

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: Levy County Nuclear Power Plant
Units 1 and 2

Docket Number: 52-029-COL and 52-030-COL

ASLBP Number: 09-879-04-COL-BD01

Location: (telephone conference)

Date: Tuesday, September 25, 2012

Work Order No.: NRC-1874

Pages 1028-1061

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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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PREHEARING CONFERENCE

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In the Matter of: : Docket Nos.
Progress Energy, : 52-029-COL and
Florida, Inc. : 52-030-COL
(Levy County Nuclear Power : ASLBP No.
Plant, Units 1 and 2) : 09-879-04-COL-BD01

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Tuesday, September 25, 2012

The above-entitled matter convened via
telephone at 2:00 p.m.

BEFORE ADMINISTRATIVE JUDGES:

ALEX S. KARLIN, Chairman

DR. ANTHONY J. BARATTA

DR. RANDALL J. CHARBENEAU

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On Behalf of the Nuclear Regulatory Commission:

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P R O C E E D I N G S

2:01 P.M.

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JUDGE KARLIN: Hello, this is Alex Karlin. I am the chairman of the Atomic Safety and Licensing Board in the matter of Progress Energy of Florida, Inc. We are holding a prehearing conference call today. I would welcome everyone on the line. We have two lines in this matter, one, a listen-only line that's available for the public. And operator, I hope that you have that line open so the public can listen to this proceeding. And then we have a second form of telephone line for the litigants, the participants in this adjudication and they will be able to speak and participate actively.

The docket number for the record of this matter is 52-029-COL and 52-030-COL. The ASLBP number is 09-879-04-COL.

This prehearing conference is being held pursuant to a notice that we issued on August 3, 2012 and today's date is September 25, 2012.

We are conducting this prehearing conference telephonically and the Board is at various locations. Here in Rockville, I'm sitting on the conference with Dr. Anthony Baratta and the other Judge on this matter, Dr. Charbeneau should be on the

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1 telephone line.

2 Are you there, Dr. Charbeneau?

3 JUDGE CHARBENEAU: Yes, in Austin, Texas.

4 JUDGE KARLIN: Very good. He's in Austin,
5 Texas. And we have Sara Culler as our administrative
6 assistant in the room.

7 Now I'm going to ask the parties to
8 introduce themselves and the people who are with them
9 on the line. We might as well start with the
10 Intervenors, Ms. Curran, could you introduce yourself
11 and the other members of your team?

12 MS. CURRAN: Good afternoon. This is
13 Diane Curran representing the Intervenors. I am by
14 myself here in the office and members of Ecology Party
15 of Florida may be on the listening line. I'm not
16 sure.

17 JUDGE KARLIN: Okay, great. Thank you.
18 And then for Progress Energy, Mr. O'Neill, perhaps you
19 could introduce your team?

20 MR. O'NEILL: Good afternoon. This is
21 John O'Neill and with me, my partner, Michael Lepre.
22 I believe that we may have one or more of our local
23 counsel for the company that has called in, will not
24 be speakers.

25 JUDGE KARLIN: Okay. Great. Thank you.

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1 Welcome. For the NRC staff, could you identify
2 yourselves. Mr. Martin, are you going to be speaking
3 here or Ms. Kirkwood or whoever?

4 MR. ROACH: This is Kevin Roach and my
5 colleague Laura Goldin for the NRC staff.

6 JUDGE KARLIN: Okay. Great. Welcome.
7 And there should be a listen-only line for the public,
8 so they should be on the line as well.

9 Just a housekeeping matter or
10 administrative matter, initially, there will be a
11 transcript made of this prehearing conference in a
12 week or so on the NRC's website. We at the moment do
13 not plan to issue a written order that memorializes
14 the discussion here today, so each of you should take
15 careful notes and pay attention because we probably
16 will not issue a formal order memorializing this. We
17 may issue some other orders, but nothing that's going
18 to summarize this call.

19 The purpose of this call is sort of a
20 final meeting of the parties to this litigation prior
21 to the evidentiary hearing beginning on October 31st.
22 And the main idea of it would be to work out any
23 logistical or other issues that might interfere with
24 us being able to proceed with the hearing effectively
25 and fairly and efficiently.

