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P R O C E E D I N G S

2:03 p.m.

CHAIRMAN GIBSON: Okay, we are on the record. This is Judge Gibson. With me in Rockville, Maryland, is Judge Baratta, and the clerk, Ann Hove.

Also on the line with us is Judge Barnett. The court reporter is on the line, correct?

COURT REPORTER: Yes, I am.

CHAIRMAN GIBSON: I believe you're on the line. You identified yourself earlier?

(Pause.)

OPERATOR: This is the operator. I'll confirm that line is still connected.

CHAIRMAN GIBSON: Yes, please do.

COURT REPORTER: I'm on the line. Sorry.

CHAIRMAN GIBSON: Court reporter's on the line. Okay, thank you.

And if I could have announcements of counsel, beginning with the applicant?

MR. FRANTZ: This is Steve Frantz and John Rund for Exelon.

CHAIRMAN GIBSON: NRC staff?

MS. PRICE: Sarah Price and Kevin Roach, NRC staff.

CHAIRMAN GIBSON: And intervenor?

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1 MR. IRVINE: Charles Irvine and Jim
2 Blackburn.

3 CHAIRMAN GIBSON: Okay. Thank you. We
4 are holding an initial scheduling conference in this
5 matter, and would like to try to go through this, if
6 possible, I think, using the initial scheduling order
7 from the south Texas case that we referenced in our
8 July '11 order.

9 Does everyone have a copy of that handy?

10 MS. PRICE: Yes, Judge Gibson.

11 MR. FRANTZ: Yes, we do.

12 MR. IRVINE: Yes, Your Honor.

13 CHAIRMAN GIBSON: Okay, good. Okay,
14 that's great.

15 I think most of the matters that are
16 covered in our July 11 order are also covered in this
17 South Texas initial scheduling order, but Ms. Hove
18 will be keeping track of that to make -- to keep us
19 on track to make sure that we don't overlook anything.

20 If we could turn, first of all, in the
21 South Texas order, to page 4, item A, and number 1,
22 updating of disclosures.

23 It appears to me, from looking at the
24 parties' agreement on mandatory disclosures in this
25 case, that that was covered -- those two paragraphs

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1 were basically covered with item 11 on page 3 of your
2 letter.

3 Is that -- my understanding correct?

4 MR. IRVINE: Yes.

5 CHAIRMAN GIBSON: Okay. I realize the
6 wording may be a little off, but essentially, it
7 appears that you all have captured the essence of what
8 we covered in those two paragraphs with item 11.

9 MR. IRVINE: I believe so, yes.

10 MS. PRICE: Yes.

11 MR. IRVINE: Yes, Your Honor.

12 CHAIRMAN GIBSON: Okay. Okay. Secondly,
13 under the item privilege logs, that appears to be what
14 you have put in item 4 of your agreement. Is that
15 correct?

16 MR. FRANTZ: That's correct. There are
17 some differences in the language between the agreement
18 we have reached here and the agreement that we reached
19 in South Texas.

20 CHAIRMAN GIBSON: Okay. Would you please
21 describe for us what those are, Mr. Frantz?

22 MR. FRANTZ: The major one is the last
23 sentence of paragraph 4, where the parties agreed to
24 preserve and maintain privileged documents.

25 CHAIRMAN GIBSON: Okay. Okay. Thank you.

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1 Okay, if we could go to page 5 of the South Texas
2 order, under scope of disclosures and hearing file,
3 that appears to me to largely track what you all have
4 in paragraph 1 of your agreement. Is that correct?

5 MR. FRANTZ: Essentially, yes, I believe.

6 CHAIRMAN GIBSON: Okay. All right.
7 There's one issue that I want to raise with you, and
8 that has to do with the use of the word drafts, and
9 I'll tell you why this is an issue for me.

10 Mr. Frantz will be familiar with this.
11 I'm not sure if the other two, the rest of the counsel
12 will be familiar with this.

13 But in the South Texas matter, the
14 Commission issued an order on September 29, regarding
15 some sensitive unclassified non-safeguards
16 information.

17 That particular order contains this
18 language: "The Board's initial scheduling order" -- on
19 page 19 -- "The Board's initial scheduling order
20 further defines the scope of the parties' mandatory
21 disclosures according to an agreement reached by the
22 parties and approved by the Board not to produce and
23 identify draft versions of documents."

24 And in this case, there was a draft
25 document that the staff had prepared that had been

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1 circulated to parties other than within the staff
2 itself. And the Commission essentially was taking the
3 position that it's conceivable that this language
4 would have encompassed a draft.

5 And I have to tell you that at the time
6 that we entered this initial scheduling order, it
7 certainly was not anything I envisioned, that a draft
8 circulated to anyone other than a party would be
9 deemed to be a draft, within the meaning of what has
10 to be disclosed to another party.

11 And so it still might not be disclosed,
12 because some privilege might be attached to it. But
13 the mere fact that it had been shown or shared with
14 another party, to me, would take it out of what I had
15 envisioned, I think the Board of South Texas
16 envisioned would have been a draft at that time.

17 So, what I would like you to do is see if
18 you can address that with your -- in paragraph 1, and
19 make some provision for -- that the three of you can
20 agree on, that would essentially say that if a party
21 has shared it or shown it to another party, it is not
22 a draft.

