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Clinch River Nuclear Site ESP

Docket Number: 52-047-ESP

ASLBP Number: 17-954-01-ESP-BD02

Location: teleconference

Date: Tuesday, November 14, 2017

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Pages 1-19

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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: : Docket No.

TENNESSEE VALLEY AUTHORITY : 52-047-ESP

(Clinch River Nuclear : ASLBP No.

Site Early Site Permit : 17-954-01-ESP-BD02

Application) :

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Tuesday, November 14, 2017

Teleconference

BEFORE:

PAUL S. RYERSON, Chairman

DR. SUE H. ABREU, Administrative Judge

DR. GARY S. ARNOLD, Administrative Judge

1 APPEARANCES:

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

9:33 a.m.

CHAIRMAN RYERSON: Good morning. Let's go on the record at this point. Welcome, everyone. We're here on the mandatory, uncontested proceeding concerning TVA's application for an Early Site Permit for small modular reactors at the Clinch River site, which is near Oak Ridge, Tennessee.

In addition to myself, the members of the Atomic Safety and Licensing Board assigned to this matter include Judge Arnold and Judge Abrue, who are with me today, as you know is our law clerk, Kimberly Hsu.

Before I take the formal appearances of counsel, just a couple of administrative matters. Obviously, we have a reporter on the line. And a transcript will be available within a few days. For the benefit of the reporter, in particular when we speak, it would be helpful if everyone remembers to identify themselves additionally with their speaking. That will make it a lot easier for the reporter.

Once again, we have made listen-only telephone lines available for members of the public and the press. So this is a transparent proceeding that is available to the public.

1 Before we take appearances, any comments
2 from my fellow judges? Judge Arnold?

3 DR. ARNOLD: No.

4 CHAIRMAN RYERSON: Judge Abrue?

5 DR. ABRUE: No.

6 CHAIRMAN RYERSON: Okay. Well, let's
7 begin then with counsel for TVA.

8 MR. DREKE: This is Ryan Dreke for TVA.
9 I'm the only one on the line.

10 CHAIRMAN RYERSON: Okay. Good morning.
11 And counsel for the NRC Staff?

12 MR. ROACH: Good morning. This is Kevin
13 Roach for the NRC Staff. Joining me also on the line
14 is Ann Hove.

15 CHAIRMAN RYERSON: Okay. Good morning to
16 both of you.

17 So the purpose of this call, as we said in
18 our order, is again trying to reach a consensus on
19 some issues that will help us draft an initial
20 scheduling order for this mandatory proceeding.

21 And once again, I think what we will plan
22 to do is circulate an order in draft so that if there
23 are any further comments, parties can make them in
24 writing.

25 I think the most sensible way to begin is

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1 with the October 24 order that we issued. And a lot
2 of the agenda items on that I think may have been
3 resolved in last week's call on the contested
4 proceeding.

5 I'll say the first item, these are the
6 dates for the Staff's SER and final EIS. And as of a
7 week ago, those were respectively I think August 2019
8 and June 2019. I assume that that is still the case?

9 MR. ROACH: This is Kevin Roach. Yes,
10 that is still the case.

11 CHAIRMAN RYERSON: Okay. And, well, there
12 was --- well, actually when those documents are
13 available in draft form, I think they were normally
14 printed both in draft and in final. Is that correct?

15 MR. ROACH: Yes, the FEIS published in
16 draft form for public comment. The SER, the draft SER
17 is not published in draft.

18 CHAIRMAN RYERSON: It's not, okay. Well,
19 certainly, anything that is published, if you could
20 get several copies of those to us, and even though our
21 final analysis will be on the final documents,
22 probably we can get a bit of a head start if we look
23 at the drafts.

24 I don't imagine we'll be doing anything
25 with them other than just familiarizing ourselves with

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1 the draft, which will probably get us much closer to
2 an analysis of the final.

3 MR. ROACH: Judge, would you like four
4 printed copies or simply noted that the, of the ML
5 numbers or ---

6 CHAIRMAN RYERSON: I think four printed
7 copies would be very helpful. Yes, thank you.

8 MR. ROACH: Okay.

9 CHAIRMAN RYERSON: Okay. The second item,
10 TVA has not requested a Limited Work Authorization.
11 And do the parties agree that the, what we have
12 attached as Attachment A to our folder 24 order the
13 issues that we should be looking at in the mandatory
14 hearing? First, for TVA, do you agree with that?

