

**Official Transcript of Proceedings**  
**NUCLEAR REGULATORY COMMISSION**

Title: Sequoyah Nuclear Plant  
Units 1 and 2

Docket Number: 50-327-LR and 50-328-LR

ASLBP Number: 13-927-01-LR-BD01

Location: (teleconference)

Date: Thursday, August 8, 2013

Work Order No.: NRC-126

Pages 1-52

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

(9:00 a.m.)

CHAIRMAN KARLIN: Good morning. This is Alex Karlin. I'm one of the judges on the Atomic Safety and Licensing Board for the Sequoyah matter. We are going to start this prehearing conference call now.

In a moment, I'll ask the parties to introduce themselves. But, Mr. Court Reporter, please put us on the record.

The party lines are open for people who are speaking, and there should be a public line available for members of the public and media who can listen in on this prehearing conference.

So just let me go through a few things at the outset, and then we can proceed.

For the record, I want to recite that this is in the matter of the Tennessee Valley Authority application for license renewal for Sequoyah Nuclear Power Plant Units 1 and 2. These are located approximately 18 miles northeast of Chattanooga, Tennessee.

The Docket Numbers for this adjudicatory proceeding are 50-327-LR and 50-328-LR, LR standing for license renewal.

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1           The ASLBP Number, the Atomic Safety  
2           Licensing Board Panel Number, is 13-027-01-BD01.

3           This prehearing conference call is being  
4           held pursuant to an order that this Board issued on  
5           July 12, 2013. And today's date is August 8, 2013.

6           This prehearing conference is being  
7           conducted telephonically, and so we have -- everyone  
8           who is participating is participating via telephone.

9           Let us go through the introductions for a  
10          moment. On the Atomic Safety and Licensing Board on  
11          this matter, there are three judges -- myself, Alex  
12          Karlín. I am the Chair of this Board because I come  
13          in with the -- to handle the procedural issues.  
14          Dr. Gary Arnold is here with me. He is one of the  
15          other judges on the Board, and we are in Rockville in  
16          a conference room. Dr. Paul Abramson is also on the  
17          Board as a judge, and he is participating via  
18          telephone, I believe from New York.

19                 Judge Abramson, you're on the line, sir?

20                 ADMIN. JUDGE ABRAMSON: I am, indeed.

21                 CHAIRMAN KARLIN: Very good. Let's put  
22          these a little closer, put the sound volume up a  
23          little higher, so we can make sure he is heard well.

24                 And Matt Flyntz, lawyer and law clerk, I  
25          believe will be on the telephone line as well. Mr.

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1 Flyntz, are you there?

2 MR. FLYNTZ: I'm here.

3 CHAIRMAN KARLIN: Very good. And Twana  
4 Ellis is our administrative assistant, and she is here  
5 in the room with us in Rockville.

6 So let us now ask the parties to introduce  
7 themselves. Why don't I start with the Blue Ridge  
8 Environmental Defense League. Mr. Zeller, please  
9 introduce yourself and any other of your colleagues  
10 from BREDL who are with you or on the line.

11 MR. ZELLER: Good morning, Judge Karlin.  
12 Thank you very much. I appreciate it. My name is  
13 Louis A. Zeller, and I am Executive Director of the  
14 Blue Ridge Environmental Defense League, with chapters  
15 in several southeastern states.

16 We are a nonprofit organization  
17 representing our members in the area of the Sequoyah  
18 Nuclear Plant; that is, southeast Tennessee, northeast  
19 Alabama, and actually parts of Georgia and North  
20 Carolina as well.

21 We are the ones that initiated the  
22 petition for a request for hearing, and we appreciate  
23 the opportunity to talk to you today.

24 CHAIRMAN KARLIN: All right. Thank you.  
25 Welcome, Mr. Zeller.

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1           For Tennessee Valley Authority, the  
2           applicant for the license renewal is here. Mr. Lewis,  
3           do you want to introduce your team and the in-house  
4           counsel from TVA?

5           MR. LEWIS: Yes. Thank you, Judge Karlin.  
6           I am David Lewis from the law firm Pillsbury,  
7           Winthrop, Shaw, Pittman, representing TVA. Also on  
8           the line representing TVA is Edward Vigilucci, the  
9           Associate General Counsel Nuclear Licensing, as well  
10          as Scott Vance and Blake Nelson, also with the TVA  
11          Office of General Counsel.

12          CHAIRMAN KARLIN: Okay. And will you be  
13          the spokesman for TVA in this call?

14          MR. LEWIS: Yes, Judge Karlin.

15          CHAIRMAN KARLIN: Okay. Thank you.

16          For the NRC staff, Ms. Mizuno, could you  
17          introduce your team, please?

18          MS. MIZUNO: Yes, Your Honor. Beth Mizuno  
19          with Office of General Counsel. With me today is  
20          Brian Harris, also with the Office of General Counsel.  
21          We are accompanied by staff members Emmanuel Sayoc and  
22          Tam Tran.

23          CHAIRMAN KARLIN: Okay. Great. And will  
24          you be the spokesman for the NRC staff today?

25          MS. MIZUNO: Yes, sir.

1                   CHAIRMAN KARLIN: Great. Okay. So let me  
2 just give a little bit of the background, this sort of  
3 thing. But before I even say that, I want to mention  
4 to everyone on the line, please take notes of this  
5 call, because we -- I really don't intend, unless my  
6 colleagues, you know, disagree at some point, to issue  
7 a synopsis of this prehearing conference call after  
8 the call. Some boards do that in some proceedings; I  
9 generally think it's unnecessary and inappropriate,  
10 and we're just going to talk.

11                   We're going to -- and you need to listen  
12 carefully and take notes, or you can -- and I would  
13 recommend this -- get a copy of the transcript for  
14 free when it is posted on the electronic hearing  
15 docket in about a week. But we don't intend to issue  
16 a little summary or synopsis of this thing a couple of  
17 days from now. You just have to take your notes.

18                   We do intend, however, and the purpose of  
19 this call, is to issue an initial scheduling order, as  
20 required by the regs, probably the end of this month.

21                   Okay. With that, the recent background of  
22 this thing is that BREDL -- I will refer to it as  
23 BREDL, Blue Ridge Environmental Defense League --  
24 filed a petition to intervene on May 6th of 2013. In  
25 May and June, the parties filed briefs, and on

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1 July 5th we issued a decision on this matter, ruling  
2 that BREDL had standing and the other two entities did  
3 not.

4 We denied seven of the contentions  
5 proposed by BREDL, and we took the eighth contention  
6 and put it in abeyance, neither admitting it nor  
7 denying it.

8 Then, on July 12th we issued an order  
9 scheduling this initial scheduling conference, and on  
10 July 31st the staff filed a letter, as we had  
11 instructed them to do, albeit a day late, where they  
12 provided us their estimated schedule for this license  
13 renewal proceeding.

14 That schedule indicated that the staff  
15 expected in their best estimate -- and it's just an  
16 estimate -- that they would issue the final  
17 supplemental environmental impact statement and the  
18 final safety evaluation report in October of 2014. So  
19 that was helpful, and we appreciate that input from  
20 the staff.

