

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: In the Matter of:
PSEG Power, LLC and PSEG Nuclear, LLC
(Early Site Permit Application)

Docket Number: 52-043-ESP

ASLBP Number: 15-943-01-ESP-BD01

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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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HEARING

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In the Matter of: :
PSEG POWER, LLC :
AND PSEG NUCLEAR, LLC : Docket No. 52-043-ESP
 : ASLBP No. 15-943-01-ESP-BD01
(Early Site Permit :
Application) :

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Wednesday, November 4, 2015

Teleconference

BEFORE:
PAUL S. RYERSON, Chair
DR. GARY S. ARNOLD, Administrative Judge
DR. CRAIG M. WHITE, Administrative Judge

1 APPEARANCES:

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P R O C E E D I N G S

(10:02 a.m.)

1
2
3 JUDGE RYERSON: Okay, let's go on the
4 record. This is Judge Ryerson.

5 OPERATOR: Excuse me. Let me join you to
6 the main conference.

7 JUDGE RYERSON: Okay.

8 MR. BURDICK: Okay. Because you're all on
9 a separate conference right now.

10 I'll join you now. You're just going to
11 hear me just briefly and then I will turn it over to
12 Mr. Judge Ryerson. One second.

13 Welcome and thank you for standing by. At
14 this time our participants are in the listen only
15 mode. I would like to now turn the call over to Judge
16 Ryerson. You may begin.

17 JUDGE RYERSON: Excuse me. All
18 participants are in a listen only mode? Hello.

19 OPERATOR: Yes. Yes. The participants
20 that did not dial in with the leader code are in the
21 listen only mode. And all the speakers have open
22 lines.

23 JUDGE RYERSON: One or two is probably in
24 a leader mode. Okay, fine.

25 OPERATOR: Correct.

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1 JUDGE RYERSON: Good morning. We're on
2 the record. This is Judge Ryerson. Welcome.

3 We're here on the matter of PSEG Power,
4 LLC, and PSEG Nuclear, LLC's application for an early
5 site permit which concerns a site for a possible new
6 power reactor in Salem County, New Jersey.

7 I chair the particular Board that the NRC
8 has set up for the mandatory hearing in this matter.
9 Judge Arnold is with me. He is also a Board member.
10 We have our law clerks here. And Judge White, the
11 third Board member, is participating by telephone.

12 Before we take the formal appearances of
13 the parties today I'd like to go over just a couple of
14 housekeeping rules. We have a reporter, obviously,
15 taking a transcript of this proceeding which will be
16 available in a few days in the NRC's public records.
17 And it will be very helpful, I'm sure, to the reporter
18 if everyone tries to remember to identify yourselves
19 before you speak.

20 We have a listen only line that's been
21 made available to interested members of the public or
22 the press. I think we may have actually one or two
23 people on that line. But just so you're aware of
24 that.

25 So before we take appearances, any other

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1 comments at this stage from my fellow judges? Judge
2 Arnold?

3 JUDGE ARNOLD: No.

4 JUDGE RYERSON: Judge White?

5 JUDGE WHITE: Nothing here.

6 JUDGE RYERSON: Okay. All right, well
7 then let's begin.

8 Who, who is representing the Applicant
9 today?

10 MR. BURDICK: Good morning, Judge Ryerson.
11 This is Stephen Burdick. I'm an attorney with Morgan
12 Lewis. I'm counsel to the Applicant PSEG.

13 Also on another phone line is Jeff Keenan.
14 Jeff is the Associate General Nuclear Counsel for
15 PSEG. And I am also joined by a few managers from
16 PSEG who will be able to assist me with answering any
17 of the Board's questions if necessary. Thank you.

18 JUDGE RYERSON: Okay. Thank you, Mr.
19 Burdick. I take it you will be the principal
20 spokesperson then for PSEG on the call?

21 MR. BURDICK: That is correct.

22 JUDGE RYERSON: Okay. And for the NRC
23 Staff?

24 MR. ROACH: Good morning, Your Honor.
25 This is Kevin Roach representing the NRC Staff. I

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1 will be principally speaking on the call.

