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**NUCLEAR REGULATORY COMMISSION**

Title: GE-Hitachi Global Laser Enrichment

Docket Number: 70-7016-ML

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## 1 UNITED STATES OF AMERICA

## 2 U.S. NUCLEAR REGULATORY COMMISSION

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## 4 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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7 In the Matter of: :

8 GE-HITACHI GLOBAL LASER : Docket No. 70-7016-ML

9 ENRICHMENT, LLC :

10 (GLE COMMERCIAL FACILITY) :

11 \_\_\_\_\_:

12  
13 Thursday,

14 June 28, 2012

15 Teleconference

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18  
19 BEFORE:

20 PAUL S. RYERSON, Chairman

21 DR. JAMES F. JACKSON, Administrative Judge

22 DR. MICHAEL O. GARCIA, Administrative Judge

## 1 APPEARANCES:

2 On Behalf of the U.S. Nuclear Regulatory  
3 Commission:

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5 CATHERINE SCOTT, ESQ.

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15 On Behalf of David Applicant:

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1 ALSO PRESENT

2 ANTHONY J. BARATTA, Associate Chief Administrative

3 Judge

4 DOUGLAS HASE, advisor to the Board on security related

5 matters

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

2:08 P.M.

CHAIRMAN RYERSON: Welcome, everyone. We have, I believe, two other Judges on the call and I should say good morning to Judge Garcia. We're about five or six time zones separated here. Judge Garcia is calling in from Hawaii. And Judge Jackson is calling in from Utah. Our law clerk for the Board, Anne Siarnacki is with me as is a Commission-appointed security advisor, Douglas Hase.

I believe that Associate Chief Judge Baratta is also listening in. He's our Panel's security advisor for general purposes.

Obviously, this call is being recorded by the reporter. There will be a transcript. Additionally, we have made this call available on a listen-only basis to members of the public or the press who wish to call in. So while we may be discussing, we will be discussing some plans for handling non-public information, classified information, of course, no classified information should be discussed during this call itself.

With that said, if counsel would introduce themselves for the record, starting with the Applicant?

1 MR. SILVERMAN: Yes, thank you, Your  
2 Honor. This is Don Silverman with Morgan, Lewis &  
3 Bockius, counsel to the Applicant. I have Charles  
4 "Chip" Moldenhauer with me who is also counsel. I  
5 wanted to mention that I have Julie Olivier, our  
6 licensing manager, with us and I'm wondering whether  
7 our security manager, Pat Jenny, is on the line or  
8 not? It does not sound like it.

9 CHAIRMAN RYERSON: Certainly not unless  
10 she got the listening only code.

11 MR. SILVERMAN: That's possible. Okay,  
12 that's our group for now.

13 CHAIRMAN RYERSON: Thank you. And for the  
14 NRC Staff?

15 MS. SIMON: Good afternoon, Your Honor.  
16 This is Marcia Simon, counsel for the NRC staff. With  
17 me, I have Michelle Albert, co-counsel for the staff.  
18 Carrie Safford will be joining us shortly and also  
19 Catherine Scott from the Office of the General  
20 Counsel. And from the staff we have Jennifer David,  
21 the Environmental Project manager, and Tim Johnson,  
22 the Safety Project manager.

23 CHAIRMAN RYERSON: Okay, thank you. And  
24 welcome, welcome to all counsel and other  
25 participants. The purpose of today's call is a very

1 simple one. This is our last opportunity to discuss  
2 logistical issues and some other issues before the  
3 evidentiary hearing begins 13 days from today on  
4 Wednesday, July 11.

5 And as chairman, I'd like to exercise the  
6 prerogative to begin by discussing four issues and we  
7 can see what else anyone might like to raise after  
8 that.

9 The first topic I'd like to talk about is  
10 excusing witnesses. I believe there are about two  
11 dozen witnesses between the NRC staff and the  
12 Applicant who have submitted pre-filed written  
13 testimony, about maybe a third or so from GLE and  
14 about two thirds from the NRC staff. The Board,  
15 obviously, does not want to drag into the hearing  
16 anyone for whom we're not going to have any questions.  
17 Unfortunately, while we've started digging into the  
18 testimony very thoroughly, I don't think we're ready  
19 yet as a Board to rule out any witnesses if we're in  
20 a position to do that before the hearing, we'd like to  
21 do it. And so I'm kind of wondering if there's a  
22 sense among the participants as to what a reasonable  
23 cutoff date would be that would be helpful to you.  
24 I'm not guaranteeing that we're going to be able to  
25 meet any deadline like that, but if there's a date

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1 certain by which it would be helpful to have a list  
2 that we could issue of witnesses whose presence  
3 clearly will not be required, is there a sense of when  
4 that date might be?

5 Mr. Silverman, let me start with you?

6 MR. SILVERMAN: Your Honor, give me one  
7 moment and I'll answer your question.

8 (Pause.)

