

# Official Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

Title: South Texas Project Units 3 and 4

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

DOCKETED

July 5, 2011 (9:00 a.m.)

ASLBP Number: 09-885-08-COL-BD01

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Location: (telephone conference)

Date: Tuesday, June 28, 2011

Work Order No.: NRC-986

Pages 1257-1272

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On Behalf of the Intervenors, Sustainable Energy  
and Economic Development Coalition:

ROBERT EYE, ESQ.

of: Kauffman & Eye

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ALSO PRESENT:

JESSIE MUIR, NRC

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

2 (1:00 p.m.)

3 CHAIRMAN GIBSON: If we could I would like  
4 to have -- this is Judge Gibson, Judge Arnold, Judge  
5 Charbeneau. If I could, I would like to have  
6 announcements of counsel.

7 MR. FRANTZ: For the Applicant, this is  
8 Steve Frantz, and I have John Matthews with me.

9 MR. SPENCER: For the NRC staff, this is  
10 Michael Spencer. With me are counsel -- co-counsel  
11 Andrea Silvia and Anita Ghosh, and also with me is  
12 Environmental Project Manager Jessie Muir.

13 MR. EYE: Robert Eye for the Intervenors.

14 CHAIRMAN GIBSON: Thank you very much. We  
15 have a couple of things we just wanted to go over with  
16 you all. The first is -- and on our last call we told  
17 you that we were attempting to find a venue for this  
18 hearing. I believe we have found one now, and it's  
19 going to be in Austin.

20 The Texas Council on Environmental Quality  
21 has been kind enough to provide us with rooms for our  
22 trial, as well as for oral argument on the new  
23 contentions. And we should be able to get breakout  
24 rooms there as well.

25 So it was, as you can imagine, not easy to

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1 find a venue that would accommodate three judges and  
2 all the parties, but we were able to do that and stay  
3 as close as we can to Bay City.

4 So we wanted to let you know that we will  
5 be getting an order out on that shortly with the  
6 particulars, including the parties -- who you would  
7 need to contact to get -- arrange for a breakout room.

8 Is there any concerns or questions anyone  
9 has about that?

10 MR. SPENCER: Your Honor?

11 CHAIRMAN GIBSON: Yes.

12 MR. SPENCER: This is Michael Spencer for  
13 the staff. I think -- I believe I heard that you  
14 talked about oral argument on the new contention.

15 CHAIRMAN GIBSON: Yes, yes, that's  
16 correct. I believe we talked about that on our last  
17 call, didn't we?

18 MR. SPENCER: I do not recall that we  
19 talked about that.

20 CHAIRMAN GIBSON: That's okay. One of us  
21 apparently is in error. It could very well be me.  
22 But in any event, what we had planned to do -- I  
23 believe we have a contention involving foreign  
24 ownership.

25 I had intended at least for us to address

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1 that matter, albeit somewhat briefly, because I think  
2 there isn't a whole lot to be said other than what is  
3 in the papers, probably on Wednesday, the 17th, and  
4 then to address any other pre-trial matters we have  
5 that day, and then to start our hearing on Thursday  
6 morning.

7 Does that present a problem, Mr. Spencer?

8 MR. SPENCER: No, Your Honor.

9 CHAIRMAN GIBSON: Okay. Let me make sure  
10 -- Mr. Eye, does that present a problem for you?

11 MR. EYE: No, sir.

12 CHAIRMAN GIBSON: Mr. Frantz?

13 MR. FRANTZ: No.

14 CHAIRMAN GIBSON: Okay. Very well. All  
15 right. We will be getting -- as I said, we will be  
16 getting an order out on that shortly that will address  
17 the venue and the contact persons at TCEQ.

18 There is something else that came up I  
19 wanted to bring to your attention, because it's rather  
20 subtle and it may have gone past you. On April 27, in  
21 our order on page 5 under Miscellaneous Matters, we  
22 indicated in paragraph 1 that to maintain the  
23 confidentiality of each party's proposed cross-  
24 examination questions they were not to be filed on the  
25 agency docket, but were instead to be submitted via

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1 e-mail to the Board's law clerk.

2 Well, it turns out that apparently the EIE  
3 has been updated since that time, and it is now  
4 possible to submit proposed questions by using the  
5 in camera filing option on EIE. So I wanted to bring  
6 that to your attention, so you may be able to file it  
7 without running the risk of your questions getting  
8 distributed to the other parties or to the public.  
9 And that way you won't have to e-mail them.

10 So I wanted to call that to your  
11 attention. We will also get out something to that  
12 effect as well in this order.

13 Any questions about that?

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

15 CHAIRMAN GIBSON: Yes.

16 MR. EYE: I presume that since that is now  
17 available that is the means by which we should use to  
18 get these cross-ex questions to you?

19 CHAIRMAN GIBSON: Well, I think it would  
20 be preferable to do it that way. I'm, you know,  
21 certainly not going to tell you that you can't do it  
22 any other way, but I think that's -- that's the way  
23 the system is set up now, so that it can --

24 MR. EYE: Okay.

25 CHAIRMAN GIBSON: -- be submitted as an

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1 in camera filing.