1 We sort of did a background on this, where
2 we are. A lot has happened in the last six months or
3 so. We had our last status conference really in
4 January of this year down in Crystal River. After
5 that, on February 22nd, the Board issued specific
6 instructions regarding the filings and conduct
7 associated with the evidentiary hearing.

8 We did have a prehearing conference in
9 March, late March, that dealt with a motion for
10 extension of time, but that was kind of a narrow
11 discussion and then in June, Ms. Curran entered her
12 appearance on behalf of the Intervenors which is good.
13 And to have all three parties represented by counsel,
14 experienced counsel, is helpful to the Board, I think.

15 All the parties have issued and filed
16 their initial statements of position, exhibits and
17 testimony in June, and then their rebuttal statements
18 of position, exhibits and testimony in the end of
19 July.

20 In September, we ruled on a motion to
21 strike and a motion in limine. And on August 30th,
22 the parties submitted some proposed questions for the
23 Board to ask of the other parties. Those were
24 submitted in camera. We will not discuss the
25 substance of those here today, of course, but we have

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1 received those.

2 We also note that no party has filed a
3 motion for cross examination on August 30th, the time
4 frame set. And just last week, we issued an order
5 requesting the parties to brief certain NEPA legal
6 issues, deeming that those were legal issues to be
7 addressed, not ones that a witness could testify to as
8 a factual matter. So we look forward to the answers
9 we're going to get on that.

10 Moving to our agenda, the things we think
11 probably ought to be worth talking about today, we
12 have five things, really. One is review the timetable
13 and the schedule. And there are a couple parts to
14 that. Number two, is we'll talk about the impact of
15 the Part 2 amendments, if any, impact. We ask
16 everyone to be prepared to talk about that today. And
17 so we'll have a brief discussion on that, presumably.
18 Three, we want to talk about hearing conduct and the
19 courtroom logistics, so we can sort out and be
20 prepared as we go down to the Levy County Courthouse.
21 Four, witness logistics and preparation. Five,
22 courtroom decorum. And those are sort of the five
23 topics we think will be worth covering here today.

24 Do any of the parties have other matters
25 that they think we need to address or would like to

1 have us address today?

2 Anything, Mr. O'Neill?

3 MR. O'NEILL: I believe that everything we
4 have on our list falls into those four categories,
5 Your Honor.

6 JUDGE KARLIN: Okay. Anyone else? Okay,
7 hearing none we will move right into it. The first
8 item is review the timetable and the schedule. The
9 first thing we turn to is the staff's September 6,
10 2012 status report. In that report, you reflected
11 that, of course, issued the FEIS in April of this
12 year. But you also indicated the FSER, the Final
13 Safety Evaluation Report, the date for that seems to
14 have slipped. The last report was you would submit it
15 in October of 2012, and September 6th status report
16 you say you don't think you're going to make October
17 2012.

18 Can you tell us, Mr. Roach, or whoever,
19 what you're looking at in terms of the FSER?

20 MR. ROACH: It is correct that the staff
21 is not going to make the October deadline. However,
22 it is not clear how long it will be pushed back and we
23 hope to provide you with those details in our next
24 status update.

25 JUDGE KARLIN: Okay, when is your next

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1 status update due?

2 MR. ROACH: I believe it is Thursday,
3 October 4th.

4 JUDGE KARLIN: You don't have anything you
5 can share with us at this point?

6 MR. ROACH: No. We are working with the
7 staff to try and figure that out.

8 JUDGE KARLIN: Okay. Thank you. Second
9 aspect of the schedule, we'd like to talk just briefly
10 about is COI-12-16. As everyone on the call knows, in
11 June the D.C. Circuit issued a decision, New York v.
12 NRC, and subsequently the Intervenor community and Ms.
13 Curran in this case filed -- a proposed contention was
14 filed in this case, based upon the New York v. NRC
15 decision dealing with the waste confidence rule. That
16 contention was filed and COI-12-16, the Commission
17 ruled that that contention would be held in abeyance
18 until the NRC sorts out what it's going to do with
19 regard to the NEPA problems rulings in that court
20 decision.

21 Mr. Roach, can you tell us how you think
22 the staff is going to approach solving -- doing an
23 EIS. It's a generic EIS, 24 months, that sort of
24 thing?

