

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: ITMO Charlissa C. Smith
Pre-hearing Conference

Docket Number: 55-23694-SP

ASLBP Number: 13-925-01-SP-BD01

Location: teleconference

Date: Monday, July 1, 2013

Work Order No.: NRC-050

Pages 95-128

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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 CONFERENCE

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In the Matter of:	:	Docket No.
CHARLISSA C. SMITH	:	55-23694-SP
	:	ASLBP No.
(Denial of Senior	:	13-925-01-SP-BD01
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Monday, July 1, 2013

Teleconference

BEFORE:

RONALD M. SPRITZER, Chair

WILLIAM J. FROEHLICH, Administrative Judge

BRIAN K. HAJEK, Administrative Judge

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APPEARANCES :

On Behalf of the Appellant

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On Behalf of the Nuclear Regulatory Commission

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ALSO PRESENT:

SARA CULLER

NICOLE PICARD

MATINA SOLOMAKOS

ANDY WELKIE

P R O C E E D I N G S

10:33 A.M.

1
2
3 CHAIR SPRITZER: Good morning. We are
4 here in the matter of Charlissa C. Smith which is
5 Docket No. 55-23694-SP. We are here pursuant to an
6 order that the Board issued on June 19th to have a
7 pre-hearing conference for the hearing scheduled for
8 July 17th and 18th. And we've sent out a list of the
9 issues we're going to talk about. They're all
10 procedural issues. We're not getting into the merits
11 of the case here. We want to basically make sure
12 everybody is familiar with and comfortable with the
13 procedures we're going to use at the hearing on the
14 17th and 18th.

15 Before we get into that, we'll have the
16 Judges identify themselves for the record.

17 JUDGE FROEHLICH: I am on the line,
18 William Froehlich in Rockville.

19 JUDGE HAJEK: I'm on the line from
20 Columbus, Ohio, Brian Hajek.

21 CHAIR SPRITZER: And also with us here in
22 our conference room in Rockville are Andy Welkie, our
23 technical support guru, who will be explaining to you
24 the technical set up; and our law clerk, Nicole
25 Picard; and our administrative support specialist,

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1 Matina Solomakos. I always have trouble with the last
2 name.

3 Why don't we have the parties identify
4 themselves for the record. Why don't we start with
5 Ms. Smith?

6 MS. SMITH: This is Charlissa Smith.

7 CHAIR SPRITZER: Okay, is anybody with
8 you, Ms. Smith or are you on your own?

9 MS. SMITH: I am alone, sir.

10 CHAIR SPRITZER: Okay. And for the NRC
11 staff, who do we have?

12 MR. WACHUTKA: For the NRC staff we have
13 myself, Jeremy Wachutka.

14 MR. CYLKOWSKI: David Cylkowski.

15 MR. SUBIN: And Lloyd Subin.

16 CHAIR SPRITZER: Okay. Is anyone else on
17 the line, well, I guess if they're listening, they're
18 not going to be able to speak.

19 The first issue we're going to talk about
20 is logistics for the venue of the hearing. You
21 hopefully have the street address in our order. I
22 believe we've let you know, but just in case we
23 haven't, on the first day, the 17th, we're planning on
24 starting at 10:30 in the morning. That's because our
25 support people need to get into the room and set

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1 things up.

2 You'll be able -- the parties will be able
3 to -- I think the library opens at 9, so you can get
4 there as early as 9 o'clock. You'll be able to go
5 into the hearing room, if you want to, look around,
6 set up anything you want to set up in the way of
7 computers and so forth to the extent you're not
8 interfering with Mr. Welkie in setting up our
9 equipment.

10 And then on the 18th, we'll start at 9 in
11 the morning. Everything will be set up and ready to
12 go. So we'll start at 9 on the 18th.

13 We will have breakout rooms for use by
14 both the staff and Ms. Smith on both days. There is
15 what's known as Room A which is on the second floor of
16 the library which will hold six people. Ms. Smith,
17 that seems that that would be sufficient, given the
18 number of witnesses you have, room for six people.
19 For the staff, they have a big larger group. You'll
20 be in Room C, as in cat, which we are told holds 12
21 people. And the Board will use Room B. However, we
22 will not -- that room looks like it's only going to be
23 available on Thursday. The Board will be without a
24 breakout room on Wednesday, so we'll just have to get
25 by, but we wanted to make sure the parties would have

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1 room to confer. Those should be open on the 17th by
2 9 a.m. so you can get in there also if you prefer to
3 use those rooms at that time.

