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## NUCLEAR REGULATORY COMMISSION

SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Title: TVA: Watts Bar Nuclear Plant, Unit 1;  
Sequoyah Nuclear Plant, Units 1 & 2;  
Browns Ferry Nuclear Plant, Units 1, 2 & 3  
PRE-HEARING CONFERENCE

Docket Number: 50-390-CivP et al.  
ASLBP No.: 01-791-01-CivP EA 99-234

Location: (telephone conference)

Date: Tuesday, February 5, 2002

Work Order No.: NRC-223

Pages 168-198

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

PRE-HEARING CONFERENCE

+ + + + +

-----x Docket Nos.

: 50-390-CivP;

IN THE MATTER OF: : 50-327-CivP;

TENNESSEE VALLEY AUTHORITY : 50-328-CivP;

(Watts Bar Nuclear Plant, : 50-259-CivP;

Unit 1; Sequoyah Nuclear : 50-260-CivP;

Plant, Units 1 & 2; : 50-296-CivP;

Browns Ferry Nuclear : ASLBP No.

Plant, Units 1, 2 & 3 : 01-791-01-CivP

: EA 99-234

-----x

Tuesday, February 5, 2002

Via telephone conference call

The above-entitled matter came on for  
hearing, pursuant to notice, at 10:00 a.m.,

BEFORE:

CHARLES BECHHOEFER, Chairman

RICHARD F. COLE, Administrative Judge

ANN MARSHALL YOUNG, Administrative Judge

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1     APPEARANCES:

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3             Authority,

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11             On Behalf of the Nuclear Regulatory Commission:

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1     ALSO PRESENT:

2                   NICHOLAS HILTON, NRC/OE

3                   WIL KEYSER, ESQ., NRC/ASLBP

4                   MICHELLE MCKOWN, ESQ., NRC/ASLBP

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

(10:12 a.m.)

CHAIRMAN BECHHOEFER: Good morning, ladies and gentlemen. This is Judge Bechhoefer. The remainder of the Licensing Board is with me also. Would you identify yourselves?

ADMINISTRATIVE JUDGE COLE: Richard Cole, C-O-L-E.

ADMINISTRATIVE JUDGE YOUNG: Hi. This is Ann Marshall Young.

CHAIRMAN BECHHOEFER: With me also are several of the legal attorneys for the Panel: Michelle McKown and Wil Keyser. Would other people identify themselves for benefit of the reporter, if nothing else?

MR. MARQUAND: This is Brent Marquand with the Tennessee Valley Authority.

MR. DAMBLY: And this is Dennis Dambly with the Office of General Counsel, NRC staff, along with Jennifer Euchner, E-U-C-H-N-E-R, and Nick Hilton, from the Office of Enforcement.

CHAIRMAN BECHHOEFER: Are there any other TVA attorneys here or not?

MR. MARQUAND: No. My two co-counsel have been in trial for the last four weeks in Birmingham,

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1 and they're still in trial.

2 CHAIRMAN BECHHOEFER: Okay. This  
3 conference is mostly to confirm previous schedules and  
4 make sure that they're adequate. First, to start out  
5 with, has discovery been completed or are any problems  
6 arising? We had heard earlier that discovery should  
7 have been completed by this time anyway.

8 MR. MARQUAND: Your Honor, this is Brent  
9 Marquand. I don't know of anything that's outstanding  
10 or of any outstanding requests or of any outstanding  
11 issues.

12 MR. DAMBLY: I believe that's true from  
13 our end also, Your Honor.

14 ADMINISTRATIVE JUDGE YOUNG: Some  
15 reference I think that the staff was raising a  
16 question about the response time. Did you all work  
17 that out?

18 MR. MARQUAND: Yes, Your Honor. We had an  
19 agreement on what was due when, and it was all  
20 provided.

21 ADMINISTRATIVE JUDGE YOUNG: Great.  
22 Wonderful.

23 CHAIRMAN BECHHOEFER: Okay. That's great.  
24 Now we note that a motion for summary disposition has  
25 been filed by TVA on the schedule we set previously.

1 Staff -- under that same schedule, the staff response  
2 is due February 20, so does the staff -- well, I  
3 guess, absent any request for change, that schedule  
4 will hold. Can the staff meet that?

5 MR. DAMBLY: That shouldn't be any problem  
6 at all, Your Honor.

7 CHAIRMAN BECHHOEFER: Okay. Very good.  
8 Then we still want legal briefs on various legal  
9 issues to be filed on March 1. Any problems with that  
10 from the various parties?

