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NUCLEAR REGULATORY COMMISSION

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Docket Number: 70-7016-ML

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1 UNITED STATES OF AMERICA

2 U.S. NUCLEAR REGULATORY COMMISSION

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4 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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6 _____
7 In the Matter of : :

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

9 ENRICHMENT, LLC : :

10 (GLE COMMERCIAL FACILITY) : :

11 _____ : :

12

13 Thursday,

14 June 28, 2012

15 Teleconference

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19 BEFORE:

20 PAUL S. RYERSON, Chairman

21 DR. JAMES F. JACKSON, Administrative Judge

22 DR. MICHAEL O. GARCIA, Administrative Judge

23

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1 **ALSO PRESENT**

2 **ANTHONY J. BARATTA, Associate Chief Administrative**

3 **Judge**

4 **DOUGLAS HASE, advisor to the Board on security related**

5 **matters**

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

2 2:08 P.M.

3 CHAIRMAN RYERSON: Welcome, everyone. We
4 have, I believe, two other Judges on the call and I
5 should say good morning to Judge Garcia. We're about
6 five or six time zones separated here. Judge Garcia
7 is calling in from Hawaii. And Judge Jackson is
8 calling in from Utah. Our law clerk for the Board,
9 Anne Siarnacki is with me as is a Commission-appointed
10 security advisor, Douglas Hase.

11 I believe that Associate Chief Judge
12 Baratta is also listening in. He's our Panel's
13 security advisor for general purposes.

14 Obviously, this call is being recorded by
15 the reporter. There will be a transcript.
16 Additionally, we have made this call available on a
17 listen-only basis to members of the public or the
18 press who wish to call in. So while we may be
19 discussing, we will be discussing some plans for
20 handling non-public information, classified
21 information, of course, no classified information
22 should be discussed during this call itself.

23 With that said, if counsel would introduce
24 themselves for the record, starting with the
25 Applicant?

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1 MR. SILVERMAN: Yes, thank you, Your
2 Honor. This is Don Silverman with Morgan, Lewis &
3 Bockius, counsel to the Applicant. I have Charles
4 "Chip" Moldenhauer with me who is also counsel. I
5 wanted to mention that I have Julie Olivier, our
6 licensing manager, with us and I'm wondering whether
7 our security manager, Pat Jenny, is on the line or
8 not? It does not sound like it.

9 CHAIRMAN RYERSON: Certainly not unless
10 she got the listening only code.

11 MR. SILVERMAN: That's possible. Okay,
12 that's our group for now.

13 CHAIRMAN RYERSON: Thank you. And for the
14 NRC Staff?

15 MS. SIMON: Good afternoon, Your Honor.

16 This is Marcia Simon, counsel for the NRC staff. With

17 me, I have Michelle Albert, co-counsel for the staff.

18 Carrie Safford will be joining us shortly and also

19 Catherine Scott from the Office of the General

20 Counsel. And from the staff we have Jennifer David,

21 the Environmental Project manager, and Tim Johnson,

22 the Safety Project manager.

23 CHAIRMAN RYERSON: Okay, thank you. And
24 welcome, welcome to all counsel and other
25 participants. The purpose of today's call is a very

1 simple one. This is our last opportunity to discuss
2 logistical issues and some other issues before the
3 evidentiary hearing begins 13 days from today on
4 Wednesday, July 11.

5 And as chairman, I'd like to exercise the
6 prerogative to begin by discussing four issues and we
7 can see what else anyone might like to raise after
8 that.

9 The first topic I'd like to talk about is
10 excusing witnesses. I believe there are about two
11 dozen witnesses between the NRC staff and the
12 Applicant who have submitted pre-filed written
13 testimony, about maybe a third or so from GLE and
14 about two thirds from the NRC staff. The Board,
15 obviously, does not want to drag into the hearing
16 anyone for whom we're not going to have any questions.
17 Unfortunately, while we've started digging into the
18 testimony very thoroughly, I don't think we're ready
19 yet as a Board to rule out any witnesses if we're in
20 a position to do that before the hearing, we'd like to
21 do it. And so I'm kind of wondering if there's a
22 sense among the participants as to what a reasonable
23 cutoff date would be that would be helpful to you.
24 I'm not guaranteeing that we're going to be able to
25 meet any deadline like that, but if there's a date

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1 certain by which it would be helpful to have a list
2 that we could issue of witnesses whose presence
3 clearly will not be required, is there a sense of when
4 that date might be?

5 Mr. Silverman, let me start with you?

6 MR. SILVERMAN: Your Honor, give me one
7 moment and I'll answer your question.

8 (Pause.)

