

October 25, 2004

Mr. Raymond Shadis
Staff Technical Advisor
New England Coalition
Post Office Box 98
Edgecomb, ME 04556

Dear Mr. Shadis:

On September 10, 2004, we received your supplement to your petition filed under Section 2.206 of Title 10 of the Code of Federal Regulations dated April 23, 2004. You provided supplemental information regarding your request that, until such time as the Nuclear Regulatory Commission (NRC) has verified that Entergy Nuclear Vermont Yankee LLC and Entergy Nuclear Operations, Inc. (Entergy) has rendered an accurate and NRC verified account of the location, disposition, and condition of all irradiated fuel, including fuel currently loaded in the reactor core, that the NRC order a halt to all fuel movement at the Vermont Yankee Nuclear Power Station (Vermont Yankee). I would like to express my appreciation for your effort in bringing these matters to the attention of the NRC.

In a teleconference on September 22, 2004, you discussed with our Petition Review Board (PRB) your supplemental letter. You clarified that in your opinion, the inspections to date to verify assembly locations and numbers were not of the veracity to ensure that the all fuel rods or pieces have been correctly identified and accounted for. In addition, you stated that the identification of the fuel rod pieces was questionable. That teleconference has been transcribed and the transcription will be considered a supplement to the petition. We have enclosed a copy of the transcript of this call for your information. The results of that discussion will be considered in the PRB's determination regarding your request.

To assist in its review of your concerns, the NRC has issued a letter dated October 5, 2004, to Entergy requesting that the following information be provided within 30 days of receipt of the letter:

- (1) Describe actions to confirm that Entergy has located the misplaced pieces. In particular, other than the comparison of the lengths of the pieces, what other evidence does Entergy have that the misplaced pieces were located? For instance, can Entergy verify that the diameters of all the broken pieces are consistent with the fuel rod pieces that were missing. General Electric makes a distinction between pieces and segments (i.e., segments are precut sections of fuel rods). Have any pieces or segments of irradiated fuel rods ever been sent to General Electric at Vallecitos or other facilities and has Entergy ever received any irradiated fuel pieces or segments from Vallecitos or other facilities? Can Entergy confirm the sections of fuel rods in the canister were pieces and not segments?
- (2) Describe Entergy's process for the movement and control of fuel rods during your reconstitution efforts. How has Entergy verified that individual fuel rod movements were properly documented and controlled? How have all individual rods removed from an assembly, or moved from one assembly to another been accounted for? Describe any

other conditions not addressed in the above questions, where fuel has been handled as less than complete assemblies (e.g., pieces, segments, pellets, rods, etc.) and how this fuel was accounted for. How many assemblies have been involved in the reconstitution efforts?

(3) Provide the root-cause analysis for this event.

We reviewed your concern in your supplemental letter regarding material misrepresentation to the NRC. We have concluded that the statements in the March 26, 2004, email from David Mannai to the NRC resident inspectors do not constitute a "material false statement." Mr. Mannai's email provided the information available, at the time it was sent, concerning a visual verification of the fuel rod pieces and clearly indicated that additional effort was planned to get photographs of the fuel rod pieces during fuel inspections. The information provided reflected an observation during the initial phase of the ongoing activities planned by Entergy. At the time of the resident inspectors' receipt of the email, the inspectors and Entergy both recognized the need for more definitive proof that the fuel rod pieces were in the container. Entergy planned to perform this more definitive look at the time of their upcoming refueling outage. As such, while the performance of Entergy's planned activities later proved that the statement in the email was incorrect, the statement was not "material" in that it was not used as a basis to conclude that the fuel rod pieces were in the container. Also, the NRC saw no indication that Mr. Mannai was trying to mislead the NRC with regard to the location of the fuel rod pieces.

We have extended our planned review time for review of your petition. We anticipate issuing a proposed Director's Decision by December 30, 2004. This will allow us time to consider your supplemental information. Alan Wang is the petition manager for your petition and if you have any additional comments or questions, please contact Mr. Wang at 301-415-1445.

