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

9:29 a.m.

1  
2  
3 JUDGE RYERSON: Welcome, everyone. We're  
4 here on a challenge to TVA's application for an early  
5 site permit concerning small modular reactors at the  
6 Clinch River Site in Tennessee.

7 I'm Judge Ryerson; I chair the Atomic  
8 Safety and Licensing Board the NRC has assigned to  
9 this matter. Hearing some background noise -- well,  
10 it's disappeared. I'm here with Judge Arnold as well  
11 as with our law clerk, and Judge Abreu will be  
12 participating by telephone.

13 Before we take the formal appearances of  
14 the counsel, I'd just like to cover a couple  
15 administrative matters. As you're aware, a reporter  
16 is on the line, and there should be a transcript  
17 available of this conference within the next few days.  
18 We have also made listen-only telephone lines  
19 available for interested members of the public or the  
20 press.

21 Before we begin with the appearances of  
22 counsel, Judge Arnold, is there anything you have at  
23 this point? Judge Abreu?

24 JUDGE ARNOLD: No, I have nothing.

25 JUDGE RYERSON: Thank you. All right,

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1 let's then begin. The counsel for the Intervenors.

2 MS. CURRAN: Good morning, this Diane  
3 Curran appearing for Southern Alliance for Clean  
4 Energy and Tennessee Environmental Council.

5 JUDGE RYERSON: And thank you, Ms. Curran,  
6 and welcome.

7 MS. CURRAN: Thank you.

8 JUDGE RYERSON: For TVA.

9 MR. NELSON: Good morning, your honor,  
10 this is Blake Nelson for TVA, and with me are  
11 Christopher Chandler and Ryan Dreke.

12 JUDGE RYERSON: Thank you, and welcome to  
13 you as well. And finally, the NRC staff.

14 MS. HOVE: Good morning, Judge Ryerson,  
15 this is Ann Hove for the NRC staff. Kevin Roach is  
16 sick this morning.

17 JUDGE RYERSON: Okay, well, welcome to  
18 you. Well, the purpose of today's call, as we  
19 indicated I think in our order of October 24, is to  
20 try to reach consensus on issues that will help the  
21 Board draft an initial scheduling order.

22 And I think the way we'll probably proceed  
23 is for the Board to try its hand at drafting an order  
24 after we hear what you have to say on this call. And  
25 then we will circulate that for written comments, if

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1 anyone feels that's necessary, after the call.

2 We put I think in the October 24 a number  
3 of agenda items. We'll get to those in a moment, but  
4 before we do, there have been a few motions and other  
5 matters that have come up that I'd like to address  
6 first.

7 First, one housekeeping detail, NRC staff,  
8 Ann, Ms. Hove, under Section 2.1202(b)(2) of our  
9 regulations, within I think 15 days of an order  
10 admitting contentions, the staff is to note its  
11 intention to participate as a party and to specify  
12 which contentions it plans to participate on. I  
13 recognize the staff often neglects to do that, but if  
14 you haven't done that, we would appreciate your doing  
15 that.

16 MS. HOVE: Yes, thank you for advising us.  
17 Thank you.

18 JUDGE RYERSON: It's interesting. It's  
19 stuck at the end of the regulations dealing with  
20 Subpart L hearings, and often I guess the boards don't  
21 specify the type of hearing that will be held at the  
22 outset. We did in our order, so it was technically  
23 due I guess 15 days after our order. But in any  
24 event, we'll wait for your filing on that.

25 We have a joint motion, uncontested from

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1 the parties, to extend the initial disclosures to a  
2 date in December, and we grant that motion. We'll get  
3 an order out either later today or tomorrow confirming  
4 that. So no one's disclosures are due tomorrow, which  
5 I think they otherwise would have been.

6 We have from Intervenors a motion for  
7 reconsideration of our rejection of Contention 1, and  
8 we will fairly promptly, I believe, get an order out  
9 on that.

10 We also have a motion from Intervenors  
11 regarding a schedule for a possible new contention or  
12 contentions, which TVA opposes and which apparently  
13 the NRC staff does not oppose, although they have a  
14 few other things to say about it. We just got I guess  
15 the final briefing on that Monday night, so we will  
16 consider that motion.