11 MR. DAMBLY: None from the staff, Your  
12 Honor.

13 MR. MARQUAND: TVA doesn't have a problem  
14 with that.

15 CHAIRMAN BECHHOEFER: Okay. And then a  
16 list of witnesses and documents are supposed to be  
17 filed by March 29. Any problems with that?

18 MR. DAMBLY: None from the staff, Your  
19 Honor.

20 MR. MARQUAND: We don't have a problem  
21 with that.

22 CHAIRMAN BECHHOEFER: Okay. And then we  
23 have provided that the hearing would commence on  
24 Tuesday, April 23 in Chattanooga. Now, we've looked  
25 for hearing rooms, and so far the only one we've found

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1 available for the projected three weeks of hearings is  
2 --

3 ADMINISTRATIVE JUDGE YOUNG: We've got the  
4 court reporter on the line?

5 CHAIRMAN BECHHOEFER: Oh, yes. The only  
6 one we found it supposedly holds only 30 people. It's  
7 at the Technical Training -- the TTI, or whatever it  
8 is, in Chattanooga. Now --

9 ADMINISTRATIVE JUDGE YOUNG: How many?

10 CHAIRMAN BECHHOEFER: Thirty, 30. I don't  
11 know that that's big enough, and that's my inquiry.  
12 How many people are likely to attend? I might say  
13 that for at least substantive witnesses, we're likely  
14 to sequester witnesses.

15 ADMINISTRATIVE JUDGE YOUNG: Before we go  
16 any further, can I -- do we have the court reporter  
17 with us?

18 COURT REPORTER: Yes, Judge.

19 ADMINISTRATIVE JUDGE YOUNG: Okay. Great.  
20 Thank you.

21 CHAIRMAN BECHHOEFER: That was on before.  
22 I did that before. Anyway, the room we have I'm told  
23 will hold 30 people, and my question is, is that big  
24 enough? Are there likely to be public attendees at  
25 the hearing?

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1 MR. MARQUAND: I can't say whether there  
2 will or will not be. My experience trying Department  
3 of Labor cases is when there are public attendees  
4 there's rarely more than -- if there are any, there's  
5 rarely more than two or three.

6 MR. DAMBLY: And from the staff side, I do  
7 believe that the Office of Enforcement and various  
8 other regions may send people for a day or two here or  
9 there since this is the first discrimination hearing,  
10 but I wouldn't anticipate anything close to running up  
11 over the 30 limit.

12 CHAIRMAN BECHHOEFER: Well, the 30  
13 includes the judge, the reporter, counsel, et cetera.

14 MR. DAMBLY: But I wouldn't think any part  
15 of the permanent group that would be there  
16 representing the staff would be more than five people  
17 at a time.

18 CHAIRMAN BECHHOEFER: Mr. Marquand, do you  
19 have any thoughts on that?

20 MR. MARQUAND: Well, assuming that we do  
21 sequester witnesses, which we would request and expect  
22 --

23 CHAIRMAN BECHHOEFER: We think that's  
24 appropriate.

25 MR. MARQUAND: I do too.

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1 CHAIRMAN BECHHOEFER: I might say if there  
2 are witnesses on essentially non-controversial items,  
3 they would not have to be sequestered. But anything  
4 controversial we think they probably should be  
5 sequestered. But the question is are there going to  
6 be any panels of witnesses who do not testify on  
7 substance but on organizational matters, how things  
8 were organized. Is there going to be anything like  
9 that? On occasion, in other cases, the staff has used  
10 such panels. It's just my inquiry in terms of size of  
11 the room and that kind of thing.

12 MR. DAMBLY: Your Honor, for the staff, we  
13 would not intend to have any panels of witnesses;  
14 they'd be one at a time. So I don't think that will  
15 be a problem. We have no problem with sequestering;  
16 in fact, we would support that also since 95 percent  
17 of the witnesses are TVA personnel anyway.

18 CHAIRMAN BECHHOEFER: So the staff doesn't  
19 intend to put a panel on for such things as how the OI  
20 investigation was initiated, et cetera.

21 MR. DAMBLY: No, Your Honor. In fact, we  
22 weren't even intending to get into that, period. The  
23 only witness that I really, at this point, anticipate  
24 from the staff would be a member from the Office of  
25 Enforcement to explain how you got to the penalty that

1 was arrived at, which is one of the things that we all  
2 need to look at.

