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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD (ASLB)

+ + + + +

PRE-HEARING CONFERENCE

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IN THE MATTER OF:	:	
ENTERGY NUCLEAR VERMONT	:	
YANKEE, LLC and ENTERGY	:	Docket No. 50-271-OLA
NUCLEAR OPERATIONS, INC.	:	ASLBP No. 04-832-02-OLA
(Vermont Yankee Nuclear	:	
Power Station Operating	:	
License Amendment)	:	

-----X

Thursday, October 21, 2004

The above-entitled matter came on for hearing, pursuant to notice, at 9:00 a.m.

BEFORE:

ALEX S. KARLIN	Administrative Judge, Chair
ANTHONY BARATTA	Administrative Judge
LESTER RUBENSTEIN	Administrative Judge

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I-N-D-E-X

Contention 1

New England Coalition - Mr. Shadis	373
Entergy - Mr. Rosinski	389

Contention 2

New England Coalition - Mr. Block	398
Entergy - Mr. Travieso-Diaz	408

Rebuttal

New England Coalition - Mr. Block	419
---	-----

Contention 3

New England Coalition - Mr. Shadis	422
Entergy - Mr. Travieso-Diaz	433

Contention 5

New England Coalition - Mr. Block	454
Entergy - Mr. Rosinski	461

Contention 7

New England Coalition - Mr. Shadis	473
Entergy - Mr. Rosinski	487
Vermont Public Service - Mr. Roisman	496

Rebuttal

New England Coalition - Mr. Block	510
Entergy - Mr. Travieso-Diaz	517
Staff - Ms. Higgins	533
Vermont Public Service - Mr. Roisman	546
New England Coalition - Mr. Block	551

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

(8:30 a.m.)

JUDGE KARLIN: Good morning. My name is Alex Karlin. I'm a Judge, a member of the Atomic Safety and Licensing Board for this matter. To my right is Judge Baratta, Anthony Baratta, Dr. Baratta; and on my left is Judge Lester Rubenstein.

Yesterday I gave an introductory sort of description of what the nature of this proceeding was. If there are any -- are there any new members of the public here who might need to have some information on that? Seeing none, I will not repeat that introductory discussion.

But I do want to reflect for the record that we're here to conduct a prehearing conference and oral argument in the matter of Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc., Docket Number 50-271, ASLBP Number 4-832-02-OLA.

This prehearing is being held pursuant to an order issued by this Board on October 1st, and then on October 18th.

Today's date is October 22, '04, and we are in the Brattleboro Middle School.

I'd like to thank counsel for all the parties and pro se representatives for the thoughtful

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1 and I think well-reasoned presentations and answers to
2 our questions yesterday. I think that was most
3 helpful in our thinking and understanding of this
4 case.

5 Today we start with the New England
6 Coalition contention number 1. If I'm correct, that's
7 where we left off. And if there are no other
8 questions, we can proceed.

9 Mr. Shadis and Mr. Block, whichever one is
10 going to conduct this.

11 MR. SHADIS: I'll be handling the QA/QC
12 contention. That's --

13 JUDGE KARLIN: Okay.

14 MR. SHADIS: -- what we call it. I just
15 need to state --

16 JUDGE KARLIN: Any rebuttal time you want
17 to reserve? You have, what is it, 20 minutes I think.

18 MR. SHADIS: Thank you. Whatever time is
19 unused. I'd like to try to reserve about 10 minutes,
20 but --

21 JUDGE KARLIN: Okay.

22 MR. SHADIS: -- hopefully you'll have some
23 questions, and we'll see how that goes. Thank you.

24 I'm going to put voice to something that
25 cannot otherwise be entered in the record, and it is

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1 a letter, I swear, that I received from an anonymous
2 employee of Entergy. It says, "Dear Mr. Shadis" --

3 JUDGE KARLIN: Could you get closer to the
4 mike, perhaps? I think we all need to be careful for
5 that, just --

6 MR. SHADIS: Thank you.

7 JUDGE KARLIN: Thank you.

8 MR. SHADIS: It refers to criticisms that
9 I had levied publicly with respect to quality
10 assurance/quality control at Vermont Yankee. And it
11 says, "Dear Mr. Shadis: I cannot believe how true
12 your words ring. Their in-house inspection program is
13 worthless. The truth is: what in-house inspection
14 program? Attached is a copy of an" --

15 MR. ROSINSKI: Judge Karlin, if I may?

16 JUDGE KARLIN: Yes?

17 MR. ROSINSKI: We object to this. This is
18 not in the record, and it's --

19 MR. SHADIS: May I respond to that,
20 please?

21 JUDGE KARLIN: You're objecting it's not
22 -- I am concerned with this, Mr. Shadis. Is this some
23 cover letter which is perhaps cover to this exhibit
24 that you --

25 MR. SHADIS: It is a cover letter to the

1 memorandum that we entered into evidence, and I will
2 remind the Panel respectfully that yesterday we had
3 mega evidence and evidentiary testimony introduced
4 that was not in the record and was not in the
5 Licensee's reply, it was nowhere in the record. And
6 I'd just presume that that was the standard you're
7 operating under now.

8 JUDGE KARLIN: Well, there was a point
9 yesterday when counsel for Entergy started using a
10 document, which we did not allow that document to be
11 used or brought into evidence. I think you have in
12 your pleadings attached the relevant memorandum, and
13 you have in your pleadings reflected that it is from
14 what you said was a whistleblower.

15 I think that will suffice, and, therefore,
16 I will sustain that objection. Perhaps you can couch
17 your argument with regard to the exhibit you did
18 provide us, which I think is helpful.

19 MR. SHADIS: Well, then, I will make his
20 words mine based on the experience. And, essentially,
21 what I learned was that a QA/QC program in which there
22 is no independence, in which the workers/employees
23 cannot be assured that there will not be some
24 influence from their direct manager, from the person
25 who is responsible, for example, for costs on a

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1 project, to greet any QA/QC problems in an unfriendly
2 fashion. And so there is a chilling effect built into
3 it.

4 I will tell you -- reaffirm that the
5 memorandum that I entered into evidence was received
6 anonymously from an employee who stated that he could
7 not sign his name, nor should I reveal the postmark
8 from which that document was sent. And I think it's
9 -- if nothing else, it's some evidence that employee
10 concerns are not what they should be in the Entergy
11 Corporation.