17 I must say, speaking for myself, and we're  
18 not going to have argument on this motion, but I'm, as  
19 TVA has argued, one of the issues that would face us  
20 is materiality of new information, which raises the  
21 question of material to what. And we don't have the  
22 proposed new contention actually in front of us.  
23 Intervenors have separated the question of timeliness  
24 from the contention itself, so I'm not, you know, I'm  
25 not sure how quickly we will get to that motion.

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1 I will say this, Ms. Curran, that if I  
2 understand your position, you're saying, in the  
3 motion, that November 20 would in fact be a timely  
4 deadline for you to file the new contention that you  
5 have in mind, contention or contentions. And if that  
6 is the case, I don't see why you couldn't just do  
7 that, if we haven't ruled adversely to you on the  
8 motion before that. Is that, I mean, am I  
9 misunderstanding anything about your position?

10 MS. CURRAN: You're correct about our  
11 position. We thought it would be better to let the  
12 Board know what we've found and what we're planning  
13 and to schedule it. That it seemed like more  
14 reasonable, more transparent case management to say,  
15 okay, we've discovered this information, this  
16 information's relevant, it's the subject of, related  
17 to subject matter of Contention 1. And that we would  
18 file a contention immediately, but we're not able to  
19 do it.

20 JUDGE RYERSON: Because your expert is not  
21 available, as I recall.

22 MS. CURRAN: Right, yeah, he's --

23 JUDGE RYERSON: Okay, well, let's leave  
24 that this way. We may decide the motion promptly.  
25 The Board hasn't really talked about it yet at all,

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1 because as I said we just got the final briefing  
2 Monday night. If we do not decide the motion either  
3 way, certainly nothing stops you from filing on or  
4 before November 20, and if you wish, simply  
5 incorporating by reference your previous filings on  
6 timeliness.

7 And similarly TVA could oppose or choose,  
8 as far as the timeliness goes, TVA also could choose,  
9 if it wishes, simply to incorporate its arguments on  
10 timeliness. So if we fail to act, you're certainly  
11 free to do that. There's nothing that we would have  
12 to say that would prevent you from doing that.

13 And so we will either decide timeliness  
14 before November 20, or it will be one of the issues if  
15 you make a filing on November 20.

16 MS. CURRAN: Okay.

17 JUDGE RYERSON: Does that seem clear and  
18 fair to everyone?

19 MS. CURRAN: Yeah, yeah, that's fine. And  
20 I think we probably, if we haven't heard from you, we  
21 probably will go ahead with a contention. And I think  
22 Dr. Lyman gets back from his travels on the tenth.  
23 And we were, you know, we'll get our contention in as  
24 soon as possible after that.

25 JUDGE RYERSON: Okay, and again, we're not

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1 ruling that it's timely, but we're just saying, you're  
2 not, you know, you're not prejudiced by having filed  
3 this motion if we don't decide it before the 25th.

4 MS. CURRAN: Great, thank you.

5 JUDGE RYERSON: Okay. Again, before we go  
6 to the agenda items in our prior order, Judge Arnold,  
7 anything?

8 JUDGE ARNOLD: No, I have none.

9 JUDGE RYERSON: And again, Judge Abreu?  
10 Judge Abreu, any issues before we go to the agenda?

11 JUDGE ABREU: No.

12 JUDGE RYERSON: Okay, thank you. Okay,  
13 let me find that October 24 order. Okay, NRC staff,  
14 Ms. Hove, we appreciate your filing a statement of  
15 your current estimate for the final staff documents,  
16 which if I recall, the EIS would be mid-June 2019, and  
17 the SER about two months later, mid-August 2019. So  
18 it sounds like we're a bit of a way, some distance  
19 from a hearing. But that's helpful to know.

20 We can ask that the parties try to agree  
21 if possible on some of the issues raised by the items  
22 in our October 24 order. So let's go through those in  
23 order and see where you might be on that.

24 The first one dealt with time limits for  
25 summary disposition motions. And I can't resist

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1 expressing my own skepticism about summary disposition  
2 when you don't have a jury. I think there are some  
3 terribly obvious summary disposition motions where the  
4 parties essentially are in a position to agree.

