

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: GE-Hitachi Global Laser Enrichment
Facility (GLE Commercial Facility)

Docket Number: 70-7016-ML

ASLB Number: 10-901-03-ML-BD0

Location: (telephone conference)

Date: Thursday, September 22, 2011

Work Order No.: NRC-1149

Pages 1-18

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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 TELECONFERENCE

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IN THE MATTER OF: :

GE-HITACHI GLOBAL LASER: Docket No. 70-7016-ML

ENRICHMENT, LLC, (GLE : ASLBP No. 10-901-03-ML-BD0

Commercial Facility) :

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Thursday, September 22, 2011

The above-entitled matter came on for pre-hearing teleconference, pursuant to notice, at 3:00 p.m.

BEFORE:

- PAUL S. RYERSON Chair
- JAMES F. JACKSON Administrative Judge
- MICHAEL O. GARCIA Administrative Judge

1 APPEARANCES:

2 On Behalf of the Nuclear Regulatory

3 Commission:

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P R O C E E D I N G S

3:02 p.m.

CHAIR RYERSON: Good afternoon, everyone. This is Judge Ryerson and I'm here in Washington with our Law Clerk, the Board's Law Clerk Hillary Cane.

We have Judge Jackson, I believe, in Utah.

JUDGE JACKSON: Correct.

CHAIR RYERSON: And Judge Garcia calling in from Hawaii.

We also have the reporter on line. So for the benefit of the reporter as we proceed, I'd ask everyone to please identify yourself before you speak. That will make the reporter's life somewhat easier.

And I should also mention that we have a nonspeaking line that we've made available to any member of the public who would like to listen into this call. As far as I know, no one has called in for that number, but you should be aware that there is that possibility.

With that said, could we have the appearances of counsel, please, starting with the Applicant.

MR. SILVERMAN: Yes, Your Honor. This is Don -- Donald Silverman from Morgan Lewis & Bockius representing the Applicant.

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1 MR. O'NEILL: Your Honor, this Martin
2 O'Neill also with Morgan Lewis & Bockius representing
3 the Applicant.

4 CHAIR RYERSON: Okay. Thank you and
5 welcome.

6 For the NRC staff?

7 MS. SIMON: Your Honor, this is Marcia
8 Simon with the Office of the General Counsel. And with
9 me I also have Molly Barkman Marsh and Catherine
10 Scott.

11 CHAIR RYERSON: Okay. Thank you and
12 welcome.

13 Is there anyone else who will be speaking
14 on this call, or do we have it at this point? It
15 sounds like we have it.

16 MS. OLIVIER: This is Julie Olivier from
17 Global Laser Enrichment. And I'm here with Chris
18 Monetta also from Global Laser Enrichment.

19 CHAIR RYERSON: Okay. Thank you.

20 MS. SIMON: And, Your Honor, this is
21 Marcia Simon.

22 We have several members of the NRC staff
23 here, some of whom might be speaking. That would be
24 Jennifer Davis, Environmental Project Manager. We're
25 also expecting Tim Johnson the Safety Project Manager

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1 but he has not arrived yet.

2 CHAIR RYERSON: Okay. Well, we'll proceed
3 then. But thank you.

4 The principle purpose of today's call,
5 which I hope will not be a long one, is set forth in
6 our September 15 Order, the Board's Order. And that's
7 to help the Board develop a revised scheduling order
8 in light of the delay in the staff documents which now
9 appears to be until February 29, 2012. Before we get
10 to that, I do want to comment briefly on the notice
11 that we received of that delay which came one day
12 before the staff documents had been promised. And I
13 must say I am surprised that no one knew more than a
14 day before that there would be essentially a six month
15 delay in issuing those documents. Obviously, even for
16 part-time judges it's helpful to have some sense of
17 what's going to be on our plates over the next several
18 months. And in this case we have two part-time judges,
19 one of whom is a full time academic who actually had
20 arranged his teaching schedule expecting that this all
21 would be fairly busy in terms of the commitment he
22 would make to this case.

23 I do not as a practice require monthly
24 reports from the staff on where the staff stands with
25 its documents, as I know some judges do that. I

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1 prefer to assume that we will see professional,
2 mature, responsible behavior and they will promptly
3 advise us if there is a change in the schedule. And
4 I hope I will not be disappointed again in the future.

5 Ms. Simon, can you speak to now the
6 likelihood that there will be a further delay past
7 February 29?

8 MS. SIMON: Your Honor, the staff is still
9 committed to meeting -- to issuing both the final EIS
10 and the SER by February 29th.