12 Nonetheless, proceeding to the memorandum
13 itself, in Entergy's reply, in the Licensee's reply,
14 we were taken to task for not referencing their QA
15 Manual. And what we found -- we did find a copy of it
16 after, you know, taking to heart their admonition.

17 That QA Manual was an Entergy manual,
18 which was incorporated as the Vermont Yankee QA Manual
19 last year. In it it stipulates that concerns should
20 be brought to Mr. Jay Thayer, the site Vice President.
21 And this is more than a little problematic from our
22 point of view in terms of whether or not there can be
23 independence or resolution of the -- of any issues
24 brought in about QA/QC.

25 And I think in part because although we

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1 made every effort to review extended power uprate
2 materials passing across Mr. Thayer's desk during
3 proceedings before the Public Service Board, and in
4 spite of that Board's order to compel production of
5 discovery, and in spite of two letters from Mr. Thayer
6 stating that they would reform the discovery process
7 within the company and be forthcoming, there was not
8 a single document that was produced in discovery that
9 had passed from Mr. Thayer directly or in which he was
10 designated the principal recipient.

11 I think with that atmosphere in the
12 company, that atmosphere of withholding of information
13 of secretiveness, I don't know how NRC can place any
14 confidence in the representations of that company with
15 respect to QA/QC.

16 And I think that the Panel must agree that
17 because NRC is an auditing agency that they have to
18 rely on the truthfulness and the candor of their
19 licensees in order to be able to regulate, in order to
20 be able to ensure public health and safety. And this
21 is not the case here.

22 We referenced in our pleading the 10 CFR
23 54 and were chastised in the reply by Entergy that
24 this was not a requirement for a QA/QC program, but,
25 rather, that it was a reporting requirement. In fact,

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1 the first sentence under 50.54 says that the company
2 shall maintain a QA/QC program.

3 I'm speaking from the top of my head,
4 because I don't feel I have the time to go dive in the
5 book. But I think if you look at it, you'll see
6 that's the first line.

7 JUDGE KARLIN: Well, I think you're right
8 that 50.54 does require a description of the QA
9 program. I thought that Entergy's point was that the
10 QA functions, and exactly how it functions, that some
11 of the details do not need to be in there. But they
12 have a program that is in place, and that the
13 regulations simply require that there be a program,
14 and that they have one.

15 MR. SHADIS: Quite so. You're quite
16 correct. And I will point out that a little further
17 along in 50.54 we get into the reporting requirements,
18 and it does report the necessity or it does require
19 reporting if the program is diminished in any way, if
20 it steps back from the standards.

21 Also, at the bottom of that very first
22 page in 50.54 is the reference to Appendix B, and also
23 cites to other parts of the regulation. And there we
24 find the description of the QA/QC program, the
25 description -- the prescription for it as being

1 independent, and a freestanding -- that would presume
2 that means a freestanding program.

3 What we find in Entergy's QA Manual is not
4 a freestanding program, but, rather, that the
5 employees of various departments are assigned QA/QC
6 tasks, and that partly preserves that independence.

7 I would offer you that this whole question
8 of the independence of the QA/QC program -- and also
9 its reliability at Entergy VY is matter for
10 interpretation, and it is a matter of dispute between
11 us and the company. I will point out that since they
12 tried to introduce evidentiary material in their
13 reply, although they didn't provide us with a copy,
14 they simply referenced it, they are confirming that
15 there is a dispute between NEC and the Licensee. In
16 essence, they are making that argument.

17 So I'm going to close with that. And if
18 you have any questions, I'd be glad to try to answer
19 them or reserve the remainder of my time here,
20 whatever that may be.

21 JUDGE BARATTA: I'd like to get further
22 amplification on how this ties in to the power uprate
23 request that -- application that is the subject of
24 this hearing. Could you expound a little bit on that?
25 I --

1 MR. SHADIS: Certainly. I don't have the
2 letter in front of me, but the State of Vermont asked
3 NRC to independently confirm the calculations in the
4 extended power uprate application. And NRC said they
5 would independently confirm some calculations, not
6 others.

7 To me, what that connotes is that they are
8 depending upon the accuracy of the calculations as
9 provided by the Licensee, and ultimately are relying
10 on the QA/QC program, at least insofar as inspection
11 -- I mean, excuse me, engineering and possibly for
12 determining the present material condition of the
13 plant for in-service inspection and maintenance.

14 And if QA/QC isn't functional there, then
15 the information they're being fed with respect to the
16 EPU cannot be relied on.

17 JUDGE BARATTA: All right. Your pleading
18 says that because power uprate assumes -- I'm going to
19 paraphrase a little bit.

20 MR. SHADIS: Sure.

21 JUDGE BARATTA: That the base plant has a
22 minimum number of defects. There's no assurance that
23 without stand-alone or at least NRC-approved
24 integrated QA/QC programs, that that will be the case,
25 I think is what you're saying. So that is the main

1 thrust of your concern with respect to power uprate,
2 or -- because there are different aspects of QA/QC.

3 If you look at Appendix B, there is a
4 requirement that, for example, the calculations,
5 drawings, and such -- and I'm paraphrasing that as
6 well -- but be done under a controlled environment and
7 be able to be verified and checked and that sort of
8 thing.

9 You're not concerned about that? Are you
10 concerned about that they don't know what they have?

11 MR. SHADIS: Yes. Your question has many
12 parts, and I -- and it's "yes" I think to all of them.
13 Basically, okay, QC -- QA/QC is an absolute in
14 determining the as-is condition of the plant prior to
15 uprate. And if you don't have an adequate program, if
16 that independence isn't preserved, then you cannot
17 have assurance that the plant is in conformance, that
18 the material condition of the plant is what it is
19 represented to be.

20 And the NRC cannot, you know, as an
21 auditor place reliance on the representations of the
22 company in that respect. And that is a major issue.

23 You may be aware, Dr. Baratta, that
24 literally thousands of Vermont residents, together
25 with our Congressional team, our State Senate, the

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1 House of Representatives, the Vermont State Nuclear
2 Advisory Panel, and the Department of Public Service,
3 the Vermont Public Service Board, requested various
4 forms of an independent engineering or independent
5 safety assessment.