25 MR. ROACH: Just one moment, Judge Karlin.

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1 JUDGE KARLIN: Okay.

2 (Pause.)

3 MR. ROACH: Unfortunately, I think the
4 most information I can provide right now is that the
5 staff is still deliberating what course it's going to
6 take with respect to an environmental review.

7 MR. ROACH: Well, the Commission issued a
8 COMSECY on this point, did they not? And they talked
9 about a two-year, 24-month time frame?

10 MR. ROACH: Yes, I think that is correct.

11 JUDGE KARLIN: And they also specified
12 that there might be situations where on a given case
13 they might do a site-specific EIS to cure the waste
14 confidence and temporary storage rule problems. Is
15 there any contemplation that the site-specific EIS
16 will be done for this case, to cure that particular
17 problem?

18 MR. ROACH: No, I'm not aware of any
19 discussion that has advanced that far.

20 JUDGE KARLIN: Okay. All right, well,
21 what that essentially seems to translate into is that
22 we have an evidentiary hearing scheduled for
23 contention C-4(a) and we're then going to issue a
24 decision, an initial decision on that contention and
25 that decision will necessarily, it seems to us, need

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1 to be a partial initial decision because this
2 proceeding will stay open so long as that proposed
3 contention is in abeyance, whether it be 24 months or
4 whatever. So this will prolong this proceeding
5 necessarily.

6 Third aspect of the schedule which is the
7 mandatory hearing, can you tell us, Mr. Roach, when do
8 you expect -- have you any inkling of when the
9 Commission is going to be conducting the mandatory
10 hearing in this case?

11 MR. ROACH: I do not, Judge Karlin.

12 JUDGE KARLIN: Okay. All right. We'll
13 move to topic number two which is the impact of the
14 Part 2 amendments. August 3, 2012, the NRC issued a
15 final rule in the Federal Register amending the Part
16 2 regulations which govern adjudicatory hearings. On
17 that same day, we issued our notice and asked the
18 parties to be prepared to discuss the impact.

19 Have the parties discussed this either
20 individually or amongst yourselves and do you have any
21 thoughts? I mean let me start with Mr. O'Neill.

22 MR. O'NEILL: In fact, there were
23 conversations. We would suggest and Mr. Lepre will
24 address this issue. He had conversations with Mr.
25 Martin before he went off on leave, that the staff,

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1 obviously, it's the staff's regulations might give
2 their views and we can comment on the staff's views as
3 to what, if any, changes might be required of the
4 initial scheduling order. We don't think there's very
5 many, but I would propose that we defer to the staff
6 to talk about their own regulations than Mr. Lepre can
7 comment on.

8 JUDGE KARLIN: Okay. Mr. Roach, who wants
9 to talk about that?

10 MS. GOLDIN: Your Honor, this is Laura
11 Goldin for the staff.

12 JUDGE KARLIN: Okay, Ms. Goldin.

13 MS. GOLDIN: The staff suggests that the
14 change may be made to F2 on page 9 of the initial
15 scheduling order regarding timeliness as the new Part
16 2 rule does not have timeliness or untimeliness any
17 more. This provision could be changed to reflect the
18 new language of the rule in 2.309(c).

19 JUDGE KARLIN: Right.

20 MS. GOLDIN: That would be our suggestion
21 to just do away with the timeliness mention of that in
22 that subheading and cite to the new 2.309(c) along
23 those lines, but note 21 -- it's up to the Board's
24 discretion to amend footnote 21 regarding motions, but
25 motions or new or amended contentions would also be

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1 filed under the 2.309(c) language.

2 JUDGE KARLIN: Right. Okay. Any other
3 discussion from the staff?

4 MS. GOLDIN: That's it, Your Honor. I
5 guess the time line for mandatory disclosures, as the
6 new rule recommends updates must be filed up to the
7 last two weeks in a month. This might reflect a
8 slight change in what we've been doing in this
9 proceeding practically, but I just wanted to note that
10 updates could contain a minimum two weeks prior to two
11 weeks worth of disclosures prior to the date that
12 updates are due but that's the floor rather than the
13 ceiling according to the new rules provision.