9 Your Honor, ideally for us it would be a  
10 week from tomorrow, I believe it's Friday, the 6th.

11 CHAIRMAN RYERSON: Friday, the 6th. Okay.  
12 NRC staff, you have a number of witnesses coming from  
13 out of town or are most of the witnesses here at  
14 headquarters?

15 MS. SIMON: Your Honor, we have several  
16 witnesses coming from out of town, both staff members  
17 coming from the region and also contractors coming  
18 from Argonne National Labs.

19 CHAIRMAN RYERSON: Okay. Again, there's  
20 no assurance that we can rule out any witnesses, but  
21 would the 6th be a reasonable date from your  
22 standpoint?

23 MS. SIMON: Yes, that would, Your Honor.

24 CHAIRMAN RYERSON: Okay, we will target to  
25 do that if we can because obviously we don't want to

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1 inconvenience people unnecessarily. Any comments from  
2 my fellow Judges at this point, Judge Garcia, Judge  
3 Jackson?

4 ADMIN. JUDGE JACKSON: This is Judge  
5 Jackson. That sounds reasonable.

6 ADMIN. JUDGE GARCIA: Yes, that's fine  
7 with me.

8 CHAIRMAN RYERSON: Okay, so we will strive  
9 to do that if we can absolutely eliminate the  
10 possibility of questions for one or more witnesses,  
11 we'll try to let you know who they are no later than  
12 a week from tomorrow.

13 MR. SILVERMAN: Thank you very much.

14 CHAIRMAN RYERSON: Also, I think at one  
15 point we did indicate that we would not require any  
16 witnesses who answered the original numerical  
17 questions, unless we asked for them. I'm not aware at  
18 this point of any such witnesses that we are asking  
19 for. So you can rest assured of that point.

20 The second item I'd like to discuss is a  
21 decision the Board has made subject to discussion  
22 today, I suppose, but our conclusion is that while we  
23 would like to be as transparent as possible that the  
24 only practical thing to do with this mandatory hearing  
25 is to close the hearing to the public in its entirety.

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1 Clearly, a lot of our questions, the Board's questions  
2 are going to focus on the first topic on which  
3 classified information has been submitted as exhibits  
4 and surely there will be questions in that area,  
5 criticality safety, in particular, that will require  
6 reference to classified information.

7 There is at least some possibility that  
8 some of the other topics may get into classified  
9 information, and in the Board's view a high likelihood  
10 that at least other categories upon public  
11 information, export control information, proprietary  
12 information, what have you, will come up throughout  
13 the hearing in discussing the various other topics  
14 that we've asked to be addressed.

15 So that is our view that it really would  
16 not be practical to try to make very limited parts of  
17 this hearing available to the public. We'd be  
18 constantly sending people out of the room.

19 There will, of course, for the benefit of  
20 the public, be at the very least an edited version of  
21 our final decision, possibly, the entire final  
22 decision depending on what level of detail the Board  
23 ultimately decides it needs to go in to prepare a  
24 complete explanation of its ruling and decision. And  
25 there obviously, in due course, will be a public

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1 version of the transcript after which we've had an  
2 opportunity to remove any information that is not  
3 public. Having real time observers from the public  
4 just doesn't seem to us to be practical.

5 Are there objections to that approach,  
6 first from the Applicant?

7 MR. SILVERMAN: Your Honor, we do not  
8 object. We agree completely. There will be some  
9 logistical questions and recommendations we have once  
10 we drill down a little on that, but we're completely  
11 in accordance with the Board on that.

12 CHAIRMAN RYERSON: Thank you, Mr.  
13 Silverman. NRC staff?

14 MS. SIMON: Your Honor, that's fine with  
15 us.

16 CHAIRMAN RYERSON: Okay. My third topic  
17 and maybe I should go through what I have and you may  
18 have some comment, Mr. Silverman, or the NRC staff,  
19 but my third topic pertains to logistics, some  
20 information for you about how we propose to proceed,  
21 some information that may be helpful to you and some  
22 questions that we will have, much of it flowing from  
23 the need to keep nonpublic information nonpublic  
24 throughout the proceeding.

25 So let me, if I may, run through a fairly

1 long list of things that I have of that nature and  
2 then we can see what is open or what questions some  
3 folks may have about it.

4 First of all, the simplest logistical  
5 things, I doubt that this is new information for you,  
6 Mr. Silverman, but everybody, the hearing will be held  
7 in Two White Flint on the third floor. For some time  
8 now, the only public access to the NRC headquarters  
9 complex has been through the other building, through  
10 One White Flint, so it's necessary for everyone to  
11 check in at One White Flint and then eventually come  
12 through the secure corridor to Two White Flint.