15 MR. DREKE: This is Ryan Dreke for TVA.
16 Yes, we agree with that attachment.

17 CHAIRMAN RYERSON: Okay. And the NRC
18 Staff.

19 MR. ROACH: Yes, we also do.

20 CHAIRMAN RYERSON: Okay. Very good. Item
21 3 is the location of the mandatory hearing. I think
22 at one point when the intervenors in the contested
23 hearing hoped that we would have argument on
24 contention admissibility closer to the site, we
25 indicated that we anticipated that the contested

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1 hearing would be near the proposed facilities or the
2 ESP.

3 You know, conceivably given the narrower
4 issues now in the contested hearing, we might or might
5 not want to reconsider that.

6 But for purposes of the mandatory hearing,
7 what are the views as to where that should be held
8 ideally from your standpoint? First, TVA.

9 MR. DREKE: Well, this is Ryan Dreke for
10 TVA. Our feeling is it may be more efficient to have
11 it in Rockville just because that is where most of the
12 NRC Staff will be. And the hearing is mostly about
13 their documents. And they, taking those resources
14 that the Board has available there and that the Board
15 is used to may make the hearing go smoother.

16 CHAIRMAN RYERSON: Okay. And NRC Staff,
17 what's your view?

18 MR. ROACH: This is Kevin Roach. We agree
19 with the reasons that TVA provided. We think that
20 having the hearing at the NRC headquarters in the very
21 nice hearing room of the Board would facilitate the
22 proceeding.

23 CHAIRMAN RYERSON: Okay. Well, we'll take
24 that under consideration then.

25 The fourth item on our agenda was oral

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1 limited appearances. I think I can anticipate your
2 answers. But what's TVA's --

3 (Telephonic interference)

4 MR. DREKE: If, our view is that we would
5 just request that they're in the process before the
6 Board's questions are submitted in writing.

7 CHAIRMAN RYERSON: What's the Staff's
8 view?

9 MR. ROACH: The Staff ultimately defers to
10 the Board. I think the Staff's experience in, for
11 example, in PSEG was that the opportunity for written
12 limited appearances seemed to work well. And so I
13 think the Staff would not think that oral limited
14 appearances would be necessary.

15 CHAIRMAN RYERSON: Okay. Well, we'll
16 consider that also.

17 MR. ROACH: And, Judge ---

18 CHAIRMAN RYERSON: Yes.

19 MR. ROACH: This is Kevin Roach. Can I
20 just return to item 3? There is a couple of questions
21 in item 3. And I just wanted to make sure that we
22 address that.

23 So one of the questions was whether the
24 Staff would want an opportunity to present evidence
25 separate from responding to the Board's written or

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1 oral questions.

2 CHAIRMAN RYERSON: Yes.

3 MR. ROACH: I just wanted to note that the
4 Staff's practice for the mandatory hearings has been
5 to submit as exhibits the SER and the FEIS, as well as
6 the draft Summary Record of Decision. And we would
7 propose to do that in this proceeding as well.

8 CHAIRMAN RYERSON: Right. Yes, I think
9 what those questions were getting at was when the
10 Commission conducts a mandatory hearing, I believe
11 there is more the nature of, what's the best word, a
12 presentation to the Commission.

13 I think, at least the mandatory hearings
14 that I have been involved in, PSEG was one, the GE-
15 Hitachi Laser Enrichment Facility was another, the
16 Board's view I think has been to try to make a
17 mandatory hearing as useful as it can be.

18 It is better to focus relatively
19 thoroughly on a limited number of issues rather than
20 to cover the waterfront and do everything in what is
21 necessarily and perhaps a little bit of a superficial
22 way.

23 So what we have done in the past and what
24 I expect we probably will do with this Board is to
25 begin with a series of questions. Probably we will

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1 focus initially, since I believe the EIS comes out
2 first, initially on a series of written questions
3 focused on environmental matters and then a series of
4 written questions later after the SER is available in
5 final form focused on safety-related matters.

6 After we see the written answers to those,
7 then for purposes of actual written testimony and oral
8 examination in the hearing, we at least in the past
9 have focused then on a much, much smaller group of
10 issues because, frankly, we've often been satisfied
11 with the written answers on our initial questions.

12 So that's the way I see this as proceeding
13 and not really requiring, unless someone wants to urge
14 us that we should permit it, not really requiring an
15 extended presentation at the outset by either the
16 Staff or TVA.

17 Does that pretty much make sense to both
18 parties, to the Staff first?

19 MR. ROACH: This is Kevin Roach. Yes,
20 that format does make sense. Just from a, I guess a
21 completeness of record standpoint as far as the Staff
22 is concerned, we've found it useful to, you know, just
23 submit as evidentiary exhibits those three important
24 staff documents, the SER, the FEIS, and the draft
25 Summary Record of Decision.