3 CHAIRMAN BECHHOEFER: Oh, okay. And that  
4 would be one witness.

5 MR. DAMBLY: Yes.

6 CHAIRMAN BECHHOEFER: Okay. No problem  
7 then. So you think maybe the 30-person hearing room,  
8 which is at the Technical Training Center, would be  
9 adequate, because it's available and we can have it.

10 MR. MARQUAND: Aside from the size of it,  
11 what are the logistics coming and going into the  
12 building and the room? Is it going to be something  
13 that is going to require all of our people to be under  
14 escort and the like or will they be free to come and  
15 go as they would in a federal courthouse downtown?

16 MR. DAMBLY: Yes. This is Mr. Dambly.  
17 Having been in there, and I'm sure Mr. Marquand's been  
18 in there a few times for some public meetings, the  
19 Discrimination Task Force, I'm certain that that room,  
20 in and of itself, the big hearing room that they have  
21 there, they could turn off, if you will, the key card  
22 thing that goes in and out of that, because that's  
23 separate from the rest of their offices.

24 MR. MARQUAND: Well, I mean, my question  
25 is from a logistics standpoint, if in order to enter

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1 the -- and I assume these are in NRC offices over  
2 there in Eastgate, Eastridge -- that it would be -- if  
3 we have to go check in every day we come in and have  
4 to be escorted to the room, it's going to make it very  
5 cumbersome for the attorneys for TVA and TVA witnesses  
6 to marshall our witnesses and to deal with the  
7 documents and the like that are involved in this case.

8 CHAIRMAN BECHHOEFER: Well, I think we'll  
9 have to check that out.

10 MR. MARQUAND: Well, my concern is that it  
11 is a burden that's placed upon us that's not placed  
12 upon opposing counsel and the opposition party. I  
13 would request -- if that's the case, I would request  
14 a neutral forum.

15 CHAIRMAN BECHHOEFER: If that's the case,  
16 we would certainly look elsewhere for hearing space.

17 MR. DAMBLY: Your Honor, the building is  
18 a publicly accessible building. The NRC has several  
19 offices in there, and there are different entrances to  
20 different sections of the NRC offices. The restrooms  
21 are in public space, and the hearing room is an  
22 isolated room by itself, as I recall, which I'm sure  
23 they can turn off the card key access to that and  
24 leave that an open room for purposes of the hearing.  
25 There wouldn't be any, if you will, burden on Mr.

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1 Marquand and his people coming in and out of the  
2 building and in and out of the hearing room.

3 CHAIRMAN BECHHOEFER: I even think members  
4 of the public, if they want to attend, and maybe one  
5 or two from what I hear, they should be able to walk  
6 in as well.

7 MR. DAMBLY: And they would.

8 CHAIRMAN BECHHOEFER: Which they're able  
9 to do, for instance, at the NRC hearing room here, but  
10 you have to make sure that people are aware that can  
11 happen.

12 MR. DAMBLY: Yes. There are no guards,  
13 and there are no magnetometers or anything else to get  
14 into the building or into the space. You don't have  
15 a guard desk to go by and sign in.

16 MR. MARQUAND: I don't have a problem with  
17 a guard desk or metal detectors as long as that burden  
18 is on both parties or any other parties equally.

19 CHAIRMAN BECHHOEFER: Well, we will make  
20 sure that essentially the room we use has public  
21 access.

22 MR. MARQUAND: All right.

23 CHAIRMAN BECHHOEFER: People may have to  
24 go through various detectors of sorts, but that's --  
25 well, that would apply in a courthouse too.

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1 MR. MARQUAND: Certainly. That's why I  
2 said I don't have a problem with that.

3 CHAIRMAN BECHHOEFER: Okay. I think that  
4 will be arranged. As long as the 30-person room is  
5 big enough, that's the one we will use.

6 ADMINISTRATIVE JUDGE COLE: This is Dr.  
7 Cole. The problem that comes in my mind is if we are  
8 going to sequester witnesses where we're going to  
9 station those witnesses. And we'll try to make some  
10 arrangements so that they would be equal  
11 accommodations for both NRC witnesses and for TVA  
12 witnesses. We'll contact them at the Training Center,  
13 see if we can maybe get a room where the sequestered  
14 witnesses would be able to take seats and wait their  
15 turn.