2 MR. EYE: Thank you.

3 CHAIRMAN GIBSON: The next item, I wanted  
4 you all to be sure and know that you may have  
5 demonstratives that you wish to present in some sort  
6 of electronic presentation during the course of our  
7 hearing. And I want you to know that there is a  
8 resource available to you.

9 Andrew Welkie, who works here at the  
10 ASLBP, is going to be involved with the coordination  
11 of all of the electronic information at trial. And if  
12 you have -- you know, need any assistance or need to  
13 coordinate getting that information together, I wanted  
14 to be sure that you had his number and his e-mail.  
15 His number is (301) 415-6541, and his e-mail is  
16 andrew.welkie, W-E-L-K-I-E, at nrc.gov.

17 Any questions about that?

18 (No response.)

19 Okay. Very well. I want to -- just have  
20 a couple of other things I would like to clear up, and  
21 they have to do with the motion in limine that has  
22 been filed, and the reply of the Intervenors.

23 I just want to make sure that we have this  
24 correct, Mr. Eye. On the first page of your response  
25 dated June 27, you lay out an e-mail -- quote an

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1 e-mail that you sent wherein you specified certain  
2 testimony of Mr. Mosenthal --

3 MR. EYE: Yes.

4 CHAIRMAN GIBSON: -- both in direct and in  
5 rebuttal, and also some exhibits that apparently are  
6 -- support his testimony. And I just want to make  
7 sure that we understand that you are agreeing that  
8 that information can be excluded. Is that correct?

9 MR. EYE: That is correct.

10 CHAIRMAN GIBSON: Okay. Now, a couple  
11 more questions. On page 2, you indicate that Mr.  
12 Mosenthal was traveling overseas, and you weren't sure  
13 about Exhibits 17 and 18. Do you yet know about  
14 Exhibits 17 and 18?

15 MR. EYE: Well, this is a little awkward.  
16 I thought I did. And as of yesterday, then, I am led  
17 to believe that I don't know. So I have -- I am going  
18 back upstream to try to nail that down, Your Honor,  
19 and I -- and I apologize for that confusion. I  
20 thought I had it resolved. Then, I was persuaded that  
21 I didn't have it resolved, and I am trying my -- I am  
22 trying to get that nailed down.

23 I'm in -- actually in another hearing  
24 today that I am taking a break from, but I -- I am  
25 going to do my best to get that nailed down.

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1 CHAIRMAN GIBSON: Okay.

2 MR. EYE: I apologize. At any rate, yes.

3 CHAIRMAN GIBSON: Okay. Thank you. Now,  
4 let's go to page 7, I believe, of your answer. You  
5 indicate there that Exhibits 3 and 4 should be  
6 excluded. I just want to make sure that you're saying  
7 -- you're agreeing to exclude Exhibit -- your Exhibits  
8 3 and 4 --

9 MR. EYE: Yes.

10 CHAIRMAN GIBSON: -- is that correct?

11 MR. EYE: Yes.

12 CHAIRMAN GIBSON: Okay, okay. Very well.  
13 Thank you.

14 Okay. Well, what I would like you to do,  
15 Mr. Eye, is I would like you to submit an addendum to  
16 this answer that -- response that you filed to the  
17 motions in limine explaining about the status of  
18 Exhibits 17 and 18, whether they can -- you're arguing  
19 to have them excluded.

20 MR. EYE: Very well.

21 CHAIRMAN GIBSON: And I would also like  
22 you to -- do you have handy a copy of your response  
23 there?

24 MR. EYE: I do not, Your Honor. I'm in  
25 another courthouse, and I --

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1 CHAIRMAN GIBSON: I appreciate the  
2 problem. Okay. Let me just ask you, do you have --  
3 if you could just make a note of this.

4 MR. EYE: Sure.

5 CHAIRMAN GIBSON: On page 11 of your  
6 response, you indicate that Mr. Johnson's availability  
7 and willingness to engage the work related to CL-2 was  
8 not secured until on or about April 29, 2011.

9 Now, I would -- in your response, in this  
10 addendum you are filing, I would also like you to  
11 clear up something about that statement.

12 MR. EYE: All right.

13 CHAIRMAN GIBSON: And I'd call your  
14 attention to the motion in limine on page 12 that  
15 indicates that Mr. Johnson's direct testimony is dated  
16 April 22 and April 9.

17 Now, clearly, those two dates are earlier  
18 than April 29. Now, I appreciate the fact there may  
19 be some explanation, you may have been coordinating  
20 with him to try to determine if in fact his evidence  
21 would be admissible or if you were going to use him as  
22 an expert. I can appreciate that fact.

23 But I can tell you that the way it looks  
24 is that there is an inconsistency between those  
25 statements, and I think it would behoove all of us for

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1 you to clarify that.

2 MR. EYE: I would be happy to. And, Your  
3 Honor, I believe that he -- it should have been 5/9  
4 when that was originally -- when his direct testimony  
5 was originally filed.