Sincerely,

/RA/

James E. Lyons, Deputy Director
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Enclosure: As stated

cc w/encl: See next page

October 25, 2004

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Sincerely,

/RA/

James E. Lyons, Deputy Director
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

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Package: ML042800306

Incoming: ML041180245 dated 4/23/04; Supplement: ML042680084 dated 9/10/04

Response: ML042800284 w/enclosure

NRR- 106

OFFICE	PDI-2/LA	PDIV-2/PM	PDI-2/PM	PDI-1/PM	REG/DRP/SC	PDI-2/VYSC	DLPM/DD
NAME	CRaynor	AWang	REnnis	DSkay	CAnderson	AHowe	JLyons
DATE	10/15/04	10/14/04	10/15/04	10/15/04	10/14/2004	10/18/2004	10/25/04

OFFICIAL RECORD COPY

LETTER TO RAYMOND SHADIS REGARDING 2.206 PETITION ON VERMONT YANKEE
SPENT FUEL INVENTORY

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Vermont Yankee Nuclear Power Station

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Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

Title: New England Coalition
2.206 Petition

Docket Number: 50-271

Location: (telephone conference)

Date: Wednesday, September 22, 2004

Work Order No.: NRC-034

Pages 1-18

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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OFFICE OF INVESTIGATION

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NEW ENGLAND COALITION

2.206 PETITION

Docket No. 50-271

-----X

Wednesday,

September 22, 2004

Telephonic Conference

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

(10:00 a.m.)

MR. BLOCK: Who's on, just you and me?

MR. CHATTIS: Oh, that's Mr. Block.

MR. BLOCK: Yes, and Mr. Chattis as well.

MR. CHATTIS: Well, we have Jim DeMantonis from Entergy auditing this call and Paul Blanche, yourself and I are on at this point waiting for NRC.

MR. ANDERSON: Yes, this is Cliff Anderson in Region 1, both sitting in on the call.

MR. CHATTIS: Good morning, Cliff.

MR. ANDERSON: Yes, good morning, Ray.

MR. BLOCK: Good morning, Cliff.

MR. ANDERSON: Good morning. Who's this?

MR. BLOCK: John Block.

MR. ANDERSON: Yes, hi, John.

MR. MENIGH: Also Gabe Menigh from Entergy.

MR. BLANCHE: And Paul Blanche here, too.

MS. DESLUCAS: Rhonda Deslucas and Mike Hamus from Entergy.

MR. WALK: Hello, Raymond?

MR. CHATTIS: Good morning, yes?

MR. WALK: Good morning. I won't put you on the speaker.

MR. CHATTIS: That's fine.

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1 MR. WALK: Mr. Chattis?

2 MR. CHATTIS: Yes.

3 MR. WALK: This is Alan Walk. I'm the
4 petition manager. I guess before we start, I'd just
5 like to have everyone introduce themselves. If you
6 would just let us know who's on the line from your
7 side.

8 MR. CHATTIS: Certainly. First off, this is
9 Raymond Chattis with the New England Coalition, and I
10 have with me this morning Jonathan Block, who is a New
11 England Coalition member and has one particular aspect
12 of this to address, and Mr. Paul Blanche, who is
13 advising and who participated in the last Petition
14 Review Board.

15 All right. Paul, are you on the line?

16 MR. BLANCHE: Yes, I am on the line.

17 MR. CHATTIS: Hey, Paul, and Mr. Block?

18 MR. BLOCK: Yes, I am on the line as well.
19 Good morning.

20 MR. CHATTIS: All right, and I'll just let
21 everyone else introduce themselves.

22 MR. LYONS: Hi, I'm Jim Lyons. I'm the
23 Deputy Director of the Division of Licensing.

24 MR. INNES: Rick Innes, products manager for
25 Vermont Yankee.

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1 MR. LILLY: Peter Lilly, general counsel's
2 office.