9 Your Honor, ideally for us it would be a
10 week from tomorrow, I believe it's Friday, the 6th.

11 CHAIRMAN RYERSON: Friday, the 6th. Okay.
12 NRC staff, you have a number of witnesses coming from
13 out of town or are most of the witnesses here at
14 headquarters?

15 MS. SIMON: Your Honor, we have several
16 witnesses coming from out of town, both staff members
17 coming from the region and also contractors coming
18 from Argonne National Labs.

19 CHAIRMAN RYERSON: Okay. Again, there's
20 no assurance that we can rule out any witnesses, but
21 would the 6th be a reasonable date from your
22 standpoint?

23 MS. SIMON: Yes, that would, Your Honor.

24 CHAIRMAN RYERSON: Okay, we will target to
25 do that if we can because obviously we don't want to

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1 inconvenience people unnecessarily. Any comments from
2 my fellow Judges at this point, Judge Garcia, Judge
3 Jackson?

4 ADMIN. JUDGE JACKSON: This is Judge
5 Jackson. That sounds reasonable.

6 ADMIN. JUDGE GARCIA: Yes, that's fine
7 with me.

8 CHAIRMAN RYERSON: Okay, so we will strive
9 to do that if we can absolutely eliminate the
10 possibility of questions for one or more witnesses,
11 we'll try to let you know who they are no later than
12 a week from tomorrow.

13 MR. SILVERMAN: Thank you very much.

14 CHAIRMAN RYERSON: Also, I think at one
15 point we did indicate that we would not require any
16 witnesses who answered the original numerical
17 questions, unless we asked for them. I'm not aware at
18 this point of any such witnesses that we are asking
19 for. So you can rest assured of that point.

20 The second item I'd like to discuss is a
21 decision the Board has made subject to discussion
22 today, I suppose, but our conclusion is that while we
23 would like to be as transparent as possible that the
24 only practical thing to do with this mandatory hearing
25 is to close the hearing to the public in its entirety.

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1 Clearly, a lot of our questions, the Board's questions
2 are going to focus on the first topic on which
3 classified information has been submitted as exhibits
4 and surely there will be questions in that area,
5 criticality safety, in particular, that will require
6 reference to classified information.

7 There is at least some possibility that
8 some of the other topics may get into classified
9 information, and in the Board's view a high likelihood
10 that at least other categories upon public
11 information, export control information, proprietary
12 information, what have you, will come up throughout
13 the hearing in discussing the various other topics
14 that we've asked to be addressed.

15 So that is our view that it really would
16 not be practical to try to make very limited parts of
17 this hearing available to the public. We'd be
18 constantly sending people out of the room.

19 There will, of course, for the benefit of
20 the public, be at the very least an edited version of
21 our final decision, possibly, the entire final
22 decision depending on what level of detail the Board
23 ultimately decides it needs to go in to prepare a
24 complete explanation of its ruling and decision. And
25 there obviously, in due course, will be a public

version of the transcript after which we've had an opportunity to remove any information that is not public. Having real time observers from the public just doesn't seem to us to be practical.

7 MR. SILVERMAN: Your Honor, we do not
8 object. We agree completely. There will be some
9 logistical questions and recommendations we have once
10 we drill down a little on that, but we're completely
11 in accordance with the Board on that.

12 CHAIRMAN RYERSON: Thank you, Mr.
13 Silverman. NRC staff?

14 MS. SIMON: Your Honor, that's fine with
15 us.

16 CHAIRMAN RYERSON: Okay. My third topic
17 and maybe I should go through what I have and you may
18 have some comment, Mr. Silverman, or the NRC staff,
19 but my third topic pertains to logistics, some
20 information for you about how we propose to proceed,
21 some information that may be helpful to you and some
22 questions that we will have, much of it flowing from
23 the need to keep nonpublic information nonpublic
24 throughout the proceeding.

So let me, if I may, run through a fairly

1 long list of things that I have of that nature and
2 then we can see what is open or what questions some
3 folks may have about it.

4 First of all, the simplest logistical
5 things, I doubt that this is new information for you,
6 Mr. Silverman, but everybody, the hearing will be held
7 in Two White Flint on the third floor. For some time
8 now, the only public access to the NRC headquarters
9 complex has been through the other building, through
10 One White Flint, so it's necessary for everyone to
11 check in at One White Flint and then eventually come
12 through the secure corridor to Two White Flint.