21 Meanwhile, on July 30th, the Tennessee  
22 Valley Authority and BREDL both filed interlocutory  
23 appeals challenging various aspects of the decision  
24 that this Board issued on July 5th. And the  
25 Commissioners will take those appeals into

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1 consideration, briefs will be filed, and they will do  
2 whatever they deem appropriate with regard to our  
3 decision.

4 So the purpose of this call today is sort  
5 of dictated by the regulations. The regulation 10 CFR  
6 2.332(a) specifies that the boards are required to  
7 hold an initial scheduling conference and to issue an  
8 initial scheduling order as soon as possible.

9 The model milestones say that should be  
10 within 55 days of the July 5th order. That would make  
11 it August 29th. We are going to try to meet that  
12 date, and it shouldn't be a problem.

13 And the regs go on to specify, you know,  
14 the objectives of an initial scheduling order, and  
15 basically they are to set up a mechanism whereby we  
16 can manage this case and conduct this case, this  
17 adjudication, fairly and efficiently and with a  
18 minimum of unnecessary litigation or, you know, waste  
19 of resources or time, et cetera.

20 This is not a time to revisit the  
21 admissibility of the contentions. This is not a time  
22 to talk about the merits of the contentions. And it  
23 is certainly not a situation where you argue the  
24 merits of your appeal. So we are going to try to work  
25 towards issuing an initial scheduling order.

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1           Now, this is a little unusual case. As we  
2 noted in our July 12th order, because we don't have  
3 any admitted contentions, and we have one that is in  
4 abeyance. Normally, an initial scheduling order will  
5 set out or clarify issues associated with mandatory  
6 disclosures, and we may talk about the timing of  
7 filings associated with the merits hearing on the  
8 admitted contentions.

9           But we don't have that here. We only have  
10 one contention, which is pending, not admitted, nor  
11 denied. And that -- our ruling was based upon the  
12 Calvert Cliffs -- the Commission's decision in Calvert  
13 Cliffs, which I will refer to as CLI 12-16.

14           So in our July 12th order, we listed seven  
15 items that we thought we would cover. Well, really  
16 six, and then the seventh, which was any other things  
17 that the Board thought of that we might want to talk  
18 about. And we have a couple of them.

19           But does anyone else have any other items  
20 proposed for this agenda? Do any of the parties -- or  
21 my colleagues if they want, you know, we have already  
22 talked with -- do the parties have any other proposed  
23 items for the agenda? Okay.

24           MR. LEWIS: This is Mr. Lewis. Not here.

25           CHAIRMAN KARLIN: Okay. Thank you.

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1           Okay. Well, then, we will just proceed  
2 with that. Now, may I ask, did the parties confer as  
3 we instructed in our July 12th order?

4           MR. ZELLER: Judge Karlin, there was a  
5 conference --

6           CHAIRMAN KARLIN: I'm sorry. Could you  
7 identify who is speaking here?

8           MR. ZELLER: Yes, sir. This is Lou Zeller  
9 for Blue Ridge Environmental Defense League. There  
10 was a request to have such a conference between TVA's  
11 attorneys and NRC staff. Unfortunately, I was not  
12 able to be reached. I think it was partly because of  
13 relatively short notice I believe that they met and  
14 discussed some items on Monday of this week, which was  
15 just a couple of days ago. So, but I was not present  
16 at any of that -- for any of that discussion.

17           CHAIRMAN KARLIN: But you were invited and  
18 given the opportunity to be present.

19           MR. ZELLER: I saw the notice after the  
20 meeting happened.

21           CHAIRMAN KARLIN: Okay.

22           MS. MIZUNO: Your Honor, this is Beth  
23 Mizuno with the staff. I've just been joined by Mitzi  
24 Young, also with the Office of General Counsel. And  
25 I wanted to pointed out that we set up this telephone

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1 consultation for Monday, but Wednesday, the week  
2 before on Wednesday, Ms. Young sent an email to Mr.  
3 Zeller, you know, alerting him as to the consultation,  
4 asking if he would be available. And she tried to  
5 reach him by phone on Monday morning, and I sent him  
6 an email also Monday morning.

7 MR. LEWIS: Judge Karlin, I also tried to  
8 call Mr. Zeller on Monday morning, and following --  
9 when he was not able to join our call, the staff and  
10 TVA proceeded to discuss your points. I then prepared  
11 a summary of what we discussed and emailed that to  
12 Mr. Zeller on Monday. We have not heard his views.

13 CHAIRMAN KARLIN: All right. Okay. So  
14 there was a bit of -- so did a call occur between the  
15 staff and the applicant?

16 MR. LEWIS: Yes, Judge Karlin, on Monday.

17 CHAIRMAN KARLIN: Okay. As I see it,  
18 there is nothing inappropriate for that, for parties  
19 to talk with each other from time to time. But is  
20 there anything you have to report to us as a result of  
21 that, or do you just want to proceed?

22 MR. LEWIS: We went down through all seven  
23 points and discussed our positions, and at least  
24 between the staff and TVA, you know, reached I think  
25 a consensus position. I have not reported anything

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1 because we had -- as I said, I transmitted those  
2 proposed positions to Mr. Zeller, and I do not know  
3 what his -- whether he had any reactions to what we  
4 were suggesting as to --

5 MS. MIZUNO: Your Honor, this is Beth  
6 Mizuno. We haven't heard anything from Mr. Zeller at  
7 all since we tried to reach him last week, Wednesday,  
8 and we haven't heard anything back from him with  
9 respect to the email synopsis that Mr. Lewis provided  
10 on Monday afternoon.

11 CHAIRMAN KARLIN: Okay. Well, unless  
12 anyone wants to say anything more about that, we're  
13 just going to proceed through the items on the  
14 July 12th list of discussion items.

15 Okay. I'm looking at page 2 of that  
16 July 12th order, and the first item we listed was the  
17 value and need to obtain regular reports from the  
18 staff as to its projected schedule for completion of  
19 the EIS and the safety evaluations. Let me just start  
20 with the -- Ms. Mizuno from the staff, your thoughts  
21 on that?

22 MS. MIZUNO: Well, Your Honor, I have  
23 members of the staff for the safety and environmental  
24 side here, and we have been working on making sure  
25 that the NRC website information is accurate and

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1 current. And given the fact that the review schedule  
2 for the environmental and the safety side reviews are  
3 on the website, we would respectfully submit that no  
4 report is necessary.

5 We are, of course, more than happy to  
6 notify the Board and the participants when our  
7 documents, either draft or final, are published. But,  
8 you know, the publication schedule, the estimated  
9 dates, are on the website. When they actually come  
10 out, we will be happy to notify you, and the parties  
11 of course.

12 CHAIRMAN KARLIN: Mr. Zeller, your  
13 thoughts?

14 MR. ZELLER: Yes. Judge Karlin, this is  
15 Lou Zeller. I believe that reports from the staff  
16 should be published on a regular basis, and official  
17 notice sent to the parties in this case by normal  
18 email notice using hearingdocket@nrc.gov and posted to  
19 the NRC Electronic Information Exchange.

20 The earlier discussion about whether  
21 notice was provided for the conference between TVA and  
22 NRC, and an email from I guess someone named Young,  
23 was missed by us. And we do check things. For  
24 example, the hearing docket email is a normal route of  
25 communication. And so we would request that this

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1 procedure be followed from the staff on a regular  
2 basis, perhaps monthly, and official notice sent via  
3 that hearing docket at nrc.gov and posted to the  
4 Information Exchange electronically.

