHLICH: Okay. Okay. Could
10 we go off the record for a moment, please? Let me put
11 you on hold.

12 (Whereupon, the proceedings in the
13 foregoing matter went off the record at
14 1:34 p.m. and went back on the record at
15 1:35 p.m.)

16 CHAIRMAN FROEHLICH: All right. We're
17 back on the record.

18 I appreciate the fact that all sides were
19 consulted, and there was consensus reached, at least
20 among the parties, on many of the items that we had
21 enumerated.

22 Mr. Polonsky, was it your proposal or the
23 proposal of the parties to come up with a draft of
24 some sort to submit to the Board for us to include
25 perhaps in a draft -- our draft of the procedural

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1 schedule? In which case we will take the last round
2 of comments and then issue a final schedule for this
3 case.

4 MR. POLONSKY: This is Mr. Polonsky. I'm
5 sorry, Your Honor. I didn't understand your question.
6 We were planning on preparing a separate agreement of
7 the parties on mandatory disclosures. We also
8 internally with the parties talked about, frankly, a
9 potential protective order and non-disclosure or -- a
10 non-disclosure agreement or affidavit. But is your
11 question whether the scheduling order should be issued
12 in draft?

13 CHAIRMAN FROEHLICH: Well, what I was
14 going to suggest is the mandatory disclosure agreement
15 I think is a good document to submit and to -- for us
16 to work from in issuing an order that reflects
17 hopefully everything -- or many of the things that you
18 wanted in it.

19 I was also going to request that a
20 schedule which reflects I guess the agreement that the
21 parties have reached in response to the enumerated
22 items would be helpful to the Board in coming up with,
23 you know, a schedule that we would publish and post on
24 this docket.

25 MR. POLONSKY: We would be happy to

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1 prepare a schedule and submit that in draft to you,
2 along with the parties' recommendations for mandatory
3 disclosures.

4 CHAIRMAN FROEHLICH: That would be very,
5 very helpful. What is the timeframe that you and the
6 parties would contemplate on getting together on the
7 mandatory disclosure agreement, as well as a schedule
8 that reflects the discussions that you have had and
9 the agreements that you have reached, at least among
10 yourselves?

11 MR. POLONSKY: At least I can speak for
12 FirstEnergy. I would think within two weeks from
13 today, or let's say two weeks from tomorrow, we should
14 have that to you. That would allow the parties to
15 both digest what is there, digest what we discussed
16 today on this call, and perhaps set up another call to
17 finalize that document.

18 CHAIRMAN FROEHLICH: Okay. Then, let's --
19 let us do that. Is that -- Mr. Lodge, Mr. Kamps, and
20 Subin, does two weeks to come up with a proposed
21 schedule based on the discussion, as well as the
22 agreement on mandatory disclosures, sound reasonable
23 to you?

24 MR. LODGE: This is Terry Lodge. Your
25 Honor, I wonder if we could perhaps make it two weeks

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1 from this coming Monday. We are going to be running
2 across the Memorial Day weekend, and some of us may be
3 actually taking an extra day off one side or the other
4 of that.

5 CHAIRMAN FROEHLICH: Yes, that would be
6 fine. And Mr. Lodge -- is that Mr. Lodge who spoke
7 or --

8 MR. LODGE: Yes.

9 CHAIRMAN FROEHLICH: Okay.

10 MR. LODGE: Yes, it was.

11 CHAIRMAN FROEHLICH: All right. Mr.
12 Subin, two weeks from Monday would work for you as
13 well?

14 MR. SUBIN: Yes, that would be fine, Your
15 Honor.

16 CHAIRMAN FROEHLICH: All right. Is there
17 anything else that would be productive to discuss at
18 this point with all parties and the Board on the line?

19 MR. KAMPS: Just a thought, Your Honor --
20 this is Kevin Kamps with Beyond Nuclear -- that also,
21 along with Toledo being a good central venue, for our
22 side anyway, in addition to the Davis-Besse facility,
23 given the nature of our renewable energy alternatives
24 contentions, there is also the nearby Bowling Green
25 wind turbine installation. And there is also the

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1 first solar manufacturing plant in Toledo, as well as
2 other solar photovoltaic manufacturing plants.

3 So it just came to mind in terms of your
4 question about benefit of a site visit, because I
5 think those real-world renewable energy installations
6 will provide a lot of important information for all
7 parties.