13 Another very basic simple logistical
14 matter is that there is very, very limited parking at
15 the NRC headquarters. People are encouraged to take
16 public transportation, if that's possible. There's a
17 Red Line right across from the One White Flint
18 building. There is parking, I guess, usually still
19 available in the Metro stop there. There's public
20 parking and perhaps even at the Marriott. I don't
21 know about that. Those are some of the options, but
22 there's very little parking available in this
23 building.

24 In terms of timing, we're going to start
25 at 9 o'clock on Wednesday. We encourage you to get

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1 here early, but not too early. Because of the
2 likelihood that we're going to be discussing
3 classified information, the Board's hearing room is
4 going to be appropriately prepared for that and we
5 will have guards at the only remaining entrances to
6 the hearing room. And so I don't think it will be
7 possible to get in before say 8 o'clock at the
8 earliest. So be early, but not too early is the
9 advice.

10 We will make available on the same floor
11 as the hearing room, the third floor of Two White
12 Flint, some space that the security folks have made
13 available to us, a conference room that holds, I
14 think, maybe ten people. It may be a little cozy in
15 there if all of the GLE witnesses are there at the
16 same time, particularly with some other people, but
17 again, particularly if we have witnesses who may not
18 all have a Q clearance or who have no need to know
19 about certain aspects of this, we're going to
20 obviously have to shuttle people back and forth. The
21 Board will provide some people to act as escorts for
22 the GLE folks.

23 The NRC staff and its witnesses, we
24 assume, you can be on your own and figure out where
25 you want to store your witnesses and where you want to

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1 work with them or have them wait. Again, in some
2 occasions, we'll normally probably empanel the
3 witnesses on one topic together, most likely, but this
4 is a case in which often probably will not want other
5 panels sitting in the back of the courtroom if they
6 really have no relation to the subject matter that's
7 being discussed at the moment.

8 Let's see. I think all lawyers, both
9 sides, should be prepared to be responsible for
10 determining that whoever is with your group in the
11 hearing room, has a need to know and an adequate
12 security clearance at all times, again, given the
13 subject matter that we're talking about and we will
14 try to be as clear as possible about what that will be
15 at any moment.

16 If the Applicant wants to carry into the
17 NRC building secret, restricted data, and my guess is
18 it would not be necessary because we have the
19 classified -- the Board has -- the classified exhibits
20 that have been submitted. And to the extent
21 necessary, we can use those in the courtroom. They
22 are secure, very close to the courtroom and we can get
23 those if need be. So I think there really isn't a
24 need to do that, but if you do want to bring in
25 classified information, it's going to be necessary to

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1 get a courier letter, as soon as possible, to bring
2 documents into the NRC building.

3 In the hearing room itself, there will be
4 no laptops or cell phones. We will have guards who I
5 guess can collect that, but rather than have a
6 basketful of similar-appearing cell phones, leave them
7 back in your car or in the office if that's possible.

8 Taking notes during the hearing is also
9 going to raise an issue, given the likelihood of
10 classified information being discussed. And if GLE
11 and the staff want to bring their own authorized
12 derivative classifiers, that's fine, otherwise, I
13 think we're going to have to destroy any notes that
14 are taken during the course of the hearing. We have
15 a secure place where we could keep during breaks or
16 overnight, perhaps, a very limited number of notes, an
17 envelope size we can stick in a proper safe here. But
18 in general, we're going to have to be very careful
19 about not allowing -- the removal of notes.

20 What else is on my list? Quite a bit
21 here. On the PowerPoint presentations, we are going
22 to be able to use a projector because we can disable
23 the recording feature of that projector, so we can
24 even show classified information if need be on the
25 projector. I think the parties would be well advised

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1 to have several paper copies for themselves, any
2 PowerPoints and the like.

3 The Board will have, each Board member
4 will have a full set of the voluminous exhibits and
5 the testimony, so if you want to talk from a
6 PowerPoint, we will have a copy in front of us. And
7 that may be the easiest way to do it, although again,
8 we can project as long as we are sure to disable the
9 recording feature of our projector.

10 Handling exhibits actually may be much
11 easier than some of you are used to in other cases.
12 Unless we hear an objection, all submitted exhibits
13 are going to be admitted and I doubt in this
14 proceeding, as it's uncontested, any party is going to
15 be raising an objection, but our intention is, unless
16 there's an objection, to admit all exhibits. For the
17 most part, you have complied with our orders and
18 you've numbered them. They're clearly numbered. The
19 Board sees no reason to renumber them all. I know
20 that's been done in some cases for whatever reason,
21 but they all have numbers and those can be the exhibit
22 numbers as far as we're concerned.