6 The position of NRC at the beginning of
7 that process when we first requested that was that it
8 was unnecessary to do any extraordinary examination of
9 the plant, because NRC had confidence that its routine
10 inspection programs found the plant to be in good
11 order and, therefore, what -- the only thing we really
12 needed to look at was anything modified for extended
13 power uprate. We really didn't need to look at the
14 base plant. And I offer you that that premise was
15 badly placed, because we have a -- apparently a QA/QC
16 program that can't guarantee that.

17 And I -- again, you know, we have but few
18 documents. We have several examples -- for instance,
19 the outage this spring where a part of a cooling unit
20 broke loose and shorted out the system, and we had a
21 transformer fire, plus a second fire, in the turbine
22 hull as a result. And that was identified by the
23 company as a QC program.

24 Their actions during that refueling
25 outage, in putting off what was a scheduled inspection

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1 and maintenance, is a -- we take it as a QA problem.

2 So, anyway, I'll stop trying to answer
3 that part of your question. Did I miss some part of
4 this?

5 JUDGE BARATTA: No, that's fine. Thank
6 you.

7 MR. SHADIS: Thank you.

8 JUDGE KARLIN: I had a question or two.
9 I found the April 15, 2004, Entergy memo that I think
10 is your Exhibit --

11 MR. SHADIS: Yes, sir.

12 JUDGE KARLIN: -- F, or one of your
13 exhibits. And I just fail to see where there's any
14 support for the proposition, or your concern I think
15 you hit pretty hard in your presentation, about
16 independence here. What information, what evidence,
17 what have you presented that supports your contention?
18 And I know you don't have to have the preponderance at
19 this point, but we do need to have something to
20 support that.

21 The memo, as I read it, says -- talks
22 about changes in the QA program, or some element of
23 it, at Entergy. And it goes on to say these changes
24 do not apply to Vermont Yankee. Therefore, there's --
25 they're not changing whatever the existing program --

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1 QA/QC program is at Vermont Yankee.

2 And then, it goes on to say in a bullet --
3 that you point out in your briefing materials, "The
4 maintenance group is already performing peer
5 inspection." And I'm not exactly sure how much of the
6 QA/QC program that encompasses. They're already --
7 "The maintenance group is performing peer inspection
8 at Vermont Yankee."

9 Where do I glean from anything in that
10 document -- and you have no expert or anyone else, you
11 know, supporting this -- that there's an independence
12 problem? I have, you know, an org chart that tells me
13 that there's some reporting problems, that they don't
14 have sufficient integrity or independence. I'm just
15 not seeing it. I mean, so --

16 MR. SHADIS: Okay.

17 JUDGE KARLIN: -- help me there.

18 MR. SHADIS: A couple of points. Number
19 one, on the second page of that memorandum where you
20 selected, "The maintenance group is already performing
21 peer inspection" --

22 JUDGE KARLIN: Right.

23 MR. SHADIS: -- if you --

24 JUDGE KARLIN: Paragraph 8, the numbered
25 paragraph 8 in the --

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1 MR. SHADIS: Paragraph 8, exactly --
2 Vermont Yankee applicability. If you back up four
3 bullets, you know, there, you see there is no QC
4 group, no QC inspection group, to transition.

5 JUDGE KARLIN: To transition.

6 MR. SHADIS: There will be --

7 JUDGE KARLIN: So is your point that they
8 don't have a QC group, or that it's not independent?
9 I mean, all they're saying is there's nothing --
10 there's no QC group at Vermont Yankee to transition.
11 I'm not sure what that --

12 MR. SHADIS: Exactly.

13 JUDGE KARLIN: -- means. I'm not sure
14 what that means. Maybe they are someplace else.
15 Maybe they are -- I don't know, but --

16 MR. SHADIS: Well, I hope they're not
17 absent. But --

18 JUDGE KARLIN: But this is a memo that
19 says, "We're going to transition certain QC groups
20 within our corporate family, I guess, and at Vermont
21 Yankee there is no QC group to inspect -- to
22 transition." I see that, and I don't know whether
23 that -- I don't know what that means.

24 And certainly there is a requirement that
25 a QA program exist and be implemented at these

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1 facilities. But I'm not sure where -- if there's a
2 support for the lack of independent -- maybe you're
3 saying there isn't one at all. I don't know.

4 MR. SHADIS: Well, what we take that to
5 mean, our reading of it as a plain reading of it, is
6 that Entergy is proposing in this memorandum to --

7 MR. WACHTER: Two minutes.

8 MR. SHADIS: -- to incorporate their QC
9 programs into the various departments, as opposed to
10 having a freestanding, independent QC program, and
11 have the various department members then perform QC
12 functions.

13 And what they are saying is when it comes
14 to transition at Vermont Yankee, it says here that it
15 is an outlier, and it says there is no QC inspection
16 group to transition. And I think it's very clear in
17 that sequence that Vermont Yankee has already
18 transitioned people out of a QC group and into the
19 various departments.

20 Finally, the QA -- the Quality Assurance
21 Manual, which is now called the Vermont Yankee Quality
22 Assurance Manual, was adopted last year. This
23 memorandum is dated this year, April. So from June,
24 or whatever it was, of last year to this year, this
25 transition is apparently not complete fleet-wide.

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1 There is no assurance here that we could
2 find on all the evidence that we could search that
3 Vermont Yankee has in place a fully-transitioned and
4 approved QC program or QA program.

5 Thank you.

6 JUDGE RUBENSTEIN: Mr. Shadis, is it your
7 contention that due to management reorganization and
8 the alignment of responsibilities within the
9 organization there is a gap in the coverage for QA/QC?

10 MR. SHADIS: There may be, but our
11 contention largely goes to the independence of QA/QC
12 as it's specified in Appendix B.

13 JUDGE RUBENSTEIN: And this has been with
14 the organization of the QA/QC group since inception of
15 the plant or for many years?

16 MR. SHADIS: Well, our assumption is that
17 the company was in compliance with the various orders
18 that came down on QA/QC in the early 1980s to put it
19 together, to get their reporting requirements
20 together, to have it independent. And somehow,
21 somewhere along the line -- and we can't find a record
22 of where the company transitioned out of that to
23 dismantle any freestanding QA/QC program, and assign
24 it to various members of the various departments, we
25 can't find that.

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1 JUDGE RUBENSTEIN: And you had some
2 specifics that you brought to the attention of the
3 NRC?