14 JUDGE KARLIN: Right, I think that's kind
15 of what I would call the lag time rule, that is to say
16 on any given date when you file your mandatory
17 disclosures, there may be a lag time between your
18 ability to sweep all of your client organization for
19 relevant documents. So I'm not sure -- I understand
20 the change. I think it's a good one and I'm not sure
21 whether or how we need to change our initial
22 scheduling order. But it's a good point. And I think
23 it's a fair approach.

24 As we approach the evidentiary hearing,
25 obviously, if there's anything important that needs to

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1 come out, I mean it obviously shouldn't be hidden or
2 should be accelerating mandatory disclosures as we
3 approach the evidentiary hearing so that nothing is
4 inadvertently missed.

5 MS. GOLDIN: Your Honor?

6 JUDGE KARLIN: Yes.

7 MS. GOLDIN: We just to -- staff just
8 wants to note that we don't necessarily recommend that
9 anything be changed regarding updating of disclosures
10 on the ISO. We just wanted to note the distinction
11 that the new rule has set forth versus what is being
12 done in practice currently.

13 JUDGE KARLIN: All right.

14 MR. LEPRE: Your Honor, this is Mike Lepre
15 with Progress. I just want to support the staff's
16 position. Right now, frankly, there's a three-week
17 lag time and under the new regulation it talks about
18 a two-week lag time. We think the three-week lag time
19 has worked well so far and it's kind of ingrained in
20 our systems now to do it that way. So we don't see
21 any reason to change the order to make the lag time
22 two weeks.

23 On the other hand, if that's something
24 that you really thought you needed to do, we don't
25 have a particular objection, but we do think it's

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1 worked well and we're comfortable with that process,
2 so we would recommend just keeping it the way it is.

3 JUDGE KARLIN: Okay. Ms. Curran, do you
4 have any thoughts on the impacts of the Part 2
5 amendments?

6 MS. CURRAN: Just to say that as you're
7 aware, Judge Karlin, parties to the Diablo Canyon
8 license renewal case, submitted a joint brief to you
9 and to your Board in that case and made some
10 suggestions for changes to the case management order.
11 And I noticed the orders have a lot of similarity.
12 And I don't see why we couldn't do the same thing
13 here. I was not involved in the discussions between
14 Progress Energy and the staff, but it seems like we
15 could do that now and just jointly submit something to
16 you.

17 JUDGE KARLIN: Okay, well that -- I don't
18 think that would be necessary here. This case is in
19 a little bit different posture, at least I thought it
20 was in a little bit different posture. In this case,
21 we are going to an evidentiary hearing on the only
22 admitted contention in a month. In a sense, I thought
23 of this case as toward the end of its life. This may
24 not be true with regard to now there's a contention
25 that's been held in abeyance, but with regard to

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1 Diablo Canyon that's a case that isn't going to go to
2 an evidentiary hearing for several years and so the
3 difference being we may end up issuing a revised
4 scheduling order in Diablo Canyon whereas here we may
5 not need to do that because things are towards the end
6 of the life of the case. The evidentiary hearing is
7 in a month. So I'm not so inclined to totally revise
8 the initially scheduling order. We may be able to do
9 a couple of -- a short order with a couple of small
10 fixes and live with that, rather than reissuing this
11 initial scheduling order in toto.

12 MS. CURRAN: Judge Karlin, this is Diane
13 Curran. That certainly makes sense and it's fine with
14 us because we may submit additional contentions and it
15 appears now that the NEPA process is not going to
16 finish in this case for another two years,
17 approximately so that if new information comes up you
18 may be seeing contentions from the Intervenors.

19 JUDGE KARLIN: Right, just so long as the
20 lawyers here are aware of the changes in the regs and
21 follows those changes which I think all three of you
22 are, all of you are, then we probably can live with
23 just some modest one or two pager that says this
24 provision is changed as follows or that provision is
25 changed somewhere else, rather than reissue the

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1 scheduling order in its entirety.

2 But I think you put your finger on one of
3 the right key things, Ms. Goldin, of course, is the
4 change in the admission of new contentions, the
5 elimination of the age factor test, and the adoption
6 of the three factor good cause test under the new
7 2.309(f)(2) I think it is. No, I'm sorry, (c),
8 2.309(c) is the one.