23 MR. FRANTZ: Judge Gibson, this is Steven
24 Frantz.

25 CHAIRMAN GIBSON: Yes.

1 MR. FRANTZ: We attempted to address that
2 issue in the fifth line of our paragraph number 1,
3 where we state that if it is already publicly
4 available --

5 CHAIRMAN GIBSON: Right.

6 MR. FRANTZ: -- documents should be
7 disclosed.

8 CHAIRMAN GIBSON: I understand, Mr.
9 Frantz, but the problem is, in this -- in the case of,
10 as you recall, in the case of South Texas, that was a
11 draft document that was not publicly available, but
12 that was deemed to be not appropriate to be disclosed
13 to the intervenors in that case, but it had been
14 disclosed to the applicant.

15 And so I'm not suggesting to you that if
16 it's a draft, it's disclosed to, let's say, by staff,
17 to the applicant, or by applicant to the staff, that
18 it would not be appropriately withheld for some other
19 reason, and ought to be put on a privilege log. It
20 would not be a draft within the meaning of what this
21 paragraph states. That's all I'm saying.

22 You can still assert a privilege to it,
23 but you can't call -- I don't want you to be able to
24 call it a draft, because to me, that's not what it is.

25 To me, you know, I did this -- I was in

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1 your shoes for, you know, 35 years or so, and, you
2 know, in my experience, a draft was something that was
3 generated internally and looked at by the -- with
4 employees of that party, perhaps by contractors, but
5 not by another -- someone outside of that general,
6 deliberative privilege or decision-making process or
7 whatever is internal to that party.

8 MR. FRANTZ: Judge Gibson, that could
9 cause some difficulties. The staff comes to our
10 offices sometimes and performs audits. They may look
11 at draft documents.

12 It's going to very difficult for us to
13 keep track of draft documents the staff may look at,
14 for example, during audits.

15 CHAIRMAN GIBSON: Okay. Well, I'm not
16 suggesting to you that this is going to be an easy
17 exercise, nor am I suggesting to you that where the
18 staff conducts an audit, and they review a document
19 for that purpose that they're -- that automatically
20 means that some privilege is not going to be attached
21 to it, or that it's no longer a draft.

22 What I am saying, though, is that the way
23 that this was described in the order by the
24 Commission, it certainly was much broader, deemed to
25 have been much broader than anything I had envisioned.

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1 This was, if you'll recall, for the
2 benefit of the intervenor, let me just explain, in
3 this case, it was a draft report that the staff put
4 together. It then provided a copy of this draft
5 report to the applicant.

6 And it, at least according to the
7 intervenors, was something that was relevant to a
8 contention that had been filed. The intervenors
9 requested a copy of it.

10 The staff denied them access, and said it
11 was a draft, and therefore, was not appropriate to be
12 disclosed.

13 Now, they may have had other reasons, but
14 the -- we certainly were not envisioning that, I think
15 at the time that we entered that initial scheduling
16 order, that a draft under that definition that was
17 shared with another party was going to be within the
18 scope of this order and would not need to be put on a
19 privilege log.

20 MR. FRANTZ: Judge Gibson, if I recall
21 correctly, in that proceeding, the draft in question
22 was a draft guidance document, and the only reason it
23 wasn't publicly available or made available to the
24 intervenors is because it involved SUNSI information.

25 CHAIRMAN GIBSON: That's correct.

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1 MR. FRANTZ: And I think in the normal
2 course of business, if the staff has a draft guidance
3 document, generally, it makes those available to the
4 public for comment, and therefore it would be
5 something that would fall within our language here,
6 because it would be publicly available.

7 Again, the only reason why it was not
8 publicly available in South Texas is because it was a
9 SUNSI document.

10 CHAIRMAN GIBSON: Bear with me, Mr.
11 Frantz. It appears to me that it would have been --
12 could have been put on a privilege log as being SUNSI
13 and not provided for that reason.

14 What the Commission did was, they said
15 because we had provided that drafts did not need to be
16 disclosed, it might be that that document did not need
17 to be produced. And all I'm saying is, this, as
18 drafted, is too broad.

19 Now, you may not want to use the word
20 share or shown. You may need to come up with some
21 special language for the circumstances you're talking
22 about, where, by virtue of the staff's investigative
23 and audit duties, it runs across the document that you
24 share only because you're essentially obligated to
25 open your files to them.

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1 But you need to come up with something
2 else to address the concern that I have. And if you
3 want to read pages 19 and 20 of that order again, Mr.
4 Frantz, I think you will understand why this language
5 is not acceptable.

6 Now, you know, you can tweak with this,
7 but something needs to be changed.

8 MR. IRVINE: This is Charles Irvine for
9 the intervenors, Your Honor.

10 CHAIRMAN GIBSON: Yes.

11 MR. IRVINE: I think, you know, if Mr.
12 Frantz can come up with some language, we can live
13 with some sort of audit exception to that.

14 CHAIRMAN GIBSON: Sure. Well, that's what
15 I said. I think you can come up with some other way
16 of addressing this so that you're not going to run
17 into a problem, Mr. Frantz, under the circumstances
18 you suggested.

19 But at the same time, this explanation of
20 drafts won't work if you have some kind of safeguards
21 or, you know, SUNSI or whatever it is that might be in
22 a document, it's disclosed to an applicant, it's
23 relevant to this -- a contention, and it's not
24 disclosed.

25 So, I would ask you all to try to get

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1 together and come up with some acceptable language.

2 Other than that, item 1 is just fine.

3 Anything else on that point?

4 Okay. Under item B on page 5, it appears
5 to me that that was covered in item 5 of your
6 agreement?

7 MR. FRANTZ: Yes.

8 CHAIRMAN GIBSON: Item C appears to me to
9 be basically encompass items 2 and 3 of your
10 agreement, albeit, this is a much shorter version of
11 what you all did.