23 Now the NRC staff testimony, I believe,
24 does not have exhibit numbers. The GLE testimony is
25 submitted with the exhibit numbers. I don't think it

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1 makes a huge difference. We can cite NRC staff
2 testimony as testimony. It's attested to by sworn
3 declarations or affidavits. We can admit it in that
4 fashion and I don't think we really have to go through
5 the exercise of numbering it unless somebody feels
6 strongly that we need to.

7 Two items that I think we will add as
8 additional numbered exhibits are the exhibit lists
9 themselves, the final versions of the exhibit lists
10 themselves and again, this is contrary to practice,
11 I think before many boards, but at least my own view
12 is that the exhibit lists are some of the most useful
13 documents to have in the record and unless there's
14 some objection, we'll just add those -- respective
15 exhibit list to your set of exhibits and give it the
16 next consecutive number.

17 Moving on from explanation to some
18 questions or directions, the parties should email the
19 Board's law clerk, Anne Siarnacki -- I'm pretty sure
20 you have her email address by now -- a list of all of
21 the individuals, lawyers, support persons, witnesses,
22 that you want to have in the hearing room at any point
23 with their name, their clearance level, if any, and
24 the organization that holds their clearance. And I
25 believe if we have that information and I'm looking at

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1 our security advisor now, if we can prepare or Mr.
2 Hase will prepare a visitor or access request form
3 that will include that. So you don't have to
4 individually prepare visitor access request forms.

5 MR. HASE: I would first like to have the
6 last four of the Socials. We hold them. If NRC holds
7 their clearance, they'd like the last four just in
8 case there's a common name we can bounce off the --

9 CHAIRMAN RYERSON: Okay.

10 MR. HASE: Another organization, if you're
11 bringing in witnesses for Argonne, they'll need a
12 visit request, so they'll either have to get DOE,
13 their security office at DOE to fill out a DOE
14 equivalent visit request or you can send them a copy
15 of a 277 and have them fill it out. But if you've got
16 people coming in from -- that other organizations hold
17 their clearance, they're going to have to get a visit
18 request pass and since next week is a holiday, Linda
19 -- PER SEC would prefer to have that probably by
20 Thursday or Friday at the latest.

21 CHAIRMAN RYERSON: Everybody get that?

22 MR. SILVERMAN: I got it. This is Mr.
23 Silverman. I did want to confer on that internally
24 here when we get back just so I understand it. We've
25 got a question or two about that here.

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1 CHAIRMAN RYERSON: Okay. NRC staff?

2 MS. SIMON: Yes, Your Honor. We
3 understand that.

4 CHAIRMAN RYERSON: Okay, it would also be
5 helpful for us to have a complete understanding. We
6 may be able to do it on the phone, of the types of
7 nonpublic information that are involved in this
8 proceeding. We know that there's classified
9 information at the level of Secret restricted data.
10 We know that there is sensitive unclassified
11 information of a security nature, I believe, as well
12 as sensitive unclassified information of a proprietary
13 nature. We know that there is export control
14 information.

15 Are there any other categories of
16 nonpublic information that we need to be aware of,
17 first starting with Mr. Silverman?

18 MR. SILVERMAN: I'm going to refer this to
19 Ms. Julie Olivier to answer, if you don't mind, Your
20 Honor.

21 CHAIRMAN RYERSON: Absolutely.

22 MS. OLIVIER: Your Honor, you've mentioned
23 all the categories of information that GLE has
24 submitted to the NRC.

25 CHAIRMAN RYERSON: So what I've said

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1 covers it?

2 MS. OLIVIER: Yes, sir.

3 CHAIRMAN RYERSON: Okay, thank you. And
4 NRC staff?

5 MS. SIMON: Your Honor, that covered the
6 NRC staff as well.

7 CHAIRMAN RYERSON: Okay. And I should
8 emphasize again, I should have mentioned this when we
9 talked about note taking, because it may affect how
10 you wish to take notes or not take notes. Again, I am
11 hopeful, personally, and I think the Board is at least
12 tentatively of a like mind, that our ultimate decision
13 is going to look more like the recent decisions that
14 you've seen from the Commission on mandatory hearings
15 which is that there are certain statutory conclusions
16 that the Board is required to reach, but that in
17 reaching those, much as the Commission did not do in
18 its mandatory hearing decisions, I don't think that
19 the Board is required to have, as in a contested
20 hearing, dozens and dozens or even hundreds of
21 specific findings of fact.