5 And then there are others where the  
6 parties dispute whether there needs to be an  
7 evidentiary hearing, and frankly my own experience is  
8 that when you don't have a jury, often it is frankly  
9 simply more efficient to go directly to an evidentiary  
10 hearing, particularly in when we have Subpart L and  
11 all the testimony comes in in writing. And more often  
12 than not, the oral part of the evidentiary hearing  
13 simply consists of the Board asking questions that  
14 concern it.

15 Anyway, having said that, have the parties  
16 reached any consensus on timing of summary disposition  
17 motions? Who would like, would anyone like to sort of  
18 take the lead in speaking as to whether you've reached  
19 agreement on these issues?

20 MS. HOVE: Judge Ryerson, this is Ann Hove  
21 for the NRC staff. We have discussed the summary  
22 disposition as a useful tool in the process and have  
23 discussed that contentions based on the FEIS could  
24 potentially be filed 30 days after the FEIS is  
25 published.

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1           And for existing contentions that may be  
2 due 45 days of publication of the FEIS, or for new  
3 added contentions after admission, 30 days for  
4 mandatory closures and another 30 days to file summary  
5 disposition.

6           JUDGE RYERSON: Okay. All right, well  
7 that, I mean 30 days from one of those dates sounds,  
8 at least sounds sensible to me, and we'll consider  
9 that as we prepare the orders. I should say that  
10 despite my skepticism often about summary dispositions  
11 being useful here, we did talk in the oral argument  
12 about how, where for example we have a pure contention  
13 of omission.

14           That would seem often susceptible to  
15 summary disposition. It might precipitate another  
16 contention dealing with the adequacy of what has been  
17 said. But if you have a contention of omission and  
18 the EIS says something about the subject, I suppose  
19 that is where summary disposition is useful and may be  
20 even agreed upon.

21           MS. CURRAN: Judge Ryerson, this is Diane  
22 Curran.

23           JUDGE RYERSON: Yes.

24           MS. CURRAN: I just want to make sure,  
25 when we talked about this, you know there's a lot of

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1 related moving parts, and I just want to make sure  
2 that it's clear. What we talked about in terms of the  
3 deadline for summary disposition motions on  
4 contentions that are already admitted, so that would  
5 be Contentions 2 and 3.

6 JUDGE RYERSON: Correct.

7 MS. CURRAN: We talked about 45 days.

8 JUDGE RYERSON: Forty-five days.

9 MS. CURRAN: Forty-five days. And then  
10 for new or amended contentions that come in based on  
11 the FEIS, we would give, have 30 days for exchange of  
12 information, and then another 30 days for summary  
13 disposition. So there's really two tracks.

14 JUDGE RYERSON: Okay. Does anybody else  
15 agree that that -- does anyone disagree that that was  
16 what your agreement was? Are all parties okay with  
17 that?

18 MS. HOVE: Judge Ryerson, this is Ann from  
19 the NRC staff. Yes, we are okay with that.

20 JUDGE RYERSON: Okay. TVA?

21 MR. NELSON: Yeah, this is Blake Nelson.  
22 Just to clarify so we understand the, so for the new,  
23 for amended contentions, those would filed 30 days  
24 after the FEIS. And then after there is a ruling  
25 admitting them, 30 days after that will be the date

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1 for summary disposition is my understanding.

2 JUDGE RYERSON: We're really talking about  
3 two things. The timeliness of new contentions and  
4 then after any new contentions might be admitted, 30  
5 days for summary disposition.

6 MR. NELSON: That's correct.

7 JUDGE RYERSON: Okay.

8 MS. CURRAN: Yeah, but wait a minute.  
9 This is Diane Curran. I think there was, we had also  
10 agreed that there was some period for exchange of  
11 information about the newly admitted contentions.  
12 That was 30 days. Have I misunderstood that? Because  
13 I thought we had agreed to build that in.

14 MR. NELSON: I think that's accurate, yes.

15 MS. CURRAN: Okay.

16 JUDGE RYERSON: Okay, so in effect it's 60  
17 days.

18 MS. CURRAN: Yes.

19 JUDGE RYERSON: Okay, so it's 45, from our  
20 standpoint, the Board's standpoint, it sounds like 45  
21 days after the staff documents for old contentions,  
22 and then in effect, 60 days after admission for new  
23 contentions. Is that correct?