5 CHAIRMAN KARLIN: And Mr. Lewis?

6 MR. LEWIS: Yes, Judge Karlin. This is  
7 David Lewis. We were in agreement with the NRC  
8 staff's position that the main purpose of the reports  
9 in typical proceedings is so that the parties can  
10 observe upcoming trigger dates for filing of testimony  
11 or summary disposition motions, and that's just, you  
12 know, currently absent here.

13 What is probably more significant are the  
14 NRC staff review documents that might trigger  
15 opportunity for further contentions. And NRC staff  
16 indicated they are amenable to notifying the Board and  
17 parties when those documents are issued. Beyond that,  
18 I think at this juncture, the website is probably  
19 perfectly adequate to keep the parties apprised of  
20 just the general status of the proceeding.

21 CHAIRMAN KARLIN: Okay. Well, thank you  
22 for those comments. We will take that under  
23 consideration.

24 I will make my observation, however, that  
25 often I think the website is not up to date, doesn't

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1 seem to have information and is a little slow.  
2 Inertia is a factor. A monthly report is required  
3 from counsel. Then, the counsel has to contact the  
4 relevant staff individuals and find -- get an  
5 affirmative answer what is changed or what isn't.

6 Absent such a requirement, you have to --  
7 the counsel has to wait for someone on the staff to  
8 contact them and tell them that something has changed,  
9 and often busy people forget -- seem to forget to do  
10 that. Other boards have tried the more laissez faire  
11 approach and have had difficulties in getting prompt  
12 information from the staff as to changes in its  
13 schedule.

14 So I think there are merits on both sides,  
15 and we will just take that under consideration.  
16 Unless Judge Abramson or Judge Arnold want to say  
17 anything more, we will move to the next item.

18 MS. MIZUNO: Judge Karlin, this is Beth  
19 Mizuno for the staff. And I wanted to just point out,  
20 if I could, we are in August of 2013. The draft  
21 supplemental environmental impact statement is not  
22 estimated to be published until February of 2014. And  
23 that is the earliest of all of the publications that  
24 we are talking about.

25 In the July 31 submission, letter

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1 submission, we gave you some of those dates. So  
2 February 2014 is the first date that is going to be  
3 coming up. If we are putting in monthly reports, the  
4 ones for August, September, October, November,  
5 December are going to be pretty thin on new  
6 information.

7 If the panel has determined that regular  
8 monthly reports are necessary, the staff would submit  
9 that it might make more sense to have those monthly  
10 reports substantially closer to the date of the  
11 expected publication. And if such reports are  
12 necessary, the staff would submit that it might be  
13 appropriate to hold off on them until December of this  
14 year.

15 CHAIRMAN KARLIN: Okay. We can take that  
16 into consideration. I would note that in all of the  
17 cases I have ever handled we have required monthly  
18 reports, and it has been a very valuable thing in my  
19 opinion. And I have seen cases where people have not  
20 required that and it has gotten them into trouble. It  
21 seems like very modest, mature thing to do.

22 Let's move to the next item, which is  
23 grappling with the -- and I will just read it from the  
24 advisability of requiring notification if a party  
25 believes that a commission has issued an order or

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1 taken any action that affects the "abeyance status of  
2 Contention B."

3 We are keying off of the Commission's  
4 ruling in CLI 12-16, which states, "In the view of the  
5 special circumstances of this case, as an exercise of  
6 our inherent supervisory authority over adjudications,  
7 we direct that these contentions and any related  
8 contentions that may be filed in the near term be held  
9 in abeyance pending our further order."

10 Now, it may seem that all we are waiting  
11 for is an order, some further CLI that will be clear  
12 as a bell and we will all know the exact moment when  
13 that event has occurred. It may alternately be that  
14 the parties here will disagree as to what is the event  
15 or circumstance that undoes the abeyance status of  
16 this thing.

17 Indeed, I see the appeals that have been  
18 filed. I have grappled in part with -- that Mr. Lewis  
19 seems to be arguing, among other things, that the  
20 triggering events have already occurred.

21 So the question would be, would it be  
22 appropriate to require an affirmative notification  
23 from either the staff or all parties of when they  
24 think that triggering event has occurred? We  
25 understand that there is a Commission policy out there

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1 dated September 13, 1984 -- and, Mr. Zeller, you may  
2 want to write this down. It's in the Federal Register  
3 at 49 Federal Register 36032.

4 And it states, "All parties in NRC  
5 adjudicatory proceedings, including the NRC staff,  
6 have a duty to disclose to the boards and other  
7 parties all new information they require -- they  
8 acquire which is considered material and relevant to  
9 any issue in controversy in the proceeding."

10 That policy seems to be -- still have some  
11 validity, because the staff filed something in one of  
12 my other cases two days ago on August 6, 2013, in the  
13 SONGS case citing that policy.

14 So may I hear from the parties -- let's  
15 start with Mr. Lewis -- as to your thoughts on how we  
16 should grapple with the -- should there be a  
17 notification? Who should give it? How should we  
18 handle that?

19 MR. LEWIS: Yes, Judge Karlin. This is  
20 Mr. Lewis. Both TVA and the staff, in our  
21 discussions, agree that we already have an obligation  
22 to advise the Board of any material developments  
23 pursue to that policy and longstanding NRC case law.  
24 There is I believe a decision in McGuire that goes  
25 back many years requiring the parties to have that

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1 obligation.

2 And so we would do so upon learning of any  
3 Commission order/action affecting the abeyance status  
4 of Contention B. Because we view that obligation as  
5 already existing, putting it in the initial scheduling  
6 order probably isn't strictly necessary, but it is an  
7 obligation we recognize.

8 CHAIRMAN KARLIN: Okay. And the staff,  
9 Ms. Mizuno, do you concur with that?

10 MS. MIZUNO: Yes, Your Honor.

11 CHAIRMAN KARLIN: Okay. Let me ask for a  
12 clarification on this, and I'll get to you in a  
13 moment, Mr. Zeller. A clarification on this, you will  
14 submit notifications when you think that the  
15 triggering event has occurred. So there could be a  
16 challenge or a contest of whether indeed that  
17 triggering event has occurred by the other parties.  
18 That's one possibility.

19 And the whole value of getting that notice  
20 or this is not -- at that moment we have an event  
21 which tells us we either proceed with this  
22 Contention B and file appropriate filings in support  
23 thereof, or we I guess terminate Contention B or do  
24 something else with it.

25 So there may be motions to dismiss,

1 motions to amend the contention, motions that follow  
2 from that event, taking it out of abeyance. And we  
3 need to -- have you thought about that, Mr. Lewis?

4 MR. LEWIS: No, Judge Karlin. I think it  
5 depends on what the action or order is. I mean, if  
6 the Commission issued an order saying, "Oh, these  
7 contentions that have been held in abeyance should be  
8 dismissed," I don't think there is much room or need  
9 for motions. If it was something more subtle, then  
10 perhaps. But I don't think that we've thought through  
11 all the possibilities.

12 CHAIRMAN KARLIN: Is it your position that  
13 the triggering event or the unabeyance -- I mean,  
14 assuming that we were -- that it applies to this case,  
15 which I know you are challenging, but assuming it does  
16 apply to this case, are you also arguing that it  
17 should be taken out of abeyance already due to the  
18 actions that the Commission has taken?