22 And so we probably, and we will discuss
23 this further at the time of the hearing, but it may
24 not be necessary to submit to the Board findings of
25 fact that would be similar to those that you might

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1 submit in an adjudicatory type of hearing. We're
2 going to analyze the testimony and we're going to
3 identify some of the issues of concern to us and how
4 we address those, but I do not see this Board most
5 likely producing a decision similar to what some other
6 Boards have done before, at least before the
7 Commission's recent decision.

8 I know the Areva Board very specifically
9 did have detailed findings of fact and obviously that
10 was their prerogative. I suspect we're going to do it
11 a little differently which may ease your burden about
12 note taking. I'm not sure. I did want to emphasize
13 that at least tentatively I think our decision will
14 look a little more like the Commission decisions than
15 the Areva Board's decisions.

16 Another logistical matter on my list is
17 the order of topics. It seems to me there's -- as far
18 as I'm aware there's no reason not to go through the
19 order of topics one through six. I mean if we had a
20 whole bunch of witnesses who were focused on topics
21 one and six, we could take those together or
22 something, but I didn't see that looking at the
23 witness list at least. So our proposal would be that
24 we just go through in order.

25 Mr. Silverman, does that make sense from

1 your standpoint?

2 MR. SILVERMAN: Yes, it does, Your Honor.

3 CHAIRMAN RYERSON: Okay, NRC staff?

4 MS. SIMON: Your Honor, could we just have
5 a moment, please?

6 CHAIRMAN RYERSON: Sure.

7 (Pause.)

8 MS. SIMON: Your Honor, that's fine with
9 the staff.

10 CHAIRMAN RYERSON: Okay, we will plan on
11 that then. Another question I have, you don't know
12 how long, the parties do not know how long the
13 proceeding will lasts because much of the proceeding
14 depends on the Board and the questions that we have.
15 But you do have, each party, I believe, has prepared
16 presentations on each of the six topics. We have, I
17 think, probably 12 presentations.

18 Starting with you, Mr. Silverman, do you
19 have a sense of how much time is involved in the six
20 sort of prepared presentations that your side will be
21 making?

22 MR. SILVERMAN: I do, to some degree, Your
23 Honor. I know -- I would say the larger -- the ones
24 that generally relate to testimony where we put in
25 more testimony, large amounts of pages, somewhere

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between 25, 30, maybe 35 minutes tops, and then others
much shorter. For example, I can tell you on Issue 1,
we're not going to get into any classified
information, but I do expect that that PowerPoint
presentation will take a good half hour and perhaps a
little bit longer and the same thing for Issue 6 which
is the Environmental Monitoring Program. But then
we'll have others that are considerably shorter.

9 We're really trying to keep kind of a half hour
10 as a threshold.

11 CHAIRMAN RYERSON: Okay, so you would say
12 that without being strictly limited to it, maybe three
13 hours in total for your presentations?

14 CHAIRMAN RYERSON: I would say that ought
15 to be ample.

16 CHAIRMAN RYERSON: Okay, and NRC staff, is
17 that -- and I'm not holding you to a specific time,
18 but does that seem like maybe a realistic outer limit
19 for your presentations?

20 MS. SIMON: Your Honor, first, we are
21 assuming that you mean -- assuming time uninterrupted
22 by questions, is that correct?

23 CHAIRMAN RYERSON: Correct. Assuming we
24 don't have questions during the -- we may, but if we
25 had no questions, how long would it take?

1 MS. SIMON: We would estimate between
2 three and four hours total.

3 CHAIRMAN RYERSON: Okay. So in total,
4 we're talking about one day without any Board
5 questions. Okay.

I'm sorry, I think I'm getting a call from
our security advisor, Judge Baratta. We may put you
on mute for just a second, but not yet.

What else is on my list? Transcript

corrections. Logistically, because the transcript here will have presumably classified information and other nonpublic unclassified information, we expect to have the court reporter working here in our offices to prepare a transcript, an additional transcript and ultimately there will be a publicly-available transcript. That raises a question of if the parties would like the opportunity to suggest transcript corrections, how do we do it? Now one way is for the parties to waive transcript corrections which is, of course, as I'm sure you know, the general rule at

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1 least under depositions in the federal rules now,
2 unless you specifically request the opportunity, you
3 waive.

4 Otherwise, I guess one option would be to
5 require an appropriately cleared person from each
6 party to come and read the transcript in its entirety
7 here in our offices and hopefully agree on any
8 transcript corrections. I'm not sure we necessarily
9 need to decide that today, but we should decide it
10 before the hearing is over.

11 Mr. Silverman, I'll start with you, any
12 thoughts about that?

13 MR. SILVERMAN: If you'll hold one second,
14 Your Honor.

15 (Pause.)