11 CHAIR RYERSON: Okay. And you will do
12 your very best to promptly advise us if that estimate
13 changes, I take it?

14 MS. SIMON: Yes, we will, Your Honor.

15 CHAIR RYERSON: Thank you.

16 All right. We proposed in our September
17 15 Order a possible in effect compression of the
18 previous schedule. I think the previous schedule ran
19 out to a somewhat leisurely eight months following the
20 staff documents. Originally the first time we did that
21 it was with everyone's agreement and it would have
22 brought us well, well ahead of the Commission's outer
23 limit for when they expect a decision in this case.
24 Of course, we've had a series of delays and this
25 latest six month delay is going to take us past, I

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1 think, necessarily the time that the Commission had
2 expected a decision. So we have done our best to
3 compress the schedule somewhat while basically holding
4 to the same concepts that all parties had agreed to
5 before.

6 So that's essentially the basis of the
7 proposal that we put out for discussion. I must say
8 that if the parties feel that that compresses one
9 deadline or another deadline or the whole process
10 unduly, and all parties feel that way, we would
11 certainly consider stretching a bit again. But that
12 was our thinking in trying as best we could to fairly
13 cut a couple of months out of the schedule because we
14 are now, through no fault of certainly most of the
15 parties here, going to necessarily be beyond what the
16 Commission had expected as a date for a final
17 decision.

18 So having said that about what we
19 proposed, the Board would like to hear what the
20 parties have to say about it. Should we begin with
21 the Applicant, Mr. Silverman?

22 MR. SILVERMAN: Thank you, Your Honor.
23 I'm happy to start. Appreciate it.

24 We do have a few thoughts we wanted to
25 share on the Order and on the schedule.

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1 We have been in touch with the staff and
2 they'll speak up shortly, I'm sure, to express our
3 request and desire that if it's possible for the staff
4 to issue the final EIS earlier than the six months
5 that's currently planned, that we would very much like
6 to see that happen. And at least from our viewpoint
7 we thought that that would be something that's
8 achievable.

9 And the purpose of raising that issue with
10 the staff was because we felt that it would be to
11 everyone's advantage that if in fact the staff could
12 issue that document sooner than the 29th of February,
13 maybe a matter of months before although there's no
14 commitment at this point, we could begin the process
15 of Board's review of the FEIS and development of Board
16 questions and responses and all that, if you will, in
17 the shadow of waiting for the SER to come out.

18 So, we have discussed that with the staff
19 and I know they'll speak, but the sense I get from
20 speaking with them is that they are not necessarily
21 coupling the two documents together. They're going to
22 do their best to issue the EIS sooner. And if they do,
23 my understanding is they would not be adverse to, and
24 this is something we very much favor, moving forward
25 on the EIS issues.

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1 One of the things we talked about, and
2 then maybe I'll let the staff speak on this issue, is
3 that it would be great if perhaps the parties and the
4 Board could have 30 days notice when the staff
5 concluded it was able to actually issue the final
6 FEIS. So, we'd like to keep open the option of being
7 able to move forward on the EIS issues and effectively
8 bifurcate the proceeding and use the time as wisely as
9 we can. There's a number of details about how that
10 would work that we haven't all worked out. There's
11 various options. But I just wanted to put that on the
12 table because that would change your schedule as
13 written.

14 CHAIR RYERSON: Yes. Would you
15 contemplate, Mr. Silverman, that say the staff is able
16 to get the FEIS out somewhat earlier, in your view
17 should that affect the proposed hearing date itself?
18 Would you seek bifurcation of the hearing or simply go
19 back to I think what our very first schedule was,
20 which was to start off with questions on one document
21 somewhat ahead of the other because initially -- it
22 may be the reverse initially; I forget now. But
23 initially the schedule contemplated for one document
24 ahead of the other, but we were still moving towards
25 a hearing at the same time.

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1 MR. SILVERMAN: You know, we talked about
2 that with staff counsel recently and I don't think
3 either party had a strong feeling on that. I think
4 we'd like to think it through some more.

5 There are two least options at least. One
6 is getting through the environmental issues assuming
7 the EIS is issued earlier and then standing by and
8 having a single hearing after all the preliminaries of
9 the SER are done. The alternative, though, is to have
10 a hearing on the EIS issues and then have a separate
11 hearing on the SER issues.