19 MR. LEWIS: Judge Karlin, that's our  
20 position on appeal. You know, the Commission will  
21 decide that. Until the Commission does, your ruling  
22 stands.

23 CHAIRMAN KARLIN: So should you send us a  
24 notice that you think the event has already occurred?  
25 I mean, I don't know. I mean --

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1 MR. LEWIS: I don't know if that covers  
2 this. I though, Judge Karlin, your point was asking,  
3 you know, if there is something further --

4 CHAIRMAN KARLIN: Okay.

5 MR. LEWIS: -- subsequent to this, where  
6 we are right now.

7 CHAIRMAN KARLIN: Okay. Mr. Zeller, your  
8 thoughts on this issue, if any?

9 MR. ZELLER: Yes. Thank you, Judge  
10 Karlin. I think it should be required that a  
11 participant's obligation to advise the Board is a  
12 accompanied by notice to the parties. And as I stated  
13 earlier, in normal notice on hearingdocket@nrc.gov and  
14 posted to the Electronic Information Exchange, that's  
15 one thing we would request in order to keep things  
16 orderly and so that we not miss anything.

17 CHAIRMAN KARLIN: All right. Yeah, I  
18 think everyone sounds like they are in agreement on  
19 that portion.

20 MS. MIZUNO: Well, Your Honor, this is  
21 Beth Mizuno for the staff. While we agree that we of  
22 course have an obligation to advise the staff, at  
23 least advise the Board and the parties as to any  
24 material development, you know, I recognize that there  
25 could be some disagreement as to what actually is

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1 material.

2 And I think our view is that what would be  
3 most useful here would be if and when the Commission  
4 actually takes final action, the final action that it  
5 was proposing in CLI 12-16 that all of the litigants  
6 in 12-16 are waiting for, when it does that, the staff  
7 can of course notify the Board and the parties.

8 And seeing as counsel for the staff is  
9 also counsel for the staff in those CLI cases --  
10 notably, oh, Grand Gulf, Callaway, license renewals,  
11 we will know when the Commission acts because we will  
12 be served, and then we can make sure that we inform  
13 everyone else.

14 CHAIRMAN KARLIN: I think that's right.  
15 I think that -- but, you know, that when -- when the  
16 Commission takes action on this, everyone will know it  
17 and it will be clear, quite clear. There may be some  
18 of you out there that think more subtle events may  
19 qualify, but my impression would be the Commission is  
20 going to speak pretty clearly when it addresses that  
21 issue, and we will all know.

22 Okay. So I think that's a useful  
23 discussion, and, you know, we may -- we will take that  
24 under advisement in drafting or developing a  
25 scheduling order, initial scheduling order.



1 Third item on the agenda -- value of  
2 setting time limits for the filing of timely motions  
3 for leave to file new or amended contentions under  
4 2.309(c)(1)(iii).

5 Now, Mr. Zeller, I will suggest to you  
6 that you familiarize yourself, if you haven't already,  
7 with the changes in the regulations that were enacted  
8 on August 3rd of last year. And there are some  
9 changes in those regs. Many of the concepts are  
10 familiar.

11 But, okay, normally a board will set a  
12 timeframe for filing of motions for new contentions,  
13 30 days, 60 days, and I suspect we will probably want  
14 to do something like that. Are there any -- so maybe  
15 it doesn't require a lot of discussion, but any  
16 thoughts on that, Mr. Lewis?

17 MR. LEWIS: Yes, Judge Karlin. This is  
18 Mr. Lewis. TVA suggests a 30-day period. We  
19 discussed that with the staff, and the staff was in  
20 agreement. That was sort of the normal timeframe and  
21 acceptable to them.

22 Currently, since there is nothing else  
23 going on in this proceeding that is imposing burdens  
24 on the party, a 30-day clock seems very reasonable.

25 CHAIRMAN KARLIN: Ms. Mizuno, anything on

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1 that?

2 MS. MIZUNO: No, Your Honor. Nothing  
3 further.

4 CHAIRMAN KARLIN: Mr. Zeller?

5 MR. ZELLER: Yes, thank you, Judge Karlin.  
6 The limit or the stipulation for timeliness of motions  
7 for leave to file new or amended contentions under  
8 2.309, as you cited, is predicated upon the  
9 availability of the new information.

10 If the date of availability of information  
11 is unclear, disputes about timeliness are inevitable.  
12 Therefore, we do think that the -- that notice be  
13 provided, and that if that is done that we have the --  
14 that would make it clear as to when new information is  
15 available, the stipulations that we would have are  
16 that information is posted by the normal  
17 hearingdocket@nrc.gov and posted to Electronic  
18 Information Exchange, and that we -- that that  
19 establish when availability is made, for example.

20 An alternative means might be through the  
21 Federal Register, which is outlined also in 2.309,  
22 under which a 60-day limit is granted from the  
23 publication in the Federal Register. So I think if  
24 there is notice, and it is done through the Electronic  
25 Information Exchange, through the

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1 hearingdocket@nrc.gov, then I believe 60 days would  
2 not be necessary.

3 Of course, we would prefer to have longer  
4 than 30 days, but I would leave it up to the judges to  
5 decide if 30 or 60 days is a proper amount of time.

6 Our principal concern is that it be clear  
7 as to when information is available, so -- to reduce  
8 the amount of potential disputes regarding timeliness.

9 CHAIRMAN KARLIN: Okay. Do either of the  
10 others care to speak on that or --

11 MR. LEWIS: Judge Karlin, this is Mr.  
12 Lewis. The 30-day period under the rules would start  
13 from when new or different information becomes  
14 available to BREDL. I don't think it's possible for  
15 us to provide notices or post information on the  
16 Electronic Information Exchange because, you know,  
17 these are the new contentions. And we would have no  
18 indication what topics BREDL intends to raise.

19 There could be, you know, many different  
20 types of occurrences that could give rise to new  
21 information, such as, you know, public meetings or  
22 responses to RAIs or, you know, new documents.

23 Obviously, that can't all be posted. I think this is  
24 the normal process is that it is BREDL's obligation to  
25 stay abreast of the docket, and their obligation to

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1 file new contention, you know, doesn't arise until 30  
2 days after that information, you know, becomes  
3 available to them.

4 CHAIRMAN KARLIN: Okay. We will take that  
5 under advisement. I mean, I might speak to the fact  
6 that, yes, the requirement is that the way the regs  
7 talk about the -- well, let me get the reg out. If  
8 information comes out that was not previously  
9 available, and that is material, then the motion for  
10 the new contention should be filed in a timely manner.  
11 That's what the reg says.

12 And we often, and generally, undertake to  
13 specify what we interpret "timely manner" to mean,  
14 i.e. 30 days, 60 days, or whatever. But it's 30 days  
15 or 60 days from the moment when the information became  
16 available.

17 And there is a whole bunch of case law on  
18 this, as you may be aware, Mr. Zeller, dealing with  
19 the duty of the parties, the intervenor, to pay  
20 attention and to monitor what's going on. And if you  
21 think something -- some new information, some new  
22 event has occurred which can be the basis of a new  
23 contention, I think the words they use is the iron-  
24 clad obligation of the intervenor to "monitor" the  
25 information and file a contention within 30 days or 60

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1 days thereafter.