4 From what we understand, they're not lunch
5 rooms, so you can eat there. But they are available
6 for conferring prior to after the hearing and any
7 breaks that we have.

8 It would be useful if both sides would
9 send us a contact cell phone. You can send that to
10 Nicole Picard, our law clerk. I'm sure both of you
11 have her -- both sides have her email address. That
12 way if there's some emergency or unexpected
13 development we need to let you know about, we'll be
14 traveling down there on Tuesday, so none of the Board
15 or support people who are working on this hearing will
16 be available Tuesday in our office, so you'll have to
17 contact us by cell phone. Nicole can give her cell
18 phone if you all have some unexpected developments as
19 well.

20 Let's see. As far as the technology goes,
21 Mr. Welkie can give you a brief rundown on what the
22 set up is going to be, what we anticipate it's going
23 to be. We haven't actually been to this facility, but
24 we've got pretty good information about it.

25 MR. WELKIE: The setup we'll be we'll have

1 at least two microphones on every table. We also will
2 have electronic versions of all of the documents that
3 have been prefiled so that we will be able to display
4 those. The room has a ceiling-mounted projector and
5 a wall-mounted screen which should be viewable by the
6 witnesses and the participants. The Judges will have
7 monitors in front of them because their backs right
8 now, the way we have the room set up their backs will
9 be to the screen.

10 So again, the way the room is laid out,
11 the witnesses and participants should be able to see
12 the projector screen. If for some reason you have
13 issues seeing the screen, I will have additional
14 monitors that I could place out if need back.

15 CHAIR SPRITZER: The layout that we
16 anticipate is the Judges, as Andy said, the Judges
17 will be sitting with their backs to the screen. NRC
18 staff, counsel, and Ms. Smith will be seated at
19 separate tables facing the Board. The screen will be
20 directly in front of you. Witnesses will be on your
21 right, our left, so that seated at the table it
22 probably will hold up to four people, possibly five if
23 we had a group of witnesses that large. And there
24 will be room for members of the public as well.

25 As far as security procedures, that's

1 pretty simple. There will be a security guard
2 present, but this doesn't seem to be the type of
3 hearing where we'd be expecting public protests or
4 anything of that nature. So we have pretty limited
5 security, but we will have one person present.

6 Let me stop there and ask if there are any
7 questions so far about the logistics, security
8 procedures issues.

9 MR. WACHUTKA: NRC staff doesn't have any
10 questions on that.

11 CHAIR SPRITZER: Ms. Smith, do you have
12 any questions?

13 MS. SMITH: I do not have any questions,
14 Your Honor.

15 CHAIR SPRITZER: Okay, let's move on and
16 talk about exhibits. For the staff, I believe we do
17 have an exhibit list from you. Is that going to
18 remain as it is or do you anticipate adding or
19 deleting anything?

20 MR. WACHUTKA: No, we don't anticipate
21 changing that. However, Ms. Smith just filed her
22 reply today that consists of 39 more exhibits and a
23 93-page reply, so we haven't looked at any of that
24 yet. But as of now, that's our final exhibit list.

25 CHAIR SPRITZER: All right, well, we

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1 haven't looked at the new filing in any great detail
2 either, so anything we do here today might have to
3 change based on that.

4 What I would suggest, what we would like
5 the parties to do, Ms. Smith, you'll obviously need to
6 submit a complete exhibit list to us and the staff.
7 It sounds like you may well have some additional
8 exhibits, so why don't you go ahead and file that as
9 soon as you are able. If by some chance you decide
10 you want to limit yourself, you'll go with your
11 existing list, please let Nicole know. Email should
12 be sufficient for that. Otherwise, we'll look forward
13 to having final exhibit lists from the parties. Seven
14 days before the hearing, does that sound realistic?
15 So that would be, I guess, July 10th?

16 MR. WACHUTKA: That sounds reasonable to
17 the NRC staff.

18 CHAIR SPRITZER: Ms. Smith, is that doable
19 for you?

20 MS. SMITH: Yes, Your Honor. It is
21 reasonable. I do have a question. I did submit an
22 updated list via email. Did you want me to submit
23 that through the EIE?

24 CHAIR SPRITZER: I would think so, yes.
25 We will use this at the hearing. Just so it's clear,

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1 what we would expect to do at the hearing, first order
2 of business would be moving the exhibits into evidence
3 and what we would like the parties, what we expect the
4 parties to do is in your case saying I hereby move
5 into evidence all the exhibits on my final exhibit
6 list submitted on whatever, July 10th, presumably. At
7 that point, if the staff has any objections, we'll
8 review those objections and we'll rule on the
9 admissibility of the exhibits. Then we'll move on and
10 do the same thing with the staff exhibits.