12 MR. FRANTZ: I believe that's correct.

13 CHAIRMAN GIBSON: Okay. Item D on page 6
14 appears to be item 8 of your agreement?

15 MR. FRANTZ: Yes.

16 CHAIRMAN GIBSON: Okay. And -- let's see.
17 Item 5 on page 6 appears to be item 12 of your
18 agreement.

19 And I think what that leaves us with is
20 you have items 7, 9, and 10, and 13, of your agreement
21 that appear -- I, at least, couldn't find a matching
22 paragraph in our order. And not that there's anything
23 wrong with this, I just wanted to be sure that that's
24 the way you all saw it as well.

25 MR. FRANTZ: I believe that's correct.

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1 CHAIRMAN GIBSON: Okay. Okay. If you
2 could, since the rest of these, other than drafts, I
3 think pretty well matches up, I think your language is
4 going to be fine, let's start with item 7, just so
5 we'll have an explanation for what you are -- what
6 your thinking was about that item.

7 MR. FRANTZ: These kinds of documents
8 typically are not substantive in nature.

9 They are records of expenses that may
10 pertain to a particular contention or billing
11 statements or time recording statements that really,
12 even if disclosed, don't provide any useful
13 information. And therefore, we don't believe that the
14 burden of producing these is worth the benefit.

15 CHAIRMAN GIBSON: Okay. Does anybody else
16 have anything to add on number 7?

17 MR. IRVINE: No, we're in agreement, Your
18 Honor.

19 CHAIRMAN GIBSON: Okay. Well, that sounds
20 like a fine agreement to us.

21 Okay, let's go to item 9 on your
22 agreement, Mr. Frantz?

23 MR. FRANTZ: Yes, again, I think this is
24 just typical of what you'll find in these kinds of
25 agreements, and I think it's also contemplated by the

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1 rules, where if the document's publicly available, you
2 can just tell the opposing party where they can obtain
3 a copy.

4 CHAIRMAN GIBSON: Just one second, please.

5 (Pause.)

6 Okay. I think that's fine with us. I
7 guess the only thing I would -- I want to throw in
8 here, I guess, is something that we haven't really
9 foreseen, and that is the RAIs that you have --
10 responses to RAIs that you have provided notifications
11 for, are you -- I guess -- I don't know whether it
12 would be paragraph 5 or paragraph 9, but I'm just
13 curious, are you envisioning that you're going to also
14 be producing those documents, or are you just
15 suggesting that by virtue of the fact that you
16 provided notice, that that's going to be sufficient?

17 MR. FRANTZ: That should be sufficient.
18 I mean, we've obviously provided copies already to
19 other parties, and so we would just identify that --
20 identify that in our log --

21 CHAIRMAN GIBSON: Okay.

22 MR. FRANTZ: -- as documents that are
23 publicly available.

24 CHAIRMAN GIBSON: Okay. Intervenors,
25 that's acceptable to you?

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1 MR. IRVINE: On the assumption that when
2 Mr. Frantz has provided notice, is he going to
3 continue posting them in the same fashion, or are they
4 going to be posted simply to the RAI docket on the NRC
5 website?

6 MR. FRANTZ: Yes, that's a good question,
7 Sir Irvine, and I appreciate that you've raised it.

8 It is somewhat burdensome on us to keep
9 filing these responses to RAIs. If it's acceptable to
10 you and the Board, I'd just as soon list those in our
11 periodic discovery updates rather than serving them
12 each time they come out.

13 MR. IRVINE: Would that mean that the
14 trigger date for -- the 30-day deadline for filing a
15 new contention or amended contention would go from the
16 time that that was disclosed to us, or from the time
17 it was sent to the NRC? Because I would imagine those
18 wouldn't necessarily match up.

19 MR. FRANTZ: I guess I would put it a
20 little bit differently. At the time that it becomes
21 publicly available, so typically, that would be either
22 when we disclose it through our periodic log updates,
23 or when the NRC actually posts it on their web page.

24 MR. IRVINE: I understand that in another
25 proceeding, and I forget whether it was Comanche or

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1 South Texas, there was an issue about some new
2 information being posted, and there was a question
3 about when it was actually posted to the NRC website.

4 And I don't know if anyone's familiar with
5 that, but I just wanted to sort of flag that, that
6 that issue has arisen in the past, where there's a
7 dispute about when it became publicly available to the
8 intervenor.

9 ADMIN. JUDGE BARATTA: This is Judge
10 Baratta here. I'm well aware of similar -- not that
11 specific case, but other similar ones, and the
12 question would be whether or not we used whichever
13 date is later, because there are some times delays,
14 due to problems with posting or with the format that
15 some of these documents are received in, which can
16 actually cause up to a couple of weeks' delay before
17 it actually appears on a website.

18 So, would anyone object to qualifying
19 that, when it becomes publicly available, being
20 defined as the later of those two dates?

21 MR. FRANTZ: Yes, we identify that on our
22 log, and that happens to be the first identification,
23 and then the intervenors make a timely request for
24 that, at the time they received that document from us
25 should be the date.

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1 ADMIN. JUDGE BARATTA: Well, yeah, if
2 that's in fact what happens, but you're implying that
3 the date would be the public availability date, and
4 that public availability date really is when it gets
5 posted.

6 MR. FRANTZ: Yes, and it would be either
7 the public availability date or the date they actually
8 have it in their hands.