12 I don't think we right now feel strongly
13 either way. We'd like to think about it some more.
14 But either way, you know you have the opportunity if
15 you take this path of being able to make some progress
16 in the interim period and, perhaps, lessen the burden
17 on the Board and the parties as things go forward.

18 CHAIR RYERSON: Yes. I understand.

19 There is, I suppose, from the standpoint
20 of involving the public or at least allowing the
21 public observe there may be some advantages to a
22 bifurcated hearing here if in fact the safety issues
23 ultimately do involve at least the possibility of some
24 level of classified information, in which case the
25 public will not be involved. So, I guess it's

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1 probably more likely that the environmental issues
2 could be aired in front of the public, which might be
3 a good thing.

4 But in any event, let me turn to the staff
5 then for a reaction to your comment.

6 MS. SIMON: Thank you, Your Honor. This
7 is Marcia Simon.

8 Certainly if it turns out that the staff
9 is able to issue the EIS, and for that matter the SER,
10 earlier than February 29th, then the staff would do
11 so. But again, at this point I'd like to just clarify
12 that the staff cannot commit to that for either
13 document at this point.

14 And if that did come about, if say
15 hypothetically the EIS could be issued earlier, then
16 we agree with Mr. Silverman that staggering the review
17 and the questions and the responses and so forth would
18 be a good idea.

19 With regard to the possibility of notice,
20 what I would suggest is that we provide notice when
21 either document is submitted for a publishing. The
22 publishing turnaround is approximately four weeks. So
23 that would, in essence, be more or less a 30 day
24 notice then. Once it goes to publication, you know
25 unless the printing presses stop for some reason, then

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1 it's out of the staff's hands.

2 CHAIR RYERSON: Yes, I would definitely
3 encourage you to give us notice of that so that we
4 really in effect know for sure that if we haven't
5 gotten the four week notice, that it doesn't sound
6 like it's coming when it was originally projected.
7 But in addition to that, if you are aware two months
8 ahead of February 29th that you're not going to meet
9 the deadline for one or the other, or that it's likely
10 to be much earlier, by all means let us know.

11 MS. SIMON: We'll do that, Your Honor.

12 Also, I'd like to mention this won't save
13 a lot of time, but it is also possible for us to get
14 electronic copies on CDs once the document is
15 submitted for publishing. Usually it takes one to two
16 weeks to do that. So a couple of weeks could be saved
17 if the Board would like to have electronic copies
18 prior to receiving the written ones, the published
19 ones. So that's another thing that could be done to
20 save a little bit of time.

21 CHAIR RYERSON: Yes. My recollection of
22 our initial scheduling Order may be in error, but I
23 thought we were going to receive electronic copies
24 prior --

25 JUDGE GARCIA: That is correct.

1 This is Judge Garcia.

2 MS. SIMON: Okay. I just wanted to
3 clarify that that can be done a few weeks before you
4 actually get the published copies.

5 And then with regards to the issue of
6 possible bifurcation, I believe in the initial
7 discussions everyone agreed that it was a couple of
8 months of less, that bifurcation probably wouldn't be
9 something that we would want to pursue. At this
10 point, again, I can't predict when and if either
11 document will be published earlier or if the EIS would
12 come out ahead of the SER. But if that difference in
13 time was less than a couple of months, if that did
14 occur, the staff's view is that the advantage of
15 bifurcation probably is minimal, although we do
16 understand your point about classified versus public
17 ability to participate.

18 CHAIR RYERSON: Yes. Again, you know
19 another consideration that may go into that direction
20 is Judge Garcia would be coming from Hawaii for this
21 hearing. And so I think that's probably another
22 reason not to have two hearings if they're going to be
23 too close together.

24 All right. Well, anything further from the
25 Applicant at this point. But if you want to say

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1 anything further now, that's fine.

2 MR. SILVERMAN: Just one more, and that
3 is, Your Honor, first of all I want to be clear we did
4 understand very clearly from the staff they were
5 making no commitments on a specific date. And I
6 didn't mean to apply that, but we did talk about that
7 they would do the best they can and that the two
8 documents were not necessarily coupled.

9 I would just say that one thing we might
10 all want to think about is at the time that this
11 notice is given that the EIS is being issued, whether
12 it's the publication notice or the electronic copy or
13 whatever, that would probably be a good time for the
14 staff and the Applicant to sit down together on the
15 phone and talk about a schedule that would start
16 pretty quickly after that and maybe make a proposal to
17 the Board. At this point it's hard to set a schedule,
18 I guess.