4 MR. SHADIS: Pardon me?

5 JUDGE RUBENSTEIN: Have there been
6 specific lapses that you brought to the attention of
7 the NRC?

8 MR. SHADIS: No, sir.

9 JUDGE RUBENSTEIN: And they have --

10 MR. SHADIS: I'm sorry. No time for that.
11 We -- this is something that I received in April, I
12 think it was.

13 JUDGE RUBENSTEIN: Is this the
14 anonymous --

15 MR. SHADIS: Pardon me?

16 JUDGE RUBENSTEIN: Is this the anonymous
17 information?

18 MR. SHADIS: Yes. Well, the anonymous
19 letter with this memorandum. The memorandum is dated
20 April 15th, and I received it I think on April 26th.
21 But I -- but, you know, it's a question of
22 interpreting it. Yes.

23 JUDGE RUBENSTEIN: Okay.

24 JUDGE KARLIN: Thank you. Thank you, Mr.
25 Shadis.

1 JUDGE RUBENSTEIN: Thank you.

2 Entergy? Mr. Rosinski?

3 MR. ROSINSKI: Good morning.

4 JUDGE KARLIN: Good morning.

5 MR. ROSINSKI: I believe we have
6 identified the root of the problem here. There are no
7 records of NRC approval of changes to the Vermont
8 Yankee quality control and quality assurance program,
9 because there have been none. The quality control
10 function at Vermont Yankee has been, since inception
11 of the plant, distributed, independent inspectors
12 within the line organization.

13 There has been no QC group at Vermont
14 Yankee within their program since inception of the
15 plant. That appears to be the root of the misreading
16 here.

17 The memo that Judge Karlin described,
18 which is the sole basis submitted by the Coalition,
19 describes that pretty well. Vermont Yankee is not
20 participating in the proposed transition, because they
21 are the model for the transition essentially, that
22 independent inspection, which is controlled by
23 approved procedure at Vermont Yankee, is the general
24 direction that Entergy corporate is looking at
25 implementing at other plants. Therefore --

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1 JUDGE KARLIN: Well, let me ask you there,
2 I mean, you sound like you're making the Coalition's
3 case. The quality assurance/quality control function
4 at the plant is distributed among line functions?

5 MR. ROSINSKI: In line organizations.

6 JUDGE KARLIN: In the line organizations?

7 MR. ROSINSKI: QC independent inspection
8 is the requirement in --

9 JUDGE KARLIN: Right.

10 MR. ROSINSKI: -- in the regulations.

11 JUDGE KARLIN: How can the line
12 organizations be independent?

13 MR. ROSINSKI: They have trained
14 inspectors, independent of the work that is being
15 inspected, which is what the requirement --

16 JUDGE RUBENSTEIN: I think the thrust of
17 the question is, they report to a QA/QC manager as
18 opposed to a line manager?

19 MR. ROSINSKI: When performing this
20 function, they are independent of their line
21 organization and report through the QA program, which
22 is independent of the line organization management
23 performing the work.

24 JUDGE KARLIN: Okay.

25 JUDGE RUBENSTEIN: You say "when

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1 performing this function," do they -- do they report
2 dually to a line manager and/or to a QC manager?

3 MR. ROSINSKI: No. It is my understanding
4 when the inspectors are assigned for this work -- the
5 function lies in an independent organization as
6 required by NRC regulations. The NRC regulations in
7 the appropriate -- as you pointed out, in Appendix B,
8 requires an independent inspection of the activities,
9 the certain activities. That's what has been
10 performed at Vermont Yankee since the inception of the
11 plant.

12 It is the organization chart that we're
13 discussing. There is no group, there is no box of
14 people on the chart. That is the group. The function
15 has been reviewed for the entire history of the plant
16 and found to be acceptable.

17 JUDGE KARLIN: Well --

18 JUDGE BARATTA: Can I --

19 JUDGE KARLIN: Go ahead.

20 JUDGE BARATTA: Who does the evaluation of
21 these people for pay raises and such?

22 MR. ROSINSKI: The line organization.

23 JUDGE BARATTA: Line organization, not the
24 -- does the QA/QC manager have any input to that
25 process?

1 MR. ROSINSKI: Yes, he has.

2 JUDGE BARATTA: Is it advisory, or is it
3 definitive?

4 MR. ROSINSKI: As an advisory function.

5 JUDGE BARATTA: Okay. Thank you.

6 JUDGE KARLIN: And on that similar point,
7 is the -- I presume there's a QA/QC manager, quality
8 assurance manager there?

9 MR. ROSINSKI: That is correct.

10 JUDGE KARLIN: Does this person have
11 another role, or that is his or her sole
12 responsibility?

13 MR. ROSINSKI: It's the sole
14 responsibility. The Q -- the quality assurance
15 manager has an independent --

16 JUDGE KARLIN: And who does that person
17 report to?

18 MR. ROSINSKI: It's an off-site reporting
19 in -- to the -- in this case White Plains, a corporate
20 function. He's not reporting to the plant manager.

21 JUDGE KARLIN: So he reports outside of
22 the line management structure?

23 MR. ROSINSKI: Yes.

24 JUDGE KARLIN: He reports to a corporate
25 QA person?

1 MR. ROSINSKI: Director of Oversight,
2 which is an independent corporate position.

3 MR. BLOCK: Mr. Chairman?

4 JUDGE KARLIN: Yes.

5 MR. BLOCK: We would like -- I'm sorry to
6 interrupt the flow. We want to place an objection on
7 the record to this questioning of the attorney as if
8 he were a witness under oath.

9 JUDGE KARLIN: Yes.

10 MR. BLOCK: And I realize the problem that
11 you're confronted with, but it's the same one we were
12 confronted with. And at hearing, we'd like an
13 opportunity to get discovery and to pursue this
14 properly and obtain witnesses who could really provide
15 that evidence under oath to you, which I think is the
16 proper way to do it.

17 The fact that you have a tendency to hear
18 -- to want to ask those questions, I think
19 demonstrates the fact that there is a live issue.
20 And, you know, if there's a dispute it shouldn't be
21 resolved by having the unsworn testimony of an
22 attorney.