3 MR. HOLDEN: Dennis Holden, project manager,
4 NRR.

5 MS. STAY: Dawn Stay, Cornair.

6 MR. WOLF: Dan Wolf, and we expect Herb
7 Percal from PRB.

8 MR. CHATTIS: Also, do we have anybody from
9 the region?

10 MR. ANDERSON: Yes, this is Cliff Anderson
11 from Region I.

12 MR. CHATTIS: Do we have anybody from the
13 licensee?

14 MR. TENNIS: Yes, this is Judy Tennis,
15 manager. I believe we have Mave Nye from our reactor
16 engineering organization, Rhonda DeLucas and Mike
17 Hamer from our licensing organization.

18 MR. WALK: Alan, I should also add that we
19 may also be hearing from Deborah Katz, who has some
20 late information on this. I'm not dead certain we're
21 going to get a call from her, but she will want to
22 speak.

23 MR. CHATTIS: All right. Jim, do you want
24 to --

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1 MR. LYONS: Yes, let me start off. This is
2 Jim Lyons. I'm the PRB Chairman. The subject of this
3 teleconference is a 2.206 petition submitted by the
4 New England Coalition dated April 23, 2004 and
5 supplemented on September 10, 2004.

6 The petitioners requested that the NRC halt
7 all fuel movement from Vermont Yankee until such time
8 as Entergy, the licensee, has rendered, and the NRC
9 has verified, an accurate account of the location
10 disposition and condition of all irradiated fuel,
11 including fuel currently loaded in the reactor core.
12 A supplement dated September 10, 2004 provided
13 additional information but did not change the
14 requested actions.

15 The purpose of this teleconference is to
16 allow the petitioner to add the Petition Review Board.
17 This is an opportunity for the petitioner to provide
18 additional explanations with support with regards to
19 the supplemental information provided on September 10.
20 This is also an opportunity for the staff and licensee
21 to ask any clarifying questions.

22 The purpose of this teleconference is not to
23 debate the merits of the petition. The PRB meeting
24 previously determined that the NRC will delay the
25 director's decision to allow the NRC additional time

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1 to address the petitioner's supplemental comments.
2 The NRC has also referred a new allegation in the
3 supplement to the appropriate channels.

4 Again, the PRB meeting today will not
5 determine whether we agree or disagree with the
6 content of the petition.

7 The teleconference is being transcribed so
8 it will help if anyone making a statement first state
9 their name clearly. The transcript will become a
10 supplement for the petition and will be made publicly
11 available.

12 We have requested that the petitioners keep
13 their remarks to about 30 minutes. The NRC will issue
14 an acknowledgment letter to the petitioner to document
15 the new schedule. The petition manager will keep the
16 petitioner and licensee periodically informed of the
17 progress of the staff review.

18 So with that, I would turn it over to you,
19 Mr. Chattis.

20 MR. CHATTIS: Thank you. One very important
21 point, you stated that the New England Coalition did
22 not change the requests from the April petition by the
23 supplement. I'd like to clarify that, if I may.

24 MR. LYONS: Sure.

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1 MR. CHATTIS: Following or during the PRB
2 meeting on the April submission, we were asked to
3 spell out what we meant by verify and the request for
4 NRC to verify the special nuclear materials inventory.
5 At that point, we said if NRC would write a letter, in
6 essence certifying that the licensee had
7 satisfactorily completed an inventory, that that would
8 do the trick.

9 By this letter, we mean to reassert or
10 reinforce our original request and to get a little
11 clearer in terms of verification. We understand that
12 the licensee did an inventory of the spent fuel by
13 provisionally confirming the presence of the fuel
14 assemblies in each storage cell.

15 However, that is some 2700 assemblies, by
16 our understanding. However, there was not a
17 confirmation made that these assemblies were full,
18 that there were not pins missing from the assemblies
19 or that there were not broken fragments contained in
20 those assemblies.

21 What we are asking for here in terms of a
22 complete inventory and one verified is that NRC verify
23 by inspection whether or not those cells and those
24 fuel assemblies are indeed full and complete or broken

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1 or partial as they are represented in the inventory
2 documents.