16 Your Honor, we would like to think that
17 through a little bit more and get back to the Board
18 and the parties, but we'll try to do that very
19 expeditiously.

20 CHAIRMAN RYERSON: Okay. Any thoughts on
21 that subject from the NRC staff?

22 MS. SIMON: Yes, Your Honor. The staff
23 would prefer not to waive the corrections and we would
24 be happy to provide probably two people with
25 appropriate clearance, if that would be acceptable.

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1 CHAIRMAN RYERSON: Okay.

2 MR. SILVERMAN: Your Honor, we don't want
3 to waive either actually, I should make that clear.
4 But there may also be -- this is Mr. Silverman again,
5 obviously, there may be -- I'm not sure what Mr. Hase
6 will have to say about this. I'm sure he can comment,
7 but I would think we could segregate the classified
8 portion on Issue 1 from everything else. And then
9 there are alternatives, I believe, even for the
10 classified portion which would be one alternative, as
11 you indicated, is to come to your offices. Another
12 is, I mean there are means of a staff and the
13 Applicant transmitting this information and they
14 transmit classified information on a routine basis.
15 We'd like to think that through a little bit more.

16 CHAIRMAN RYERSON: Okay. Somehow I sense
17 that there would not be a groundswell of support for
18 waiving of anything, so we'll work that out as I said.

19 I frankly was not expecting you would
20 probably waive, but it is important to recognize, I
21 think, that in a noncontested hearing of this nature
22 there is sort of a progression of information that the
23 Board relies upon. We start with the staff documents
24 or even the application before the staff documents and
25 then we have our questions which are answered under

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1 oath and then we have the prefilled written testimony
2 and so forth. So there's a large body of information
3 that the Board relies upon, that reviews and relies
4 upon, and it's not just likely to turn on a word or
5 two in the transcript. But in any event, we'll deal
6 with that in due course.

7 By the way, I am informed that there is a
8 good chance if you want to keep notes during the
9 hearing, we will be able to store them, a reasonable
10 quantity, and as long as we treat them as secret,
11 restricted data, the highest possible level, we could
12 eventually get them to you and they could be reviewed
13 by a classifier at that point.

14 MR. SILVERMAN: Your Honor, if I may,
15 Julie Olivier?

16 MS. OLIVIER: Your Honor, I just wanted to
17 point out that two of our witnesses are qualified
18 derivative classifiers.

19 || CHAIRMAN RYERSON: Okay.

20 MS. OLIVIER: And one of our witnesses
21 also is a proprietary ECI and SRI expert, so for DOE,
22 at least, we'll be able to do that at the hearing and
23 then possibly, if we have SRD notes, just have you
24 store them for us.

25 || CHAIRMAN RYERSON: In real time, right?

1 MS. OLIVIER: Yes.

2 CHAIRMAN RYERSON: That will be great.

3 That would probably work very well.

4 All right, I have a fourth topic that I'd
5 like to discuss briefly, the fourth topic is this, are
6 there any implications of D.C. Circuit decisions
7 concerning the waste confidence rule for this
8 proceeding?

9 The staff, the NRC staff, has conceded in
10 some recent filings in reactor cases which, of course,
11 are a much different part of the fuel cycle. But in
12 reactor cases, I believe the staff has now conceded
13 that a license could not issue at this time because
14 for a reactor, what you do with the high level waste
15 is certainly something that should be considered as
16 part of the NEPA analysis and since no one has done a
17 NEPA analysis, because they're relying upon the
18 generic analysis done by the Commission, there are no
19 present analyses and there is at the moment apparently
20 no valid generic analysis.

21 Now we are, I guess, really two steps
22 removed in fuel cycle from that. We're talking about
23 enrichment of uranium which, at least as I understand
24 it, then goes into fuel rods which then go into
25 reactors which then become high level waste at some

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1 point.

2 So the question is, is there any relevance
3 to the D.C. Circuit decision to this proceeding? I
4 mean we are obviously -- you are hopeful, I assume,
5 Mr. Silverman, that at the end of the day the Board
6 makes a recommendation or directs or authorizes the
7 staff to issue a license which would probably be a lot
8 sooner if it occurs than any other reactor licenses
9 that are under consideration. And so it would be
10 helpful to the Board to have the parties' views on
11 what, if any, implications there are of the D.C.
12 Circuit decision. I would suggest that's probably
13 something that would be best in the form of a legal
14 analysis, although it could also be addressed by some
15 of the NEPA witnesses or both, I suppose.