6 CHAIRMAN GIBSON: Okay.

7 MR. EYE: But I -- I mean, I remember  
8 talking to him very clearly, because I was in  
9 beautiful Lincoln, Nebraska, and I took a break for no  
10 -- from another proceeding to nail that down. And  
11 that was on the 29th of April. But at any rate, I  
12 will certainly clarify that as well.

13 CHAIRMAN GIBSON: Judge Arnold just  
14 flashed in front of me a copy of something that is  
15 dated May 9, so it may be it's -- it may well be that  
16 -- you know, that may well be the case, so let's --  
17 anyway, all I ask you to do is just to clarify that.  
18 Okay?

19 MR. EYE: Yes, sir.

20 CHAIRMAN GIBSON: So that if in fact there  
21 was some other -- you know, something else going on,  
22 we understand that, because I understand there is an  
23 April 15 -- the May disclosures were as of April 15 or  
24 something, but I just want to be sure that you -- we  
25 have that cleared up.

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1 MR. EYE: I will --

2 CHAIRMAN GIBSON: Because as I'm sure you  
3 can appreciate, we do think that the mandatory  
4 disclosure rules are very important, and we want to  
5 see that they are complied with. Okay?

6 MR. EYE: Yes, sir.

7 CHAIRMAN GIBSON: Okay. Now, that  
8 concludes the issues that I have. But, Judge  
9 Charbeneau, Judge Arnold, do you all have anything  
10 else?

11 JUDGE ARNOLD: No.

12 JUDGE CHARBENEAU: No, I don't.

13 CHAIRMAN GIBSON: Okay. Let me ask you,  
14 Mr. Eye, do you have anything else?

15 MR. EYE: No, not at this time, Your  
16 Honor.

17 CHAIRMAN GIBSON: Mr. Frantz?

18 MR. FRANTZ: Just one thing very quickly  
19 in terms of schedule. We are due to submit -- all of  
20 the parties are due to submit their proposed questions  
21 to the Board on July 12th. Does the Board intend to  
22 rule on the motions in limine before then? Obviously,  
23 that will affect the content of our questions to the  
24 Board.

25 CHAIRMAN GIBSON: Just one second, please.

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1 (Pause.)

2 JUDGE ARNOLD: Are we on mute?

3 (Pause.)

4 CHAIRMAN GIBSON: Judge Charbeneau just  
5 wanted me to make clear that it's not the Texas  
6 Council but the Texas Commission on Environmental  
7 Quality. And I apologize for that error; I should  
8 know that.

9 But in any event, let -- Mr. Frantz, I  
10 believe you will be seeing something shortly. I would  
11 like to get the rest of -- I would like to get this  
12 addendum from Mr. Eye before we do that, but I told  
13 you we will have something out shortly, and we expect  
14 to.

15 I can tell you, however, that to the  
16 extent that you have just heard, they have gotten this  
17 clarification from Mr. Eye. I think, you know,  
18 clearly that there -- this information from Mr.  
19 Mosenthal and these exhibits from Mr. Mosenthal -- 3,  
20 4, 5, 6, 8, 10, 42, 43, 44 -- are going to be  
21 excluded. Hopefully, we will hear about 17 and 18  
22 shortly.

23 MR. FRANTZ: Thank you.

24 CHAIRMAN GIBSON: Absolutely. Is there  
25 anything else, Mr. Frantz?

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1 MR. FRANTZ: No.

2 CHAIRMAN GIBSON: Mr. Spencer?

3 MR. SPENCER: No, Your Honor.

4 MR. EYE: Your Honor, would it be okay if  
5 I got this addendum to you -- I can't do it today, and  
6 I can't do it tomorrow. That puts me to -- I've lost  
7 days of the week. That puts me to Thursday. Is that  
8 acceptable for everybody, if I got that out at that  
9 point? I just -- I just really am not going to be in  
10 my office or really even able to turn my attention to  
11 it until then.

12 CHAIRMAN GIBSON: Well, if that's the  
13 soonest you can get it, we appreciate the exigencies  
14 of a smaller law practice, and you just -- you just  
15 get it to us Thursday, and plan on it.

16 MR. EYE: Thank you, sir.

17 CHAIRMAN GIBSON: Okay?

18 MR. EYE: I'll do that.

19 CHAIRMAN GIBSON: Okay. Now, anything  
20 else, Mr. Eye?

21 MR. EYE: Not on behalf of the Intervenors  
22 at this time.

23 CHAIRMAN GIBSON: Mr. Frantz?

24 MR. FRANTZ: We have nothing.

25 CHAIRMAN GIBSON: Mr. Spencer?

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1 MR. SPENCER: No, Your Honor.

2 CHAIRMAN GIBSON: Okay. Very well. We  
3 will stand adjourned and look forward to seeing your  
4 submittals. Take care. Have a good day.

5 (Whereupon, at 1:17 p.m., the proceedings  
6 in the foregoing matter were adjourned.)

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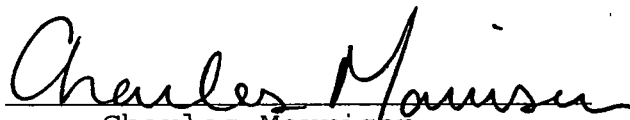
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ASLBP Number:                    09-885-08-COL-BD01

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