23 Thank you.

24 JUDGE KARLIN: I think that's a reasonable
25 point. We're trying to make your case, actually,

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1 because there was a question of independence here.
2 And I thought it would be helpful from what they said
3 to help us understand that a little bit better. But
4 I don't think we have -- do we have any more questions
5 along that line?

6 JUDGE RUBENSTEIN: No.

7 JUDGE KARLIN: Okay.

8 MR. BLOCK: We realize that, and we
9 sympathize with the problem. We thank you.

10 JUDGE KARLIN: All right.

11 MR. BLOCK: But, like I say, you know --

12 JUDGE KARLIN: We just get curious about
13 these things, too.

14 MR. BLOCK: Sure. Thank you.

15 JUDGE KARLIN: All right.

16 MR. ROSINSKI: I think one issue here is
17 -- let's look at what the contention actually
18 challenged. We've had a wide-ranging discussion of
19 the philosophy of quality assurance and quality
20 control here. But, really, let's look at what the
21 contention before this Panel really says.

22 It says two things -- that Vermont Yankee
23 has undertaken to reduce its quality assurance and
24 quality control program in violation of 50.54, and it
25 says VY is eliminating, or has eliminated, independent

1 quality control inspection functions. All right?

2 It does -- it is not just wide-ranging.
3 We have issues with the particular -- you know, wide,
4 broad independence issues. It is clear that the root
5 of this contention is perceived uneasiness with
6 corporate changes to the quality assurance programs
7 outside of Vermont Yankee. That is not within the
8 scope of this proceeding.

9 I haven't heard anything that ties any of
10 these challenges, even in the broader scope, to the
11 application, to EPU at Vermont Yankee. They haven't
12 challenged the quality of any specific item in any of
13 the submittals on the docket in this case.

14 The entire contention rests on the
15 Coalition's misreading of the memo that Judge Karlin
16 identified. It's clear that there is no action being
17 proposed for Vermont Yankee. So whatever issues that
18 the Coalition has raised exist today if they exist at
19 all. And we don't believe they exist, so there is no
20 need to go down the road of the program structure or
21 whether it -- the questions that we were asking and
22 answering.

23 And the Coalition also incorrectly
24 connects, as they have here, the discussion in the
25 April 2004 memo with the 2003 changes to the Vermont

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1 Yankee quality assurance program, following the sale
2 of the plant to Entergy.

3 I want to be clear: the 2003 changes did
4 two simple things. They referred VY users of the
5 program to the NRC-approved Entergy Quality Assurance
6 Program Manual. Entergy now owns the plant. That is
7 appropriate. And remove duplicative and superseded
8 contents from the VY program manual.

9 The changes were for administrative
10 alignment of the program only. There were no
11 substantive changes to any of the functions. And
12 there were certainly no changes to the quality control
13 or independent inspection function. And, again, that
14 program that -- the Entergy program that was referred
15 to has been reviewed and approved by the NRC.

16 I want to be absolutely clear. Neither
17 the 2003 changes or the 2004 memo made any changes to
18 the quality control function at Vermont Yankee. And,
19 more importantly, there is no basis in the contention,
20 as submitted, for any of these other broad challenges
21 and concerns from anonymous letters and the rest of
22 that.

23 There are other ways to raise that, as
24 were intimated here. You can file a 2.206. They can
25 file assertions or allegations with the Commission.

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1 This is a broad challenge to, admittedly, an important
2 program, but this contention is not.

3 The Coalition's misreading of the sole
4 document that they submitted in support of this
5 relatively narrow, although incorrect, narrow
6 contention does not support it. Their misreading of
7 the document cannot form the basis of a contention
8 within this hearing structure.

9 I'd be happy to answer any further
10 questions.

11 JUDGE KARLIN: All right. Thank you.

12 Questions? Okay. Thank you.

13 Ms. Poole, Staff?

14 MS. POOLE: Thank you. Staff has nothing
15 to add to its papers, although we'd be pleased to
16 answer Board questions.

17 JUDGE KARLIN: All right. Any questions
18 of Staff?

19 I don't think you reserved any time. It
20 ended up going all the way through. So we will not be
21 able to entertain anything at this point.

22 MR. SHADIS: May I have one minute?

23 JUDGE KARLIN: You need to reserve time
24 for rebuttal. I think it's a good strategy to do a
25 better time on that. So --

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1 MR. SHADIS: Thank you.

2 JUDGE KARLIN: -- maybe -- okay. So I
3 think we'll move on to the next contention, NEC
4 contention number 2. I would suggest you reserve some
5 time for rebuttal, because there's always something
6 you want to say at the end. It's an advantage that
7 the Petitioner has, because they have the burden on
8 these sort of things, as you know.

9 MR. BLOCK: We'd like to just reserve two
10 minutes.

11 JUDGE KARLIN: All right.

12 MR. BLOCK: Get the two-minute warning.

13 JUDGE KARLIN: Okay. Good.

14 MR. BLOCK: But if the Board is inclined
15 to pursue questions, we feel that's more important
16 than -- at that point that the time is up, I'll make
17 a decision whether to waive part of the rebuttal in
18 order to continue.

19 JUDGE KARLIN: All right.

20 MR. BLOCK: In this contention concerning
21 the reliability under extended power uprate conditions
22 of the main steam isolation valves, we have a
23 contention where the issue of fact that we've raised
24 or controverted per 10 CFR 2.309 is the mechanical
25 performance and reliability of the main steam

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1 isolation valve under extended power uprate
2 conditions.

3 Our contention draws a line of distinction
4 between the adverse trend that's noted in one of the
5 documents that Mr. Gundersen declares upon that -- for
6 Entergy identified, and the potential for increased
7 damage and leakage under uprate conditions.

8 We're concerned, and we contend that the
9 main steam isolation valves will not withstand EPU
10 conditions, and, most significantly, that EPU accident
11 conditions, when there are large leaks beyond -- will
12 allow for an accident beyond alternative source term
13 bounds, under those kinds of conditions that the EPU
14 will aggravate. And so these valves will be under
15 greater pressure.

16 And, additionally, Mr. Gundersen made a
17 point about the leakage having an adverse effect on
18 the maintenance of adequate pressure -- that is, the
19 net positive suction head issue.

20 And if the Board has some questions about
21 the contention, I'd be pleased to try to answer them,
22 although fortunately I am not, and have never been, a
23 reactor operator, fortunately for the industry. And
24 all of us, right.