9 ADMIN. JUDGE BARATTA: Okay.

10 MR. FRANTZ: Whichever's earlier.

11 ADMIN. JUDGE BARATTA: All right. But
12 thank you for qualifying that.

13 MR. IRVINE: So, are we talking about the
14 earlier date or the later date?

15 CHAIRMAN GIBSON: Well, I guess I just
16 wanted to know if you all were going to be able to
17 reach an agreement about that, or if we were going to
18 need to get very specific about that in which case,
19 you know, Judge Baratta and Judge Barnett now have to,
20 you know, try to decide what we think is best.

21 MR. FRANTZ: Yes, what I would recommend
22 is I'll make a proposal to the other parties, and if
23 we can reach an agreement, we'll provide you that
24 language.

25 CHAIRMAN GIBSON: That sounds wonderful.

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1 I think that way we can get both of these -- both the
2 drafts and that matter, you guys can address that
3 among yourselves, and we'll look forward to your --
4 receiving that.

5 MR. IRVINE: I think that's fine, Your
6 Honor.

7 MS. PRICE: That's fine with the staff.

8 CHAIRMAN GIBSON: Good. Well, while we're
9 on that point, by the way, staff, I didn't get a
10 chance to weigh in on this issue of drafts. Was there
11 anything you wanted to say about?

12 MS. PRICE: Not at this time. I think we
13 can work with that.

14 CHAIRMAN GIBSON: Okay. Thank you very
15 much. Okay.

16 All right. Item 10, again, I couldn't
17 really find a counterpart in that in this initially
18 scheduling order. If there is one, you can let me
19 know.

20 Otherwise, can you just tell me what
21 you're sort of envisioning there?

22 MR. FRANTZ: Basically, it follows the
23 language of the rule itself, that we should identify
24 the people we are going to be using as witnesses when
25 those people become known, and it may not be, for

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1 example, and I wouldn't expect this to occur for any
2 of the parties, it won't be identified as part of the
3 initial disclosures, because this is so early in the
4 proceeding. But in the subsequent updates, we would
5 then identify who our witnesses are going to be.

6 CHAIRMAN GIBSON: Okay. Yeah. Yeah, that
7 is an important issue. Just as I -- I had my
8 consciousness raised about drafts, I think you
9 probably had your consciousness raised about this in
10 conjunction with the motion in limine you filed
11 recently, Mr. Frantz, so I understand that.

12 Okay. 13. Mr. Frantz, what was your
13 thinking on that point?

14 MR. FRANTZ: Again, I think this is just
15 a fairly standard provision that we've used and seen
16 elsewhere, that at the options of the parties, they
17 can either file their disclosures through email, or by
18 using the electronic information exchange at the NRC.

19 CHAIRMAN GIBSON: Okay. And intervenor,
20 that's okay with you guys?

21 MR. IRVINE: Yes, it is, Your Honor.

22 CHAIRMAN GIBSON: Okay. Okay. One other
23 thing I want to call your attention to on the South
24 Texas order, on page 16, on motions for cross-
25 examination, Mr. Frantz is aware of this.

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1 I'm not sure if the other parties are
2 aware of this, but they're, just in the last, you know
3 month or so, it's now possible to go directly to the
4 EIE, and there's a link there for submitting your
5 proposed cross examination questions in camera, so you
6 don't have to email them anymore to the Board like we
7 did in that case.

8 So I just wanted to call your attention to
9 the fact that that is now available, and it did work
10 in our case, so.

11 Okay, well, we will, you know, Judge
12 Baratta and Judge Barnett and I will look forward to
13 getting your suggested changes on those points. And
14 we will be, while, you know, we haven't had a chance
15 to talk among ourselves about everything, now that
16 we've had the benefit of your input on these
17 additional points, we'll be discussing those.

18 And we'll be prepared to draft up an
19 initial scheduling order that most likely will
20 incorporate all of your suggested changes.

21 MS. PRICE: Judge Gibson?

22 CHAIRMAN GIBSON: Yes.

23 MS. PRICE: Sarah Price for the NRC staff.

24 CHAIRMAN GIBSON: Yes.

25 MS. PRICE: We're putting together our

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1 initial hearing file disclosures now, and we don't
2 have an actual order in place.

3 I wondered if you would honor the parties'
4 agreement regarding the privilege laws for the hearing
5 file, and also the agreement regarding the billing
6 statements? Or if you would like for us to do --

7 CHAIRMAN GIBSON: Well, absolutely, we'll
8 honor your agreement with respect to those points.

9 MS. PRICE: Great.

10 CHAIRMAN GIBSON: And if for some reason,
11 we, you know, decide that there's something really
12 important about that, we'll let you know, and you can
13 supplement it later.

14 But I think at this point, you can take it
15 to the bank that what you've got in this agreement,
16 with the two qualifications we've talked about, are
17 going to be acceptable.

18 MS. PRICE: Okay. Thank you, Judge
19 Gibson.

20 CHAIRMAN GIBSON: Okay. There's obviously
21 a number of other things in the South Texas scheduling
22 order that you have before you. I guess I would like
23 to know if there are any things about it -- oh,
24 there's one other thing I wanted to call to your
25 attention. Just one second.

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1 (Pause.)

2 Let me just raise this one other thing
3 with you about the South Texas order. That has to do
4 with the right to file a reply.

5 We indicated in the South Texas order that
6 the parties would need -- could file a consolidated
7 pleading, and we've had a little bit of difficulty
8 with that in the South Texas case.

9 So, I would be interested in knowing if
10 you all have any views about that, and whether or not
11 it -- a party should request leave to file a reply
12 that contains their request for leave and the motion
13 itself.