11 As we indicated in our order, and Ms.
12 Smith, I know you're not a lawyer, so we should
13 probably make this clear again. If you decide not to
14 object to staff exhibits, that doesn't mean you're
15 agreeing with the exhibits or something, that
16 everything in the exhibit is true as stated, or
17 anything of that nature. It simply means you're
18 agreeing is not a forgery, number one, what it appears
19 to be. I'm pretty sure that's true for all the
20 exhibits that have been filed. And be that it's not
21 just completely totally irrelevant, has absolutely
22 nothing to do with any issue of the Board might
23 consider relevant. So I suspect most of the exhibits,
24 in fact, all of them are going to pass those rather
25 minimal tests. If they don't, we'll certainly take

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1 into account any objections, any party may raise and
2 we'll rule on them at the time.

3 So that's the function of the exhibit
4 list. It's not just to make you all prepare another
5 document. It makes it a lot easier to get -- to
6 manage the admission of the exhibits, particularly for
7 our support staff, rather than going through them
8 individually that is. And of course, the list should
9 be complete. They should include every document you
10 want the Board to look at in considering its ruling on
11 the merits.

12 Now we may have some -- the Board may have
13 some documents that we want to take judicial notice of
14 or otherwise make Board exhibits. If we do that, we
15 will notify the parties as soon as we're able to and
16 give you the opportunity to respond to those
17 documents, including objecting to our consideration of
18 them if you so choose.

19 We have also have the question list, that
20 is questions we'd like parties to be prepared to
21 answer. Again, we'll get that out to you as soon as
22 we can.

23 I think that pretty much covers what I had
24 to say on exhibits. Any questions on that?

25 MR. WACHUTKA: The NRC had one question

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1 about the recent exhibits filed by Ms. Smith. There
2 were two copies of each exhibit that was filed, and we
3 just wanted to confirm that those two copies were
4 identical and nothing changed between the two.

5 MS. SMITH: Yes, they are identical. I do
6 apologize for that. When I initially uploaded the
7 documents, I didn't get a confirmation from the email
8 and I was a bit concerned, so I just wanted to make
9 sure that they actually did go through. So there's no
10 changes from the duplicates. They are exactly the
11 same.

12 MR. WACHUTKA: Okay.

13 CHAIR SPRITZER: Did you have any
14 questions about exhibits, Ms. Smith?

15 MS. SMITH: No, Your Honor.

16 CHAIR SPRITZER: Okay.

17 JUDGE HAJEK: This is Brian Hajek. I did
18 have a clarification of the NRC lawyer, stated that
19 there were 39 new exhibits submitted by Ms. Smith and
20 her new list only has 22, I believe, additional
21 exhibits listed. So is there another exhibit list
22 that has not been provided to us by email or EIE yet?

23 MR. WACHUTKA: The NRC staff, we got up to
24 Exhibit 116, CCS116.

25 JUDGE HAJEK: Okay, the copy that I have

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1 only goes up to 100, so there must be another one that
2 I haven't downloaded then.

3 MR. WACHUTKA: Right, there are two
4 separate -- we've got two separate exhibit lists from
5 Ms. Smith and the latest one in an email goes up to
6 Exhibit 116.

7 JUDGE HAJEK: Thank you.

8 CHAIR SPRITZER: This is Judge Spritzer
9 again. The next item on our list is opening and
10 closing statements. As far as openings go, we have
11 your statements of position. We have two days, but we
12 have no more than two days at this facility. So the
13 preference would be not to have opening statements,
14 but if either Ms. Smith or the staff feel otherwise,
15 we can reconsider that.

16 I should note opening statements for Ms.
17 Smith's benefit in particular are not -- they're
18 simply a kind of preview of what you think the
19 evidence will show. We already have a preview. In
20 fact, we have most -- a good part of the evidence
21 since we have the pre-filed testimony and pre-filed
22 exhibits. So we pretty much know what the evidence is
23 at least intended to show based on the documents and
24 witness testimony. We already have in your statements
25 the position.

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1 So does anybody have any strong feels that
2 we should have an opening statement?

3 Staff, do you have any view on that?

4 MR. WACHUTKA: The NRC would recommend
5 just really brief opening statements. We would like
6 maybe five minutes each. Ms. Smith, since she has the
7 burden of proof should go first. She can withhold a
8 couple minutes for rebuttal and then we'll have five
9 minutes and then she can have rebuttal time. We're
10 just saying ten minutes total time. We don't think
11 would be very much.