3 MR. LYONS: Okay.

4 MR. CHATTIS: So, and I guess I'm presuming
5 that because NRC did an audit type verification, in
6 other words, they inspected a sampling of the storage
7 cells to verify that the correctly numbered, you know,
8 fuel assemblies were identified in those cells, that
9 that action being complete satisfied NRC's
10 understanding of what we meant by a complete
11 inventory.

12 So now I am trying to make it more clear
13 that since what the licensee lost control of in the
14 first past was not fuel assemblies. What they lost
15 control of were fuel fragments, or pieces, that the
16 inventory should be detailed enough to assure that
17 there are not additional fuel fragments or pieces
18 missing from these assemblies.

19 So, I think what it would require would be
20 at least pulling a representative sample of the 2700
21 assemblies and determining if they are full, complete,
22 partial, whatever the inventory documents say they
23 are.

24 I'm wondering if you have questions about
25 that. So, if we can get clear as to what it is we're

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1 asking for as distinguished from what we settled on in
2 the initial petition.

3 MR. LYONS: I think we understand that.

4 MR. CHATTIS: Okay.

5 MR. LYONS: And everyone needs to identify
6 themselves for the benefit of the court reporter.

7 MR. CHATTIS: I'm sorry. Did I fail to do
8 that? This is Ray Chattis.

9 The other thing that I want to emphasize is
10 that the question is raised here of whether or not NRC
11 can place complete reliance on the representations of
12 the licensee with respect to the disposition of these
13 special nuclear materials. We tried to make the point
14 in our petition by including the e-mail correspondence
15 from Entergy to the resident inspector of March 26,
16 asserting that the spent fuel had been confirmed,
17 visually confirmed to be in its open container on
18 March 26 as an indicator.

19 I think in terms of what evidence is and
20 what evidence demands, with your permission I'd like
21 to have Mr. Block address that question.

22 MR. LYONS: Yes, we would be willing to hear
23 from Mr. Block.

24 MR. LEWIS: This is Steve Lewis. Mr. Block,
25 are you functioning as the attorney for the coalition?

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1 MR. CHATTIS: No, he is not. I'm sorry to
2 answer the question for him. Go ahead, Mr. Block.

3 MR. BLOCK: Thank you. This is Jonathan
4 Block. No, I'm not functioning as an attorney.
5 Rather, I'm a member of the New England Coalition, and
6 Mr. Chattis has used me as a consultant in the past,
7 and it's in that capacity that he asked me to make a
8 comment if I had an interest in it. So, with your
9 permission, could we go forward on this?

10 MR. CHATTIS: Yes, that's fine.

11 MR. BLOCK: As I understand the situation,
12 the event that took place was an e-mail on or about
13 March 26 in which a representation was made by the
14 licensee concerning whether the fuel had been located.
15 On that basis, the public was addressed by a member of
16 the NRC, providing assurances that the fuel had been
17 located at a public meeting.

18 I think that this is prima facie evidence
19 that, how should we put it, that it would be imprudent
20 to rely on the licensee's representations in this
21 matter further. What I mean by that is that it's not
22 a circumstance or an inference that's involved. It's
23 not circumstantial evidence. It's not inferential
24 evidence, but rather direct evidence of less than
25 absolute candor of the sort that would be required in

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1 terms of not making material misrepresentations to the
2 regulator.

3 I would think that given that the NRC is now
4 being asked to rely on the licensee's representation
5 that the container that was shipped in, in fact, and
6 located there was in fact not full when it came or
7 full when it came. These are things that are now in
8 doubt. Unfortunately, the NRC is put in a position of
9 relying on the representation in the same incident or
10 continuing incident of somebody who has just made a
11 material misrepresentation to them.

12 So, it's my humble opinion, as both an
13 ordinary citizen but also somebody who has some
14 familiarity with the law, that the agency is being put
15 in the position of having to rely for assurances about
16 the actual accounting of the missing fuel on someone
17 who has just made a misrepresentation to them about
18 whether the fuel, in fact, was there or not.