9 Now the other thing we need to emphasize
10 there is 2.307(a) is also available so that parties
11 can obtain extensions from the time frame, the 30-day
12 time frame for new contentions so that is an important
13 aspect of the new final rule. Also, the new final
14 rule makes clear that all motions are subject to the
15 ten-day rule, must be filed within ten days of the
16 occurrence or circumstance from which they arise, the
17 exception of new contentions and any other exceptions
18 that are laid out in our scheduling order, one of them
19 being motions for summary disposition which are
20 essentially moot at this point anyway. We give you
21 extra time for that.

22 So keep in mind motions have to be filed
23 within ten days, except for the exceptions. And also
24 note that the term late-filed contentions have been
25 banished from the vocabulary by the Commission and it

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1 is new contention that we use. The late-filed being
2 an unnecessary pejorative term implying that there's
3 something negligent about having to file it after the
4 new information came out.

5 I think as we understand it, it sounds
6 like the parties understand the new regulations.
7 Unless there's something else to add, we'll take it
8 under advisement and try to figure out what we need to
9 do to clean up the record and reflect that.

10 Any other discussion on the impact of the
11 Part 2 amendments? Okay.

12 The third item on the agenda is the
13 hearing conduct and the courtroom logistics. We just
14 wanted to talk briefly about that. We are guests in
15 the Levy County Courthouse. For those of you who were
16 involved in this case back in April of 2009, we
17 conducted oral argument in that courthouse and it's a
18 nice, it's an excellent, but somewhat small facility
19 out in the country sort of. The acoustics in the
20 courtroom we used seemed to be good. There are two
21 courtrooms there. I don't know which one we're going
22 to get and I don't know the exact configuration, but
23 just some thoughts.

24 First, we'll have to have three counsel
25 tables, tables for the three parties rather than the

1 normal two, and it ends up being a tight fit, so you
2 may only be able to have two people, two lawyers or
3 two people at the counsel table. So it's a tight fit
4 there.

5 With regard to prefiled testimony and
6 exhibits, you don't need to bring copies of your
7 prefiled testimony and exhibits for the Board to give
8 to the Board. We have them. They were filed
9 electronically and at the evidentiary hearing we will
10 simply admit the prefiled testimony and the exhibits
11 subject to the motion, the rulings we've done on the
12 motion to strike and the motion in limine.

13 If there are no further objections or
14 anything else, we're just going to admit those and
15 proceed. You don't need to bring copies for the
16 Board. You do need to bring copies for yourself and
17 your witnesses and we'll get to that later. Remember,
18 at the hearing the only thing, the main thing really
19 that happens is that we ask questions. This is an
20 inquisitorial-style proceeding and so we're going to
21 just take the witnesses, bring them up, and start
22 asking questions about their testimony and about the
23 FEIS.

24 We will probably issue a short order
25 between now and the hearing laying out a little bit of

1 detail like initial opening statements. We'll
2 probably give everyone a few minutes, ten minutes or
3 something to do an opening statement. I'm not sure
4 about closing statements. If we have time, that
5 probably will be fine, too. But again, the logistics
6 will yet to be determined, except to probably give you
7 opening statement.

8 We will also have a projector there where
9 one of our staff is going to have the documents, the
10 exhibits in the computer projector and we may project
11 a map or a chart or an exhibit up on the screen and
12 use that as a vehicle for questioning the witnesses.
13 And that's again, going to add to the tightness of the
14 entire room. So that's our plan for the hearing room
15 and the courtroom logistics.

16 Any questions about that? Okay.

17 MR. O'NEILL: Judge Karlin?

18 JUDGE KARLIN: Yes.

19 MR. O'NEILL: Will your system be set up
20 such that if you asked a witness a question and the
21 witness thought he could best explain it by reference
22 to an exhibit, a chart, or something like that, would
23 that be set up logistically so that your person could
24 pull up that exhibit and put it up there to assist the
25 witness and the Board in understanding the answer?

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1 JUDGE KARLIN: Yes, as long as it's been
2 prefiled. Yes, it has to be an exhibit that's been
3 filed, obviously.

4 MR. O'NEILL: Right, exactly. I
5 understand there's no new evidence, but certainly in
6 answering the questions, it may well be that a witness
7 will find it helpful to refer you to a particular
8 exhibit. If you have the projector, then it can be
9 available for everyone to see.