13 Another very basic simple logistical  
14 matter is that there is very, very limited parking at  
15 the NRC headquarters. People are encouraged to take  
16 public transportation, if that's possible. There's a  
17 Red Line right across from the One White Flint  
18 building. There is parking, I guess, usually still  
19 available in the Metro stop there. There's public  
20 parking and perhaps even at the Marriott. I don't  
21 know about that. Those are some of the options, but  
22 there's very little parking available in this  
23 building.

24 In terms of timing, we're going to start  
25 at 9 o'clock on Wednesday. We encourage you to get

1 here early, but not too early. Because of the  
2 likelihood that we're going to be discussing  
3 classified information, the Board's hearing room is  
4 going to be appropriately prepared for that and we  
5 will have guards at the only remaining entrances to  
6 the hearing room. And so I don't think it will be  
7 possible to get in before say 8 o'clock at the  
8 earliest. So be early, but not too early is the  
9 advice.

10 We will make available on the same floor  
11 as the hearing room, the third floor of Two White  
12 Flint, some space that the security folks have made  
13 available to us, a conference room that holds, I  
14 think, maybe ten people. It may be a little cozy in  
15 there if all of the GLE witnesses are there at the  
16 same time, particularly with some other people, but  
17 again, particularly if we have witnesses who may not  
18 all have a Q clearance or who have no need to know  
19 about certain aspects of this, we're going to  
20 obviously have to shuttle people back and forth. The  
21 Board will provide some people to act as escorts for  
22 the GLE folks.

23 The NRC staff and its witnesses, we  
24 assume, you can be on your own and figure out where  
25 you want to store your witnesses and where you want to

1 work with them or have them wait. Again, in some  
2 occasions, we'll normally probably empanel the  
3 witnesses on one topic together, most likely, but this  
4 is a case in which often probably will not want other  
5 panels sitting in the back of the courtroom if they  
6 really have no relation to the subject matter that's  
7 being discussed at the moment.

8 Let's see. I think all lawyers, both  
9 sides, should be prepared to be responsible for  
10 determining that whoever is with your group in the  
11 hearing room, has a need to know and an adequate  
12 security clearance at all times, again, given the  
13 subject matter that we're talking about and we will  
14 try to be as clear as possible about what that will be  
15 at any moment.

16 If the Applicant wants to carry into the  
17 NRC building secret, restricted data, and my guess is  
18 it would not be necessary because we have the  
19 classified -- the Board has -- the classified exhibits  
20 that have been submitted. And to the extent  
21 necessary, we can use those in the courtroom. They  
22 are secure, very close to the courtroom and we can get  
23 those if need be. So I think there really isn't a  
24 need to do that, but if you do want to bring in  
25 classified information, it's going to be necessary to

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1 get a courier letter, as soon as possible, to bring  
2 documents into the NRC building.

3 In the hearing room itself, there will be  
4 no laptops or cell phones. We will have guards who I  
5 guess can collect that, but rather than have a  
6 basketful of similar-appearing cell phones, leave them  
7 back in your car or in the office if that's possible.

8 Taking notes during the hearing is also  
9 going to raise an issue, given the likelihood of  
10 classified information being discussed. And if GLE  
11 and the staff want to bring their own authorized  
12 derivative classifiers, that's fine, otherwise, I  
13 think we're going to have to destroy any notes that  
14 are taken during the course of the hearing. We have  
15 a secure place where we could keep during breaks or  
16 overnight, perhaps, a very limited number of notes, an  
17 envelope size we can stick in a proper safe here. But  
18 in general, we're going to have to be very careful  
19 about not allowing -- the removal of notes.

20 What else is on my list? Quite a bit  
21 here. On the PowerPoint presentations, we are going  
22 to be able to use a projector because we can disable  
23 the recording feature of that projector, so we can  
24 even show classified information if need be on the  
25 projector. I think the parties would be well advised

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1 to have several paper copies for themselves, any  
2 PowerPoints and the like.

3 The Board will have, each Board member  
4 will have a full set of the voluminous exhibits and  
5 the testimony, so if you want to talk from a  
6 PowerPoint, we will have a copy in front of us. And  
7 that may be the easiest way to do it, although again,  
8 we can project as long as we are sure to disable the  
9 recording feature of our projector.

10 Handling exhibits actually may be much  
11 easier than some of you are used to in other cases.  
12 Unless we hear an objection, all submitted exhibits  
13 are going to be admitted and I doubt in this  
14 proceeding, as it's uncontested, any party is going to  
15 be raising an objection, but our intention is, unless  
16 there's an objection, to admit all exhibits. For the  
17 most part, you have complied with our orders and  
18 you've numbered them. They're clearly numbered. The  
19 Board sees no reason to renumber them all. I know  
20 that's been done in some cases for whatever reason,  
21 but they all have numbers and those can be the exhibit  
22 numbers as far as we're concerned.