16 CHAIRMAN BECHHOEFER: And wait their turn,  
17 right.

18 ADMINISTRATIVE JUDGE COLE: We'll let you  
19 know about that.

20 CHAIRMAN BECHHOEFER: Okay.

21 MR. DAMBLY: This is Mr. Dambly. I had  
22 one question on sequestration, and I don't know if TVA  
23 intends to have MacArthur or McGrath sit the whole  
24 thing on some basis or otherwise, because I would  
25 object to that.

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1 MR. MARQUAND: We will designate a  
2 corporate representative to sit through the hearing,  
3 and I haven't determined who that will be yet.

4 MR. DAMBLY: Again, if it's --

5 CHAIRMAN BECHHOEFER: I assume that that  
6 would not be a witness.

7 MR. MARQUAND: Well, I think we're  
8 entitled to designate who we need to designate as a  
9 corporate representative regardless of whether they're  
10 a witness or not. And in light of the fact that the  
11 NRC staff has indicated that they intend to drag  
12 everybody and their brother into this, I don't know  
13 how we could avoid designating a witness as a  
14 corporate representative who would be effective in  
15 assisting us at the counsel table.

16 ADMINISTRATIVE JUDGE YOUNG: You're  
17 entitled to have a corporate representative there.

18 CHAIRMAN BECHHOEFER: Well, I'm not sure  
19 if he or she is a witness.

20 ADMINISTRATIVE JUDGE YOUNG: Yes, they  
21 are. Yes, they are.

22 CHAIRMAN BECHHOEFER: Well, I don't think  
23 so. I don't think so.

24 PARTICIPANT: Well, we'll have to settle  
25 that.

1 CHAIRMAN BECHHOEFER: Yes. Because if  
2 that witness is hearing other people and then gets up  
3 to testify --

4 ADMINISTRATIVE JUDGE YOUNG: This is Judge  
5 Young. Let me suggest something. If there's any  
6 dispute over who will be the corporate representative,  
7 whether they can be a witness, and also if there are  
8 any motions in limine with regard to any of the  
9 testimony or witnesses or evidence, it might be a good  
10 idea to just set a deadline for those to be filed.  
11 Right now we have a date for witness and exhibit lists  
12 of March 29, and I think that probably we could set a  
13 deadline within one week after that for both parties  
14 to file any objections, motions in limine, any similar  
15 types of motions or objections by April 3 with  
16 responses due by April 5.

17 MR. MARQUAND: Judge, I'm going to be out  
18 of the country. Can we go for a week -- the next week  
19 to the 10th?

20 CHAIRMAN BECHHOEFER: I'm not sure we  
21 should have any of this.

22 ADMINISTRATIVE JUDGE YOUNG: Till the  
23 10th, that's -- it might be a better idea to actually  
24 move back the deadline for witness and exhibit lists  
25 to March 22 and then have maybe the deadline --

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1 CHAIRMAN BECHHOEFER: We're tied up for  
2 that.

3 ADMINISTRATIVE JUDGE YOUNG: Give us a  
4 minute to confer, would you, please?

5 MR. MARQUAND: Sure.

6 (Judges confer.)

7 CHAIRMAN BECHHOEFER: Well, after some  
8 discussion, the Board would first inquire when -- now,  
9 this is apart from the full list of witnesses and  
10 documents -- when TVA would know whether its corporate  
11 representative, or however you term it, will be a  
12 witness and would otherwise be sequestered. If  
13 there's no conflict, then there's no issue.

14 MR. MARQUAND: I would not imagine it  
15 would be before the 1st of March. I will know before  
16 -- I'll have a pretty good idea before we do our  
17 witness and exhibit list. Frankly, I haven't sat down  
18 to think about it. I know Mr. Dambly objected to Dr.  
19 MacArthur. I don't anticipate calling him as  
20 corporate representative. I have not ruled out  
21 whether I would call Mr. McGrath as a corporate  
22 representative or possibly somebody from the Human  
23 Resource Department, but I haven't really crossed that  
24 bridge yet.

25 But, frankly, you know, unless we use

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1 somebody as a corporate representative who has some  
2 knowledge of the case, that corporate representative  
3 wouldn't do us any good, and, like I said, Mr.  
4 Dambly's indicated that he anticipates calling a lot  
5 of people, so all I can tell you is I will let him  
6 know as soon as I can figure out who that would be.

7 MR. DAMBLY: Your Honor, this is Mr.  
8 Dambly for the staff again. Since this is causing  
9 some consternation, whatever, we're not going to  
10 object to whoever they want to put down there as their  
11 corporate rep as long as we know who it is before the  
12 hearing.