25 JUDGE KARLIN: Questions?

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1 JUDGE BARATTA: Yes. I think we heard
2 yesterday that the valves are actually tested in
3 reverse direction, and then the results are then
4 interpolated to determine what the leakage rate would
5 be in the forward direction during an accident. I
6 think that was more or less a summary of what we
7 heard. Would you care to comment on that?

8 MR. BLOCK: Just a moment. May I confer
9 with Mr. Shadis for a moment?

10 JUDGE KARLIN: Sure. Sure, yes.

11 (Pause.)

12 MR. BLOCK: Our position on that is that
13 they would like to do the testing for flow in only one
14 direction under the thesis that that's the primary
15 flow direction. However, under accident conditions,
16 it would be different. So the kind of testing that
17 they want to do we believe is less conservative than
18 would take place under actual conditions.

19 And since we're dealing with an increase
20 in pressure, it would be better to make these tests
21 under real conditions, but that's another contention.

22 JUDGE RUBENSTEIN: Do you have any --

23 MR. BLOCK: Excuse me.

24 (Pause.)

25 May I clarify that? Mr. Shadis informs me

1 that I misspoke, that it's a question of the margin
2 that's built into the testing regimen, and they're
3 advocating for one that's less conservative without
4 any kind of rationale for doing that.

5 JUDGE RUBENSTEIN: Let me try to see your
6 basis. Have you examined all the containment
7 integrity tests that -- are you aware of all the
8 containment integrity tests that the NRC requires --
9 containment overpressure, MSIV operation?

10 MR. BLOCK: Excuse me a moment.

11 (Pause.)

12 I can't say that we're aware of all of
13 them. We're aware of many of them, and the standards
14 for sealing the MSIV are within the tech specs --
15 found in the tech specs for this plant.

16 JUDGE RUBENSTEIN: Tech specs --

17 MR. BLOCK: And I believe our expert was
18 aware of those when he did this. He's somebody with
19 extensive experience in the industry, as you can see,
20 looking at Mr. Gundersen's supporting curriculum
21 vitae.

22 JUDGE RUBENSTEIN: Do the MSIV leakage
23 rates exceed the tech spec leakage rates, in totality?

24 MR. BLOCK: We can't say that, but their
25 testing is showing a negative trend, which is what he

1 pointed out.

2 JUDGE RUBENSTEIN: I'm searching for your
3 basis, other than a trend in some of the testing. Can
4 you help me with that? You're not saying you're not
5 in conformance with the regulations, but you're saying
6 there's a trend in the leakage rates.

7 And I guess also I'm a little concerned
8 with -- not concerned, trying to understand what you
9 expect -- in fact, what relief would you look for? Do
10 you look for valve replacement? Do you look for more
11 testing? And, you know, I don't particularly hear a
12 basis yet.

13 (Pause.)

14 MR. BLOCK: Okay. I'm sorry to hold you
15 up. This is more difficult for me, because I've only
16 recently come into contact with the technical
17 information. If I understand this correctly, the
18 point that Mr. Gundersen makes, and that we rely upon
19 in our basis, is he examined this trend in testing
20 where there's a clear increase in the negative results
21 that they're getting.

22 One, you know, gets worse and worse with
23 each test, and he's saying that from his point of view
24 this is an issue of aging, but that Entergy looks at
25 it and says, "Oh. Well, it's a suboptimal design of

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1 these valves."

2 And so it's a question of looking at this,
3 and in his professional judgment saying that under EPU
4 conditions there is going to be an accelerated curve
5 of aging, there is going to be more corrosion of the
6 valves, you're going to have wetter steam hitting
7 these valves, and that as a result there is going to
8 be more degradation than they are analyzing that there
9 will be.

10 And so I guess to try to answer the second
11 question, what kind of relief there would be is for
12 there to be a more conservative rather than less
13 conservative approach to the problem, and that there
14 be a proper analysis done that takes into account the
15 factors that Mr. Gundersen was raising about how the
16 EPU conditions will put greater strain on these valves
17 than exists under the current conditions.

18 JUDGE RUBENSTEIN: Many components in
19 complex systems age and wear, and the purpose of a
20 good inspection program is to assure that they don't
21 fail to meet the requirements of the NRC regulations.
22 So one can hypothesize where, but one has to -- to now
23 relate this to the inspection program that is ongoing,
24 the replacement program, the maintenance program. And
25 if you have a specific concern in this area where

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1 you've seen a failure, I think it would be a good
2 opportunity to voice it.

3 MR. BLOCK: Okay. Mr. Shadis points out
4 to me that what you're saying is correct, but not if
5 there's bad root cause analysis here, and that's the
6 problem. So we see that as a primary problem with the
7 application process and what's going on.

8 As far as the inspection goes, I think
9 that it depends on whether the inspection is being
10 made and when it's being made as to what it's going to
11 turn up. And, you know, we have a different kind of
12 inspection program now. So it's not clear to me that
13 this is something that's going to be under constant
14 scrutiny.

15 And then, you mentioned the quality
16 control aspect, and, you know, we've just moved from
17 the previous contention. And if they are having QA/QC
18 problems, then I guess all of these things would work
19 together to compound one another and lead to a result
20 that I don't think this agency would like to have in
21 a plant that's going to be given the -- you know,
22 potentially the green light to go ahead and make this
23 kind of an uprate, and have much higher pressure
24 conditions and much heavier stresses on all of the
25 components.

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1 JUDGE RUBENSTEIN: Well, I just want to
2 tie it off. So your contention is they haven't
3 identified the root cause of the steam valve/isolation
4 valve segregation leakage? But leakage is a normal
5 occurrence in most valves to a certain degree, and one
6 looks to control this leakage, has systems to examine
7 it, to assess when it becomes excessive. So why don't
8 we leave it at that?

9 JUDGE KARLIN: I have a question, if I
10 may, unless you want to respond to that.

11 MR. BLOCK: Yes, I do.

12 JUDGE KARLIN: Okay.

13 MR. BLOCK: It's that they haven't
14 identified, according to Mr. Gundersen, they haven't
15 made a proper identification of the reason for these
16 failures. They're shifting that reason to another
17 cause that he believes is incorrect. That's a core of
18 dispute, which I mentioned at the beginning of my
19 comments, and we see that as the problem.