10 JUDGE KARLIN: Yes, that is correct.

11 COURT REPORTER: Excuse me, this is the
12 court reporter. Is that Mr. O'Neill speaking?

13 MR. O'NEILL: That is.

14 COURT REPORTER: That is.

15 JUDGE KARLIN: Yes, all the exhibits,
16 prefiled exhibits will be in the computer and so he
17 can project any of those documents. That will be
18 possible.

19 MR. O'NEILL: Thank you. That's very
20 helpful.

21 JUDGE KARLIN: Good question. All right,
22 we're going to go to the fourth item which is witness
23 logistics and preparation. First, I'm speaking
24 personally. I'd like to commend the parties on their
25 initial and rebuttal prefiled testimony exhibits.

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1 From my perspective, they seemed to have generally
2 followed the February 22, 2012 instructions. You have
3 given a goodly number of definitions of important
4 terms and that's helpful, especially to me, as the
5 lawyer Judge on this Board. And also helpful to us in
6 trying to write, ultimately write the decision and
7 define terms where we can.

8 I note there was an exception in that the
9 staff, rather than following our request to have
10 witnesses file separate testimony for each witness,
11 file one gigantic affidavit or declaration and quite
12 frankly that's made it more difficult for me to follow
13 and to use. It's sort of testimony by committee and
14 disfavored, but we didn't prohibit it, so you did it
15 anyway. So we'll have to live with it.

16 We also note that the parties have in
17 camera prefiled questions that you have sent to us
18 have been helpful, are helpful. We're still going
19 through the testimony and the exhibits. We're still
20 studying them and trying to think through the issues
21 and develop any questions we may have, but those
22 prefiled questions were helpful.

23 As I said before, the main thing,
24 essentially the only thing that happens in the subpart
25 L proceeding is the Board asks questions of the

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1 witnesses. This is not a time for the witnesses to
2 give tutorials or PowerPoint presentations, nor do we
3 have -- we have 25 witnesses by my account, perhaps
4 more, who have filed testimony. Most if very helpful
5 and good, but was not an equal time. We're not going
6 to give everyone their exact 1/25th of the hearing
7 time. Some witnesses, we may have very few questions
8 for. In fact, if their prefiled testimony is clear,
9 then we may have no questions for a given witness at
10 all. And in that vein, we have studied the testimony
11 sufficiently at this point to conclude that we have no
12 questions on several topics. Those topics are salt
13 drift and deposition, that's one topic; and
14 destructive wildfires. The Board has no questions
15 that we intend to ask on those topics. Therefore, we
16 are trying to tell you now that you do not need to
17 bring witnesses whose testimony relates solely to
18 those issues.

19 Our best shot that involves from the staff
20 Dr. Berg and Mr. Quinlan and from Progress Energy it
21 appears to be Dr. Howroyd, Dr. Blancher, and Dr.
22 Robertson. It appears to us that those five
23 individuals' testimony relates solely to salt drift
24 and deposition and/or destructive wildfires and if
25 that is correct, then they don't need to show up.

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1 Their testimony in writing was clear and the parties
2 can save some money and everyone can save some time
3 and energy and we don't need to impose upon them to
4 attend the hearing.

5 So they do not need to come. They can come if you
6 want to bring them. That will be fine.

7 Meanwhile, we're still studying the
8 prefiled testimony and exhibits and if we find that
9 there is some other witness that we ultimately realize
10 we don't have any questions for, we will try to tell
11 you that in advance some time in the next four weeks
12 and say that person can be excused as well because
13 there's no use dragging all these people down there
14 and then not having any questions for them. So we're
15 trying to think that through ahead of time and to the
16 extent we are able to do that, we will let you know.

17 Does everyone understand that? Any
18 questions?

19 MR. O'NEILL: Judge Karlin, John O'Neill.

20 JUDGE KARLIN: Yes.

21 MR. O'NEILL: First, that is very helpful,
22 obviously, because it will save cost. I note that Dr.
23 Howroyd is also a meteorologist and has produced
24 rebuttal testimony in climate change. If you might
25 have questions on climate change we will bring him.

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1 If you determine that you don't, then if you will let
2 us know in the future, then we would excuse him, but
3 I think right now we still have at least one issue on
4 his rebuttal that you have not yet said you don't have
5 any questions on.