19 That was the opinion that I had to offer.
20 I hope it's useful to you in some way.

21 MR. LYONS: Okay, thank you. This is Jim
22 Lyons again.

23 MR. CHATTIS: Thank you, Jim. This is Ray
24 Chattis. Are you all clear on the container to which
25 Mr. Block was referring?

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1 MR. LYONS: Yes, this is Jim Lyons. Yes, we
2 are.

3 MR. CHATTIS: Okay. This would be the
4 container described as a stainless steel tube, three
5 feet in length and three inches in diameter, sealed on
6 both ends. The reason that I want to be clear on that
7 is because of our concern expressed in part in our
8 supplemented petition that it was the practice of
9 licensees to send the fuel for reexamination and
10 analysis out to General Electric in Valacetis,
11 California.

12 We are uncertain whether any of that fuel
13 was returned to licensees for storage, and if so, when
14 it was returned to licensees for storage. At this
15 point, so far as we know, there is no documentation or
16 tracking or positive material identification of this
17 particular cylinder. I had been hoping the Deborah
18 Katz would be joining us at this point, but I will go
19 ahead with my understanding of what she would be
20 bringing forward, and then if she does join us, you
21 know, by the time we're done, she can confirm it.

22 Basically, it is that Ms. Katz represented
23 to me this morning that she had spoken with the
24 resident inspector at Vermont Yankee at the time that
25 the fuel was reported missing and that he represented

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1 to her that Vermont Yankee had called down to Yankee
2 Row and inquired if they had any knowledge of the
3 location of this fuel.

4 Does that tone signal indicate that we have
5 another call on the line?

6 MR. LYONS: We didn't hear it. Did someone
7 just join the bridge?

8 MR. CHATTIS: I guess not.

9 MR. LYONS: Okay.

10 MR. CHATTIS: Our concern is that by
11 anecdote by the record of the investigation at
12 Millstone, it appears that there was in the historic
13 time frame, 1979, late 1970's, early 1980's, what
14 appears to be fairly heavy traffic in fuel moving
15 around to and from New England plants.

16 So, what it indicates to us is the necessity
17 for a very careful examination of the origin of this
18 cylinder and the time frame in which it appeared.

19 MR. LYONS: I think we understand that.

20 MR. BLANCHE: This is Paul Blanche. I have
21 a brief statement I'd like to make and I guess more of
22 a question. Can you hear me?

23 MR. CHATTIS: Yes, we can hear you.

24 MR. BLANCHE: Okay. Ray and John, I heard
25 words that you mentioned about the licensee providing

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1 inaccurate, incomplete information. Is that an
2 allegation that is either 50.5 or 50.9 that you're
3 making here?

4 MR. LYONS: I had simply provided that
5 information to the Petition Review Board. I believe
6 they have passed it on as an allegation. I'm not
7 certain, you know, what part of 10 C.F.R. Part 50 it
8 would fall under, but my understanding is that it has
9 been now entered as an allegation.

10 MR. BLANCHE: Okay. This is Paul Blanche
11 again. So, it's either 50.5 or 50.9. Can the NRC
12 confirm that that has been taken as an allegation
13 against one of those regulations?

14 MR. WALK: This is Alan Walk. Yes, it has.
15 Cliff?

16 MR. ANDERSON: We'll address this issue in
17 responding to the letter, excuse me, in response to
18 the petition.

19 MR. LYONS: This is Jim Lyons again. Is
20 there anymore that you want to provide, information
21 that you want to provide to the Petition Review Board?

22 MR. ANDERSON: There is one small item, and
23 that is that, as we pointed out in our petition, the
24 recovered fuel pieces have been identified by their
25 approximate diameter, and there is some confusion on

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1 the diameter. Primarily they've been identified by
2 length, and what I have in hand here is a description
3 of the missing fuel segments from the Humboldt
4 reactor, which as you know, is currently under
5 investigation.

6 The outer diameter of those fuel segments
7 and the approximate length of them would also
8 accommodate what was found at Vermont Yankee, albeit
9 the Humboldt fuel is supposed to have stainless steel
10 cladding.