13 CHAIRMAN BECHHOEFER: Even though that  
14 person would be a witness who would be otherwise  
15 sequestered.

16 MR. DAMBLY: That's right, Your Honor.  
17 Depending on the witness, if it's somebody that I  
18 think that's a major issue for, I'll just call him  
19 first. I mean there are plenty of corporate people  
20 they can bring in that wouldn't make any difference to  
21 me if they sat through the whole thing or not because  
22 they have a small part. If it's some central person  
23 and I think it will be an issue, I could call him  
24 first, and then they won't hear anybody else's  
25 testimony till afterwards.

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1 MR. MARQUAND: That's a reasonable  
2 approach.

3 CHAIRMAN BECHHOEFER: Yes, that is a  
4 reasonable approach. Let me ask, what about the staff  
5 representative?

6 MR. DAMBLY: Well, you know, obviously, it  
7 wouldn't be bad to have Mr. Kaiser, but I don't how he  
8 could be a representative of the staff, so I would  
9 assume that the only staff person we would have with  
10 us at the table would be somebody from the Office of  
11 Enforcement. Whether or not that would be the person  
12 who would testify as to the metro map and how did he  
13 get to the various fines and severity levels, I don't  
14 know.

15 CHAIRMAN BECHHOEFER: Then there's no  
16 problem. So I think if the matter is resolved, as  
17 we've just heard, that would be satisfactory. Well,  
18 do we have any other things?

19 ADMINISTRATIVE JUDGE YOUNG: We're all on  
20 the board for the hearing dates that we've set, right?

21 MR. MARQUAND: I am, Your Honor.

22 MR. DAMBLY: No problem for us, Your  
23 Honor.

24 MR. MARQUAND: And, Mr. Dambly, I need to  
25 let you know I've got -- you know, obviously, you're

1 going to want to call some TVA people as witnesses.  
2 If you could let us know ahead of time, and I'm not  
3 talking now, but I'm talking like towards the end of  
4 March, what their sequence is, we can sequence their  
5 work. Dr. MacArthur is on a church mission trip, and  
6 he told me he was not available the week of April 23.  
7 I hope he's available the next week.

8 MR. DAMBLY: I'm sure we can work around  
9 whatever anybody's schedules are.

10 MR. MARQUAND: Okay.

11 ADMINISTRATIVE JUDGE COLE: Mr. Marquand,  
12 this is Judge Cole.

13 MR. MARQUAND: Yes.

14 ADMINISTRATIVE JUDGE COLE: I think in our  
15 last pre-hearing conference you had indicated you  
16 estimated it would take two weeks; is that correct?

17 MR. MARQUAND: That was Mr. Dambly's  
18 estimation.

19 ADMINISTRATIVE JUDGE COLE: That was Mr.  
20 Dambly, okay.

21 MR. MARQUAND: And I don't have any reason  
22 -- I think, actually, he said three weeks. I hope  
23 it's not three weeks.

24 ADMINISTRATIVE JUDGE COLE: Okay. Mr.  
25 Dambly, do you have any reason to modify your previous

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1 estimate?

2 MR. DAMBLY: Well, I think what I had said  
3 was two to three, and I don't know that I would modify  
4 that. I think it would be wise to have the space  
5 should it go to the third week. Hopefully things will  
6 go faster, but, again, there are a substantial number  
7 of witnesses. There were a substantial number of  
8 depositions taken, as the Board's aware, I think, and  
9 given that, most of those people have relevant  
10 information. And the way the depositions went, I  
11 would expect that it's not going to be over in two or  
12 three days, by any means.

13 ADMINISTRATIVE JUDGE COLE: You gentlemen  
14 are pretty efficient, I'm sure. All right. Thank  
15 you.

16 CHAIRMAN BECHHOEFER: Do either of you  
17 have -- or either party have any estimate of numbers  
18 of witnesses that you will be calling?

19 MR. MARQUAND: Dennis, do you know how  
20 many depositions we took?

21 MR. DAMBLY: I think, Your Honors, we're  
22 talking probably 15, maybe more, maybe a few less.  
23 We'll have to weed out stuff in the end.

24 CHAIRMAN BECHHOEFER: That's the staff,  
25 what about TVA?

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1 MR. MARQUAND: In addition to the --

2 CHAIRMAN BECHHOEFER: Rough guesses now.

3 MR. MARQUAND: I mean I think our  
4 witnesses are the same ones that Mr. Dambly  
5 anticipates calling. We've got --

6 CHAIRMAN BECHHOEFER: They don't overlap;  
7 they're called separately.

8 MR. MARQUAND: Well, but they're the same  
9 people. And in addition to those, there may be two or  
10 three more, but that's probably about it.