6 JUDGE KARLIN: Right, okay, we'll get back
7 to you on that. Well, let me put it this way. You
8 are correct in noting that if he is also testifying in
9 rebuttal or whatever on another issue like climate
10 change, then you probably would be reasonably advised
11 -- you need to bring him, unless we subsequently tell
12 you we don't have any questions on climate change. Or
13 you don't need to bring him because we don't have any
14 questions for him on climate change. If one of those
15 five people we named is testifying on other topics,
16 then you need to bring him.

17 MR. O'NEILL: Thank you. That's very
18 helpful.

19 JUDGE KARLIN: We have not yet figured out
20 a precise sequence of how we're going to bring up the
21 witnesses, which topics will go on first. One way to
22 approach it is just simply the organization of the
23 contention, Section A(1), A(2), A(3), C(1), C(2),
24 etcetera. We haven't figured that out yet, but we're
25 working on it and we may be -- obviously, by the time

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1 we get to the hearing we will know what order we want.
2 We haven't decided whether we want to sequester any of
3 the witnesses and we'll think that through as well.
4 The logistics of that may be challenging in this small
5 courtroom.

6 One of the things I do want to urge,
7 however, is that you should make sure, counsel should
8 make sure that their witnesses are thoroughly prepared
9 at the hearing. They should know what they've said in
10 their testimony. They should have it virtually just
11 totally conversant with everything they said in their
12 written testimony. And for staff witnesses, in
13 particular, they need to be very familiar with the
14 portions of the FEIS where they are responsible. and
15 where it is, what pages it is and that sort of thing.
16 For example, Mr. Doub, I note in the staff's initial
17 testimony, Mr. Doub stated that "I was responsible for
18 preparing the terrestrial ecology and wetlands
19 portions of Sections 2.4, 4.3, 5.3, 7.3 and 9.3 of the
20 FEIS." Great. Mr. Doub needs to be fully aware of
21 everything in those sections so that when I pull up --
22 I'm going to have the FEIS in my hand, the hard copy.
23 I'm not going to use the screen and he needs to have
24 a hard copy in his hand, too, because when I ask a
25 question about page 5-33 and it deals with terrestrial

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1 ecology, I hope he knows that section of the FEIS
2 backwards and forwards.

3 The same holds true for every other
4 witness, particularly staff witnesses who are the --
5 the FEIS is the primary issue here. Is it adequate or
6 is it not adequate? So please, please work with your
7 witnesses, make sure they do their homework and have
8 reread their testimony and have reread those sections
9 of the FEIS they're responsible for because we want to
10 have a productive give and take and this is not a
11 cavalier matter.

12 Next item on the agenda, courtroom
13 decorum. Just a note, we had a limited appearance
14 session in January of this year down in Crystal River.
15 It was well attended and a very civil proceeding and
16 it was helpful to us and we appreciate that. As all
17 of the people on this call know, the evidentiary
18 hearing in October will be a different matter. It is
19 an adjudicatory proceeding where members of the public
20 do not have an opportunity to speak. They can attend.
21 We want them to attend. They're welcome to attend and
22 listen, but this is a different type of proceeding.
23 It is a smaller venue. The room is smaller, so we
24 just ask each of you to talk to your constituents and
25 your members and your stakeholders and your employees

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1 and inform them hopefully of what this adjudication is
2 and what it is not and welcome them to attend, but
3 hopefully we will have a civil and decorous sort of
4 proceeding as befits an adjudication and not have any
5 difficulties with that.

6 So please, talk to your -- and educate your members
7 and your stakeholders about what's going to happen.

8 With that, I think we've covered
9 everything we need to in the hearing. Anything else,
10 Judge Baratta or Judge Charbeneau?

11 JUDGE CHARBENEAU: Not from me.

12 JUDGE BARATTA: No, nothing from me.

13 JUDGE KARLIN: Any questions from the
14 parties?

15 MR. ROACH: This is Kevin Roach, Judge
16 Karlin. One question about whether the Board is aware
17 of whether the Levy County Courthouse has any rooms
18 for the parties to go during breaks, prepare witnesses
19 or anything of that nature?