24 MS. CURRAN: Yes.

25 JUDGE RYERSON: Okay.

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1 MS. HOVE: Judge Ryerson, this is Ann Hove  
2 for the staff again.

3 JUDGE RYERSON: Yes.

4 MS. HOVE: It may also be helpful to have  
5 another scheduling call to evaluate future scheduling  
6 issues if new contentions are admitted.

7 JUDGE RYERSON: Yeah, I'm pretty sure our  
8 order will say something to the effect that we'll have  
9 calls when and if needed. We will try to lay things  
10 out initially, but matters have a way of changing  
11 things a little bit along the way, particularly when  
12 they're two years away from a hearing.

13 Okay, let's get to Item 2. And that's  
14 mandatory disclosures, which we have already said we'd  
15 deal with in response to your motion.

16 So the first one would be I think, I  
17 forget what your date was, but sometime in mid-  
18 December. And I think the Board has found in the past  
19 that a monthly update at a date certain, the 15th of  
20 the month or the first workday after that, is usually  
21 useful. Did you reach any kind of agreement about  
22 that?

23 MS. HOVE: Judge Ryerson, this is Ann Hove  
24 for the NRC staff. We had discussed having it be  
25 every second Tuesday of each month after the December

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1 15 initial filing.

2 JUDGE RYERSON: And by discussed you mean  
3 agreed? We're always happy to take agreements. Makes  
4 life easier.

5 MS. HOVE: Yes.

6 JUDGE RYERSON: Okay, so every second  
7 Tuesday.

8 MR. NELSON: And your honor, this is TVA.  
9 If I might, we also discussed and just came to an  
10 agreement this morning on additional clarifications  
11 and limitations consistent with other discovery  
12 agreements that have been entered into in proceedings.  
13 And so we could either go through those now, or we  
14 could just file them after this prehearing conference  
15 call for the Board's consideration.

16 JUDGE RYERSON: It might be easier just to  
17 file them if you've agreed upon these, and we will  
18 consider putting them in our order. And again, it's  
19 going to be a draft order. We'll give you a, one last  
20 chance to comment on it. But if we could incorporate  
21 those, that would be helpful, yes.

22 MR. NELSON: Okay, then we'll do that  
23 shortly after.

24 JUDGE RYERSON: Okay. And maybe Item 3 is  
25 covered by that. Time limit for filing a final list

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1 of potential witnesses. Some of this may be kind of  
2 made moot by a schedule that provides for adequate  
3 time to, between the oral hearing and the initial  
4 filings and rebuttal.

5 I mean, you don't need a list of witnesses  
6 if you in fact have the testimony of all witnesses.  
7 But again, was there any discussion of that, or is  
8 that something that can be covered in your filing?

9 MS. HOVE: Your honor, this is Ann Hove  
10 for the staff again. We discussed that within 30 days  
11 of a contention being admitted or 30 days of a witness  
12 being identified would be an appropriate time frame,  
13 and that witnesses could be included in monthly  
14 disclosures that are filed.

15 JUDGE RYERSON: Okay, excellent.

16 MS. CURRAN: This is Diane Curran. I  
17 thought we also said that, and the people may not,  
18 parties may not know what their witnesses are within  
19 30 days after admission of a contention, but that we  
20 said, In no event later than 30 days. I guess for the  
21 admitted contentions, it was 30 days after issuance of  
22 the FEIS. I thought that's what we said.

23 JUDGE RYERSON: Okay. All right, Item 4,  
24 anybody want a settlement judge? Don't all jump at  
25 one time. I'm not, and since we are not a settlement

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1 board or a settlement judge, I'm not going to speak to  
2 this very much, except I can't help noting that a  
3 theme as we read all your filings that kept coming  
4 through was that for the most part, the NRC staff and  
5 TVA kept saying, Oh, this is premature, this is an  
6 issue for the COL.

7 And the Intervenors kept saying, well, if  
8 we wait to the COL, that ship will have sailed.  
9 You'll say we're late or things will have been in  
10 effect finalized anyway. So I don't know if there's  
11 an opportunity to compromise your positions in a way  
12 that satisfies everyone and kind of puts some of this,  
13 or all of this, over to a later date. But that's all  
14 I will say on it.