11 What I've gotten from the document which was
12 provided by the Humboldt project manager is that when
13 fuel was going to be shipped for testing, it was the
14 practice at least at Humboldt to sever the fuel into
15 approximately 18-inch segments so that the thing that
16 raised my antenna on this is that the, you know, this
17 is in the realm of close enough.

18 So, if it was the practice there, we could
19 surmise it was the practice elsewhere to sever the
20 fuel segmented into approximately 18-inch sections for
21 shipping. This leads us to question again, since fuel
22 segments of that approximate length were available in
23 the industry if the fuel located by Vermont Yankee did
24 indeed originate at Vermont Yankee, whether or not it

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1 was fuel that had been segmented or sectioned for
2 shipping but then was never shipped in that container.

3 All of the history of this fuel and all of
4 its genealogy, if you will, all of its origins, are
5 brought into question. In any case, I wanted to
6 introduce that question in support of the questions
7 that we asked in our supplemented petition.

8 I wonder if I'm making sense to you.

9 MR. LYONS: This is Jim Lyons. We
10 understand what you're saying.

11 MR. WALK: Thank you. I believe that really
12 concludes the comments that I wanted to add this
13 morning, unless you folks have any other questions.

14 MR. BLOCK: Ray?

15 MR. WALK: Yes.

16 MR. BLOCK: This is John Block. I wonder if
17 I might add just one small point.

18 MR. WALK: It's good by me if it's good by
19 NRC.

20 MR. CHATTIS: Sure.

21 MR. BLOCK: I'm wondering whether, and this
22 would be something I have no idea of, whether the fuel
23 at each facility has a particular fingerprint that
24 would allow it to be identified based on, you know,

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1 the way the reactors are set up and the length of the
2 exposure of the fuel. That's what I was wondering.

3 MR. WALK: This is Alan. Each assembly is
4 marked and each fuel pin is also marked, and I believe
5 they can identify each down to the pin level of which
6 assembly should contain which pin.

7 MR. BLOCK: Thank you, Alan.

8 MS. KATZ: This is Deborah Katz from the
9 Citizens Awareness Network. I'm calling because Ray
10 Chattis had asked me to provide some information that
11 I had gotten from the resident inspector from Vermont
12 Yankee this spring about the missing fuel at Vermont
13 Yankee to add to this.

14 What Mr. Pelton raised with me was that when
15 the fuel was lost, or they couldn't find it at Vermont
16 Yankee, they actually called over to Yankee reactor to
17 see if they had it in their fuel core. It's sort of
18 mind boggling to think about, but it was what was told
19 to me.

20 MR. LYONS: All right, Ms. Katz. We
21 appreciate that. Mr. Chattis had informed us that you
22 had had that conversation before, so it's good to hear
23 that we've got the confirmation from you.

24 Did the licensee have any questions?

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1 MR. DEMANTONIS: This is Jim Demantonis. We
2 have no comments.

3 MR. LYONS: All right, thank you. Do we
4 have anymore questions from the NRC? I'm looking
5 around the table here. Again, this is Jim Lyons.
6 There's no additional questions here at headquarters.

7 Cliff, do you have any other questions?

8 MR. ANDERSON: Nothing here in Region I.

9 MR. LYONS: Okay. Well, I thank everyone
10 for coming to this call and giving their time to go
11 over this issue. We will be providing the response
12 back and acknowledgement letter back with a new
13 schedule to you, Mr. Chattis. So, you can be looking
14 for that in the next couple of weeks, I guess.

15 MR. CHATTIS: Thank you. We very much
16 appreciate your time and your attention on this.

17 MR. LYONS: Thank you.

18 MR. BLOCK: This is John Block. I also
19 thank you for having provided us with an opportunity
20 to speak with you about this.

21 MR. LYONS: Okay. Thank you very much.
22 This will end the call.

23 (Whereupon, the above-referenced conference
24 call was concluded.)

25

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