12 CHAIR SPRITZER: All right, that sounds
13 reasonable, as long as we can hold it to a minimal
14 level. I should note, again for Ms. Smith's benefit
15 in particular, this is not the time to testify. The
16 opening statement is simply a statement of what your
17 view of what the evidence will show. But it doesn't
18 constitute testimony. That will be the next item on
19 the agenda after we hear the opening statements, but
20 the opening statements themselves are not evidence.
21 All right, so five minutes for each side with Ms.
22 Smith going first.

23 Again, in terms of witness questioning,
24 the next subject on our list, logically, we would
25 start with Ms. Smith's witnesses. As the staff

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1 indicated, she has the burden of proof in this. And
2 then we proceed to the staff witnesses. Is there any
3 reason that anybody can see to do that differently?

4 MR. WACHUTKA: No, that is how the NRC
5 staff would suggest going.

6 CHAIR SPRITZER: All right.

7 MS. SMITH: Your Honor, I do have a
8 question about the witnesses.

9 CHAIR SPRITZER: Yes.

10 MS. SMITH: In my latest filings, I did
11 request a possible modification to the subpoenas. I
12 have two individuals that are actually going to be on
13 vacation during that time. One is actually out of the
14 country and it's going to cause a lot of burden on
15 being able to have them there. And I wanted to find
16 out if there was an alternative that is allowed,
17 either by written correspondence or by telephone
18 conference to allow those people to still be able to
19 participate?

20 CHAIR SPRITZER: Well, I don't know that
21 we can give you an answer to that right here. Who are
22 the witnesses?

23 MS. SMITH: One would be Perry Tucker and
24 the other one is Rodney Waltower.

25 CHAIR SPRITZER: We have pre-filed

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1 testimony from both of them, I guess.

2 MS. SMITH: Yes, sir. You do.

3 CHAIR SPRITZER: Which one is out of the
4 country?

5 MS. SMITH: Rodney Waltower.

6 CHAIR SPRITZER: And Mr. Tucker, what's
7 his issue?

8 MS. SMITH: He would be on vacation. I
9 didn't ask any specific information about it.

10 CHAIR SPRITZER: All right. Well, so the
11 witnesses will be physically present on the 17th and
12 18th for your case would be besides yourself, Mr.
13 Sinkler and Mr. Turner?

14 MS. SMITH: Mr. Turner will be there. I
15 did not speak with Mr. Sinkler about being present.

16 CHAIR SPRITZER: Turner is your only
17 witness, okay, other than -- whatever we can work out
18 for the other two. All right, we'll have to take that
19 under consideration what our options are.

20 When are Mr. Tucker and Mr. Waltower
21 available? I'm pretty sure we have the option under
22 the rule of sending them written questions. However,
23 at least from my perspective that's much less
24 satisfactory than having a live witness. So when are
25 they available?

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1 MS. SMITH: As far as written
2 correspondence or --

3 CHAIR SPRITZER: Well, if you were to have
4 them present either by telephone or whatever.

5 MS. SMITH: I know that Mr. Tucker, he
6 will make himself available for a telephone conference
7 just based on whatever information I relay back to
8 him. Mr. Waltower, I would have to probably go back
9 and ask more detailed questions being that he won't be
10 here. I can't tell you exactly where he'll be at what
11 time during that period. So I can go back and try to
12 get a little bit more information.

13 I guess should I ask questions more about
14 after that week or during that week of the actual
15 hearing?

16 JUDGE FROEHLICH: This is Judge Froehlich.
17 I believe that the Board will likely have questions
18 for Mr. Tucker and I was wondering in your last answer
19 he would be available if we had to link him in by
20 telephone. Is he available on the two dates that
21 we've set for hearing on the 17th and 18th?

22 MS. SMITH: My understanding is that he
23 would be, Your Honor.

24 JUDGE FROEHLICH: Okay. And I guess if
25 the Board has written questions, we'd be able to get

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1 them out either before or after our session on the
2 17th or 18th.

3 MS. SMITH: Yes, Your Honor.

4 CHAIR SPRITZER: I think that would be, at
5 least from my perspective, if we can have Mr. Tucker
6 present by phone on either the 17th or 18th that would
7 be much preferable than postponing it any further. So
8 if you can talk to him about that and get back to us
9 and let our law clerk, Ms. Picard, know precisely when
10 he would be available. Probably the 17th would be the
11 best day since that's when we'd be hearing from your
12 witnesses, but if we've already started with the
13 staff, we can take a break and go back to Mr. Tucker
14 and then proceed with the staff again once we've heard
15 from him.