14 Do you all have any views about that?

15 Let me start with you, Mr. Frantz.

16 MR. FRANTZ: For replies to the run of the
17 mill motions, I agree that there should be -- you
18 might as well file a consolidated motion to file a
19 reply and the reply itself.

20 I don't see much to be gained by having a
21 separate motion to file a reply, and it's followed
22 later on by the reply itself.

23 CHAIRMAN GIBSON: Okay. Staff?

24 MS. PRICE: Staff agrees with that
25 position.

1 CHAIRMAN GIBSON: Intervenor?

2 MR. IRVINE: I'm not familiar with the
3 specific problems that might have occurred in the
4 South Texas case, unless you want to, you know,
5 describe some of the problems. On principle, we're
6 not opposed to consolidated replies.

7 CHAIRMAN GIBSON: Okay. Okay. Well,
8 we'll take your comments into consideration.

9 I have a feeling that we'll be able to
10 resolve it in a way that you all find acceptable. But
11 I just wanted to be sure and raise that with you all
12 before we moved on.

13 Another thing, this is a sort of minor
14 point, but we'll -- be sure in the future, if you do
15 file documents that you attach to a pleading, that you
16 call them attachments rather than exhibits, so that we
17 won't have any confusion about exhibits that were
18 attached to pleadings versus exhibits that we're going
19 to be using at trial.

20 So, I think, in this case, the initial
21 petition had attached some documents that were called
22 exhibits.

23 I think it would be, in the future, if you
24 could just call them attachments, I think it will make
25 things go more smoothly.

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1 Okay. Let's go, then, to the initial
2 scheduling order. We've covered, I think, most of the
3 issues in the first part of the order.

4 Let me just go to page 6, item 4,
5 electronically stored information, reasonable search
6 and format of production. I assume that is -- that
7 was acceptable to you all?

8 MR. FRANTZ: That's correct.

9 CHAIRMAN GIBSON: Staff?

10 MS. PRICE: Yes, Your Honor.

11 CHAIRMAN GIBSON: Intervenor?

12 MR. IRVINE: Yes, Your Honor.

13 CHAIRMAN GIBSON: Okay. On page 7,
14 disclosure disputes, motions to compel, monthly status
15 reports, and requests for Subpart G proceeding based
16 on disclosure by witnesses.

17 Obviously, the dates are going to change,
18 but are those -- are those provisions acceptable to
19 the three of you?

20 MR. FRANTZ: Judge Gibson, if I can
21 perhaps go back to the paragraph 4 on page 6?

22 CHAIRMAN GIBSON: Sure. Sure.

23 MR. FRANTZ: I'm sorry to go back.

24 CHAIRMAN GIBSON: No, it's all right, Mr.
25 Frantz.

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1 MR. FRANTZ: Paragraph 4-B on page 6 says
2 that documents shall be produced in PDF, and I think
3 the agreement of the parties is that they be produced
4 either in PDF or in native file format.

5 CHAIRMAN GIBSON: Okay. That change will
6 be made, so the language would be -- say -- to be
7 produced in PDF, searchable, or what?

8 MR. FRANTZ: Native file format.

9 CHAIRMAN GIBSON: Okay. Okay, good. And
10 that's acceptable to everyone there?

11 MS. PRICE: Yes, Your Honor.

12 MR. IRVINE: Yes, Your Honor.

13 CHAIRMAN GIBSON: Okay. Okay, thank you,
14 Mr. Frantz.

15 MR. FRANTZ: And one other thing, too.
16 And even in PDF, it may be that some of the documents
17 that we have could not be converted readily into a
18 word-searchable format in PDF. They may be, for
19 example, documents we did not prepare, that we've
20 obtained from third parties.

21 And so, I think, our language that we have
22 in our agreement is that they should be word-
23 searchable to the extent practical.

24 CHAIRMAN GIBSON: Okay.

25 MR. FRANTZ: I guess we use the words, use

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1 our best efforts to make them word searchable.

2 CHAIRMAN GIBSON: Okay. Okay. Let's see.
3 Where is that in your agreement?

4 MR. FRANTZ: That's in paragraph number 3.

5 CHAIRMAN GIBSON: In paragraph 3, okay.
6 I just wanted to be sure I got the language. Okay.
7 So, okay, good.

8 So, format, the format of production is in
9 3 on your order, and we'll be sure and track that
10 language. Okay. Thank you.

11 MS. PRICE: Judge Gibson?

12 CHAIRMAN GIBSON: Yes.

13 MS. PRICE: Sarah Price with the staff.
14 I have a question about paragraph C on page 7 of the
15 STP order, regarding the monthly status reports.

16 CHAIRMAN GIBSON: Yes.

17 MS. PRICE: Considering how far out we are
18 from any sort of documents coming out of the NRC as
19 far as a DEIS, can we get that to either a two-month
20 term or a quarterly term, or as soon as there's
21 something to tell you, we tell you, sort of term?

22 CHAIRMAN GIBSON: Well, I mean, I guess --
23 I don't want to say that we would be unalterably
24 opposed to that, but as a practical matter, how much
25 of a burden is it on you to just send the same -- come

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1 up with a letter, and then send the same letter the
2 next month that says there's no change?

3 MS. PRICE: It's really no burden, it just
4 kind of clutters the file --

5 CHAIRMAN GIBSON: Right.

6 MS. PRICE: -- with something that doesn't
7 provide any information to anyone, so. We're fine
8 with whichever way you agree.