15 If there's no sense that anybody wants a  
16 settlement judge, we obviously are not going to  
17 appoint one. I suppose you may want to consider that  
18 further. Obviously, Ms. Curran probably would like a  
19 decision on her motion for reconsideration before she  
20 thinks about a settlement judge.

21 And as far as -- I think TVA is the only  
22 party that has appealed here. BREDL did not appeal,  
23 the NRC staff did not appeal. And I guess TVA might  
24 prefer to have a decision from the Commission before  
25 it decides about that. But I don't know, some

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1 decisions from the Commission seem to come down  
2 promptly and others seem to take a year or more, so  
3 that might be a factor.

4 In any event, if the parties decide they  
5 would like a settlement judge, let us know and we  
6 would certainly we would look in to appoint one.

7 Item 5 was, does any party expect  
8 confidential status to documents that would otherwise  
9 have to be disclosed. I'm not really talking about  
10 privileged documents here. Those obviously you  
11 withhold and make a list of them. But I'm talking  
12 about confidential documents that you have to turn  
13 over but you don't want generally made public. Does  
14 anybody contemplate having such documents?

15 MR. NELSON: Your honor, this is TVA. We  
16 don't know that we'll have such documents. It's  
17 theoretically possible we could have documents that  
18 are proprietary or under other confidentiality  
19 agreements. We don't know yet. But it's a  
20 possibility.

21 And what we discussed on the call is  
22 basically we'll cross that bridge when we come to it.

23 JUDGE RYERSON: That's fine, yeah. I mean  
24 obviously you'll then want to negotiate some sort of  
25 confidentiality agreement for the Board to look at and

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1 potentially approve, I would assume. But if you don't  
2 have that problem, no need to go through that.

3 Okay, Item 6, the site visit. Did the  
4 parties talk about that?

5 MS. HOVE: Your honor, this is Ann Hove  
6 for the NRC staff. The staff feels that a site visit  
7 is not needed, but we'll of course defer to the  
8 Board's preference on the issue.

9 JUDGE RYERSON: Okay. Does anybody else  
10 have a view about a site visit?

11 MR. NELSON: TVA has the same view as the  
12 staff.

13 JUDGE RYERSON: Okay.

14 MS. CURRAN: And so do the Intervenors.

15 JUDGE RYERSON: Okay, interesting. There  
16 will be, of course, a mandatory hearing in this matter  
17 as well. And so at the moment, the same Board members  
18 are on that board. So we'll raise that issues in the  
19 context of the mandatory hearing, I suppose.

20 MS. CURRAN: Judge Ryerson, this is Diane  
21 Curran. I had understood the commissioners were doing  
22 the mandatory hearings now. But it's going to be the  
23 Licensing Board?

24 JUDGE RYERSON: The commissioners have  
25 been doing the mandatory hearings on new reactors.

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1 But the boards have been doing them on early site  
2 permits, and also on uranium enrichment facilities.

3 MS. CURRAN: Oh, okay.

4 JUDGE RYERSON: And so this, at the  
5 moment, this would be done by a licensing board. I  
6 suppose if Yucca Mountain ever comes back, we may be  
7 reshuffling some of our boards a bit. But at the  
8 moment, it's the same three judges who are on the  
9 contested board.

10 MS. CURRAN: Thank you.

11 JUDGE RYERSON: Okay. Let's see, Item 7.  
12 Okay, yeah, seven gets to really how the parties would  
13 prefer to conduct the written part of the evidentiary  
14 hearing. And have you reached an agreement on that?

15 MS. HOVE: Judge Ryerson, this is Ann Hove  
16 for the staff. The staff would prefer to file  
17 testimony and statements and positions simultaneously,  
18 which would allow all of us to work on it at the same  
19 time and perhaps be more efficient that way.

20 JUDGE RYERSON: Okay, would you  
21 contemplate a rebuttal simultaneous as well, or just  
22 one filing?

23 MS. HOVE: Yes. Just one filing, sorry.

24 JUDGE RYERSON: One. Your, the staff's  
25 preference is for one filing, one time, simultaneous?

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1 MS. HOVE: Yes.