2 Also joining me, representing the NRC
3 Staff is Anne Hove. She's calling from another line;
4 Olivia McCulla and Patrick Moulding. From the Staff
5 we have Project Managers Allen Fetter, Prosanta
6 Chowdhury and Tomeka Terry. And we're also joined by
7 Jennifer Dixon-Herrity who is a Branch Chief in NRO's
8 Environmental Projects Branch.

9 JUDGE RYERSON: Okay. Well thank you.

10 And again, I think you, Mr. Roach, are the
11 person to whom we should address any questions in the
12 first instance; is that correct?

13 MR. ROACH: Yes, Judge Ryerson.

14 JUDGE RYERSON: Okay. All right, well the
15 purpose of the call today is to see if we can reach a
16 consensus on some issues that will allow the Board to
17 draft a preliminary scheduling order for this
18 mandatory hearing. I think the easiest thing might be
19 for the Board to draft that itself and then circulate
20 it for any written comments by the parties. And we
21 could modify it as appropriate it and then, and then
22 circulate it -- issue it in final form.

23 Unless the parties or my fellow judges
24 have any other thoughts on the matter, I suggest we
25 just go right ahead to the ten questions that the

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1 Board outlined in our order of October 15.

2 And turning to that order I see that the
3 first question is the Staff's schedule. We have the
4 SER. I think that the last time I heard, the Staff
5 was contemplating a final environmental impact
6 statement in November, this month.

7 Is that still the case, Mr. Roach?

8 MR. ROACH: Yes, that is still the case.
9 The staff is expecting to publish the FEIS by November
10 27th.

11 This would be probably also a good time
12 for me to bring up something that the Staff thought
13 might facilitate the Board's review of the FEIS, so
14 we're kind of at a stage within the FEIS where we're
15 making administrative changes. We're not, we're not
16 entirely finished with the environmental review. To
17 the extent that we have some outstanding Endangered
18 Species Act consultations. But we are essentially
19 finished with the NEBA portion and the FEIS.

20 And so during this kind of pendency period
21 with the kind of the administrative review process for
22 the FEIS, the Staff thought that it might be helpful
23 for the Board if it could make an advanced copy of the
24 essentially complete FEIS available to the Board.

25 We could make it public on ADAMS and, you

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1 know, although we're not expecting to make any changes
2 to it, we could provide the Board with a crosswalk of
3 any changes that are eventually made.

4 JUDGE RYERSON: Okay. So you're proposing
5 to essentially give us an advanced copy of the FEIS
6 that you think is really virtually final, and then you
7 would supplement that with any changes in the final
8 version of that? Is that what you're saying?

9 MR. ROACH: Yes, that, --

10 JUDGE RYERSON: Yes.

11 MR. ROACH: -- we thought that that
12 several-week headway might, might assist the Board.

13 JUDGE RYERSON: Yes. I, no, I think
14 that's, myself I think that's a good idea.

15 Judge Arnold, do you agree?

16 JUDGE ARNOLD: I actually don't really
17 care. I've got so much reading to do in that SER that
18 --

19 JUDGE RYERSON: Okay. Well, no reason not
20 to.

21 Judge White, is that agreeable to you?

22 JUDGE WHITE: Yes, that sounds good to me.

23 JUDGE RYERSON: Yes. So that's fine. If
24 you can get us that in whatever form. Paper form is
25 always good for me but something electronically is

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1 fine as well.

2 Let's see. So I take it you're pretty
3 confident of the, of the November 27th date. If you
4 miss that we're not talking about missing it by very
5 much. Is that, is that a fair impression, Mr. Roach?

6 MR. ROACH: Yes, that is the case.

7 JUDGE RYERSON: Okay. So I think that,
8 that gets us to the second issue which is, is there
9 any reason to have a bifurcation of this mandatory
10 hearing? And it seems to me there's absolutely no
11 reason at all. The two documents will be relatively
12 close to each other, the SER and the EIS, so we might
13 as well do everything at one time.

14 And I take it nobody disagrees with that
15 on the line? Okay.

16 MR. BURDICK: Judge Ryerson, this is
17 Stephen Burdick on behalf of PSEG.

18 I think, you know, if -- to us it depends
19 on when the Board is able to issue their questions on
20 the two, two portions of the review, on the safety and
21 environmental. It sounds like those are going to be
22 fairly close in time. And if that's the case, then
23 probably bifurcation doesn't make sense.