23 Now the NRC staff testimony, I believe,  
24 does not have exhibit numbers. The GLE testimony is  
25 submitted with the exhibit numbers. I don't think it



1 makes a huge difference. We can cite NRC staff  
2 testimony as testimony. It's attested to by sworn  
3 declarations or affidavits. We can admit it in that  
4 fashion and I don't think we really have to go through  
5 the exercise of numbering it unless somebody feels  
6 strongly that we need to.

7 Two items that I think we will add as  
8 additional numbered exhibits are the exhibit lists  
9 themselves, the final versions of the exhibit lists  
10 themselves and again, this is contrary to practice,  
11 I think before many boards, but at least my own view  
12 is that the exhibit lists are some of the most useful  
13 documents to have in the record and unless there's  
14 some objection, we'll just add those -- respective  
15 exhibit list to your set of exhibits and give it the  
16 next consecutive number.

17 Moving on from explanation to some  
18 questions or directions, the parties should email the  
19 Board's law clerk, Anne Siarnacki -- I'm pretty sure  
20 you have her email address by now -- a list of all of  
21 the individuals, lawyers, support persons, witnesses,  
22 that you want to have in the hearing room at any point  
23 with their name, their clearance level, if any, and  
24 the organization that holds their clearance. And I  
25 believe if we have that information and I'm looking at

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1 our security advisor now, if we can prepare or Mr.  
2 Hase will prepare a visitor or access request form  
3 that will include that. So you don't have to  
4 individually prepare visitor access request forms.

5 MR. HASE: I would first like to have the  
6 last four of the Socials. We hold them. If NRC holds  
7 their clearance, they'd like the last four just in  
8 case there's a common name we can bounce off the --

9 CHAIRMAN RYERSON: Okay.

10 MR. HASE: Another organization, if you're  
11 bringing in witnesses for Argonne, they'll need a  
12 visit request, so they'll either have to get DOE,  
13 their security office at DOE to fill out a DOE  
14 equivalent visit request or you can send them a copy  
15 of a 277 and have them fill it out. But if you've got  
16 people coming in from -- that other organizations hold  
17 their clearance, they're going to have to get a visit  
18 request pass and since next week is a holiday, Linda  
19 -- PER SEC would prefer to have that probably by  
20 Thursday or Friday at the latest.

21 CHAIRMAN RYERSON: Everybody get that?

22 MR. SILVERMAN: I got it. This is Mr.  
23 Silverman. I did want to confer on that internally  
24 here when we get back just so I understand it. We've  
25 got a question or two about that here.

1 CHAIRMAN RYERSON: Okay. NRC staff?

2 MS. SIMON: Yes, Your Honor. We  
3 understand that.

4 CHAIRMAN RYERSON: Okay, it would also be  
5 helpful for us to have a complete understanding. We  
6 may be able to do it on the phone, of the types of  
7 nonpublic information that are involved in this  
8 proceeding. We know that there's classified  
9 information at the level of Secret restricted data.  
10 We know that there is sensitive unclassified  
11 information of a security nature, I believe, as well  
12 as sensitive unclassified information of a proprietary  
13 nature. We know that there is export control  
14 information.

15 Are there any other categories of  
16 nonpublic information that we need to be aware of,  
17 first starting with Mr. Silverman?

18 MR. SILVERMAN: I'm going to refer this to  
19 Ms. Julie Olivier to answer, if you don't mind, Your  
20 Honor.

21 CHAIRMAN RYERSON: Absolutely.

22 MS. OLIVIER: Your Honor, you've mentioned  
23 all the categories of information that GLE has  
24 submitted to the NRC.

25 CHAIRMAN RYERSON: So what I've said

1 covers it?

2 MS. OLIVIER: Yes, sir.

3 CHAIRMAN RYERSON: Okay, thank you. And  
4 NRC staff?

5 MS. SIMON: Your Honor, that covered the  
6 NRC staff as well.

7 CHAIRMAN RYERSON: Okay. And I should  
8 emphasize again, I should have mentioned this when we  
9 talked about note taking, because it may affect how  
10 you wish to take notes or not take notes. Again, I am  
11 hopeful, personally, and I think the Board is at least  
12 tentatively of a like mind, that our ultimate decision  
13 is going to look more like the recent decisions that  
14 you've seen from the Commission on mandatory hearings  
15 which is that there are certain statutory conclusions  
16 that the Board is required to reach, but that in  
17 reaching those, much as the Commission did not do in  
18 its mandatory hearing decisions, I don't think that  
19 the Board is required to have, as in a contested  
20 hearing, dozens and dozens or even hundreds of  
21 specific findings of fact.

22 And so we probably, and we will discuss  
23 this further at the time of the hearing, but it may  
24 not be necessary to submit to the Board findings of  
25 fact that would be similar to those that you might

1 submit in an adjudicatory type of hearing. We're  
2 going to analyze the testimony and we're going to  
3 identify some of the issues of concern to us and how  
4 we address those, but I do not see this Board most  
5 likely producing a decision similar to what some other  
6 Boards have done before, at least before the  
7 Commission's recent decision.