2 JUDGE RYERSON: Okay, and that's the  
3 staff's position. Intervenors, do you have a  
4 different position?

5 MS. CURRAN: Yes. We would prefer for the  
6 Intervenors to go first, then TVA and the NRC staff,  
7 and then a rebuttal from the Intervenors. I think it  
8 just helps to focus the issues more, because the  
9 contested issues are what the Intervenors are putting  
10 forward about the application.

11 I think the most important thing is to  
12 focus the issues and complete the record, so that  
13 would be our preferred way of doing it. And in any  
14 event, we think that rebuttal testimony is helpful.

15 JUDGE RYERSON: And TVA? You have a third  
16 position?

17 MR. NELSON: Yes, we have a third option,  
18 and that is simultaneous initial filing and then  
19 simultaneous rebuttal. And that way, that allows each  
20 of the parties to sort of set forth how they  
21 understand the contention as admitted and its  
22 implications, and it gives everybody an opportunity to  
23 provide responsive argument on those positions.

24 JUDGE RYERSON: Okay.

25 MS. HOVE: Judge Ryerson, this is Ann for

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1 the staff. We agree with TVA on that issue.

2 JUDGE RYERSON: Oh, okay. So you don't  
3 favor just one filing at one point.

4 MS. HOVE: Right, but for rebuttal to be  
5 simultaneous as well.

6 JUDGE RYERSON: All right, well the Board  
7 will consider that. I was about to say, I was again  
8 speaking for myself, personally leading to some form  
9 of rebuttal rather than just having ships passing in  
10 the night on one filing. So we'll give some thought  
11 to whether it's simultaneous initial and simultaneous  
12 rebuttal, or an initial response and a reply.

13 MR. NELSON: Your honor, if I might, if  
14 you're considering the sequential approach, TVA  
15 doesn't prefer that for the reasons I already stated.  
16 But if that is considered, please consider that,  
17 making it clear that the response of pleading would  
18 not be limited to what's raised in the first, in the  
19 Intervenors' pleading.

20 JUDGE RYERSON: Okay, point well taken.  
21 Okay, excuse me. Now, Item 9, oh, no, Item 8.  
22 Suggested time limits for filing motions for cross-  
23 examination. And I don't think we put it in our  
24 order, but I guess you could say the same thing, and  
25 you obviously haven't discussed it, because we didn't

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1 put it on our order, but motions in limine and  
2 proposed questions that the Board might ask.

3 Any, first of all, any agreement on the  
4 motions for cross-examination, the timing of those?

5 MS. HOVE: Your honor, this is Ann Hove  
6 for the staff. We had mentioned 45 days before the  
7 hearing. The staff had mentioned 45 days before the  
8 hearing for filing these motions for cross-  
9 examinations.

10 But I think also the Intervenors would  
11 like ten days from the date of the last testimony.  
12 But if the hearing is 20 days after such testimony,  
13 then that could perhaps be late in the process.

14 JUDGE RYERSON: Okay. Yeah, I mean  
15 there's some conflict between the milestones, the  
16 rules, and at least my own sense of good case  
17 management. I think if the Board is asking most of  
18 the questions, it is helpful to have the final written  
19 testimony more than 20 days before the oral hearing.

20 But in any event, so is there, there's no  
21 real agreement on that? What is the Intervenors'  
22 position then, Ms. Curran?

23 MS. CURRAN: Well, where are we -- our  
24 general concerns, and this is from my experience over  
25 many years, is that there's a huge amount to do

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1 preparing for a hearing, and often the times frames  
2 are really short. So and as you mentioned, you hadn't  
3 put motions in limine into your questions.

4 So what we always look for, Intervenors  
5 look for in these kinds of scheduling orders, is  
6 sufficient time to respond to motions in limine and  
7 prepare questions and prepare for the hearing. And  
8 measuring the time from, you know, how many days  
9 before the hearing starts isn't as meaningful to us as  
10 saying we're going to give you a reasonable amount of  
11 time after you get this information to digest it and  
12 make motions and respond to motions.

13 And then we're also going to give a  
14 reasonable amount of time before the hearing starts so  
15 that you can prepare. And it seems in this case  
16 there's not, there's no construction pending, so it's  
17 not as though there's some huge practical reason to  
18 rush forward.