8 CHAIRMAN FROEHLICH: Okay. Thank you.
9 Judge Trikouros, is there anything else that you have
10 at this point?

11 ADMIN. JUDGE TRIKOUROS: Yes, I do have a
12 question regarding the venue. Are there facilities in
13 the Port Clinton area that would be useable if we
14 chose to do limited appearance statements? In other
15 words, having limited appearance statements in the
16 Port Clinton area versus Toledo, and then we can
17 decide on the venue for the hearing.

18 MR. JENKINS: This is David Jenkins. Are
19 you asking, are there -- you know, there are certainly
20 conference rooms that are generally available. I
21 think you -- we were in the courthouse at Ottawa
22 County. If you are looking for a courthouse, that is
23 probably the most readily available in the vicinity of
24 the plant. There is the National Guard Center
25 literally within five miles of the plant, who has an

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1 open conference center.

2 ADMIN. JUDGE TRIKOUROS: I guess what --
3 let me rephrase my question. You had -- there was an
4 opinion expressed regarding Toledo versus Port Clinton
5 on the part of the Intervenors, and Port Clinton for
6 the -- for FirstEnergy. Does either party see a
7 benefit to having limited appearance statements, if we
8 chose to do those, in Port Clinton?

9 MS. SUTTON: Your Honor, this is Kathryn
10 Sutton. I definitely see an advantage to that. In
11 particular, those who are living in the vicinity of
12 the site would have an opportunity to participate in
13 a limited appearance session. As Mr. Jenkins
14 indicated, there is a very nice facility where the NRC
15 has conducted the NEPA scoping meeting in the past,
16 and that would afford these residents and local
17 personnel an opportunity to participate.

18 ADMIN. JUDGE TRIKOUROS: Okay. Thank you.

19 MR. LODGE: Your Honor, this is Terry
20 Lodge. I have a -- without waiving our preference
21 that Toledo be a site, I would like to propose a
22 couple of things. Number one, in the past, the NRC
23 has convened public presentations of various sorts at
24 the Oak Harbor, Ohio, high school auditorium, which is
25 a very lovely, modern high school, large auditorium,

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1 with pretty good acoustics, if memory serves. That
2 might be a place for limited appearance statements in
3 the Ottawa County/Port Clinton area. It is about five
4 miles south of the plant itself.

5 We concur that the citizens/residents
6 living in relative proximity to Davis-Besse need to be
7 heard, but we also would request that the Board
8 consider taking limited appearance statements in
9 Toledo, if that is the ultimate forum, also.

10 CHAIRMAN FROEHLICH: Thank you.

11 ADMIN. JUDGE TRIKOUROS: All right. Thank
12 you. Thank you.

13 CHAIRMAN FROEHLICH: Judge Kastenberg, did
14 you have anything?

15 ADMIN. JUDGE KASTENBERG: No, not at this
16 time.

17 CHAIRMAN FROEHLICH: Okay. All right.
18 That leaves us I guess, having gone through the items
19 that were enumerated in the Board's order, with a
20 commitment by the parties to have within two weeks
21 from Monday a draft on mandatory disclosure
22 agreements, as well as a proposed schedule to be
23 instituted in this case, which will be submitted to
24 the Board.

25 What the Board would plan to do is take

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1 the materials that are filed two weeks hence and put
2 together a draft scheduling order for the parties.
3 And then, after having received comments on that
4 proposed order, to issue a final scheduling order to
5 govern the proceedings in this case.

6 Is there any other issues? Does anyone
7 else wish to be heard on any of the things that we
8 discussed today?

9 (No response.)

10 Please keep in mind the model milestones
11 in the proposed schedule, and as well as anything that
12 is spelled out in the Commission's regulations. Yes.
13 We may spill over the 55 days that are mentioned in
14 the milestones for getting this order out, but we will
15 do our best to make it as close to that as we possibly
16 can.

17 All right. With that, let's conclude
18 today's telephone pre-hearing conference and stand
19 adjourned.

20 Thank you all.

21 (Whereupon, at 1:45 p.m., the proceedings
22 in the foregoing matter were adjourned.)
23
24
25

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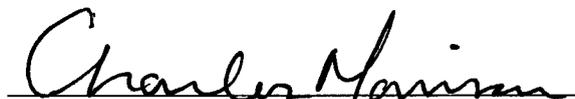
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CERTIFICATE

This is to certify that the attached proceedings
before the United States Nuclear Regulatory Commission
in the matter of: First Entergy Nuclear
 Davis Besse Station

Name of Proceeding: Pre-Hearing Conference
Docket Number: 50-346-LR
ASLBP No. 11-907-01-LR-BD01
Location: (teleconference)

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Charles Morrison
Official Reporter
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