20 JUDGE RUBENSTEIN: It's assertive -- and
21 I'm looking for some sort of a -- with him -- with
22 being a recognized professional for some evidence --
23 pardon me, that's a bad word -- for some sort of a
24 basis for this assertion.

25 MR. BLOCK: Negative trend identified in

1 the document.

2 JUDGE RUBENSTEIN: Thank you.

3 JUDGE KARLIN: A question. I think,
4 having read the briefs, what we'll hear in part from
5 Entergy is that, look, this should have been raised a
6 year ago I guess. They identified a negative trend in
7 their valve leakage. They applied for an amendment to
8 their license last year, I guess in July of '03, to
9 change the testing method to make it in -- what I
10 think you would say is more lenient or somehow less
11 problematic.

12 And there was a notice of opportunity for
13 hearing at that time, if anyone wanted to gripe or
14 object about change to the testing at that time. Now
15 we're going to hear that -- that said that, and I
16 think that's a valid concern here. I mean, you did
17 not raise anything at the time about the problem --
18 the proposed change in their testing protocol.

19 But I -- if I understand what you're
20 saying, it's sort of like the car analogy of 55 mile
21 an hour, 75 mile an hour, that, well, we're not going
22 to object to some modest change if you're going to
23 still go at 55 miles an hour.

24 But if you're going to suddenly start
25 going at 75 miles an hour, now we think there's enough

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1 delta there that we are concerned. And you're raising
2 for that basis -- is that essentially your contention?

3 MR. BLOCK: I would tend to agree with
4 your analysis. Mr. Shadis finds something. He's not
5 explaining exactly what. But our point here is that
6 that other proceeding was about alternative source
7 term, not about EPU. This is about EPU. This applies
8 to EPU. It's being brought up in that context. We're
9 not raising it as an AST issue.

10 And, you know, if the net effect was the
11 segmentation of the application process, by taking
12 care of the alternative source term in that
13 proceeding, and taking care of other issues here, this
14 is an issue here that is an effect that is going to be
15 exacerbated by these conditions. And that's where you
16 and I would agree to go back to the car analogy, and
17 I'm not sure --

18 JUDGE KARLIN: Well, I'm not sure I'd
19 agree. But I think it's a good one, and I think --

20 MR. BLOCK: Yes.

21 JUDGE KARLIN: -- we ought to attribute it
22 to Mr. Roisman. But thank you.

23 I don't have anything further.

24 MR. BLOCK: Thank you.

25 JUDGE KARLIN: So you will reserve

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1 whatever remaining time that they had for rebuttal.
2 Okay.

3 Entergy, Mr. Diaz?

4 MR. TRAVIESO-DIAZ: Mr. Chairman, members
5 of the Board, good morning.

6 JUDGE KARLIN: Good morning.

7 MR. TRAVIESO-DIAZ: I want to start by
8 reading you the contention, so it will bring us back
9 to --

10 JUDGE KARLIN: Would you speak closer to
11 the microphone?

12 MR. TRAVIESO-DIAZ: Yes. The contention
13 says, "The license amendment should not be approved at
14 this time because Entergy has failed to address the
15 root cause of MSIV leakage, but instead proposes to
16 shift the problem downstream to -- higher allowable
17 leakage in the condenser. Entergy's failure to pursue
18 the root cause of a negative component performance
19 trend -- that could ultimately give failure of the
20 MSIV safety function."

21 Now, they're saying in this contention
22 that Entergy -- the main gist of the contention is
23 that Energy has failed to pursue the root cause for
24 the MSIV leakage. Interestingly, the first paragraph
25 of the declaration that supports this contention uses

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1 and refers to one and only document. The root cause
2 analysis, 31 pages long, performed by Entergy that --

3 JUDGE KARLIN: Well, I see in your
4 pleadings I think you referred to an 81-page document.
5 Did you attach it as an exhibit?

6 MR. TRAVIESO-DIAZ: They attached it.
7 These are exhibits.

8 JUDGE KARLIN: Is it their exhibit? Okay.
9 I'm sorry.

10 MR. TRAVIESO-DIAZ: Yes. So --

11 JUDGE KARLIN: Whose exhibit is it? Did
12 you all have that 81-page exhibit attached --

13 MR. TRAVIESO-DIAZ: 31. Let's not make it
14 too long.

15 JUDGE KARLIN: Where can I find that
16 document? I'm sorry. What is -- I'm confused. In
17 the pleadings?

18 MR. TRAVIESO-DIAZ: Yes.

19 JUDGE KARLIN: Attached to whose --

20 MR. TRAVIESO-DIAZ: Their pleadings.

21 JUDGE KARLIN: Whose pleading is it
22 attached to as an exhibit?

23 MR. TRAVIESO-DIAZ: I believe it's
24 attached to the declaration of Mr. Gundersen.

25 JUDGE KARLIN: Mr. Gundersen?

1 MR. TRAVIESO-DIAZ: Yes.

2 JUDGE KARLIN: Okay. I'm sorry.

3 MR. TRAVIESO-DIAZ: If I -- may I
4 continue?

5 JUDGE KARLIN: Yes, please. I'm sorry.

6 MR. TRAVIESO-DIAZ: My first point is that
7 the contention effectively claims that something
8 hasn't been done, and they cite the very document that
9 states exhaustively what they claim should be done.

10 Second point is that if it's -- there is
11 no dispute, I don't think, that --

12 JUDGE KARLIN: Where is that cite? Can
13 you help me with that cite?

14 MR. TRAVIESO-DIAZ: Oh, yes. It is Mr.
15 Gundersen's declaration. It's on page -- let's see,
16 it's on the second page of the declaration, and on the
17 second paragraph. "In anticipation of extended power
18 uprate, and in response to conditions reported" --

19 JUDGE KARLIN: Wait a second. I'm still
20 -- I'm on the wrong attachment. Okay. Second page,
21 second paragraph?

22 MR. TRAVIESO-DIAZ: Yes. The paragraph
23 that's says, "In anticipation."

24 JUDGE KARLIN: Right.

25 MR. TRAVIESO-DIAZ: That's referring to

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1 this document. This document indeed contains --

2 JUDGE KARLIN: Okay.

3 MR. TRAVIESO-DIAZ: -- an exhaustive root
4 cause analysis. So I think the contention is wrong on
5 its face. But it's more significant than that. I
6 don't think there is any dispute that the MSIV issue
7 is not part of this EPU application. The EPU
8 application doesn't purport to make any change on the
9 operation of the MSIVs on their acceptance criteria,
10 on the leakage data, the test methodology, or the
11 amount of leakage that's acceptable. None of that is
12 changed.