16 Let me start with the NRC staff because
17 it's the staff's EIS that's involved. Would you find
18 it possible within -- before or at the time of the
19 hearing to submit a legal analysis of that point?

20 MS. SIMON: Your Honor, could we have a
21 minute to confer on that, please?

22 CHAIRMAN RYERSON: Sure.

23 (Pause.)

24 MS. SIMON: Your Honor, we can provide a
25 legal analysis before the hearing.

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1 CHAIRMAN RYERSON: Thank you very much.
2 Mr. Silverman, did you want to provide something on
3 that subject?

4 MR. SILVERMAN: I am sorry, Your Honor,
5 can you hear me?

6 CHAIRMAN RYERSON: Yes.

7 MR. SILVERMAN: I'm sorry. Yes, we'd be
8 happy to and by the time of the hearing would be
9 great.

10 CHAIRMAN RYERSON: Thank you very much.
11 All right, let's see, Judge Jackson, anything that you
12 wanted to raise at this point?

13 ADMIN. JUDGE JACKSON: No, I think you've
14 covered the items very well, Judge Ryerson.

15 CHAIRMAN RYERSON: Thank you. Judge
16 Garcia?

17 ADMIN. JUDGE GARCIA: This is Judge
18 Garcia. I have nothing to add today.

19 CHAIRMAN RYERSON: Thank you. Let's go
20 to the Applicant. Mr. Silverman, are there other
21 matters we need to be discussing or questions you have
22 at this point?

23 MR. SILVERMAN: Yes, probably.

24 CHAIRMAN RYERSON: I could go to the staff
25 first if you want a moment to think.

9 Bear with me a minute. With respect to
10 the sixth item I think you mentioned, GLE individuals
11 carrying in secret, restricted data and needing a
12 courier letter, I think there is an alternative to
13 that which is to transmit through the appropriate
14 secure channels anything we might want to transmit to
15 the NRC staff, to the security staff, as we did with
16 the actual filing of our testimony to the staff
17 lawyers.

18 CHAIRMAN RYERSON: Yes, I am being
19 informed that that is the preferred way to do it.

20 MR. SILVERMAN: That is our preferred way
21 also. And we're going to want to do that because we
22 have -- some of our witnesses are certainly going to
23 be dealing with classified information. Is probably
24 going to have some notes on his PowerPoint slides and
25 that kind of thing and he wants to have those with

1 him. So we'll handle that in accordance with regular
2 channels.

3 Also with respect to computer, cell
4 phones, and the like, I would think we could leave
5 those in that room that you've made available to us.

6 MR. HASE: That is if they're willing to
7 assume custody for their stuff so we don't have to put
8 a guard in front of it.

9 CHAIRMAN RYERSON: Yes, there will not be
10 a guard in front of that room, although I believe it's
11 in the security area. But as long as we are not
12 assuming custody of your -- guaranteeing the return of
13 your possessions, they should be safe there, I think.

14 MR. SILVERMAN: Okay, thank you. We
15 talked about the fact that if we do take notes, we'll
16 have individuals there who are qualified and capable
17 of reviewing those and deciding whether we can leave
18 with them or whether they have to stay at the NRC. If
19 they stay at the NRC again, they can be transmitted
20 back to us through the same secure channels.

21 CHAIRMAN RYERSON: Excellent.

22 MR. HASE: An we will have a copy of the
23 classification guide available.

24 MR. SILVERMAN: Great. I am sure some of
25 our people know that inside and out, but that will be

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1 useful.

2 PowerPoints, we're fine on that. I was
3 going to -- it was our recommendation that to the
4 extent the Board was comfortable with it, that it
5 would be -- it would probably facilitate the whole
6 proceeding if it was possible for most or all of those
7 witnesses to be able to just get through those
8 PowerPoints uninterrupted. It's your prerogative, of
9 course, to raise questions at any time, but I think if
10 it's possible to let those presentations go forward,
11 get them completed and then go back with questions, it
12 would probably speed things up.

13 Bear with me a second. I'm going to go on
14 mute for one second.

15 CHAIRMAN RYERSON: Sure.

16 (Pause.)

17 MR. SILVERMAN: All right, I was concerned
18 about the issue of -- or I didn't really understand
19 the issue of visit request passes, but I've been
20 advised we can handle that, no problem.

21 CHAIRMAN RYERSON: Good.

22 MR. SILVERMAN: Bear with me.

23 (Pause.)

24 One more moment, Your Honor.

25 CHAIRMAN RYERSON: Certainly.

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1 (Pause.)