11 CHAIRMAN BECHHOEFER: Okay. Well, that's  
12 --

13 MR. MARQUAND: Let me ask, in light of  
14 your comment, Judge, just a procedural question. In  
15 some of the -- in fact, in many of the courts that we  
16 try cases in where there's not a jury, where it's just  
17 tried to a judge, frequently the judges like for the  
18 parties to deal with all the testimony from one  
19 witness the first time they're called to the stand  
20 since we're really not involved in a question of  
21 sequence of presentation to a jury, it doesn't really  
22 disrupt anybody's presentation. My question was what  
23 is the Board's pleasure in that? Do you anticipate  
24 having the staff call the witness and have their  
25 testimony limited to, at that point, what the staff

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1 wants and then have them recalled later and go through  
2 all their testimony, from TVA's standpoint, again?

3 CHAIRMAN BECHHOEFER: Let's go off the  
4 record for a minute?

5 (Whereupon, the foregoing matter went off  
6 the record at 10:48 a.m. and went back on  
7 the record at 10:50 a.m.)

8 CHAIRMAN BECHHOEFER: I think the Board  
9 would prefer that when a witness is there he or she be  
10 able to testify to whatever he's going to testify to,  
11 and then there be cross examination, and that would  
12 include perhaps matters that were not testified to on  
13 direct but the other party wishes the witness to  
14 address. So that I think it would save time and be  
15 more efficient to try to handle a given witness at one  
16 time.

17 MR. MARQUAND: I understand, Judge. I  
18 think that's a reasonable approach.

19 CHAIRMAN BECHHOEFER: Any view from the  
20 staff?

21 MR. DAMBLY: I don't have any problem with  
22 that either, Your Honor. We might run into some  
23 questions about who has the right to lead and not lead  
24 at various points, but we can cross that when we get  
25 there.

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1 ADMINISTRATIVE JUDGE YOUNG: It would  
2 probably be pretty clear who are adverse witnesses,  
3 and those will be the ones, obviously, that you'll be  
4 able to lead on.

5 MR. DAMBLY: But then if they're putting  
6 on their case with the same guy but as part of the  
7 cross, I would assume that part of it would have to be  
8 without leading if there's something different being  
9 discussed.

10 MR. MARQUAND: I understand what the Judge  
11 said.

12 CHAIRMAN BECHHOEFER: Well, I think we've  
13 covered everything we think we wanted to cover. Do  
14 any of the parties have anything else to raise?

15 MR. DAMBLY: Did we set a date -- this is  
16 Mr. Dambly -- for motions and limine?

17 ADMINISTRATIVE JUDGE YOUNG: We were going  
18 to, but I don't think that -- if either party thinks  
19 that you are going to file a motion in limine, then I  
20 do think we need to go back to the timing of the  
21 deadline for motions in limine. Are you thinking that  
22 there might be a necessity for any such motion?

23 MR. DAMBLY: It depends. I think, as I  
24 indicated last time, when we see their witness list  
25 and their list of documents, there's a possibility

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1 that we may file a motion on one of the witnesses.

2 ADMINISTRATIVE JUDGE YOUNG: That's  
3 something that I believe we were about to talk about,  
4 and there was a problem with the timing. I think that  
5 Judge Cole and Judge Bechhoefer are going to be  
6 involved in another case in early April. That's why  
7 I was earlier beginning to suggest that we might want  
8 to move the witness and exhibit list deadline earlier  
9 so that we could resolve any motions in limine prior  
10 to everyone being unavailable. So if you think that  
11 there's a possibility of that, does either party have  
12 any objection to moving that witness and exhibit  
13 deadline back to an earlier date?

14 MR. DAMBLY: For the staff, Your Honor, we  
15 don't have a problem with March 22.

16 MR. MARQUAND: I think that's going to be  
17 pushing it, but I think we can make March 22. My  
18 problem is that for March 23 until April 1 I'll be out  
19 and gone so that even if we move it to March 22, that  
20 doesn't mean that I'd be able to turnaround and give  
21 you -- digest what the staff had done and give you a  
22 motion in limine immediately within two days upon my  
23 return.