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1 But, you know, we understand that the
2 focus from the Board's hearing is not necessarily on
3 broad presentations.

4 CHAIRMAN RYERSON: Right. No problem with
5 submitting those as exhibits. That's certainly
6 appropriate.

7 And TVA, what's your view? Does that
8 sound like a sensible way to proceed from your
9 standpoint?

10 MR. DREKE: This is Ryan Dreke for TVA.
11 Yes, we agree.

12 CHAIRMAN RYERSON: Okay. Very good. Item
13 5 was site visit. And as I recall when we were
14 talking last week about the contested hearing, I think
15 both TVA and the NRC Staff were of the view that they
16 would certainly support a site visit if the Board felt
17 it would be helpful or appropriate, but what I think
18 was not necessarily recommending that.

19 And I assume that's your position on the
20 mandatory hearing as well. Am I correct? First to
21 NRC Staff.

22 MR. ROACH: Yes, that's still our
23 position.

24 CHAIRMAN RYERSON: Okay. And also TVA,
25 same position?

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1 MR. DREKE: This is Ryan Dreke for TVA.
2 Yes, we still have the same position.

3 CHAIRMAN RYERSON: Okay. Item 6, again,
4 last week I think we probably covered this. If there
5 ends up being some sensitive, non-public information
6 involved, we can deal with that at that time. But at
7 the moment, there doesn't seem to be a likely need to
8 do that. Again, NRC Staff, is that your position?

9 MR. ROACH: Yes, that's the, our position.
10 We don't currently anticipate that either Staff
11 document will contain sensitive information.

12 CHAIRMAN RYERSON: Okay. And the TVA, are
13 you aware at this point of sensitive information that
14 is likely to require some sort of protective order?

15 MR. DREKE: This is Ryan Dreke for TVA.
16 We don't anticipate that. Obviously, we don't know
17 what the NRC will put in their final documents. There
18 are certain artifacts, information that's been
19 redacted in our application. I don't know to what
20 extent that will be in the final reports.

21 CHAIRMAN RYERSON: Okay. Thank you.
22 Well, I think the last item on our agenda, the last
23 specific item, deals with the schedule. And here is
24 the issue that we see.

25 I think if you look at the milestones that

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1 the Commission has set forth for the contested
2 hearing, it's very roughly, it appears from the last
3 relevant Staff document -- and I think last week we
4 were talking about the likelihood that would be the
5 EIS as opposed to waiting for the SER.

6 But whatever that is, roughly the
7 milestones say six months to get through the actual
8 oral portion of the evidentiary hearing. And then the
9 Board has 90 days to complete a written decision,
10 which, so essentially six months and three months, or
11 roughly nine months starting from the last relevant
12 Staff document.

13 The Commission has often said, I don't
14 think it's anywhere in the written milestones, but the
15 Commission has said at least once and maybe more than
16 once that it certainly expects the mandatory hearings
17 to be completed in four to six months of the last
18 Staff document. In this case, that would be the SER,
19 because on the mandatory side, we surely will be
20 looking at both safety and environmental issues.

21 Another consideration is that, at least in
22 my view and I think the Board -- we haven't discussed
23 it, but I think the Board is likely to be of the same
24 mind. It makes more sense to finish the contested
25 proceeding before the mandatory hearing, because that

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1 way, well, that way on the mandatory hearing where our
2 discretion to consider issues is much broader, we can
3 deal with things that may come up and not be to our
4 satisfaction are entirely dealt with in the contested
5 proceeding.

6 So those are kind of the relevant
7 considerations. And it just seems to me that if we
8 honor the Commission's goals, there's almost no way we
9 can't be doing both of these at the same time. And I
10 know that was expressed last week in the call on the
11 contested proceeding as perhaps a concern.

12 So, having talked about all this, let me
13 just ask you your position. I think the Board is
14 prepared to run the two proceedings respectively
15 simultaneously.

16 I think we would probably try to take less
17 at least than our 90 days to decide the contested
18 proceeding to ensure, perhaps, that we decide the
19 mandatory hearing in a reasonably, timely fashion, but
20 after the contested hearing, and that we would, I
21 mean, we would, to the extent possible, avoid having
22 deadlines on the same day. But basically the two
23 proceedings would be concurrent.

24 And is there objection to that I guess is
25 our basic question. First, from TVA.

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1 MR. DREKE: This is --- I'm sorry.

2 CHAIRMAN RYERSON: I was just going to say
3 that if TVA's goal is to conclude these proceedings as
4 quickly as possible, it would seem that you would want
5 simultaneous, essentially concurrent, proceedings on
6 the mandatory and contested side.