9 CHAIRMAN GIBSON: Okay. Okay. Thank you
10 --

11 MS. PRICE: Yes.

12 CHAIRMAN GIBSON: -- for your suggestion,
13 and we will take it under advisement.

14 Okay, item D, request for Subpart G
15 proceeding based on disclosure by witnesses, that's
16 acceptable to everyone? Obviously, the dates?

17 MR. FRANTZ: With one clarification. I
18 would assume this would apply to contentions that are
19 submitted and admitted in the future, with respect to
20 the existing contentions, of course, I think the
21 Board's already ruled that subpart L should be used.

22 CHAIRMAN GIBSON: Okay. Intervenor?

23 MR. IRVINE: Yes, I think we agreed that
24 subpart L would be used for the contentions, for the
25 admitted contentions.

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1 CHAIRMAN GIBSON: Just one second, please.

2 Just one second.

3 (Pause.)

4 Okay, Mr. Frantz, I think we'll take your
5 suggestion under advisement.

6 I guess the only qualification I guess we
7 would have about that is, I think, at this point,
8 intervenors basically said we're going to -- subpart
9 L is fine, and there's -- you know, there's nothing
10 about the credibility of a witness that's at issue.

11 If, for some reason, that does become an
12 issue, I guess they would have to then move for --
13 with respect to the existing contentions, I guess they
14 would have to move for leave to address this, if we
15 put your language in. Correct?

16 MR. FRANTZ: That's correct.

17 CHAIRMAN GIBSON: Okay. Whereas if we
18 leave it like that, they wouldn't be forced to move
19 for leave, although they essentially said they don't
20 anticipate an eyewitness.

21 Okay. We'll consider your suggestion.

22 Is there anything else on subpart G, item
23 D?

24 MR. FRANTZ: We have nothing.

25 CHAIRMAN GIBSON: Okay. Let's go, E,

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1 additional contentions, number 1, consolidated
2 briefing. Anything on that point?

3 MR. FRANTZ: We believe that looks fine.

4 CHAIRMAN GIBSON: Okay.

5 MS. PRICE: That's fine with the staff.

6 CHAIRMAN GIBSON: Intervenor?

7 MR. IRVINE: That's okay with us.

8 CHAIRMAN GIBSON: Timeliness?

9 MR. FRANTZ: That's also fine with the
10 applicant.

11 CHAIRMAN GIBSON: Okay.

12 MS. PRICE: It's fine with the staff.

13 CHAIRMAN GIBSON: Selection of hearing
14 procedures, pleadings and motions, pleadings, page
15 limitation, response to new facts or arguments, motion
16 for leave to file a reply. Are we -- so let's just
17 set aside the motion for leave to file a reply for a
18 second.

19 With respect to these other ones, are you
20 all okay with that?

21 MR. FRANTZ: The applicant is.

22 MS. PRICE: The staff is.

23 MR. IRVINE: Yes, Your Honor, can't think
24 of a reason to disagree.

25 CHAIRMAN GIBSON: Okay. Thank you. Okay.

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1 With respect to the motion for leave to file a reply,
2 I think, as we've already indicated, we may try to
3 clean up that language to make it more clear exactly
4 what we had, because of the problem that we previously
5 had.

6 But, is there anything else that you all
7 wish to say about the motion for leave to file a
8 reply?

9 MR. IRVINE: We have nothing.

10 CHAIRMAN GIBSON: Staff?

11 MS. PRICE: Staff has nothing else to say
12 about that.

13 CHAIRMAN GIBSON: Intervenor?

14 MR. IRVINE: Nothing.

15 CHAIRMAN GIBSON: Okay. Okay, well, we'll
16 work on that.

17 Motion for extension of time, answer
18 opposing a motion to exceed page limitation, and
19 motion certification. Are you all -- are those
20 acceptable to you all?

21 MR. FRANTZ: The applicant find those to
22 be acceptable.

23 MS. PRICE: They're acceptable to the
24 staff.

25 MR. IRVINE: And to the intervenors, Your

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1 Honor.

2 CHAIRMAN GIBSON: Okay. All right.
3 Answer certification, supplemental information and
4 dispositive motions.

5 Are you all -- are those acceptable to you
6 all?

7 MR. FRANTZ: They're acceptable to the
8 applicant.

9 MS. PRICE: They're acceptable to the
10 staff.

11 MR. IRVINE: And to the intervenors, Your
12 Honor.

13 CHAIRMAN GIBSON: Okay. Okay. We've got
14 -- on page 12, we have continuing on dispositive
15 motions, we have certification, additional time for
16 dispositive motions. On 13 we have answers, 4,
17 continuance, and 5, deadline.

18 Are all those acceptable to you all?

19 MR. FRANTZ: They are to the applicant.

20 MS. PRICE: They are to the staff.

21 MR. IRVINE: And the intervenors, Your
22 Honor.

23 CHAIRMAN GIBSON: Okay. Item H,
24 clarification, simplification, and amendment of
25 pleadings. Is that acceptable to you all?

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1 MR. FRANTZ: It is to the applicant.

2 MS. PRICE: It is to the staff.

3 MR. IRVINE: And the intervenor.

4 CHAIRMAN GIBSON: I, evidentiary hearing
5 filings?

6 MR. FRANTZ: This is Steve Frantz for the
7 applicant. Currently, looking at the schedule,
8 there's about a one year difference between the
9 schedule in the environmental case and the schedule
10 for the safety case.

11 Assuming that that gap remains through the
12 proceeding, or perhaps even widens, depending on how
13 things go, we would recommend that there would be two
14 trigger dates, one for the environmental contentions,
15 that's key to the FEIS, and one trigger date for the
16 safety contentions that's key to the SER.