16 MS. SMITH: Your Honor, the subpoena dates
17 have the 18th on it. It was before the additional day
18 was added.

19 CHAIR SPRITZER: Well, ask Mr. Tucker if
20 he'd be available on the 17th with or without changing
21 the subpoena.

22 MS. SMITH: It's not an issue with Mr.
23 Tucker. I just wanted to clarify it for Turner.

24 CHAIR SPRITZER: Oh.

25 JUDGE HAJEK: Is there a problem with Mr.

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1 Turner being available on the 17th?

2

3 MS. SMITH: I didn't speak with him about
4 the 17th. Yes, I only talked about the date that
5 actually on the subpoena.

6 CHAIR SPRITZER: Well, why don't you ask
7 him if he's available on the 17th. If not, we may
8 have to make some adjustment in the order in which we
9 hear from the witnesses.

10 MS. SMITH: Yes, sir.

11 CHAIR SPRITZER: Just for the staff's
12 benefit, if we have to rearrange the witnesses, you'll
13 still get the opportunity to respond to whatever they
14 may have to say, so I'd had to -- at another hearing
15 where we had to virtually reverse the order of all of
16 the witnesses because the witness for one side
17 unexpectedly did not appear.

18 As we said, we expect, in the order, we
19 expect all the witnesses who filed pre-filed testimony
20 to be present. We've just been notified of two.
21 We'll have to make some sort of special accommodation
22 for.

23 Is the staff expecting any problems with
24 any of its witnesses?

25 MR. WACHUTKA: No, the staff will have all

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1 of our witnesses there, everyone who filed pre-filed
2 testimony or filed affidavits.

3 CHAIR SPRITZER: Are they going to be
4 available both days? is there somebody that needs to
5 leave on either the 18th or to come -- to not be there
6 on one of those two days for personal or some special
7 reason?

8 MR. WACHUTKA: They'll be there both days.

9 CHAIR SPRITZER: All right, great. Does
10 either side have any other witnesses other than the
11 ones who have filed pre-filed testimony?

12 MS. SMITH: No, Your Honor.

13 MR. WACHUTKA: No.

14 CHAIR SPRITZER: All right. As far as the
15 staff witnesses, in terms of Ms. Smith's witnesses,
16 we're just going to take them in the order we can get
17 them it sounds like. For the staff witnesses, I think
18 from the Board's perspective having eight witnesses
19 testify at the same time is not particularly -- not
20 what we would think would be useful. We have a
21 suggestion as to how we'd like to hear the witnesses
22 for the staff. We're open to other suggestions if you
23 prefer. We thought it would be most logical to start
24 with the three witnesses who were involved in the --
25 who were actually involved in the operating exams and

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1 those would be Mssrs. Capehart, Bates, and Meeks. The
2 second group we would include those who were involved
3 in aspects of the, I believe it's called the informal
4 review or the administrative review. Those would be
5 Mr. Jackson and Mr. Ehrhardt.

6 Next we would hear from the two management
7 witnesses, Mr. Widmann and Mr. McHale. And last, Mr.
8 Lea. As I've said, we're open to other suggestions,
9 but that's we think would be most useful for us in
10 terms of hearing from the witnesses.

11 Do you all have any thoughts on that, staff
12 first?

13 MR. WACHUTKA: That sounds reasonable to
14 the staff.

15 CHAIR SPRITZER: Okay. Ms. Smith, I
16 assume you don't have any problem with our doing it
17 that way?

18 MS. SMITH: No, Your Honor, I don't.

19 CHAIR SPRITZER: As I said, we will give
20 the staff an opportunity, if some of Ms. Smith's
21 witnesses are called out of order, we will -- that is
22 if they have to testify after or in between staff
23 witnesses, we have said we will give you the
24 opportunity for rebuttal.

25 Posed questions for the Board, I believe

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1 Ms. Smith has already submitted those. Ms. Smith,
2 were you planning on submitting any additional
3 questions or do we have everything that you intend to
4 submit on that?

5 MS. SMITH: Yes, Your Honor, I did intend
6 to submit additional questions, more to the response
7 that was given.

8 CHAIR SPRITZER: Okay, and the staff -- I
9 don't believe, at least I haven't found any questions
10 yet. Do you all plan to submit any prior to the
11 hearing?

12 MR. WACHUTKA: The staff hasn't submitted
13 any yet. We do plan on submitting questions. We
14 would like to request that the deadline for questions
15 be July 10th, the same deadline as the final exhibit
16 list.