7 MR. DREKE: This is Ryan Dreke for TVA.
8 In general, we think it might be beneficial to conduct
9 another conference of this type around the time that
10 the Staff documents come out. And it may be easier to
11 assess then whether or not we can run them
12 concurrently.

13 I think, in general, we would be okay with
14 some overlap. But there needs to be some kind of
15 clear separation I think between the two processes,
16 getting witnesses ready for testimony.

17 And we would expect to use some of the
18 same witnesses. And we wouldn't want to, we want to
19 make sure in their minds there's a clear distinction
20 between the two proceedings, which can be difficult
21 sometimes for non-attorneys to fully commit to in
22 their minds or get that integrated fully into their
23 testimony.

24 CHAIRMAN RYERSON: Okay. Yes, I guess one
25 consideration --- of course, your appeal might be

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1 successful, in which case if it's fully successful,
2 there will not be presumably a contested proceeding.

3 But even if it's not, the third
4 contention, which dealt with the language in the
5 Staff's SER, might be susceptible to resolution on
6 summary disposition or possibly construed as
7 effectively at the legal issue contention, the facts.

8 But what the Staff's SER says will not
9 presumably be in dispute. So there might not be that
10 much left for an evidentiary hearing.

11 So I think in some ways what you say is
12 well taken. It might depend on what the contested
13 proceeding looks like at that point.

14 NRC Staff, do you have some comments?

15 MR. ROACH: Yes, Judge Ryerson. I guess
16 just to clarify, in the preceding discussion you were
17 having, what you were referring to is the Staff's EIS?

18 CHAIRMAN RYERSON: Yes.

19 MR. ROACH: Okay. Just wanted to be sure.
20 Okay. Yes, I think the NRC Staff is committed to, you
21 know, an efficient and quality process for the
22 hearings. And so I don't think the Staff wants to say
23 at this point that certainly that there couldn't be
24 any overlap. I think that there could feasibly be
25 overlap. And that would be fine.

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1 But I guess in that regard, I think it
2 would be useful to kind of have another discussion,
3 you know, once these issues develop and we start
4 understanding how they might collide closer to the
5 time when the contested hearing filings are due and
6 when and what the mandatory hearing obligations will
7 be so we can kind of understand what the personnel
8 demands might be and we can articulate those better at
9 that point in time.

10 But in general, we're not opposed to the
11 idea of any overlap at all.

12 CHAIRMAN RYERSON: Thanks. I think maybe
13 what we'll try to do in the draft that we circulate is
14 set forth a tentative plan separately, obviously, for
15 both the contested and the uncontested proceedings,
16 but put in some language about reexamining schedules
17 closer in time.

18 Again, the final documents are nearly two
19 years away from here. So a lot could happen between
20 now and then.

21 MR. DREKE: Judge Ryerson, may I make a
22 comment? This is Ryan Dreke for TVA.

23 CHAIRMAN RYERSON: Yes.

24 MR. DREKE: In the context of the
25 contested hearing, although the travel burden won't be

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1 that much on TVA, it could conceivably be difficult
2 for the NRC Staff. So I would just ask that be taken
3 into account when setting the deadlines.

4 CHAIRMAN RYERSON: I'm sorry, the travel
5 ---

6 MR. DREKE: Yes, well, if the contested
7 hearing is going to be near the site.

8 CHAIRMAN RYERSON: Oh, okay, right.

9 MR. DREKE: That could -- we may need to
10 extend some of the deadlines just for preparing
11 testimony for the mandatory hearing to take into
12 account that some of those days may not be workable or
13 that we may not be able to work on some of those days.

14 CHAIRMAN RYERSON: Okay, yes, okay. Thank
15 you. All right. Again, our plan I think will be to
16 try to write something up and circulate it for any
17 final comments. Is there anything else at this point
18 that we should be discussing? First, TVA.

19 MR. DREKE: This is Ryan Dreke. No.

20 CHAIRMAN RYERSON: Okay. NRC Staff?

21 MR. ROACH: No, we don't have anything
22 else.

23 CHAIRMAN RYERSON: Okay. Judge Arnold?

24 DR. ARNOLD: No, I have nothing.

25 CHAIRMAN RYERSON: Judge Abrue?

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DR. ABRUE: Nothing else.

CHAIRMAN RYERSON: Okay. Well, as I said, we will try to fairly promptly get a draft around and give you a time period for some comments on that. And otherwise, we stand adjourned. Thank you.

(Whereupon, the above-entitled matter went off the record at 9:57 a.m.)