17 CHAIRMAN GIBSON: Okay. Just one second,
18 please.

19 (Pause.)

20 Mr. Frantz?

21 MR. FRANTZ: Yes.

22 CHAIRMAN GIBSON: I just want to make
23 sure, you were saying that there's a year projection
24 between the two?

25 MR. FRANTZ: Between the advanced SER,

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1 which is currently scheduled for August 2012, and the
2 final environmental impact statement, which was August
3 of 2013.

4 CHAIRMAN GIBSON: Okay.

5 MR. FRANTZ: And I emphasize advanced SER,
6 though I don't see any reason why we can't proceed to
7 hearing based upon the advanced SER rather than the
8 actual publication of the NUREG.

9 CHAIRMAN GIBSON: Okay. All right. I
10 appreciate your suggestion. Let me ask the staff. Do
11 you all have a view about that?

12 MS. PRICE: We would agree with the
13 applicant on that.

14 CHAIRMAN GIBSON: Intervenor?

15 MR. IRVINE: I guess I just have one -- I
16 mean, generally, we are in agreement on that, with, I
17 guess one question I never asked Mr. Frantz, but would
18 that mean still one hearing at the end?

19 MR. FRANTZ: There would be two hearings,
20 presumably -- if we still have that standing
21 contentions on safety and environmental issues, and
22 then there are, of course, the Commission would have
23 a mandatory hearing at the very end of the proceeding.

24 MR. IRVINE: Okay, yeah, that's my
25 understanding, and if that's -- that is acceptable to

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1 us.

2 CHAIRMAN GIBSON: Okay. Okay. Let me
3 just say, I just want to make sure, are you focused on
4 the final SER, or the advanced SER, or the SER with
5 open items?

6 MR. FRANTZ: The advanced SER.

7 CHAIRMAN GIBSON: Okay. Okay. Okay.
8 Fair enough. All right. We just wanted to be sure we
9 know what you're asking. We'll have a chance to talk
10 about that among ourselves, and we'll be sure and
11 address it.

12 Just one second, please.

13 (Pause.)

14 Staff, would you be looking at the
15 advanced SER as being the appropriate vehicle to
16 precipitate a hearing?

17 MS. PRICE: That would be appropriate,
18 Your Honor.

19 CHAIRMAN GIBSON: Intervenor?

20 MR. IRVINE: Yes, Your Honor.

21 CHAIRMAN GIBSON: Okay. Okay. All right.
22 So the advanced SER is what you all would look at as
23 a trigger date. Okay, fair enough.

24 Okay. And you're all agreeable to two
25 separate hearings, if that's what it comes down to?

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1 MR. FRANTZ: Yes.

2 MS. PRICE: Yes.

3 MR. IRVINE: Yes.

4 CHAIRMAN GIBSON: Okay. Good. All right.
5 Now, with that qualification of what the trigger date
6 is, is paragraph I otherwise acceptable?

7 MR. FRANTZ: It is to the applicant.

8 CHAIRMAN GIBSON: Staff?

9 MS. PRICE: Sorry, I'm turning to that
10 page again.

11 CHAIRMAN GIBSON: It's on page 14, I'm
12 sorry.

13 MS. PRICE: Yes, it is.

14 CHAIRMAN GIBSON: Intervenor?

15 MR. IRVINE: Yes, Your Honor.

16 CHAIRMAN GIBSON: Okay. Now, let's go
17 through these one at a time. Initial statements of
18 position, is that acceptable?

19 MR. FRANTZ: It is to the applicant.

20 MS. PRICE: It is to the staff.

21 MR. IRVINE: And to the intervenor.

22 CHAIRMAN GIBSON: Okay. Rebuttal
23 statements on page 15, is that acceptable?

24 MR. FRANTZ: It is to the applicant.

25 MS. PRICE: It is to the staff.

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1 MR. IRVINE: And to the intervenor.

2 CHAIRMAN GIBSON: Okay. Motions in limine
3 or to strike, and proposed questions for Board to ask?

4 MR. FRANTZ: They are acceptable to the
5 applicant.

6 MS. PRICE: They're acceptable to the
7 staff.

8 MR. IRVINE: And to the intervenor.

9 CHAIRMAN GIBSON: Okay. Motions for cross
10 examination, evidentiary hearing, and witness with
11 written testimony must be available in person?

12 MR. FRANTZ: Those are acceptable to the
13 applicant.

14 MS. PRICE: They are acceptable to the
15 staff.

16 MR. IRVINE: And to the intervenor.

17 CHAIRMAN GIBSON: Okay. On page 17,
18 attachments to filings, a document must be attached,
19 exception, an attached documents are attachments and
20 not exhibits. Are all those acceptable?

21 MR. FRANTZ: Those are acceptable to the
22 applicant.

23 MS. PRICE: They're acceptable to the
24 staff.

25 MR. IRVINE: It's fine with us, Your

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1 Honor.

2 CHAIRMAN GIBSON: Okay. And we have
3 designation and marking of attachments and page
4 limits/methods of electronic submission.

5 Now, let me just say, let's just go to
6 designation and marking of attachments. I assume
7 that's okay with everyone?

8 MR. FRANTZ: That's acceptable to the
9 applicant.

10 MS. PRICE: Acceptable to the staff.

11 MR. IRVINE: And to the intervenor.

12 CHAIRMAN GIBSON: Okay. And when we get
13 closer to trial, we'll probably have some specific --
14 more information about that, you know, but we don't
15 need to worry about it right now.