8 I know the Areva Board very specifically  
9 did have detailed findings of fact and obviously that  
10 was their prerogative. I suspect we're going to do it  
11 a little differently which may ease your burden about  
12 note taking. I'm not sure. I did want to emphasize  
13 that at least tentatively I think our decision will  
14 look a little more like the Commission decisions than  
15 the Areva Board's decisions.

16 Another logistical matter on my list is  
17 the order of topics. It seems to me there's -- as far  
18 as I'm aware there's no reason not to go through the  
19 order of topics one through six. I mean if we had a  
20 whole bunch of witnesses who were focused on topics  
21 one and six, we could take those together or  
22 something, but I didn't see that looking at the  
23 witness list at least. So our proposal would be that  
24 we just go through in order.

25 Mr. Silverman, does that make sense from

1 your standpoint?

2 MR. SILVERMAN: Yes, it does, Your Honor.

3 CHAIRMAN RYERSON: Okay, NRC staff?

4 MS. SIMON: Your Honor, could we just have  
5 a moment, please?

6 CHAIRMAN RYERSON: Sure.

7 (Pause.)

8 MS. SIMON: Your Honor, that's fine with  
9 the staff.

10 CHAIRMAN RYERSON: Okay, we will plan on  
11 that then. Another question I have, you don't know  
12 how long, the parties do not know how long the  
13 proceeding will lasts because much of the proceeding  
14 depends on the Board and the questions that we have.  
15 But you do have, each party, I believe, has prepared  
16 presentations on each of the six topics. We have, I  
17 think, probably 12 presentations.

18 Starting with you, Mr. Silverman, do you  
19 have a sense of how much time is involved in the six  
20 sort of prepared presentations that your side will be  
21 making?

22 MR. SILVERMAN: I do, to some degree, Your  
23 Honor. I know -- I would say the larger -- the ones  
24 that generally relate to testimony where we put in  
25 more testimony, large amounts of pages, somewhere

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1 between 25, 30, maybe 35 minutes tops, and then others  
2 much shorter. For example, I can tell you on Issue 1,  
3 we're not going to get into any classified  
4 information, but I do expect that that PowerPoint  
5 presentation will take a good half hour and perhaps a  
6 little bit longer and the same thing for Issue 6 which  
7 is the Environmental Monitoring Program. But then  
8 we'll have others that are considerably shorter.

9 We're really trying to keep kind of a half hour  
10 as a threshold.

11 CHAIRMAN RYERSON: Okay, so you would say  
12 that without being strictly limited to it, maybe three  
13 hours in total for your presentations?

14 CHAIRMAN RYERSON: I would say that ought  
15 to be ample.

16 CHAIRMAN RYERSON: Okay, and NRC staff, is  
17 that -- and I'm not holding you to a specific time,  
18 but does that seem like maybe a realistic outer limit  
19 for your presentations?

20 MS. SIMON: Your Honor, first, we are  
21 assuming that you mean -- assuming time uninterrupted  
22 by questions, is that correct?

23 CHAIRMAN RYERSON: Correct. Assuming we  
24 don't have questions during the -- we may, but if we  
25 had no questions, how long would it take?

1 MS. SIMON: We would estimate between  
2 three and four hours total.

3 CHAIRMAN RYERSON: Okay. So in total,  
4 we're talking about one day without any Board  
5 questions. Okay.

6 I'm sorry, I think I'm getting a call from  
7 our security advisor, Judge Baratta. We may put you  
8 on mute for just a second, but not yet.

9 Okay, we will see how that goes. They  
10 won't all be at one time and if we sense that it might  
11 be productive for everyone to sort of move quickly  
12 through some of them, we can do that as we progress.  
13 But that's certainly a reasonable start.

14 What else is on my list? Transcript  
15 corrections. Logistically, because the transcript  
16 here will have presumably classified information and  
17 other nonpublic unclassified information, we expect to  
18 have the court reporter working here in our offices to  
19 prepare a transcript, an additional transcript and  
20 ultimately there will be a publicly-available  
21 transcript. That raises a question of if the parties  
22 would like the opportunity to suggest transcript  
23 corrections, how do we do it? Now one way is for the  
24 parties to waive transcript corrections which is, of  
25 course, as I'm sure you know, the general rule at

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1       least under depositions in the federal rules now,  
2       unless you specifically request the opportunity, you  
3       waive.

4               Otherwise, I guess one option would be to  
5       require an appropriately cleared person from each  
6       party to come and read the transcript in its entirety  
7       here in our offices and hopefully agree on any  
8       transcript corrections. I'm not sure we necessarily  
9       need to decide that today, but we should decide it  
10      before the hearing is over.

11             Mr. Silverman, I'll start with you, any  
12      thoughts about that?

13             MR. SILVERMAN: If you'll hold one second,  
14      Your Honor.

15             (Pause.)