20 JUDGE KARLIN: I'm not aware. I do not
21 know. You'll have to check that out yourself.

22 MR. ROACH: Okay. The last thing was
23 whether the Board has considered whether there might
24 be other legal issues aside from the ones from the
25 order of last Friday, legal issues that they would

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1 like the parties to prepare?

2 JUDGE KARLIN: We don't have any others at
3 this point. It's possible that will have other legal
4 issues that need to be briefed. If so, we'll get back
5 to you. One of the things we tried to do with those
6 questions is to recognize that it might not be fair to
7 ask say Ms. Aston or Mr. Doub some of those legal
8 questions and so -- they're legal questions and so
9 witnesses can't answer them. And they wouldn't be
10 prepared to. So we wanted to maximize the chance to
11 get thoughtful answers from the parties and so if we
12 have other legal questions, we will -- we may send
13 them out or we may ask for a bit of an oral argument
14 after the hearing or some other point. We can always
15 do that.

16 MR. ROACH: Okay, thank you.

17 JUDGE KARLIN: Okay. Anything else?

18 MR. O'NEILL: Judge Karlin, just a couple
19 of questions and clarifications, if I can impose on
20 your time.

21 JUDGE KARLIN: All right.

22 MR. O'NEILL: First, I infer that the
23 witnesses should be prepared to bring with them to the
24 witness stand copies of their testimony and exhibits
25 that were filed in this proceeding, and for the staff,

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1 the FEIS, and that there's no objection to having --
2 for them having those notebooks with that information
3 in front of them when they testify.

4 JUDGE KARLIN: Correct. They should have
5 any key testimony or documents with them and be able
6 to refer to them.

7 When I ask questions I will not use the screen. I'm
8 going to say on page 5.23 of the FEIS, it states such
9 and such. We're not going to put that up on the
10 screen for everybody to see. I'm going to expect the
11 witness to have that FEIS in his lap and be able to
12 look at it and answer me.

13 MR. O'NEILL: Secondly, because for
14 certain subject areas, we have more than one witness
15 who has expressed either factual information or
16 opinions, if we were presenting this testimony, we
17 might put up a couple of panels to ensure that your
18 question had the correct subject matter expert on that
19 subject. Certainly, if you just looked at the
20 testimony, the individual would know the testimony,
21 but if you had a more general question, for example,
22 let's say Mr. Rumbaugh, who designed the model; Mr.
23 Lehnen, who was responsible for modeling, we would put
24 up as a panel if you asked us to do it.

25 My question to the Board then is have you

1 considered, are you amenable to, given the number of
2 witnesses, having panels or have you not thought about
3 that yet?

4 JUDGE KARLIN: We're still working through
5 how we want to do this, so we haven't figured that out
6 yet, but I think our predilection, my predilection is
7 when I have a question, when we have questions, we're
8 going to ask them of specific witnesses.

9 What I do not like is the situation where
10 there's a panel of three experts from the Applicant
11 staff or you name it and the Board asks a general
12 question and leaves it to the three panelists to
13 decide who wants to answer it. That's what I call the
14 lowest common denominator answer. To the most part,
15 I don't think we're going to do it that way. We're
16 going to ask specific questions of specific people.
17 We may have three of them sitting up there at the same
18 time, but we're going to ask specific questions of
19 specific people.

20 Now if somebody says oh, I am not the
21 person to answer
22 that question. Joe Blow is more expert in that, we
23 can listen to that and we may decide to ask Joe Blow
24 or we may say no, Mr. Jones, we want you to answer
25 that question. Because your testimony said X and

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1 therefore we want your answer to that question. Does
2 that help?

3 MR. O'NEILL: It's helpful and we just
4 want to make sure we understand how you would like to
5 do it. I think those are all the questions I have.
6 It's been actually -- helps us in our preparation to
7 have this information in advance. Thank you.

8 JUDGE KARLIN: Great. Okay, well, thank
9 you all. We're looking forward to the evidentiary
10 hearing. It's going to be a tight courtroom, but it's
11 a good facility and we hope that we can proceed
12 efficiently and we think we can get it all done in the
13 two days' time frame. So we look forward to seeing
14 you on Halloween. We stand adjourned.

15 (Whereupon, at 2:47 p.m., the prehearing
16 conference was concluded.)

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