17 CHAIR SPRITZER: All right, that sounds
18 like a good proposal.

19 Ms. Smith, is that agreeable to you as
20 well? That would be the deadline for any and all
21 questions you all want to submit for us to ask at the
22 hearing prior to the hearing?

23 MS. SMITH: Yes, Your Honor, that's fine.

24 CHAIR SPRITZER: And we will, in all
25 likelihood, allow some limited proposed questions to

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1 be submitted to the Board by both parties during the
2 evidentiary hearing. I've gotten them in handwritten
3 form. I think the last hearing the staff brought a
4 computer and printed them out. Either way is fine.
5 Obviously, this would be something that would have to
6 be done quickly. So we're not going to insist on
7 formality for that.

8 Okay, anybody have any questions on
9 witnesses, witness questions, anything we haven't
10 covered yet?

11 JUDGE FROEHLICH: I just want to remind
12 the parties that the questions that they'll submit
13 will be done to the Board only and not to the other
14 parties.

15 CHAIR SPRITZER: Right, absolutely.
16 Any other questions on witness issues?

17 MR. WACHUTKA: No questions for the staff.

18 CHAIR SPRITZER: Ms. Smith?

19 MS. SMITH: No questions, Your Honor.

20 CHAIR SPRITZER: Deadline for transcript
21 corrections. Ms. Smith, what that means is we will
22 have a written transcript of the evidentiary hearing
23 prepared. The parties get to make corrections to the
24 transcript. However, they are strictly of a technical
25 nature, somebody's name spelled wrong, for example.

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1 They're not to change the substance of anybody's
2 testimony. Does 30 days sound reasonable for that?
3 Staff?

4 MR. WACHUTKA: Thirty days sounds
5 reasonable for the staff. What date would that be?

6 CHAIR SPRITZER: Thirty days from the end
7 of the hearing which we presume will be the 18th,
8 which we had every intention of making sure will be
9 the 18th I should say.

10 JUDGE FROEHLICH: How long will it take to
11 receive the transcript?

12 CHAIR SPRITZER: Oh, that's right. I'm
13 sorry. I misspoke. It should be -- probably a week,
14 but we should allow -- it should run from the date you
15 actually get the transcript, not the date of the end
16 of the hearing.

17 And as far as proposed findings of fact,
18 conclusions of law, what we thought it would be, 60
19 days, again, that would run from when you get the
20 transcripts and obviously, it's hard to propose
21 findings of fact before you have a transcript. Does
22 that sound all right with the staff?

23 MR. WACHUTKA: That sounds fine for the
24 staff.

25 CHAIR SPRITZER: Ms. Smith, are those

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1 deadlines workable for you? That is 30 days after you
2 get the transcript for any proposed transcript
3 corrections and 60 days after you get the transcript
4 to submit proposed findings of fact and conclusions of
5 law for the Board?

6 MS. SMITH: Your Honor, the dates are
7 fine. Do you mind giving me a little bit of a better
8 detailed definition of finding facts and conclusions
9 of law?

10 CHAIR SPRITZER: It's pretty much self-
11 explanatory. You start with the findings of fact are
12 the findings you want the Board to make as to what
13 actually happened from the first -- and normally, you
14 would proceed in chronological order going through the
15 various factual issues. It's not legal argument.
16 It's simply here's what happened, the findings you
17 want the Board to make.

18 Conclusions of law essentially the legal
19 conclusions you want the Board to reach. Normally, I
20 think for your purposes probably I would focus more on
21 the findings of fact. The legal conclusions,
22 certainly give some thought to those also, but the
23 most helpful thing to the Board, we're responsible for
24 knowing law, but most helpful to the Board if you can
25 point us to the various spots in the transcript, in

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1 the exhibits, that you want us to focus on when -- we
2 are going to make the ultimate findings of fact.

3 And we will certainly, we're not simply
4 going to accept one side's -- unless they are
5 extraordinarily accurate, we're not going to accept
6 one side's proposed findings verbatim. So we will do
7 our own homework. But this is basically a roadmap
8 that you want to draw for us as to the findings you
9 think we should make. Does that help at all?

10 MS. SMITH: Yes, Your Honor. It does. I
11 just wanted to clarify.

12 CHAIR SPRITZER: Let me ask if any of the
13 other Judges have anything to add on that?

14 JUDGE FROEHLICH: This is Judge Froehlich.
15 The only thing I might add for Ms. Smith's benefit is
16 that proposed findings of fact are usually numbered
17 and they're usually a very simple thing, for each step
18 along the way with a reference to the transcript or a
19 piece of testimony or an exhibit that will allow the
20 Board to sort of follow step-by-step to come up with
21 the ultimate conclusion in the case. And we look at
22 that from both sides and then --

23 CHAIR SPRITZER: Right, proposed findings
24 that don't have any evidentiary support, either an
25 exhibit or a transcript, they're essentially useless.