16             Your Honor, we would like to think that  
17      through a little bit more and get back to the Board  
18      and the parties, but we'll try to do that very  
19      expeditiously.

20             CHAIRMAN RYERSON: Okay. Any thoughts on  
21      that subject from the NRC staff?

22             MS. SIMON: Yes, Your Honor. The staff  
23      would prefer not to waive the corrections and we would  
24      be happy to provide probably two people with  
25      appropriate clearance, if that would be acceptable.

1 CHAIRMAN RYERSON: Okay.

2 MR. SILVERMAN: Your Honor, we don't want  
3 to waive either actually, I should make that clear.  
4 But there may also be -- this is Mr. Silverman again,  
5 obviously, there may be -- I'm not sure what Mr. Hase  
6 will have to say about this. I'm sure he can comment,  
7 but I would think we could segregate the classified  
8 portion on Issue 1 from everything else. And then  
9 there are alternatives, I believe, even for the  
10 classified portion which would be one alternative, as  
11 you indicated, is to come to your offices. Another  
12 is, I mean there are means of a staff and the  
13 Applicant transmitting this information and they  
14 transmit classified information on a routine basis.  
15 We'd like to think that through a little bit more.

16 CHAIRMAN RYERSON: Okay. Somehow I sense  
17 that there would not be a groundswell of support for  
18 waiving of anything, so we'll work that out as I said.

19 I frankly was not expecting you would  
20 probably waive, but it is important to recognize, I  
21 think, that in a noncontested hearing of this nature  
22 there is sort of a progression of information that the  
23 Board relies upon. We start with the staff documents  
24 or even the application before the staff documents and  
25 then we have our questions which are answered under

1 oath and then we have the prefiled written testimony  
2 and so forth. So there's a large body of information  
3 that the Board relies upon, that reviews and relies  
4 upon, and it's not just likely to turn on a word or  
5 two in the transcript. But in any event, we'll deal  
6 with that in due course.

7 By the way, I am informed that there is a  
8 good chance if you want to keep notes during the  
9 hearing, we will be able to store them, a reasonable  
10 quantity, and as long as we treat them as secret,  
11 restricted data, the highest possible level, we could  
12 eventually get them to you and they could be reviewed  
13 by a classifier at that point.

14 MR. SILVERMAN: Your Honor, if I may,  
15 Julie Olivier?

16 MS. OLIVIER: Your Honor, I just wanted to  
17 point out that two of our witnesses are qualified  
18 derivative classifiers.

19 CHAIRMAN RYERSON: Okay.

20 MS. OLIVIER: And one of our witnesses  
21 also is a proprietary ECI and SRI expert, so for DOE,  
22 at least, we'll be able to do that at the hearing and  
23 then possibly, if we have SRD notes, just have you  
24 store them for us.

25 CHAIRMAN RYERSON: In real time, right?

1 MS. OLIVIER: Yes.

2 CHAIRMAN RYERSON: That will be great.  
3 That would probably work very well.

4 All right, I have a fourth topic that I'd  
5 like to discuss briefly, the fourth topic is this, are  
6 there any implications of D.C. Circuit decisions  
7 concerning the waste confidence rule for this  
8 proceeding?

9 The staff, the NRC staff, has conceded in  
10 some recent filings in reactor cases which, of course,  
11 are a much different part of the fuel cycle. But in  
12 reactor cases, I believe the staff has now conceded  
13 that a license could not issue at this time because  
14 for a reactor, what you do with the high level waste  
15 is certainly something that should be considered as  
16 part of the NEPA analysis and since no one has done a  
17 NEPA analysis, because they're relying upon the  
18 generic analysis done by the Commission, there are no  
19 present analyses and there is at the moment apparently  
20 no valid generic analysis.

21 Now we are, I guess, really two steps  
22 removed in fuel cycle from that. We're talking about  
23 enrichment of uranium which, at least as I understand  
24 it, then goes into fuel rods which then go into  
25 reactors which then become high level waste at some

1 point.

2 So the question is, is there any relevance  
3 to the D.C. Circuit decision to this proceeding? I  
4 mean we are obviously -- you are hopeful, I assume,  
5 Mr. Silverman, that at the end of the day the Board  
6 makes a recommendation or directs or authorizes the  
7 staff to issue a license which would probably be a lot  
8 sooner if it occurs than any other reactor licenses  
9 that are under consideration. And so it would be  
10 helpful to the Board to have the parties' views on  
11 what, if any, implications there are of the D.C.  
12 Circuit decision. I would suggest that's probably  
13 something that would be best in the form of a legal  
14 analysis, although it could also be addressed by some  
15 of the NEPA witnesses or both, I suppose.

16 Let me start with the NRC staff because  
17 it's the staff's EIS that's involved. Would you find  
18 it possible within -- before or at the time of the  
19 hearing to submit a legal analysis of that point?