2 And many events occur which are outside of  
3 the control of either the staff or the applicant,  
4 which may, in intervenor's eyes, constitute such new  
5 information. So requiring them to notify every time  
6 any potential new information comes out is I believe a  
7 very unusual situation.

8 But it certainly is 30 days or 60 days  
9 after the information becomes available, and the  
10 typical case law is, you know, sort of as a reasonable  
11 person standard, when did you know or when should you  
12 have known? When should a reasonable person have  
13 known that this information was available? The  
14 objective standard that even if you actually didn't  
15 know you need to be reasonably conversant with what is  
16 going on. So we will take that under consideration.

17 MR. LEWIS: Judge Karlin, if I might?

18 CHAIRMAN KARLIN: Yes.

19 MR. LEWIS: I did not mean to imply that,  
20 you know, any -- the global universe of new  
21 information would need to be supplied by the parties.  
22 My request had to do with the questions that you  
23 outlined in the July 12 order, questions number 1 and  
24 2, and then upcoming is question number 6 about  
25 discovery. So, in other words, things that they know

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1 about which are the reports, the filing updates, and  
2 things like that.

3 CHAIRMAN KARLIN: Right. I mean, if they  
4 make their normal filings, generate documents, put  
5 them into ADAMS, put them into -- you know, I guess  
6 you need to monitor ADAMS, because if they put it onto  
7 ADAMS as some relevant document here, well, that may  
8 be the beginning of the timeframe for you to file a  
9 new contention if you think it's appropriate based  
10 upon whatever was posted in ADAMS.

11 If they posted it on ADAMS, you know, five  
12 weeks late, well, the availability of it may be five  
13 weeks late. I don't know, unless you have actual  
14 knowledge of it in some other way. But, okay, let us  
15 move, if we may, to the dispositive motions.

16 Item Number 4, the value of setting rules  
17 and time limits for the filing of dispositive motions  
18 such as motion for summary disposition. Well, we  
19 don't have any admitted contentions at the moment, so  
20 maybe this is not going to come up. But once the  
21 triggering event occurs at the Commission level,  
22 someone may want to file a motion for summary  
23 disposition.

24 I would ask the staff and the applicant  
25 and Mr. Zeller also to recognize the regs have

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1 changed, and the regs now say all motions must be  
2 filed within 10 days of the event or circumstance from  
3 which they arise. And that includes motions for  
4 summary disposition. It does not include motions for  
5 new contentions, because the regs specifically exclude  
6 that.

7 So the rule is a motion for summary  
8 disposition must be filed within 10 days of the event  
9 from which it arises. One of the questions is whether  
10 we want to modify that and extend it to make it 30  
11 days as well, or something like that.

12 Mr. Lewis, your thoughts?

13 MR. LEWIS: Yes, Judge Karlin. This is  
14 Mr. Lewis. The discussion that TVA and the staff had,  
15 our conclusion was it was probably premature at this  
16 time to be establishing those rules in the absence of  
17 any admitted contentions. We would basically be  
18 suggesting a procedure in a void, and that it would  
19 make more sense to revisit this if and when a  
20 contention is admitted.

21 I do agree with you that if a contention  
22 were admitted, it would be worthwhile in light of some  
23 recent cases on timeliness of summary disposition  
24 motions, to obtain some agreement on the parties on,  
25 you know, whether there is in fact a specific date on

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1 which a summary disposition motion has to be filed or  
2 whether there is some range in which it may be filed,  
3 which to me is more practicable. But at this point,  
4 if we were to do that, we would be doing it in a void.

5 CHAIRMAN KARLIN: Well, here is the  
6 situation. We have a Contention B. It is neither  
7 admitted nor denied. It is in abeyance, and we are  
8 waiting for the Commission to do something. And once  
9 it does something, it may be that you will want to, I  
10 don't know. If you think that the Commission's action  
11 has -- requires the dismissal of this contention, I  
12 could think that you might file a motion for summary  
13 disposition or some motion for dismissal of  
14 Contention B.

15 MR. LEWIS: We would --

16 CHAIRMAN KARLIN: In that circumstance or  
17 scenario, you would have to file within 10 days of  
18 that event, the motion for --

19 MR. LEWIS: Yes, Judge Karlin, I agree  
20 with you. I think a motion to dismiss should be filed  
21 within 10 days. I don't think it would be a motion  
22 for a summary disposition, which is a merits  
23 determination. I do think it would be a motion to  
24 dismiss, and I do agree that the normal provision that  
25 a motion should be filed within 10 days of the

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1 triggering occurrence --

2 CHAIRMAN KARLIN: Okay.

3 MR. LEWIS: -- would be applicable.

4 MS. MIZUNO: Your Honor, this is Beth  
5 Mizuno. I would like to refer the Board and the  
6 parties to the regulation at 10 CFR 2.1205 that  
7 specifically discusses summary disposition. And it  
8 talks about motions for summary disposition being  
9 submitted no later than 45 days before the  
10 commencement of the hearing.

11 Well, as we all recognize, we don't have  
12 a date for commencement of the hearing, so we can't  
13 count 45 days from there. The regulation at 1205 also  
14 talks about allowing parties an opportunity to file  
15 their answers within 20 days after service of such a  
16 summary disposition motion.

17 And so, you know, given that the response  
18 time is 20 days, I think requiring a motion within 10  
19 days of any action is a little bit on the short side.

20 CHAIRMAN KARLIN: Well, let me address  
21 that. First, there is a distinction in all my --  
22 between promptness and ultimate deadlines. The  
23 ultimate deadline set forth in the reg, subject to  
24 modification by the presiding officer, the ultimate  
25 deadline for motions for summary disposition in

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1 Subpart L proceedings is 45 days before the  
2 commencement of the hearing.

3 That deadline is very difficult, is the  
4 best thing I can say about it, because 45 days before  
5 the commencement of the hearing the motion is filed.  
6 Twenty days later the answers are filed. The ruling  
7 has to be issued at least 15 days before the hearing  
8 begins.

9 That gives the Board a 10-day window to  
10 rule on the motion for summary disposition. Forty-  
11 five days plus twenty, now you're down to how many  
12 days? Twenty-five days before the hearing, now you've  
13 got an issue with between 25 and 15 days. That  
14 doesn't work. It never has worked, and it isn't going  
15 to work here.

16 So point one is that deadline, that's an  
17 ultimate deadline for motion for summary disposition.  
18 It's not a promptness deadline. The promptness  
19 deadline still applies.

20 I don't want parties sitting on motions  
21 for summary disposition until 45 days before the  
22 hearing is going to start when you could have filed it  
23 a year or two earlier. Okay? So that doesn't apply.  
24 There is a 10-day deadline.

25 Let me -- so that's option 1. Option 2

1 is, we are not under a Subpart L. No contention has  
2 been admitted. We are not under L, we're not under G,  
3 we don't know what we're under. So that reg doesn't  
4 even apply. So, okay, we will take it under  
5 consideration.