24 ADMINISTRATIVE JUDGE YOUNG: Oh, I thought  
25 you were going to be gone the first week of April.

1 MR. MARQUAND: No, until the first week of  
2 April.

3 ADMINISTRATIVE JUDGE YOUNG: Oh, okay.

4 MR. MARQUAND: I'm sorry.

5 ADMINISTRATIVE JUDGE YOUNG: Well, if  
6 that's the case, if you could -- I don't know how  
7 quickly -- it seems like these motions could be filed  
8 fairly quickly, and earlier I was going to suggest  
9 April 3 for filing of the motions, April 5 for  
10 responding, and then that would give us the week of  
11 April 8 to rule on enough in advance of the hearing  
12 that people can plan. Does that sound reasonable?

13 MR. MARQUAND: Well, I'd rather have till  
14 April 5 to file the motions. I'll try not to be wordy  
15 in anything I say, but I still think it would take me  
16 a couple days to digest what the staff proposes and  
17 determine if we have any hard spots with it.

18 ADMINISTRATIVE JUDGE YOUNG: The problem  
19 is if we move it back to the 5th, then we're going to  
20 have to get a real quick turnaround on responses,  
21 because then we're getting really close to the hearing  
22 and times when various ones of us are going to be  
23 unavailable. So, you know, how about the 4th and the  
24 8th, the 4th for motions, 8th for responses?

25 MR. MARQUAND: Well, I can live with that.

1 ADMINISTRATIVE JUDGE YOUNG: Can you, Mr.  
2 Dambly?

3 MR. DAMBLY: What dates did we finally  
4 settle on?

5 CHAIRMAN BECHHOEFER: We haven't settled  
6 on anything yet.

7 ADMINISTRATIVE JUDGE YOUNG: We were  
8 throwing out there, and Mr. Marquand said he had no  
9 objections to filing motions in limine on April 4,  
10 with responses on the 8th.

11 CHAIRMAN BECHHOEFER: What day is the 4th?

12 MR. MARQUAND: The 4th is a Thursday.

13 ADMINISTRATIVE JUDGE YOUNG: And then the  
14 8th is a Monday.

15 MR. DAMBLY: No, that's not a problem for  
16 us, Your Honor.

17 ADMINISTRATIVE JUDGE YOUNG: Okay. Then  
18 why don't we go ahead and set those as the dates and  
19 then we can have some time to --

20 CHAIRMAN BECHHOEFER: That seems okay.

21 (Judges confer.)

22 CHAIRMAN BECHHOEFER: Okay. I guess we'll  
23 set those dates: April 4 for any motions in limine,  
24 April 8 for any responses.

25 ADMINISTRATIVE JUDGE YOUNG: Let me just

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1 say, just to reflect discussions we were having,  
2 obviously we do not encourage filing motions in limine  
3 on each and everything that you may conceivably object  
4 to, keeping in mind the somewhat flexible evidentiary  
5 standard in these hearings. And I think probably both  
6 of you are on the same wavelength in terms of any such  
7 motions would be on fairly significant witnesses or  
8 evidence that you really need an advance ruling on.  
9 Does that make sense?

10 MR. MARQUAND: Yes, Your Honor.

11 MR. DAMBLY: Yes, Your Honor.

12 ADMINISTRATIVE JUDGE YOUNG: Great. Okay.

13 CHAIRMAN BECHHOEFER: Okay. Is there  
14 anything -- we'll set those dates for motions in  
15 limine. Anything further the parties wish us to  
16 address today?

17 MR. DAMBLY: Nothing for the staff, Your  
18 Honor.

19 MR. MARQUAND: Nothing from TVA either,  
20 Your Honor.

21 CHAIRMAN BECHHOEFER: Okay. Well, we  
22 enjoyed talking with you this morning, and I guess  
23 we'll see you at the hearing.

24 ADMINISTRATIVE JUDGE YOUNG: Do we need to  
25 talk again before the hearing? Is there any --

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1 CHAIRMAN BECHHOEFER: Do you think there's  
2 any -- yes. Is there any reason why we should --

3 MR. MARQUAND: If the parties do file  
4 motions in limine, would it be of assistance to the  
5 Board after you receive the motion and the response,  
6 say, maybe on the 10th or the 11th, to have a status  
7 conference, I mean to schedule one in the event that  
8 you might want to hear any additional information from  
9 the parties on those motions?