24 But if there were, for some reason, to be
25 more than a few weeks' difference in when the Board

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1 would issue those questions, there may be some benefit
2 to bifurcating both on the overall schedule but also
3 kind of levelizing the hearing burden across the
4 upcoming months, but only if those are going to differ
5 by a few weeks or more.

6 JUDGE RYERSON: Yes. Yes, my sense is,
7 and I haven't really discussed this in detail with
8 Judge Arnold and Judge White, but my sense is that
9 since we've had the SER already, probably we can try
10 to get written questions out on the SER before we have
11 a set of written questions on the EIS, and basically
12 give you a head start to respond to those.

13 We might have a competent response date
14 that we could, hopefully, get you our SER-related
15 questions a little earlier and you can start on those
16 while we're looking at the EIS.

17 And it's interesting, you mentioned the
18 questions. I mean there are many different ways to
19 run a mandatory hearing. It's kind of a strange
20 animal, frankly, for those of us who are legally
21 trained judges particularly. The notion of a hearing
22 without opposing parties is, is unusual.

23 And I think the Commission has indicated
24 over the years that there are many acceptable ways of
25 doing it. My last mandatory hearing, the last that I

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1 personally participated in, involved actually your
2 colleague, I assume he's still your colleague, Mr.
3 Silverman, Mr. Burdick. And we had a mandatory
4 hearing on the GE-Hitachi Laser-Based Enrichment
5 Facility.

6 And what we did there, and I'm going to
7 certainly suggest to my fellow Board members that we
8 do it here, is have -- begin with a series of fairly
9 large number of written questions to which we'll take
10 written responses not necessarily under oath. And
11 then when we've received those, try to drill down on
12 areas for sworn testimony leading up to an oral
13 hearing.

14 My own sense, at least from the GE-Hitachi
15 Laser-Based Enrichment case, was that if a mandatory
16 hearing is useful it's often useful by trying to focus
17 in some depth on a limited number of topics rather
18 than just kind of try to do everything necessarily a
19 little bit superficially.

20 So that's, that's the direction that I'm
21 kind of going to. And, of course, that really
22 involves a number of steps. We, the Board members,
23 have to look at the Staff documents. We have to come
24 up with questions. The parties have to answer those
25 questions. We have to look at the answers and come up

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1 with further areas for written testimony. Testimony
2 has to be prepared. We have to look at the testimony.
3 And all getting towards an evidentiary hearing and,
4 ultimately, a written decision.

5 So there are a number of steps. And I
6 know the Commission has indicated over the years that
7 six months after the Staff documents is probably the
8 outside date that they'd like to see a decision from,
9 from a licensing board.

10 I suppose one question, and actually this
11 is Question 4 is, how does the Applicant feel? I
12 think we can and we will meet a 6-month deadline if
13 that's what the Applicant wants.

14 On the other hand if, in the Applicant's
15 scheme of things, it really wouldn't matter at all if
16 it took another month or two and that made things a
17 little easier for the Staff, the Applicant and the
18 Board, we can probably do that as well.

19 So I'll start with you, Mr. Burdick, do
20 you have a sense about that? Or is the company very
21 interested in getting a decision here as soon as
22 possible?

23 MR. BURDICK: Yes, Your Honor, I -- you
24 know our philosophy with approaching a mandatory
25 hearing from what we can control is to try to get done

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1 as quickly as possible.

2 As we've contemplated in response to the
3 Board's question, the process to be used here, we
4 quickly turned to the process that the Commission has
5 been using for the COL mandatory hearings. We've been
6 involved in a number of those and found the process to
7 be, you know, quite efficient and fairly streamlined.

8 And with respect to a goal for the order,
9 and understand it depends on what the Board decides as
10 far as the process for the hearing, but the Commission
11 has identified a goal of four months from the final
12 EIS, and then there are certain milestones. But
13 recognize that the Commission's process has been
14 slightly different than what was used for, for either
15 the laser enrichment facility or some of the older ESP
16 mandatory hearings.

17 But we would certainly urge the Board and,
18 although this supports more discussion, trying to
19 follow as closely as possible the procedures set up by
20 the Commission.