19 So we would just ask that whatever  
20 schedule is set up, just bear in mind that it's  
21 usually a lot of material that has to be gone through,  
22 and that the hearing record is ever so much better if  
23 the parties have time to actually read it and prepare  
24 decent questions and thorough motions, motions in  
25 limine, and to respond to them.

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1           JUDGE RYERSON: Well I, again, speaking  
2 for myself not necessarily for the Board, I think  
3 you've really hit on something. Because again, if you  
4 look at the milestones and what the rules contemplate,  
5 and happily the rules say the boards can change it by  
6 scheduling order, it's there is kind of an enormous  
7 convergence immediately prior to the hearing where  
8 everybody has to do lots of things.

9           So I think it, we'll give some thought to  
10 that. I think it is important that at the time that  
11 people are preparing written testimony, which at least  
12 in my experience is the single most important part of  
13 our Subpart L hearings, that people are not distracted  
14 too much by other activities. And that's why earlier  
15 I mentioned summary.

16           Summary disposition may be appropriate for  
17 some types of contentions, but I am not a big fan of,  
18 myself, of summary disposition motions that really  
19 have no chance of prevailing. And the Board will  
20 probably reserve its right not to even require a  
21 response to such a motion so that the Intervenors  
22 don't have to spend half their organizing time dealing  
23 with that if the motion is just on its face  
24 inappropriate because there are contested issues of  
25 fact.

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1           Similarly, motions in limine in a non-jury  
2 proceeding are frequently also of very limited use.  
3 You know, I have seen other boards deal with them, and  
4 expend enormous resources, time, and effort trying to  
5 decide whether a particular piece of evidence is  
6 merely a persuasive or somehow inadmissible, even  
7 though obviously we would have to look at it to decide  
8 it's inadmissible. So I'm not a real big fan of a lot  
9 of motions in limine.

10           And you're certainly free to suggest  
11 questions to the Board. My experience has been that  
12 many parties seem to express an enormous number of  
13 suggested questions for the Board that are truly  
14 argumentative and are simply, you know, are simply  
15 that. They're not really questions that the Board  
16 needs to answer because they are already reflected in  
17 one party's written testimony or the other.

18           But in any event, we will, so having said  
19 that, you know, having cautioned you that as far I'm  
20 concerned, that summary disposition, motions in  
21 limine, proposed questions for the Board to ask should  
22 be submitted with restraint, nonetheless, we would  
23 certainly try to provide a schedule that allows  
24 adequate time to do that without distracting everyone  
25 from the most important business, which again, is I

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1 think preparing the written testimony for the Subpart  
2 L hearing.

3 Let's see. The next item that I have,  
4 unless anyone has anything else on Item 8, Item 9 is  
5 how the obligations of the mandatory portion of the  
6 proceeding may affect the schedule for the contested  
7 proceeding. And was there any discussion of that  
8 among the parties?

9 MS. HOVE: Yes, this is Ann Hove for the  
10 staff again. We feel that because there are some of  
11 the same personnel that will be participating in the  
12 contested and the mandatory hearing, that it would be  
13 helpful to have some spacing in due dates between  
14 those two hearings. And also of course another  
15 scheduling call would be helpful.

16 JUDGE RYERSON: Yeah.

17 MS. HOVE: If we're in that situation.

18 JUDGE RYERSON: Yeah, well that's  
19 interesting. I mean, I know some boards that have  
20 effectively handled both have tried to hold them in  
21 like in the same week. And perhaps do a site visit at  
22 the same time, perhaps have oral limited appearance  
23 statements at the same time, although hopefully are  
24 not necessary and some of us question the utility of  
25 those.

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1           We'll give that some thought, and we will  
2           be having a call just on the subject of a mandatory  
3           hearing. So you know, we can consider further about  
4           that. But it's interesting. The staff's position is,  
5           I take it, probably you don't want to have it the same  
6           week. Is that correct?

7           MS. HOVE: In theory that would be  
8           possible, but given that, like I said, the same people  
9           would be working on both, it would be helpful to space  
10          it out.

11          JUDGE RYERSON: Okay. All right, very  
12          good. And Ms. Curran, the Commission has made quite  
13          clear that the only participants, the only parties to  
14          the mandatory hearing are the applicant, the staff,  
15          and the Board. But you know, everything we do is  
16          public, so you are obviously welcome if you choose to  
17          listen in to any conferences we have or to see  
18          anything that's public on the mandatory hearing.