6 Mr. Zeller, did you have any thoughts on  
7 this one?

8 MR. ZELLER: We are satisfied with the  
9 regulation as you stated it, Judge Karlin, at the  
10 beginning.

11 CHAIRMAN KARLIN: Okay.

12 MR. LEWIS: Judge Karlin, this is Mr.  
13 Lewis. Again, I suggest that not knowing what section  
14 of the rules we're under, again, makes setting rules  
15 probably premature at this point in time. If you were  
16 to set rules, my preferred practice has always been to  
17 file summary disposition motions after the NRC staff  
18 has taken a position on the issue, which means either  
19 after the draft EIS of an environmental contention or  
20 after an initial SER that addresses the issue. And my  
21 practice has always been to try and file the motion  
22 for summary disposition promptly after those dates.

23 CHAIRMAN KARLIN: Right.

24 MR. LEWIS: The hearing is typically  
25 triggered by the final documents. You know, that then

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1 provides sufficient time for the parties to respond  
2 and the Board to rule. But for the final trigger date  
3 -- and if you were inclined to set such dates -- I  
4 think that would be a more reasonable procedure.

5 And I agree, actually, that 10 days after  
6 those -- a draft EIS or the initial SER is a short  
7 amount of time, because if there is something in such  
8 documents that a party who has been preparing a  
9 summary disposition motion has not anticipated, it is  
10 a short time to get back with its experts and tailor  
11 its motion.

12 CHAIRMAN KARLIN: Right. Well, there is  
13 no confusion that we are currently under 2.323. That  
14 does apply, and that does say 10 days. And so -- and  
15 that is a promptness deadline, which applies to all  
16 motions, and it made very in the changes of August 3,  
17 2012, that "all motions" means all motions, and that  
18 includes motions to dismiss or motions for summary  
19 disposition.

20 And whether under L or G, we are certainly  
21 under C. And so we need to grapple with that one way  
22 or the other. And maybe it is reasonable to have a  
23 little more timeframe for dispositive motions.

24 I might add that I am generally not very  
25 -- I don't think they are a very productive thing to

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1 do in most of these proceedings, but okay.

2 Let's go to number 6, which is whether  
3 it's necessary or appropriate for the staff to file  
4 and update its hearing file at this time. I'm not  
5 even sure whether this reg applies from what I just  
6 said, which is that we are not under Subpart L at this  
7 point.

8 But perhaps you all will discuss that and  
9 have some feeling. Perhaps I would start with Ms.  
10 Mizuno on this one.

11 MS. MIZUNO: Well, yes, Your Honor. Given  
12 your pointing out that we are not necessarily under  
13 Subpart L, then the regulations there, the 1200  
14 series, wouldn't apply. You know, when you look at  
15 1203(a)(1), which talks about hearing files and gives  
16 the requirements for hearing files, it is predicated  
17 on an order granting a request for hearing.

18 The trigger point is a memorandum and  
19 order, a decision and order that grants a hearing  
20 request. No hearing --

21 CHAIRMAN KARLIN: Oh, that's right.  
22 That's right.

23 MS. MIZUNO: -- has been granted in this  
24 case. And, accordingly, the staff would submit that  
25 no hearing file is required.

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1 CHAIRMAN KARLIN: Yes. Okay. Mr. Lewis,  
2 I assume you are neutral or concur with that?

3 MR. LEWIS: I concur with that. And,  
4 similarly, the obligation on disclosures apply to  
5 admitted contentions. So even if you were looking at  
6 the disclosure rules in 2.336, those are obligations  
7 that only apply when there are admitted contentions.  
8 And to the extent there are, I think in both cases,  
9 the hearing file and disclosure obligations don't  
10 apply at this juncture.

11 CHAIRMAN KARLIN: Okay. That we did --  
12 let me hear from Mr. Zeller first. Anything, Mr.  
13 Zeller?

14 MR. ZELLER: Judge Karlin, we disagree.  
15 I think it's necessary and appropriate for the staff  
16 to file an update hearing information. Reading 10 CFR  
17 2.12013, paragraph A governs only the timing and the  
18 availability of the hearing file, not a basis for it.

19 As stated in the July 12th order, the  
20 posture of this case is unusual. And then further  
21 down in 2.1203, in paragraph D, it flatly prohibits  
22 all other means of discovery. That is, a party may  
23 not seek discovery from any other party, either the  
24 NRC or its personnel, unless under Subpart C.

25 Petitioners have no other means of

1 compelling discovery. Therefore, it is necessary and  
2 appropriate for the staff to file and update its  
3 hearing file, we believe.

4 CHAIRMAN KARLIN: Okay. Well, a couple of  
5 thoughts, and we will -- 2.1203 is a Subpart L  
6 regulation. We are not determined that we are in  
7 Subpart L, so this is an initial issue or difficulty  
8 that I sought to raise by asking this question.

9 As Ms. Mizuno has pointed out as well, the  
10 reg says in A(1), "Within days of the issuance of the  
11 order granting requests for hearing, and admitting  
12 contentions, the NRC staff shall file in the docket,"  
13 you know, et cetera, et cetera, make a hearing file  
14 available. And so we have not admitted any  
15 contentions. We are not in Subpart L, as yet. We are  
16 in a strange posture.

17 And I would also agree with I think -- and  
18 this is my personal opinion -- with Mr. Lewis, to the  
19 extent that we -- 2.336, which are the mandatory  
20 disclosure requirements, are not triggered here  
21 because they all tee off of the contentions that have  
22 been admitted, and the documents that are relevant to  
23 those contentions, et cetera.

24 And since we have no admitted contentions,  
25 they are not triggered. So what we have I guess is a

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1 bit of a limbo, and staff certainly has a duty, as  
2 they acknowledged in our discussion of Item Number 2,  
3 there is a general duty on all parties to disclose  
4 relevant information as set forth in the policy  
5 statement in 1984, which everyone has said, "Yes,  
6 that's valid, and it should apply." But I do not see  
7 the mandatory disclosure provisions of 2.336 applying.

8 And my real question is for the staff,  
9 okay, if we assume that this 2.1203 duty -- hearing  
10 file duty doesn't apply, what would you be filing in  
11 any event? Will you file anything? Probably in  
12 ADAMS? Will you file in the EH -- in the Electronic  
13 Hearing Docket? Are you just going to file -- neither  
14 of the above?

15 MS. MIZUNO: Your Honor, Beth Mizuno for  
16 the staff. The answer would be neither of the above.  
17 And in doing so, we would be consistent with the  
18 practice that has been ordered in similarly situated  
19 cases, as in Grand Gulf, which has a contention on  
20 waste confidence -- rather, involves a contention of  
21 waste confidence -- that is being held in abeyance.  
22 There is no hearing file requirement. I would know.  
23 I would have to be filing them.

24 Similarly, in Callaway, if there were --  
25 there is a waste confidence contention, and it is

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1 being held in abeyance, there is no disclosure, no  
2 discovery. There are no filing obligations on the  
3 part of the staff.

4 Similarly, although I am not on that case,  
5 I just checked. South Texas license renewal, there is  
6 also no hearing file requirements, because the staff  
7 is not filing any. And it is my understanding that in  
8 the Prairie Island ISFSI proceeding where there is --  
9 where there are admitted contentions, but there is  
10 also a waste confidence contention that is being held  
11 in abeyance, they have admitted contentions and the  
12 waste confidence contention that is being held in  
13 abeyance.