21 JUDGE RYERSON: All right. Well, yeah, I
22 think the boards have handled mandatory hearings a
23 little differently from the Commission. And I think
24 there's some good reasons for that.

25 The Commission has a larger staff at its

1 disposal for one thing. But the short of it is, from
2 the company's standpoint, from the Applicant's
3 standpoint, Mr. Burdick, you would like -- you are
4 prepared to take on a heavy burden if need be, and the
5 Board will take on whatever burden is necessary too to
6 meet your goal.

7 Yes, I think the Commission in terms of
8 boards' decisions has usually clocked about four to
9 six months as a reasonable time frame. But in any
10 event, we will, we will try to come up with a schedule
11 that addresses a mandatory hearing in a prompt
12 fashion.

13 Let's go to Issue 5 in the October 15
14 order. And that's -- we attached, I guess as
15 Attachment A to that order, a set of determinations
16 which I think are what were put into the regulations
17 maybe back in 2007 or so. And I think that's what we
18 are supposed to be deciding. And I, we use the term
19 "determinations" advisedly. I'm not sure these are
20 findings of fact or conclusions of law but they are
21 certainly determinations that the regulations
22 contemplate have to be made.

23 Anybody disagree with that summary in
24 Attachment A? Is that what we're supposed to be
25 addressing?

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1 MR. BURDICK: Your Honor, this is Stephen
2 Burdick on behalf of PSEG. We agree that the findings
3 identified in Attachment A to that order are the
4 correct findings to be considered as part of this
5 mandatory hearing.

6 JUDGE RYERSON: And, Mr. Roach, the Staff
7 agrees as well?

8 MR. ROACH: Yes, Your Honor, the Staff
9 also agrees.

10 JUDGE RYERSON: Excellent. Very good.

11 Okay, Issue 6. Where and how should the
12 oral portion of the mandatory hearing be conducted?
13 I guess, I mean we have a courtroom here in Rockville
14 which we're happy to have a hearing in. Certainly in
15 adjudicatory proceedings the agency's position has
16 usually been that, wherever possible, the agency likes
17 to conduct adjudicatory proceedings near the affected
18 population.

19 We have not yet explored what facilities
20 might be available in Salem County, New Jersey. But
21 let me, let me throw it open for discussion, first to
22 you, Mr. Burdick.

23 How do you, how do you feel about where,
24 where the -- yes, let's talk about geography first and
25 then there are some other aspects of the hearing.

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1 What about geography? Where would you like to see the
2 hearing held?

3 MR. BURDICK: Sure. Thank you, Your
4 Honor. This is Stephen Burdick on behalf of PSEG.

5 We believe that the Board should hold the
6 hearing at the NRC Headquarters in Rockville. It will
7 certainly support wherever the Board decides to hold
8 it, but we think Rockville makes a lot of sense here.

9 I know in recently, at least for COL
10 mandatory hearings, the NRC Staff has identified a
11 significant number of witnesses, and including in the
12 ongoing STP COL I think more than 100 witnesses,
13 really the individuals that have been involved in the
14 review. And probably there will be less for this
15 proceeding because there is a smaller scope.

16 But given that, you know, we would expect
17 PSEG would have significantly fewer witnesses and so
18 we're happy to travel down to Rockville to hold the
19 hearing. I think that will be the most efficient way.

20 JUDGE RYERSON: Mr. Roach, any position
21 from the NRC Staff?

22 MR. ROACH: Yes. Kevin Roach for the
23 Staff.

24 We largely agree with the advantages that
25 the Applicant identified. I think there we agree that

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1 holding the hearing in Rockville, you know, will allow
2 the Staff, both parties and the Board to take
3 advantage of the excellent facilities and to I guess
4 conserve resources.

5 JUDGE RYERSON: Okay. Well, we'll
6 certainly consider that then. I know that's always,
7 almost always my own personal preference. But I'll
8 talk with -- well, the Board will have a discussion
9 about that a little bit later.

10 In terms of the format for the hearing, as
11 I said, I think that we were contemplating, at least
12 preliminarily, written questions, then followed by
13 more limited areas of sworn written pre-filed
14 testimony. And the Board members much like earlier,
15 asking whoever submitted sworn written testimony,
16 asking questions.