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1 So please tell us what you want us to look at to
2 verify what you want us to find.

3 All right, that's pretty much the end --
4 well, we do have one other issue. That is the
5 redactions in the -- a good deal of the testimony and
6 exhibits have extensive redactions, I guess more the
7 exhibits than the testimony. It makes it hard to read
8 at some point when big blocks of information are
9 crossed out.

10 We can manage it. Some of this seems to
11 me to be a bit excessive, given at least my
12 understanding and staff can correct me if I'm wrong,
13 but the personally-identifiable information would not
14 include, for example, John Smith, chief of Operations
15 at the Nuclear Regulatory Commission. A person's name
16 and job title are not personally-identifiable
17 information. Am I mistaken about that?

18 MR. WACHUTKA: No, the staff thinks that's
19 correct.

20 CHAIR SPRITZER: Have you found any places
21 either in your own exhibits or Ms. Smith's where we
22 might be able to unredact some of what has been
23 redacted?

24 MR. WACHUTKA: We haven't noticed any in
25 particular, but if the Board sends us an email of the

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1 ones they wanted redacted -- or not redacted, we can
2 bring the non-redacted copies with us to the hearing.

3 CHAIR SPRITZER: Okay. We'll try to get
4 both sides something on that.

5 JUDGE FROEHLICH: This is Judge Froehlich.
6 My understanding also is not just in relation to the
7 staff official, I think there are instances where
8 there are officials who were either recipients or
9 authors of emails and other materials in the exhibits
10 who work for the licensee at the plant. Is it the
11 staff's position that those items should be protected,
12 should be redacted, those names or position titles?

13 MR. WACHUTKA: The staff doesn't have an
14 issue with redacting those. I can't think of any
15 examples where we re-redacted those things in our
16 exhibits.

17 JUDGE FROEHLICH: Well, perhaps then, Ms.
18 Smith, out of an abundance of caution, in a number of
19 your exhibits, I believe there are plant officials and
20 their titles that have been redacted. I don't see a
21 particular need for them to be redacted. And staff,
22 you're welcome to chime in on this. It would be
23 helpful if we knew who those individuals where and
24 those are usually -- and I'm only asking for the
25 information, the name of the person and their position

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1 or whatever within the Vogtle organization.

2 MS. SMITH: I am assuming that you are
3 speaking about one of the exhibits that has several
4 names in an email and I was simply just kind of
5 following the trend that I've noticed on some of the
6 other documents that were redacted. So that's pretty
7 well why I was following the same technique that was
8 used. But if the Board would like, I can submit that
9 document again. I'm not sure if it's more appropriate
10 to submit it in a non-public or just as it's written?

11 CHAIR SPRITZER: I'm not referring,
12 certainly, to any of the applicants. I think that's
13 appropriate that those names be redacted, but I think
14 there are a series of emails and I'm not sure exactly
15 how many at this point where they were recipients or
16 even authors of correspondence who were obviously
17 plant officials or whatever, but don't have the name
18 or their title and I think those should be unredacted.

19 MS. SMITH: Yes, Your Honor. I'll do that
20 and resubmit them.

21 MR. WACHUTKA: And the staff will look to
22 see if we have anything like that in our exhibits.
23 We'll submit anything and limit it to title and
24 position which should be fine.

25 JUDGE FROEHLICH: Let us put you on hold.

1 I'd like to confer with Judge Spritzer for a moment,
2 please.

3 (Pause.)

4 COURT REPORTER: This is the court
5 reporter just confirming that the conference is still
6 active. Is anybody out there?

7 MR. WACHUTKA: NRC staff is here.

8 COURT REPORTER: Thank you.

9 CHAIR SPRITZER: This is Judge Spritzer
10 and Judge Froehlich. We're still here, but we've
11 muted ourselves out to confer among ourselves. We'll
12 be back on the line with the parties momentarily.

13 (Pause.)

14 CHAIR SPRITZER: All right, I think what
15 we would like is for the parties to submit unredacted
16 versions of documents that you have submitted in
17 redacted form, but do it in the -- what is it called
18 -- the nonpublic file. Is that doable as a practical
19 matter?