19          MS. CURRAN: Thank you.

20          JUDGE RYERSON: Let's see, Item 10. Oh,  
21          yeah, we sort of implicitly talked about this earlier.  
22          I mean, at the moment we only have environmental  
23          contentions. We don't know for sure what we will have  
24          two years from now. I must say, I'm kind of inclined,  
25          unless there's likely to be a change in the dates,

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1 they're only, the SER and EIS are currently projected  
2 to be only two months apart.

3 So myself, I've given some thought to  
4 having a trigger date for everything from the latter  
5 of those two. Even if there isn't a safety contention  
6 directly linked to the SER, they're only two months  
7 apart. There might be some advantages to starting  
8 everything with the later of the two, which would be  
9 I guess in this case the SER.

10 Did you talk about that, and if so, did  
11 you reach any kind of consensus?

12 MS. HOVE: Judge Ryerson, this is Ann Hove  
13 for the NRC staff. If there are only environmental  
14 contentions, then the staff preference is have the  
15 hearing begin after the FEIS is published, and not to  
16 wait for the SER.

17 JUDGE RYERSON: Okay. Anybody else have  
18 a view?

19 MR. NELSON: That was TVA's view as well.

20 MS. CURRAN: This is Diane Curran. We  
21 would, I think it is possible that we will want to  
22 file contentions based on the SER. I'm not sure, but  
23 the most efficient thing for us would be to have a  
24 single hearing on any admitted contentions, depending  
25 on whether they're environmental or safety.

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1           So we don't think that it would -- we  
2 think it would be a good idea to just make sure that  
3 all the opportunities to file new contentions have  
4 passed before the hearing goes forward, because our  
5 resources are limited and we don't, if it's possible  
6 to avoid a bifurcated hearing, we'd certainly like to  
7 do that.

8           JUDGE RYERSON: Yeah. Well, we'll think  
9 about that. I mean one, as a practical matter, if a  
10 new contention were admitted after -- even if the EIS  
11 and the SER came out the same time, the time would get  
12 briefing and decision on a new contention, there's  
13 very good chances I think we would choose to bifurcate  
14 in any event, because the other contentions would be  
15 presumably ready to go much sooner.

16           But in any event, we will give some  
17 thought to that and we appreciate knowing the  
18 positions --

19           MS. HOVE: Judge Ryerson, I apologize,  
20 this is Ann Hove for the staff again. We do feel that  
21 there's a public interest in completing the  
22 proceedings as efficiently and expeditiously as  
23 possible. So again, I would just say that if all we  
24 have are environmental contentions, then we don't feel  
25 there's a need to wait.

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1 JUDGE RYERSON: Okay, all right, we will  
2 consider that. I think that's it for the issues that  
3 we identified ahead of time in our order. Is there  
4 anything else that any of the parties wants to raise  
5 at this point? Sounds like there is not.

6 Okay, again, as I said, I think what we'll  
7 try to do, what the Board will try to do, is prepare  
8 a draft order which we will circulate as a draft and  
9 you can provide written comments if you wish. In  
10 addition, I believe, was that TVA has volunteered to  
11 provide us with some thoughts about procedures or  
12 discovery, which we'll look at, and to the extent we  
13 think it's a good idea, incorporate in that draft  
14 before we send it out.

15 That said, is there anything else, Judge  
16 Arnold?

17 JUDGE ARNOLD: No.

18 JUDGE RYERSON: Judge Abreu?

19 JUDGE ABREU: No.

20 JUDGE RYERSON: Ms. Curran?

21 MS. CURRAN: No, thank you.

22 JUDGE RYERSON: TVA?

23 MR. NELSON: No, your honor.

24 JUDGE RYERSON: The NRC staff?

25 MS. HOVE: Yes, we would just like to

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1 thank you for the opportunity to comment on the draft  
2 order.

3 JUDGE RYERSON: Okay, well, we're happy to  
4 do that. All right, I think we stand adjourned.  
5 Thank you very much.

6 (Whereupon, the above-entitled matter went  
7 off the record at 10:11 a.m.)

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