17 And thus the Board would get at what might
18 be troubling the Board at all.

19 Beyond that, and this probably goes mostly
20 to you, Mr. Burdick, although the Staff has a role
21 certainly on the EIS, do you want a significant
22 opportunity to give us a presentation, as it were,
23 that is pretty much, you know, your control what you
24 want to do? Or would you be more content to basically
25 let the Board ask questions?

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1 MR. BURDICK: Thank you, Your Honor. This
2 is Stephen Burdick on behalf of PSEG.

3 I think the response to that somewhat
4 depends on how the Board proceeds with the hearing.
5 If it is more of the process that's been used for the
6 laser enrichment mandatory hearing or some of the
7 earlier ESPs, then I think the questions and what the
8 Board identifies are fairly, fairly broad and would
9 cover most of the issues.

10 If it turns out to be more like the COL
11 mandatory hearings, we have found it useful to present
12 some pre-filed written testimony that stays at a
13 fairly high level but focuses on why the, why we
14 believe the record supports the findings that must be
15 made to issue the ESP to the Applicant. And so kind
16 of our response depends on that.

17 And also, I think, we haven't talked about
18 the post-hearing activities. You know, our preference
19 would be that maybe we wouldn't need to submit post-
20 hearing briefs that specifically address findings of
21 fact and conclusions of law, but, you know, if the
22 Board still has questions at that point we'd certainly
23 respond to questions. And if that's the case, then
24 there may be some benefit to having some pre-filed
25 testimony that does focus on the findings.

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1 As far as a more general presentation at
2 the oral hearing, we have found it beneficial to have
3 an opening presentation that would give an overview of
4 the project. I know that the Commission's had just
5 that. They've given I think 20 or 30 minutes for an
6 opening presentation by the Applicant and then by the
7 Staff that gives just an overview from, from both the
8 Applicant and then the Staff's perspective. And we
9 found that to be useful as well.

10 JUDGE RYERSON: All right. Well, we
11 certainly can have time to decide exactly what the
12 hearing, the oral portion of the hearing would look
13 like. But I did want to get a kind of a preliminary
14 sense on that.

15 Does the NRC Staff have a view about how
16 the hearing ought to be conducted?

17 MR. ROACH: Yes. I think that your
18 presentation of the written questions, providing
19 grounds to focus the inquiry for, you know, a
20 subsequent, subsequently limited hearing kind of
21 looking into areas where there is, where there is
22 still uncertainty is an effective way to conduct the
23 hearing.

24 And I think we would agree with the
25 Applicant that an opportunity to present kind of an

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1 overview presentation at the beginning of the oral
2 hearing is something that the Staff has found useful,
3 something on the order of 10 to 15 minutes probably.
4 In the case of an ESP I think the Staff would find
5 helpful.

6 JUDGE RYERSON: All right. Yes, I think
7 15 minutes, half an hour, that's certainly very
8 reasonable. Again, we can, we can revisit this a
9 little closer, closer to the hearing.

10 But my guess is that we're talking about
11 a 1- or at most 2-day hearing here. Anybody
12 contemplate anything different from that?

13 MR. BURDICK: Your Honor, this is Stephen
14 Burdick from PSEG.

15 We certainly agree with that and I think
16 probably one day may be sufficient.

17 JUDGE RYERSON: Okay. All right, well let
18 me get to topic 7: oral limited appearances.

19 And I will begin this discussion by saying
20 that there are differing views among the judges on the
21 ASLBP about oral limited appearance sessions. I am,
22 frankly, not a fan of them, at least in adjudicatory
23 proceedings. I think there's, unfortunately, a lot of
24 confusion on the part of the public.

25 By the time we have a typical adjudicatory

1 proceeding what is at stake is usually a very narrow
2 contention or a finite series of contentions that are
3 maybe quite technical. And the public is invited in
4 to comment, in theory comment on those issues, and
5 rarely has an understanding of what the issues really
6 are. And of course we are precluded from our -- by
7 our regulations from considering anything that the
8 public says in these sessions as evidence.

9 So I, for one, am not a big fan of limited
10 appearance sessions. My own view is that they may be
11 sort of an artifact of an earlier era before the NRC
12 Staff went out and had a variety of sessions with the
13 public in a setting in which the Staff was in a
14 position to respond, which again the Board members are
15 not at these limited appearance sessions.