14 In Prairie Island ISFSI, in that  
15 proceeding, there is no discovery obligation with  
16 respect to the waste confidence decision contention,  
17 because it's held in abeyance.

18 CHAIRMAN KARLIN: Right.

19 MS. MIZUNO: So if we make no filings, we  
20 will actually be consistent with the practice in other  
21 similar cases.

22 CHAIRMAN KARLIN: Okay. Other -- you may  
23 be surprised to know that some of the judges around  
24 here do not always agree on all of the ways to  
25 approach the case management. But in any event, none

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1 of those things are binding, but it is good to know  
2 that other -- what other people are doing. And I do  
3 know that.

4 But there is a duty at least, as you have  
5 all agreed, to notify, as the Commission policy says  
6 "All parties and NRC adjudicatory proceedings,  
7 including the NRC staff have a duty to disclose to the  
8 boards, and other parties, all new information they  
9 acquire which is considered material and relevant to  
10 any issue and controversy in the proceeding." That is  
11 the '84 policy.

12 Now, so there is a duty to disclose. The  
13 question will be whether it's relevant to an issue in  
14 controversy, Contention B being the pending,  
15 unadmitted, undenied contention. So there is a duty  
16 there as far as it goes.

17 Okay. I think that covers it, except for  
18 a couple of additional items that I want to talk  
19 about. And those are ex parte communications,  
20 identification of parties, and duty of candor.

21 Ex parte communications, Mr. Zeller, this  
22 is mostly for your benefit, which is to say on  
23 July 24th one of the officers or directors of the Blue  
24 Ridge Environmental Defense League sent me an email  
25 that discussed, in some modest respect, the merits of

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1 the decision.

2 They asked for -- she asked, this lady --  
3 I have her name here somewhere. Ms. Dunigan, the  
4 development director at BREDL, asked me to take some  
5 actions, asked the Board to take some actions with  
6 regard to this case. That wasn't prohibited -- that  
7 was a prohibited ex parte communication under 2.347.

8 I would like you to read that reg and just  
9 make sure you understand that, because we're not -- no  
10 one is supposed to provide those to us, and if we get  
11 them we have to put them on the record. And, in any  
12 event, we don't really want to proceed in that way.

13 MR. ZELLER: Judge Karlin, I hear you loud  
14 and clear. And I apologize, we have a new staffer and  
15 I have already corrected that.

16 CHAIRMAN KARLIN: Oh, okay.

17 MR. ZELLER: Thank you.

18 CHAIRMAN KARLIN: Fine. I would note --  
19 and this may seem a little confusing to you, Mr.  
20 Zeller -- that there is a separate regulation, which  
21 is 2.315(a), which allows for non-parties to submit  
22 limited appearance statements in writing. And we have  
23 received several letters, emails, from people who do  
24 not seem to be associated with any party, individuals  
25 who have expressed concerns on various items. And as

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1 we get those, we put them in the record, and those are  
2 not prohibited ex parte communications, because they  
3 are not from a party.

4 If they indicate they are from a party, it  
5 is prohibited and not supposed to happen. But if  
6 they're not from a party, then it is not prohibited,  
7 I guess is the best I can say.

8 Second item is parties. Please note, Mr.  
9 Zeller, and this is for you, that when we ruled on  
10 standing the only entity which was granted standing  
11 was the Blue Ridge Environmental Defense League. And  
12 you have several other entities, such as the  
13 Bellafonte Efficiency and Sustainability Team and the  
14 mothers Against Tennessee River Radiation, and they  
15 were not granted standing.

16 Now, I note in your appeal of July 30,  
17 2013, your caption of the case included both of those  
18 entities in the caption of the case, and you put a  
19 footnote down there, Footnote 1, that you prefer to  
20 style your petition to include best and major.

21 Now, they are not parties in our  
22 proceeding. You may want to get away with that up at  
23 the appeal level. But I suggest that when you file  
24 things in this proceeding the caption should be Blue  
25 Ridge Environmental Defense League, period. Okay?

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1 MR. ZELLER: Judge Karlin, it is a  
2 difference without a distinction. And so, I mean, I  
3 appreciate your citing, you know, some of the  
4 background on this, but the League is incorporated,  
5 and its chapters. I mean, the name Blue Ridge  
6 Environmental Defense League, in this case "league"  
7 means all of the chapters, which stretch from Virginia  
8 to Alabama and Georgia. So --

9 CHAIRMAN KARLIN: Well, Mr. Zeller, we  
10 have already ruled on this. We don't -- and only  
11 parties are entitled to make filings in this  
12 proceeding. And if a non-party files something, it is  
13 subject to being stricken. And I would suggest that  
14 you don't want that to happen, so it is -- it makes a  
15 difference to us, because if you wanted either of  
16 those other entities to be admitted as a party all you  
17 would have had to do is present an affidavit from  
18 someone saying they're a member of that party.

19 And you didn't do that, and we had to rule  
20 accordingly, and we did rule accordingly, and I hope  
21 you will follow that. And we don't want your  
22 pleadings to be stricken for naming people who are not  
23 parties.

24 ADMIN. JUDGE ABRAMSON: This is Judge  
25 Abramson. Let me just pick up something here, okay?

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1 CHAIRMAN KARLIN: Yes.

2 ADMIN. JUDGE ABRAMSON: Mr. Zeller, the  
3 point is that these are chapters of your organization,  
4 I gather, and you don't see a distinction but we do.  
5 As chapters, they are probably also members of your  
6 organization. So whatever they want to file, they can  
7 file through BREDL. Just don't have them try to do it  
8 on their own because they're not parties here.

9 CHAIRMAN KARLIN: Okay. Right.

10 Now, the final item that I have, and my  
11 colleagues may have something else, is what I'm going  
12 to call a duty of candor with the tribunal. There are  
13 a number of regs and rules, I'll call them, that  
14 apply.

15 In Footnote 25 of our July 5th decision,  
16 we cited 2.304(d), which requires the parties --  
17 person, when they're signing a pleading, to be  
18 attesting or supporting, believe in, the truthfulness  
19 of what they are saying. 2.323(d) speaks to the  
20 accuracy of the pleading. And, again, when people  
21 file something, they should believe that it's truthful  
22 and accurate, and that's fine.

23 And there is another requirement that  
24 applies to lawyers. That would not be you, Mr.  
25 Zeller, but it might be -- and this is the lawyers.

1 And Model Rule 3.3(a)(3) of the ABA Code of Ethics for  
2 Lawyers says, "A lawyer shall not knowingly fail to  
3 disclose to the tribunal legal authority in the  
4 controlling jurisdiction known to the lawyer to be  
5 directly adverse to the position of the client, and  
6 not disclosed by opposing counsel."

7 And the purpose of that rule is to allow  
8 the tribunal, this Board, to make the best decision  
9 and best-informed decision we can. So I would say to  
10 the lawyers, if you know of a precedent or a case that  
11 is adverse to your position, I think what you need to  
12 do is to inform us of that case or decision, and to  
13 help distinguish it or explain it or help us  
14 understand how it's not applicable.

15 Because if we issue a decision that  
16 totally misses a significant case that is out there,  
17 we look foolish and we are subject to appeal and  
18 reversal, and I think we'd like to think it through.