20 MR. WACHUTKA: The NRC staff can do that?

21 CHAIR SPRITZER: Ms. Smith?

22 MS. SMITH: Your Honor, for the documents
23 that I redacted, I can do that, but for several of my
24 exhibits, they were actually taken from the Attachment
25 1 which were already redacted before I received them.

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1 CHAIR SPRITZER: All right, for ones you
2 can't redact, I mean if you don't have the original,
3 obviously you won't be able to submit those, but for
4 all others you think you should be able to pub them in
5 the nonpublic file in unredacted form?

6 MS. SMITH: Yes, Your Honor, I can.

7 CHAIR SPRITZER: Okay. I would think what
8 you would do is have them -- they should have the same
9 exhibit number on them so we'll know -- if we want to
10 go look at the unredacted version we won't have any
11 trouble locating the document.

12 MR. WACHUTKA: This is NRC staff. We'll
13 just use the same exhibit number and then parentheses
14 U or something to indicate it's the unredacted
15 version.

16 CHAIR SPRITZER: Yes, that would be fine.
17 Ms. Smith, you can do it that way also.

18 MS. SMITH: Thank you.

19 CHAIR SPRITZER: All right, the last item
20 on our list was issues of concern to the parties not
21 identified above and not otherwise covered by the
22 Board. Does anybody have any questions of a
23 procedural nature at this point?

24 MR. WACHUTKA: No, this all makes sense to
25 NRC staff. Sounds good.

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1 CHAIR SPRITZER: Ms. Smith?

2 (Pause.)

3 Okay, we may have lost Ms. Smith. She
4 should call back in. All right.

5 JUDGE HAJEK: For the benefit of the staff
6 and the court reporter, it appears that Ms. Smith is
7 no longer on the line and we've just sent Ms. Picard,
8 our law clerk, to get a phone number. We intend to
9 call Ms. Smith and tell her to call back in to this
10 conference.

11 CHAIR SPRITZER: I think we're pretty much
12 done, but want to clarify that there are no issues.
13 We want to get her back, if we can.

14 MR. WACHUTKA: The NRC staff understands
15 and we'll stand by.

16 JUDGE HAJEK: Thank you.

17 MR. WELKIE: Staff, we're going to put you
18 on hold -- on mute for a moment. We'll be back
19 shortly.

20 MR. WACHUTKA: Understood.

21 MS. SMITH: Hello?

22 MR. WELKIE: Ms. Smith, are you back with
23 us?

24 MS. SMITH: Yes, I am. I apologize.

25 MR. WELKIE: Okay, very good.

1 CHAIR SPRITZER: We were pretty much at
2 the end. We just want to make sure there were no
3 other issues or problems that you had, Ms. Smith, that
4 you wanted to ask us about, that is issues of a
5 procedural nature like the things we've been talking
6 about today.

7 MS. SMITH: Your Honor, I do have one
8 question. It's not a procedural question. It is to
9 request permission to send and I should have done this
10 in the exhibit questions, but I do have six documents
11 that I was not able to upload through the EIE and I
12 was the same situation as before with the three
13 documents that were too large to be accepted by the
14 system. And I request permission to be able to mail
15 those as well.

16 CHAIR SPRITZER: Does the NRC staff have
17 any objection to that? When will be getting them?

18 MS. SMITH: I will be putting them in the
19 mail today, Your Honor.

20 CHAIR SPRITZER: By what means of
21 delivery?

22 MS. SMITH: I can file those in a couple
23 of days.

24 CHAIR SPRITZER: Does staff have any
25 response to that?

1 MR. WACHUTKA: The NRC staff doesn't
2 object.

3 CHAIR SPRITZER: All right, we'll go with
4 that.

5 MS. SMITH: And Your Honor, the documents,
6 they're not cited within the document. It is just to
7 show where the information originated or these parts
8 were generated.

9 CHAIR SPRITZER: All right, if no one has
10 anything, let me ask my two judicial colleagues, any
11 further from Judge Froehlich or Judge Hajek?

12 JUDGE FROEHLICH: This is Judge Froehlich,
13 I have nothing.

14 JUDGE HAJEK: I have nothing.

15 CHAIR SPRITZER: Very good, thank you for
16 your participation.

17 Ms. Smith, be sure and get back to us as
18 soon as you can, particularly about the two witnesses,
19 Mr. Tucker and Mr. Waltower and whether Mr. Tucker
20 would be available by phone on the 17th or 18th.

21 MS. SMITH: Yes, Your Honor.

22 CHAIR SPRITZER: Very good. Thank you.
23 We are now adjourned.

24 (Whereupon, at 11:21 a.m., the
25 teleconference was concluded.)