16 So that's my starting proposition. That
17 said, I suppose if there ever were a situation where
18 it would make sense to have -- invite the public in
19 for oral limited appearances, it's a mandatory hearing
20 where the scope is as broad as we wish to make it. So
21 that is kind of a counterbalance, countervailing view.

22 I won't poll my fellow Board members yet.
23 This is something we can talk about later. But, but
24 let me get your views.

25 Mr. Burdick, how do you feel about oral

1 limited appearances? Do you think they're a good
2 thing, a necessary thing? What's your view?

3 MR. BURDICK: Sure. Thank you, Your
4 Honor. This is Stephen Burdick on behalf of PSEG.

5 Our view is under the circumstances for
6 this proceeding that an oral limited appearance is not
7 necessary, but instead that an opportunity to submit
8 written limited appearance statements would be
9 sufficient.

10 And I think for some of the reasons, Judge
11 Ryerson, that you just mentioned with this proceeding
12 that's been going on for five-and-a-half years or so
13 there have been a number of different opportunities,
14 but I think we counted about seven for members of the
15 public to come together and comment on the project.
16 And many of those comments are in the record of this
17 proceeding to be addressed and comments on the EIS.
18 And so there's been a lot of that opportunity already.
19 There haven't been hearing requests here.

20 And so our suggestion -- but we certainly
21 defer to the Board and we'll support what the Board
22 decides -- but our suggestion is that only an
23 opportunity for written limited appearance statements
24 is necessary.

25 JUDGE RYERSON: Thank you, Mr. Burdick.

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1 Mr. Roach, NRC Staff have a view?

2 MR. ROACH: You know, we certainly
3 acknowledge that there have been a number of
4 opportunities for the public to comment and interact
5 throughout the review process. But we defer to the
6 Board regarding the matter whether limited appearance
7 statements would be, would be useful. So we can
8 support either having or not having them.

9 JUDGE RYERSON: Okay, thank you.

10 So that's the Board now has at least I
11 think two issues to consider, if I'm following: one,
12 where the hearing is and, secondly, what we do about
13 the limited appearances.

14 Issue 8 that we raised in the order. And
15 again I'll start with you, Mr. Burdick. Do you think
16 a site visit would be helpful for the Board in this
17 particular case at this stage?

18 MR. BURDICK: This is Stephen Burdick on
19 behalf of PSEG.

20 Our view right now is that we don't
21 believe a site visit is necessary. It will be
22 possible to illustrate the site based on figures in
23 the application and through other photographs. And
24 recognizing this time of the year the weather could
25 present some challenges in holding a good site visit.

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1 However, we certainly defer to the Board,
2 and if the Board would like a site visit then we'll
3 support that and provide a good site tour. And we
4 have a site tour that we've used for other
5 circumstances where we can do that over the course of
6 a few hours, you know, certainly within one, one day's
7 time.

8 So we don't think it's necessary but, you
9 know, if the Board wants it we'll support it.

10 JUDGE RYERSON: Okay. Thank you.

11 And, Mr. Roach, does the NRC Staff have a
12 view about site visits?

13 MR. ROACH: Sort of similar to the limited
14 appearance statement question, that the Staff would
15 defer to the Board's determination of whether it would
16 be useful. The Staff has found the site visits
17 illuminating throughout the review process as one data
18 point.

19 I did just want to note that if the Board
20 did decide to have both a limited appearance statement
21 and a site visit that it might be a good use of time
22 and resources to combine those two things.

23 JUDGE RYERSON: Yes, I think that would --
24 if we did that, if we did both it would make sense to
25 do both together. I think that's a very good point.

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1 MR. BURDICK: This is Stephen Burdick on
2 behalf of PSEG.

3 You know, the other alternative we
4 thought, which I think Boards have done under other
5 circumstances, is if they decide that they don't need
6 a site visit at the beginning of the hearing, and
7 certainly if something came up during the course of
8 the review then they could defer that decision down
9 the road, if there was something as part of the review
10 that they really wanted to see at the site.