16 On page limits, method of electronic
17 submission, now, is this -- is the language that you
18 all suggested about filing, I guess, number 13, does
19 it go there? Or would it go somewhere else?

20 MR. FRANTZ: I believe -- I believe that
21 13 is really dealing only with document disclosures
22 under 2.336.

23 CHAIRMAN GIBSON: Okay.

24 MR. FRANTZ: I think the paragraph you're
25 referring to in the South Texas order deals with other

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1 kinds of filings and pleadings.

2 CHAIRMAN GIBSON: Okay. And it just
3 mostly has to do with size, then.

4 MR. FRANTZ: Yes.

5 CHAIRMAN GIBSON: Okay. Okay, that's
6 fine. And I take it, you all are okay with that
7 language?

8 MR. FRANTZ: Yes, we are.

9 MS. PRICE: The staff is fine with that.

10 MR. IRVINE: Yes, Your Honor.

11 CHAIRMAN GIBSON: Okay. All right. Just
12 one second, please.

13 (Pause.)

14 Okay, from our standpoint, I believe we
15 have gotten the information we need from you, other
16 than the additional language you all are going to be
17 providing to us.

18 And so let me ask you, first of all, Mr.
19 Frantz, is there anything else you need to bring to
20 our attention?

21 MR. FRANTZ: There were -- was at least
22 one issue you raised in your notice for this
23 conference call that we have not discussed and that
24 pertains to site visits.

25 CHAIRMAN GIBSON: Yes.

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1 MR. FRANTZ: And Exelon is happy to
2 sponsor a site visit for the Board and the parties.
3 We recommend that that be done, if possible, in
4 conjunction with some other, perhaps pre-hearing
5 conference that we might have in the area so that we
6 would not have to all travel to the site just for that
7 occasion alone.

8 CHAIRMAN GIBSON: Okay. So, I think
9 that's a good suggestion.

10 We're glad that your client is interested
11 in hosting a site visit, and I'm sure that we would
12 all look forward to that and benefit greatly from it.

13 But there's probably no pressing need to
14 do it right now, and I think you perhaps will have,
15 I'm anticipating, we're going to have additional pre-
16 hearing conferences down there in light of the fact
17 that, you know, we're getting a lot of new
18 information. It's going to be, you know, new motions
19 and new contentions, probably.

20 So, I, you know, we can anticipate --
21 there probably will be some more opportunities for us
22 to do that.

23 So, thank you, and I'm sure we'll all
24 benefit from that.

25 Let me just ask intervenor, is there any -

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1 - I assume that's acceptable to you, that at some
2 point, we'll do a site visit, but it's not going to be
3 any time in the just immediate future?

4 MR. IRVINE: I would put one provision on
5 that, that you know, obviously, August 2012 will be a
6 trigger date for the safety contentions, and sometimes
7 before that, having the site visit would be preferable
8 for us, obviously.

9 CHAIRMAN GIBSON: Okay. I'm sure that
10 will be -- that will work out fine.

11 MR. IRVINE: Thank you, Your Honor.

12 CHAIRMAN GIBSON: Staff?

13 MS. PRICE: The staff has nothing to add
14 on that, Your Honor.

15 CHAIRMAN GIBSON: Okay. Okay, well, I'm
16 glad that were able to cover all of the points.

17 And let me ask you, other than the site
18 visit, is there anything else, Mr. Frantz?

19 MR. FRANTZ: No. You had had other issues
20 you had raised in your order, you know, for example,
21 whether there's a possibility for a settlement. I
22 think all of the parties believe at this point it's
23 premature to discuss settlement.

24 CHAIRMAN GIBSON: Right. Okay. Fair
25 enough. Staff, is there anything else that you need

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1 to bring to our attention?

2 MS. PRICE: Not at this time, Your Honor.

3 CHAIRMAN GIBSON: Intervenor, anything you
4 need to bring to our attention?

5 MR. IRVINE: Nothing from us, Your Honor.

6 CHAIRMAN GIBSON: Okay. All right. Well,
7 we will -- we will look forward to receiving the
8 information from you to address the little -- few
9 little things that we need to address, like drafts.

10 And then, once we get that, we will be
11 issuing an order shortly that hopefully -- that will
12 in large part, track the initial scheduling order in
13 South Texas, and your agreement that you all have
14 reached.

15 With that, let me just ask Judge Baratta,
16 is there anything else?

17 ADMIN. JUDGE BARATTA: Nothing more, thank
18 you.

19 CHAIRMAN GIBSON: Judge Barnett?

20 ADMIN. JUDGE BARNETT: No, nothing more.

21 CHAIRMAN GIBSON: Okay. Well, I think
22 we've covered everything, and we will stand adjourned.
23 Thank you for your time.

24 MR. FRANTZ: Thank you.

25 MR. IRVINE: Thank you, Your Honor.

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MS. PRICE: Thank you.

(Whereupon, the above-entitled matter was
concluded at 3:00 p.m.)

CERTIFICATE

This is to certify that the attached proceedings
before the United States Nuclear Regulatory Commission
in the matter of: Victoria County Station ESP

Name of Proceeding: Pre-Hearing Conference

Docket Number: 52-042

ASLBP Number: 11-908-01-ESP-BD01

Location: Rockville, Maryland

were held as herein appears, and that this is the
original transcript thereof for the file of the United
States Nuclear Regulatory Commission taken by me and,
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transcript is a true and accurate record of the
foregoing proceedings.



Chad Jackson
Official Reporter
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