19 In this context, I would suggest, Mr.  
20 Lewis, that I was very surprised that your brief, with  
21 regard to Contention B, did not ever once mention the  
22 Commission's decision in Calvert Cliffs, CLI 12-16.  
23 I have to believe, with the experienced litigator you  
24 are, and your colleagues, that you are aware of that  
25 decision. And I found that a very difficult -- we had

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1 to confront that decision. In fact, that was the  
2 basis of our decision on Contention B.

3 So I would think that it's especially --  
4 the duty of candor is especially important when there  
5 are experienced litigators on one side and there is a  
6 pro se party on the other side, because it's -- we can  
7 -- we have less ability to depend on the pro se party  
8 to come forward with the opposing citations. So if  
9 everyone --

10 MR. ZELLER: I apologize for that. I was  
11 aware of the case. I had thought about including  
12 discussion. I had reached the conclusion that the  
13 case was inapplicable, and I actually thought at that  
14 point, because I think you had indicated that there  
15 would be a pre-hearing conference, that there would be  
16 a further opportunity for -- to have that discussion,  
17 and made the judgment to leave that for the prehearing  
18 conference, and then the prehearing conference went  
19 away. So that was a bad call on my part, and I  
20 apologize.

21 CHAIRMAN KARLIN: Okay. Thank you.  
22 Because, you know, sometimes we have prehearing  
23 conferences, but we need all the help we can get to  
24 issue the best decisions we can. And, you know, you  
25 need to inform us in your briefs of what -- you know,

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1 of those kind of decisions.

2 Even if it's a close call, please put it  
3 in there and explain to us why you don't think it's  
4 relevant or appropriate.

5 So with that, are there any other items  
6 Judge Arnold or Judge Abramson want to talk about?  
7 This has gone a little longer than I expected. I'm  
8 sorry for that, but --

9 JUDGE ARNOLD: This is Judge Arnold. I  
10 just have one concern about dates on draft  
11 environmental impact statement final. I recently, in  
12 another case, had noticed that the final environmental  
13 impact statement was now available, and that notice  
14 gave an ML number. And I went to ADAMS and I inserted  
15 that ML number, and it came up with no hits.

16 The next day, no hits. It was some time  
17 next week that it actually turned up in ADAMS. So the  
18 date from which -- that was the trigger point was  
19 unknown. We know when we got the notice, and we know  
20 when I finally got hold of it. But we don't really  
21 know when it really first became available. And I  
22 just want parties be aware that this type of thing can  
23 happen, where the actual insertion into ADAMS takes  
24 longer than expected.

25 CHAIRMAN KARLIN: Yeah. Good point.

1 Judge Abramson?

2 ADMIN. JUDGE ABRAMSON: Yeah. No, I don't  
3 have anything on this case, although Mr. Silverman has  
4 another case where the Board is looking for something  
5 from you. So we hope you will find it.

6 CHAIRMAN KARLIN: Could you repeat that?  
7 I think some of your words cut off. Who were you  
8 addressing that to, Mr. --

9 ADMIN. JUDGE ABRAMSON: Mr. Silverman.

10 CHAIRMAN KARLIN: Silverman? He's not on  
11 this call, I don't think.

12 ADMIN. JUDGE ABRAMSON: Sorry.

13 CHAIRMAN KARLIN: Yeah, yeah, yeah.

14 Okay. Sorry. All right. Is there  
15 anything else from any of the parties at this point?

16 MS. MIZUNO: Sorry. This is Beth Mizuno  
17 with the NRC -- representing the NRC staff. We have  
18 had some difficulty reaching Mr. Zeller by telephone.  
19 And I was just hoping to confirm his telephone number.  
20 And if you think it's inappropriate to do it on the  
21 record, that's fine, I'll take it offline. But it  
22 would be helpful if we knew -- if we could confirm the  
23 number that we should be using to reach him.

24 CHAIRMAN KARLIN: Yes. Mr. Zeller, I have  
25 to say that we have had a significant difficulty in

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1 reaching you as well. I'm not sure whether there is  
2 some personal or -- whatever is going on there, but  
3 our law clerk tried to call you repeatedly when we  
4 were attempting to schedule this conference call, and  
5 you did not return any of those calls.

6 In fact, before this conference call, we  
7 had to call you yesterday. You were supposed to call  
8 in several days ago to get your number and you did not  
9 do so. You filed this case; this is your case.  
10 Presumably, you should be paying attention and  
11 responding when one of my law clerks or Ms. Ellis  
12 attempts to contact you, and the same with the other  
13 parties.

14 You can't sit on your hands and say that  
15 you didn't get to participate in the conference call  
16 if you don't respond and pay attention. So what's the  
17 best number to call you at?

18 MR. ZELLER: I appreciate that, Your  
19 Honor. Our number is (336) 982-2691. That will also  
20 refer you to -- for immediate -- anything that is  
21 urgent, also to a secondary number, which you will  
22 gain access to by dialing that.

23 I would say that we did have a -- I did  
24 have a family emergency this week, so I was tied up.  
25 And I don't expect that to happen again.

1 CHAIRMAN KARLIN: All right. Anything  
2 else that you want to say, Mr. Zeller, at closing? We  
3 are going to close this now.

4 MR. ZELLER: No, Judge Karlin. I  
5 appreciate the opportunity to present our views on  
6 this request for intervention. I do hope -- and I do  
7 look forward to -- discussing the merits of the case  
8 sooner rather than later.

9 CHAIRMAN KARLIN: All right. And, Mr.  
10 Lewis, you get the last word.

11 MR. LEWIS: Judge Karlin, this is Mr.  
12 Lewis. I don't have anything further.

13 CHAIRMAN KARLIN: Okay. Thank you.

14 ADMIN. JUDGE ABRAMSON: Judge Karlin?

15 CHAIRMAN KARLIN: Yes.

16 ADMIN. JUDGE ABRAMSON: Before we close,  
17 would you just spend 30 seconds summarizing what the  
18 status is, what we're going to do?

19 CHAIRMAN KARLIN: Okay. Let me try that.

20 ADMIN. JUDGE ABRAMSON: Thirty seconds.

21 (Laughter.)

22 CHAIRMAN KARLIN: Judge Abramson keeps me  
23 on a short leash. Well, thirty seconds. We are going  
24 to issue an initial scheduling order on or before  
25 August 29, 2013, laying out, you know, what things

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1 need to -- what we can do to help manage this case  
2 fairly and efficiently as it goes forward, recognizing  
3 it's an unusual situation.

4 Other than that, I don't think we have any  
5 action items. And we're not going to issue a synopsis  
6 of this prehearing conference. If people -- hopefully  
7 you took notes. You can check the transcript. It  
8 will be posted, hopefully, in a week.

9 Does that cover it, Judge Abramson, or is  
10 there anything else that --

11 ADMIN. JUDGE ABRAMSON: That's good. And  
12 you almost made it in 30 seconds.

13 (Laughter.)

14 CHAIRMAN KARLIN: Okay. All right. I  
15 want to thank everyone for sitting in on the call and  
16 for talking some of these issues through. And we'll  
17 endeavor to issue a scheduling order before the end of  
18 the month. So the matter is now adjourned.

19 Thank you.

20 (Whereupon, at 10:12 a.m., the  
21 proceedings in the foregoing matter were  
22 adjourned.)

23

24

25