11 JUDGE RYERSON: Yes.

12 MR. BURDICK: So we offer that, you know,
13 if there's uncertainty right now. That's certainly an
14 alternative.

15 JUDGE RYERSON: Yes. Yes, I think that
16 that's a good point, Mr. Burdick. If we were to have
17 a site visit, I think it would be most useful at a
18 fairly late stage where we had already been focused on
19 particular issues rather than just kind of going
20 looking at a site that's next to preexisting reactors.

21 Okay. I think Issue 9 in the order is an
22 easy one. For an ESP do we have any sensitive
23 information, proprietary information, anything like
24 that we need to be worrying about?

25 MR. BURDICK: This is Stephen Burdick on

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1 behalf of PSEG.

2 We're not aware of any sensitive
3 information or any that we would need to discuss or
4 anticipate discussing in response to questions or
5 questions at the oral hearing. And under these
6 circumstances we think if something came up we could
7 certainly deal with it at the time.

8 JUDGE RYERSON: Okay. Fair enough.

9 And I take it the Staff is in agreement
10 with that?

11 MR. ROACH: Yes, the Staff agrees.

12 JUDGE RYERSON: Okay. And the last issue
13 we put out for discussion -- we'll get to a couple
14 other points after this -- but at this stage is there
15 anything else, while we have everybody together that
16 either the Applicant or the Staff would like to bring
17 up?

18 I'll start with you, Mr. Burdick.

19 MR. BURDICK: Sure, Judge Ryerson. This
20 is Stephen Burdick on behalf of PSEG.

21 We just had one issue, and I'm sure the
22 Board's aware of this. But as we were looking through
23 the regulations that apply to a mandatory hearing we
24 did come across 10 C.F.R. 2.104(a). And that
25 discusses the timing of the publishing the notice of

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1 hearing and that it must be published in the Federal
2 Register at least 30 days before the hearing date,
3 versus a 15-day deadline for some hearings.

4 And just recognizing that when these
5 mandatory hearings start sometimes the deadlines come
6 pretty quickly. So we'd just point out that
7 regulation but are certain that the Board is already
8 aware of this.

9 JUDGE RYERSON: Nonetheless, we appreciate
10 that, Mr. Burdick.

11 So anything else, NRC Staff, you want to
12 raise at this point?

13 MR. ROACH: Just, just one, Your Honor.
14 The Staff had in mind that it would follow the
15 procedure that it has been following in the recent
16 Commission-run mandatory hearings with respect to the
17 record of decision process to satisfy 51.102(c). And
18 that process has been that we would submit a draft
19 record of decision to the presiding officer. The
20 presiding officer makes its decision which constitutes
21 the record of decision.

22 And Staff would then prepare a final
23 summary record of decision which would be consistent
24 with the presiding officer's decision. And then these
25 things would be issued in the post-hearing notices.

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1 JUDGE RYERSON: Okay. I mean this is part
2 of the Board's responsibility to actually take the
3 role of weighing the various environmental
4 consequences I take it?

5 MR. ROACH: Yes. But the, again, the
6 process that the Staff has followed is to submit a
7 draft for the Board's or for the presiding officer's
8 consideration. And then the next step would be the
9 decision which would constitute the record of decision
10 itself. And then the Staff just, the Staff has
11 summarized that in a summary record of decision, you
12 know, which is subsequently noticed to the public.

13 JUDGE RYERSON: Okay. What do you see as
14 the timing of these various steps? The Staff submits
15 a draft. Say the EIS is completed at the end of
16 November. So we're talking about, just talking here
17 for the moment about a 6-month time frame, that means
18 a decision around June 1 or before. What are you,
19 what's the Staff talking about in terms of a draft
20 ROD?

21 MR. ROACH: Just one moment, if I could
22 confer, Your Honor.

23 JUDGE RYERSON: Sure.

24 (Pause.)

25 MR. ROACH: Thank you, Your Honor.

1 I just wanted to clarify one sort of scope
2 issue regarding what I was talking about with the
3 draft record of decision.

4 JUDGE RYERSON: Sure.

5 MR. ROACH: It's, you know, to comply with
6 51.102, this record of decision document that we would
7 be providing the Board is like an 11-page or so
8 document that addresses the findings called for by
9 51.102. It's not like a full-scope series of findings
10 of fact, you know, the Board would be making in its
11 initial decision.