20 MS. SIMON: Your Honor, could we have a  
21 minute to confer on that, please?

22 CHAIRMAN RYERSON: Sure.

23 (Pause.)

24 MS. SIMON: Your Honor, we can provide a  
25 legal analysis before the hearing.

1 CHAIRMAN RYERSON: Thank you very much.  
2 Mr. Silverman, did you want to provide something on  
3 that subject?

4 MR. SILVERMAN: I am sorry, Your Honor,  
5 can you hear me?

6 CHAIRMAN RYERSON: Yes.

7 MR. SILVERMAN: I'm sorry. Yes, we'd be  
8 happy to and by the time of the hearing would be  
9 great.

10 CHAIRMAN RYERSON: Thank you very much.  
11 All right, let's see, Judge Jackson, anything that you  
12 wanted to raise at this point?

13 ADMIN. JUDGE JACKSON: No, I think you've  
14 covered the items very well, Judge Ryerson.

15 CHAIRMAN RYERSON: Thank you. Judge  
16 Garcia?

17 ADMIN. JUDGE GARCIA: This is Judge  
18 Garcia. I have nothing to add today.

19 CHAIRMAN RYERSON: Thank you. Let's go  
20 to the Applicant. Mr. Silverman, are there other  
21 matters we need to be discussing or questions you have  
22 at this point?

23 MR. SILVERMAN: Yes, probably.

24 CHAIRMAN RYERSON: I could go to the staff  
25 first if you want a moment to think.

1 MR. SILVERMAN: No, no. I'm good. I'm  
2 happy to do that. I'm going to skip every item that  
3 you identified where we have no issue or question. I  
4 will say we really appreciate having that conference  
5 room space. One of the things we were concerned about  
6 is where we would frankly house our people, witnesses  
7 who don't have clearances when we're working on Issue  
8 1. So that's great.

9 Bear with me a minute. With respect to  
10 the sixth item I think you mentioned, GLE individuals  
11 carrying in secret, restricted data and needing a  
12 courier letter, I think there is an alternative to  
13 that which is to transmit through the appropriate  
14 secure channels anything we might want to transmit to  
15 the NRC staff, to the security staff, as we did with  
16 the actual filing of our testimony to the staff  
17 lawyers.

18 CHAIRMAN RYERSON: Yes, I am being  
19 informed that that is the preferred way to do it.

20 MR. SILVERMAN: That is our preferred way  
21 also. And we're going to want to do that because we  
22 have -- some of our witnesses are certainly going to  
23 be dealing with classified information. Is probably  
24 going to have some notes on his PowerPoint slides and  
25 that kind of thing and he wants to have those with

1 him. So we'll handle that in accordance with regular  
2 channels.

3 Also with respect to computer, cell  
4 phones, and the like, I would think we could leave  
5 those in that room that you've made available to us.

6 MR. HASE: That is if they're willing to  
7 assume custody for their stuff so we don't have to put  
8 a guard in front of it.

9 CHAIRMAN RYERSON: Yes, there will not be  
10 a guard in front of that room, although I believe it's  
11 in the security area. But as long as we are not  
12 assuming custody of your -- guaranteeing the return of  
13 your possessions, they should be safe there, I think.

14 MR. SILVERMAN: Okay, thank you. We  
15 talked about the fact that if we do take notes, we'll  
16 have individuals there who are qualified and capable  
17 of reviewing those and deciding whether we can leave  
18 with them or whether they have to stay at the NRC. If  
19 they stay at the NRC again, they can be transmitted  
20 back to us through the same secure channels.

21 CHAIRMAN RYERSON: Excellent.

22 MR. HASE: An we will have a copy of the  
23 classification guide available.

24 MR. SILVERMAN: Great. I am sure some of  
25 our people know that inside and out, but that will be



1       useful.

2                   PowerPoints, we're fine on that. I was  
3       going to -- it was our recommendation that to the  
4       extent the Board was comfortable with it, that it  
5       would be -- it would probably facilitate the whole  
6       proceeding if it was possible for most or all of those  
7       witnesses to be able to just get through those  
8       PowerPoints uninterrupted. It's your prerogative, of  
9       course, to raise questions at any time, but I think if  
10      it's possible to let those presentations go forward,  
11      get them completed and then go back with questions, it  
12      would probably speed things up.

13                   Bear with me a second. I'm going to go on  
14      mute for one second.

15                   CHAIRMAN RYERSON: Sure.

16                   (Pause.)

17                   MR. SILVERMAN: All right, I was concerned  
18      about the issue of -- or I didn't really understand  
19      the issue of visit request passes, but I've been  
20      advised we can handle that, no problem.

21                   CHAIRMAN RYERSON: Good.

22                   MR. SILVERMAN: Bear with me.

23                   (Pause.)

24                   One more moment, Your Honor.

25                   CHAIRMAN RYERSON: Certainly.

1 (Pause.)