10 CHAIRMAN BECHHOEFER: What's the 10th?

11 MR. MARQUAND: Somewhere in that time  
12 frame.

13 MR. DAMBLY: Your Honor, I'm out from the  
14 10th until -- I'll be back the 15th.

15 MR. MARQUAND: Maybe even the next week.

16 MR. DAMBLY: If you wanted to do -- file  
17 them on the 8th and talk on the 9th, that's okay, as  
18 long as everybody's e-mailing anyway. I don't  
19 anticipate -- I mean hopefully there won't be any, but  
20 if there -- I would anticipate the most the staff is  
21 going to deal with is one issue.

22 ADMINISTRATIVE JUDGE YOUNG: And we can  
23 take anything else that comes up, just to sort of get  
24 us on track before the hearing.

25 CHAIRMAN BECHHOEFER: Well, we don't need

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1 a conference unless there's a motion in limine.

2 (Judges confer.)

3 CHAIRMAN BECHHOEFER: Okay. Why don't we  
4 set a status conference for April 9, which is a  
5 Tuesday at 2 p.m.?

6 MR. MARQUAND: Can I request the Court to  
7 set a different time? I've got a doctor's appointment  
8 that day that's been scheduled for quite a while, and  
9 I don't --

10 CHAIRMAN BECHHOEFER: I know all of these  
11 appointments are. I have a --

12 ADMINISTRATIVE JUDGE YOUNG: What time are  
13 you available, Mr. Marquand?

14 MR. MARQUAND: Well, the appointment's  
15 scheduled at one, and I assume that I probably get  
16 seen until two.

17 ADMINISTRATIVE JUDGE YOUNG: Would the  
18 morning be better?

19 MR. MARQUAND: The morning would  
20 definitely be better.

21 ADMINISTRATIVE JUDGE YOUNG: Same time as  
22 today, say, nine o'clock your time?

23 MR. MARQUAND: Sure.

24 MR. DAMBLY: No problem for the staff.

25 ADMINISTRATIVE JUDGE YOUNG: And we'll

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1 just talk about motions in limine or anything else  
2 that we need to resolve, just to make the hearing go  
3 smoothly.

4 CHAIRMAN BECHHOEFER: Prior to the  
5 hearing.

6 MR. MARQUAND: Did you say nine o'clock or  
7 ten o'clock?

8 ADMINISTRATIVE JUDGE YOUNG: Nine your  
9 time, ten o'clock our time.

10 CHAIRMAN BECHHOEFER: Ten our time.

11 MR. MARQUAND: We're on the same time you  
12 are.

13 ADMINISTRATIVE JUDGE COLE: You are?

14 CHAIRMAN BECHHOEFER: You are?

15 MR. MARQUAND: We are. So is Chattanooga.

16 CHAIRMAN BECHHOEFER: Thought you were an  
17 hour difference.

18 MR. MARQUAND: No, we're on eastern.

19 ADMINISTRATIVE JUDGE COLE: Ten o'clock's  
20 good.

21 CHAIRMAN BECHHOEFER: Okay.

22 MR. MARQUAND: And Chattanooga, where  
23 you're going to have the hearing, is on the same time  
24 too.

25 CHAIRMAN BECHHOEFER: Oh, okay. We had

1       been told otherwise.

2               MR. MARQUAND: Well, it's only about 15  
3 miles west of Chattanooga is the break.

4               CHAIRMAN BECHHOEFER: Oh, okay.

5               ADMINISTRATIVE JUDGE YOUNG: So April 9 at  
6 ten o'clock.

7               MR. MARQUAND: Right.

8               CHAIRMAN BECHHOEFER: Okay. We'll issue  
9 an order as soon as we can recording this. There's  
10 not many changes from what we had previously. Okay.  
11 Well, we'll talk with you on the 9th.

12              MR. MARQUAND: All right. Thank you,  
13 Judges.

14              MR. DAMBLY: Thank you.

15              ADMINISTRATIVE JUDGE YOUNG: Thank you,  
16 everybody.

17              MR. MARQUAND: Thank you, Mr. Dambly and  
18 Jennifer.

19                       (Whereupon, at 11:02 a.m., the Pre-hearing  
20 Conference was concluded.)

21

22

23

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25



CERTIFICATE

This is to certify that the attached proceedings  
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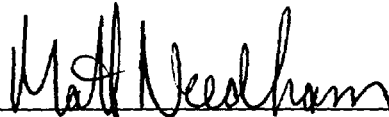
Pre-Hearing Conference

Docket Numbers: 50-390-CivP, et al

ASLBP Numbers: 01-791-01-CivP, et ux

Location: (Telephone Conference)

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