12 So just wanted to clarify that one scope
13 point.

14 JUDGE RYERSON: Okay.

15 MR. ROACH: And with respect to the timing
16 issue, didn't have a definitive date in mind, but it
17 might make sense for the Staff to file that with its,
18 with its written testimony after the question
19 responses have been, have been filed.

20 JUDGE RYERSON: Okay. Somewhat later in
21 the process in other words. Okay.

22 MR. ROACH: Yes.

23 JUDGE RYERSON: All right. All right,
24 anything else that we should be talking about before
25 I talk a little bit about preparing an order here?

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1 Sounds like our discussions are largely done.

2 I think the most efficient way to proceed
3 would be -- I think the Board members need to have a
4 call among ourselves a little bit after this call or
5 another day, whichever works for people -- but
6 preliminarily I think it probably makes sense for the
7 Board to try to come up with a proposed scheduling
8 order that we can circulate for written comments. I
9 hope we don't need another call at this point, but I
10 think the Board would like to talk about and resolve
11 some of the issues that we've left open today and come
12 up with a proposal for proceeding.

13 I know, I know in the GE-Hitachi case your
14 colleague Mr. Silverman was kind enough to take that
15 role and draft it and send it to us. And we had a few
16 changes and then issued back. But I think basically
17 that probably is not as productive as it was then
18 because we had, we had at least as a possible starting
19 point that very order from that case a few years ago.

20 So that's my, I think that that will be
21 the plan, unless I hear something to the contrary,
22 that the Board will talk a little bit. We'll try to
23 come up with an order that we all agree upon on the
24 Board and circulate that for comments and possible
25 changes.

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1 We have, we have obviously a little bit of
2 time because there's no way we're getting questions
3 out on the SER until sometime in December of January
4 if it's not available -- rather on the EIS. And the
5 EIS is not available until late November.

6 So, with that I think probably we're
7 pretty much, pretty much done for this call.

8 Anything else, Judge Arnold, you wanted to
9 talk about? Judge White?

10 JUDGE WHITE: Nothing here.

11 JUDGE RYERSON: Okay. Mr. Burdick,
12 anything else you'd like to talk about this morning?

13 MR. BURDICK: Yes, Judge Ryerson. Stephen
14 Burdick on behalf of PSEG.

15 Your plan for issuing a proposed
16 scheduling order for any comments works for us. If
17 you feel it would be helpful, we'd certainly be
18 willing to prepare that, as my colleague Don Silverman
19 had done in the past, if that would be useful. But
20 we're fine with, with either approach.

21 And I think just one other, one other
22 comment. We talked about this earlier but just wanted
23 to reiterate that we, we're very interested in moving
24 through this process as quickly and as efficiently as
25 possible. And anything we can do to help that

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1 process, you know, we're willing to put the resources
2 to that to make that happen.

3 So thank you.

4 JUDGE RYERSON: All right. Well, we
5 appreciate that. And we will in those circumstances
6 reciprocate and put our resources to it as well.

7 Mr. Roach, for the NRC Staff anything else
8 to talk about today?

9 MR. ROACH: No, Your Honor. The Staff's
10 agreed with the proposed approach regarding the
11 circulating the scheduling order.

12 I just wanted to note regarding the
13 advanced copy of the FEIS, that once that's available
14 we can notify the Board of course.

15 JUDGE RYERSON: Okay. Appreciate that.

16 Judge White, I think if you are available
17 we'll call you directly after, right after this call,
18 if you're available this morning.

19 JUDGE WHITE: That works fine. Let me
20 give you the best number for that.

21 JUDGE RYERSON: Okay.

22 JUDGE WHITE: You have my cell number but
23 I'm in my office and the office phone probably works
24 better. Less chance of things breaking down.

25 JUDGE RYERSON: Sure.

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1 JUDGE WHITE: And that number is 208-3 --
2 I'm sorry, 24 -- just a second. 208-426-3633.

3 JUDGE RYERSON: Okay. We'll call you in
4 just a couple minutes after this call then.

5 JUDGE WHITE: Okay, thanks.

6 JUDGE RYERSON: Very good. All right,
7 well we now stand adjourned. Thank you all.

8 (Whereupon, at 10:42 a.m., the
9 teleconference was adjourned.)

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