2 MR. SILVERMAN: Your Honor, the Applicant
3 doesn't have anything else. Thank you very much.

4 CHAIRMAN RYERSON: Okay, thank you, Mr.
5 Silverman.

6 NRC staff, Ms. Simon?

7 MS. SIMON: Yes, Your Honor. We just have
8 a couple of things. The first one was we'd like to
9 just get a clarification on the visit request for the
10 outside contractors who will be coming in, to whom
11 they are to submit that?

12 MR. HASE: If they're coming in on our
13 behalf, basically, try to get a 277 or you can either
14 -- they're going to need to fill out the information
15 with their security office. And if you can get it to
16 me, I can get it to Linda Watson.

17 MS. SIMON: Okay, is this Doug?

18 MR. HASE: Yes.

19 MS. SIMON: Okay.

20 MR. HASE: But they're going to have to
21 fill out the -- DOE has their form. If you tell your
22 witnesses, I need a classified visit request from your
23 security office, they fill it out, you get it to us,
24 I'll get it to PER SEC.

25 MS. SIMON: Okay, thanks. We also have a

1 couple of contractors on topic three from the Center
2 for Nuclear Waste Regulatory Analysis and so they're
3 also under contract with NRC. So they would go
4 through the same --

5 MR. HASE: Are they cleared?

6 MR. JOHNSON: I don't know if they have Q
7 clearances and we're not sure about the ANL contractor
8 as to whether he has a Q clearance. So they may be
9 restricted from certain parts of the hearing.

10 MS. SIMON: That gets to our other
11 question which had to do with -- Judge Ryerson, at the
12 outset you mentioned that perhaps some of the other
13 topics might get into classified information. Do you
14 have any idea at this point which ones those might be?

15 CHAIRMAN RYERSON: No, it is just that we
16 don't want to be precluded from asking about whatever
17 we need to ask about.

18 MS. SIMON: Okay, with the understanding
19 from the staff that again, some of the witnesses on
20 topics other than topic one don't have Q clearances.

21 MR. HASE: And we need to be clear that
22 there's two different issues that are related.
23 There's the VARs, there's the Visit Access Request
24 that everybody gets into, both cleared and uncleared
25 witnesses are going to have to go through VARs. For

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the cleared ones, if the NRC holds their clearances,
then that's why we need the name, like for example,
the last four of their Social so we can verify
clearances.

If you know you've got uncleared witnesses, we still need their names and organizations, but you just say uncleared, and they get the red escort required badges as opposed to the blue, they can go pretty much anywhere badge.

10 MS. SIMON: Okay, thank you.

11 MR. HASE: You need to make sure you
12 distinguish between cleared and uncleared visitors,
13 but all the witnesses, everybody is going to need to
14 get into VARs.

15 CHAIRMAN RYERSON: All right, we talked
16 earlier about getting a list of the -- essentially
17 everybody who is coming with their name, clearance,
18 agency, who holds a clearance and the last four of the
19 Social, if it's us, I guess.

What's a reasonable date to get that? I
guess it would be helpful from our standpoint to have
it as soon as possible.

23 Mr. Silverman, is there a date that you
24 think you can promise that?

25 MR. SILVERMAN: How about this Monday?

1 CHAIRMAN RYERSON: I think that would be
2 fine.

3 NRC staff?

4 MS. SIMON: Your Honor, can we just have
5 a moment, please?

6 CHAIRMAN RYERSON: Sure.

7 (Pause.)

8 MS. SIMON: Your Honor, we can provide
9 that information by the end of the day on Monday.

10 CHAIRMAN RYERSON: Excellent. Monday is
11 what, July 2nd, correct? Yes.

12 All right, again, any other issues that
13 you have, Judge Jackson?

14 ADMIN. JUDGE JACKSON: None from me.

15 CHAIRMAN RYERSON: Judge Garcia?

16 ADMIN. JUDGE GARCIA: Not at this time.

17 CHAIRMAN RYERSON: Okay. Last chance for
18 either of the parties, here. You're all set for the
19 moment?

20 MR. SILVERMAN: Your Honor, I just wanted
21 to mention, I was asked to mention this, that we'll
22 have our security manager who is very experienced in
23 all the security, in the room and of course, has her
24 clearances, and she'll be also available to assist in
25 making these judgments, if, for example, we start to

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1 stray into an area that might be getting close to
2 classified information.

3 CHAIRMAN RYERSON: Excellent, that will be
4 fine. Very good. I think we are done. Thank you
5 all. We stand adjourned and we look forward to seeing
6 you on July 11th.

7 (Whereupon, at 2:51 p.m., the
8 teleconference was concluded.)

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