2 MR. SILVERMAN: Your Honor, the Applicant  
3 doesn't have anything else. Thank you very much.

4 CHAIRMAN RYERSON: Okay, thank you, Mr.  
5 Silverman.

6 NRC staff, Ms. Simon?

7 MS. SIMON: Yes, Your Honor. We just have  
8 a couple of things. The first one was we'd like to  
9 just get a clarification on the visit request for the  
10 outside contractors who will be coming in, to whom  
11 they are to submit that?

12 MR. HASE: If they're coming in on our  
13 behalf, basically, try to get a 277 or you can either  
14 -- they're going to need to fill out the information  
15 with their security office. And if you can get it to  
16 me, I can get it to Linda Watson.

17 MS. SIMON: Okay, is this Doug?

18 MR. HASE: Yes.

19 MS. SIMON: Okay.

20 MR. HASE: But they're going to have to  
21 fill out the -- DOE has their form. If you tell your  
22 witnesses, I need a classified visit request from your  
23 security office, they fill it out, you get it to us,  
24 I'll get it to PER SEC.

25 MS. SIMON: Okay, thanks. We also have a

1 couple of contractors on topic three from the Center  
2 for Nuclear Waste Regulatory Analysis and so they're  
3 also under contract with NRC. So they would go  
4 through the same --

5 MR. HASE: Are they cleared?

6 MR. JOHNSON: I don't know if they have Q  
7 clearances and we're not sure about the ANL contractor  
8 as to whether he has a Q clearance. So they may be  
9 restricted from certain parts of the hearing.

10 MS. SIMON: That gets to our other  
11 question which had to do with -- Judge Ryerson, at the  
12 outset you mentioned that perhaps some of the other  
13 topics might get into classified information. Do you  
14 have any idea at this point which ones those might be?

15 CHAIRMAN RYERSON: No, it is just that we  
16 don't want to be precluded from asking about whatever  
17 we need to ask about.

18 MS. SIMON: Okay, with the understanding  
19 from the staff that again, some of the witnesses on  
20 topics other than topic one don't have Q clearances.

21 MR. HASE: And we need to be clear that  
22 there's two different issues that are related.  
23 There's the VARs, there's the Visit Access Request  
24 that everybody gets into, both cleared and uncleared  
25 witnesses are going to have to go through VARs. For

1 the cleared ones, if the NRC holds their clearances,  
2 then that's why we need the name, like for example,  
3 the last four of their Social so we can verify  
4 clearances.

5 If you know you've got uncleared  
6 witnesses, we still need their names and  
7 organizations, but you just say uncleared, and they  
8 get the red escort required badges as opposed to the  
9 blue, they can go pretty much anywhere badge.

10 MS. SIMON: Okay, thank you.

11 MR. HASE: You need to make sure you  
12 distinguish between cleared and uncleared visitors,  
13 but all the witnesses, everybody is going to need to  
14 get into VARs.

15 CHAIRMAN RYERSON: All right, we talked  
16 earlier about getting a list of the -- essentially  
17 everybody who is coming with their name, clearance,  
18 agency, who holds a clearance and the last four of the  
19 Social, if it's us, I guess.

20 What's a reasonable date to get that? I  
21 guess it would be helpful from our standpoint to have  
22 it as soon as possible.

23 Mr. Silverman, is there a date that you  
24 think you can promise that?

25 MR. SILVERMAN: How about this Monday?

1 CHAIRMAN RYERSON: I think that would be  
2 fine.

3 NRC staff?

4 MS. SIMON: Your Honor, can we just have  
5 a moment, please?

6 CHAIRMAN RYERSON: Sure.

7 (Pause.)

8 MS. SIMON: Your Honor, we can provide  
9 that information by the end of the day on Monday.

10 CHAIRMAN RYERSON: Excellent. Monday is  
11 what, July 2nd, correct? Yes.

12 All right, again, any other issues that  
13 you have, Judge Jackson?

14 ADMIN. JUDGE JACKSON: None from me.

15 CHAIRMAN RYERSON: Judge Garcia?

16 ADMIN. JUDGE GARCIA: Not at this time.

17 CHAIRMAN RYERSON: Okay. Last chance for  
18 either of the parties, here. You're all set for the  
19 moment?

20 MR. SILVERMAN: Your Honor, I just wanted  
21 to mention, I was asked to mention this, that we'll  
22 have our security manager who is very experienced in  
23 all the security, in the room and of course, has her  
24 clearances, and she'll be also available to assist in  
25 making these judgments, if, for example, we start to

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1       stray into an area that might be getting close to  
2       classified information.

3                   CHAIRMAN RYERSON:   Excellent, that will be  
4       fine.   Very good.   I think we are done.   Thank you  
5       all.   We stand adjourned and we look forward to seeing  
6       you on July 11th.

7                   (Whereupon,       at     2:51     p.m.,       the  
8       teleconference was concluded.)

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