19 CHAIR RYERSON: Yes. Well, what I was
20 going to propose was that we could -- unless there is
21 some specific objection to what we have proposed,
22 assuming the February 29 date, that we could issue an
23 order that has that. And then we might add something
24 to the order or simply agree amongst ourselves that
25 obviously it is within the Board's control when we

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1 issue our questions. And if, in fact, we get the say
2 FEIS well before the February 29 date, we could
3 voluntarily put upon ourselves the burden of putting
4 out sooner the questions on the FEIS, perhaps leaving
5 the same response date or perhaps not. And in sort of
6 a worse case, just leave the same response date but
7 give you a lot more time to respond to our questions
8 because we can get our questions out a lot earlier.
9 So, you know that's one option is to basically go with
10 these dates that we have proposed but remain flexible
11 to change them if in fact the February 29 date can be
12 moved up for one or both documents. Or can we do
13 something, I suppose, that simply says we're going to
14 wait. That the current schedule is off and that we're
15 going to have to wait to set a new schedule.

16 I must say, my instincts are to have a
17 schedule because it's easier to modify a schedule than
18 to create one. We can always modify it.

19 Any strong feelings, Mr. Silverman? How
20 do you feel about that?

21 MR. SILVERMAN: I think I'm inclined to
22 agree with you, Your Honor, that it would be better to
23 have a schedule than not to have one. And I like your
24 idea. And I would just say that this is does not
25 sound contradictory, but as much as we would like to

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1 move forward very promptly with this as expeditiously
2 as possible, we're not asking for any relief at all
3 right now but there's two areas: The responses to the
4 Board questions and the submittal of the prefiled
5 testimony where there is a month there for responses
6 and prefiled testimony. You know, we would just like
7 to say that if we get extensive questions or we need
8 to develop a fully lengthy testimony, you know there
9 may be a situation where we would ask for some
10 additional time. But we're not asking for that now.
11 It kind of depends on what we get back from the Board.

12 CHAIR RYERSON: Okay. Ms. Simon, any
13 further thoughts from you?

14 MS. SIMON: Your Honor, the staff agrees
15 with the Applicant and with the Board that it would be
16 good to have a schedule. And we don't have any
17 specific comments about the schedule that you've laid
18 out.

19 CHAIR RYERSON: Okay. Well, I'm inclined
20 then, subject to conferring with my fellow Board
21 Members, is to come up with another scheduling order
22 that will basically put these dates in as the latest
23 alternative, but probably will add a little bit of
24 language to specifically recognize at least the
25 possibility we may change if we are fortunate and one

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1 or both staff documents are available sooner. And also
2 to recognize that out of respect for the Commission's
3 preference on timing, we've tried to compress the
4 schedule as much as possible. And we recognize that
5 it may be necessary for one or more parties to ask for
6 more time; something like that.

7 So if that's agreeable.

8 Any comments from Judge Jackson and Judge
9 Garcia at this point?

10 JUDGE JACKSON: I have no other comments.

11 This is Judge Jackson.

12 JUDGE GARCIA: This is Judge Garcia.

13 I would like to see a notice one month
14 prior to the February 29th deadline indicating that
15 the NRC staff expects to issue the reports on the
16 dates specified and not deal with another last minute
17 delay.

18 CHAIR RYERSON: Yes. Okay. We certainly
19 can put that in. And I'll circulate a draft of an
20 order to each of you before we issue it.

21 Okay. One other item. I just wanted to
22 confirm that while the Board's initial preference had
23 been to have a site visit after we saw the staff
24 documents, at this point we would rather -- we are
25 going forward and we're going to have the site visit,

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1 I believe it's next Wednesday the 28th. As far as I
2 know, all of the arrangements, security arrangements
3 and the like have been made for that. And if anybody
4 else has a contrary understanding, let me know.

5 All right. Anything else that we should
6 talk about today while we have everyone on the phone?

7 MR. SILVERMAN: I have nothing, Your
8 Honor.

9 This is Donald Silverman.

10 CHAIR RYERSON: Ms. Simon?

11 MS. SIMON: This is Ms. Simon.

12 We don't have anything further.

13 CHAIR RYERSON: Okay. Anything else from
14 my fellow Judges?

15 All right. Well, it sounds like we are
16 done. Thank you all. We stand adjourned.

17 (Whereupon, the Pre-Hearing Teleconference
18 was adjourned at 3:24 p.m.)

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