13 It's if -- it's subject to the EPU
14 application, so we are talking about something that is
15 not part of this proceeding, because whatever else the
16 EPU application does it does not change any part of
17 this MSIV testing and assessment of test results or
18 acceptance criteria.

19 JUDGE KARLIN: Well, let me ask on that.
20 Is this the 55 mile an hour/75 mile an hour issue?
21 You've got a car. You don't change anything in the
22 car, but suddenly you change its speed and you
23 increase it by 20 percent, or whatever. Are you not
24 pushing some of the systems -- the preexisting systems
25 that might have been acceptable as 55 that might be

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1 acceptable at 75?

2 And the question then becomes: is this
3 such a system that would be challenged more at an
4 uprate condition? And see if you can help me with
5 what nexus we should use, I mean, to evaluate whether
6 a preexisting system could legitimately be the subject
7 of a contention here.

8 MR. TRAVIESO-DIAZ: Well, that subject is
9 addressed in the application. Even though not -- not
10 the way you put it, but it -- the application says in
11 its analysis, and I'll give you the citation -- NEC
12 3309-0P, Draft Revision B2, 9/5/2003. It says an
13 increase in flow rate --

14 JUDGE KARLIN: What is that? That's in
15 the application?

16 MR. TRAVIESO-DIAZ: That's in the
17 application, yes.

18 JUDGE KARLIN: All right.

19 MR. TRAVIESO-DIAZ: This is part of the
20 PUSAR. The application says an increase in flow rate,
21 which is what you're going to see in the event that
22 the rate is granted, and what the MSIV valve is going
23 to see, an increase in flow rate assists MSIV closure.
24 To not only it is not detrimental, this is a situation
25 which running the car faster makes it run better,

1 makes it run more effective.

2 So with respect to the ability to close
3 the MSIVs in the event of an accident, having a
4 greater flow rate helps. That's what this document
5 says.

6 MR. SHADIS: Excuse me, Mr. Chairman.
7 Could you please ask counsel for Entergy to slow down
8 his speech somewhat? I'm really having a very
9 difficult time understanding what he's saying.

10 MR. TRAVIESO-DIAZ: I apologize. I tend
11 to get carried away sometimes.

12 JUDGE KARLIN: Thank you.

13 MR. TRAVIESO-DIAZ: Okay. So my second,
14 and I think fundamental, point -- without even going
15 into the facts, which we will -- is that this
16 contention does not challenge the application. And,
17 therefore, it's out of scope.

18 The third point, and that's where counsel
19 for NEC claims there is a factual dispute, is that --
20 well, let me just give you another preliminary point.
21 As you predicted that I would say, they had an
22 opportunity to challenge this proposed change when it
23 was proposed. And I want to correct the record.

24 First, the application to increase the
25 allowable leakage rate was entered before not only the

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1 EPU proceeding was instituted, but even before they
2 realized there was a problem. So there is no basis
3 for claiming that there is a regulation or that we are
4 doing this in installments.

5 So I -- putting that aside, there was a
6 proceeding over a year ago in which for other reasons
7 there was an application to increase the leakage
8 space, and that was not contested. It could have
9 been, but it wasn't.

10 On the facts, there are many things we can
11 say about the facts, but we are -- I want basically to
12 tell you that where they claim that there is a dispute
13 of fact -- issues of fact that require elucidation of
14 the hearing, the dispute on the case consists of a
15 declaration by their expert witness that provides no
16 facts in support, and bases its arguments in what
17 yesterday was described as cherrypicking, statements
18 in this root cause analysis.

19 But this is actually particularly not just
20 found with cherrypicking, because it takes -- it takes
21 one sentence, and sometimes in the context of that
22 same sentence there is also a contradiction, and it
23 doesn't address it.

24 Now, this is not a question of weighing
25 the evidence. I think the case law shows that when

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1 you are relying on a document for a particular
2 statement, you have an obligation to address any part
3 of the document that is contrary to your position.

4 JUDGE KARLIN: Ironclad obligation.

5 MR. TRAVIESO-DIAZ: Well, I don't -- I
6 don't want to --

7 JUDGE KARLIN: Well, they have an ironclad
8 obligation.

9 MR. TRAVIESO-DIAZ: Yes. Well, I mean, I
10 can give you cases that call it that, but, I mean, it
11 stands to common sense.

12 JUDGE KARLIN: Okay.

13 MR. TRAVIESO-DIAZ: The best example of
14 that that I'm talking about is that they claim that
15 these MSIV -- the excessive leak rates are the result
16 of aging. Now, there is a several-paragraph
17 discussion on page 27 of this document that says, "We
18 thought about that could be aging, and we examined the
19 issue, looked at it, and determined that it could not
20 really be because valves of all kinds of ages are
21 failing."

22 Moreover, these valves are -- when they
23 are looking at the outage, they are -- like you do
24 when you overhaul the engine of a plane, you take them
25 out, you clean them, you inspect them, you correct any

1 deficiencies they may have, you put it back as new.
2 So aging has nothing to do with it.

3 Now, it may very well be that the expert
4 could disagree with this, but he had an obligation to
5 say -- an ironclad obligation, if there was something
6 in the document that he referred to that contradicted
7 what he said, he had an obligation to address it. He
8 didn't have to agree with it. He would have to deal
9 with it.

10 If this is the sentence -- that
11 declaration looked at several places, and that's the
12 most significant on because it goes to the root cause.
13 In fact, the root cause analysis, which is not
14 contested as such in the declarations -- and I think
15 it's four causes, potential causes to this existing
16 leak.

17 One is very simple; they changed the test
18 methodology. Before 1996, they were testing the
19 valves such that they were testing the relational flow
20 that you see in an accident. After 1996, they took
21 one of the valves, observing flow and during the --
22 the flow in the direction of the accident. That, I am
23 told, increases the possibility that you are going to
24 get a leakage rating which you may be experiencing.

25 JUDGE KARLIN: A what?

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1 MR. TRAVIESO-DIAZ: A leakage rating that
2 may be not consistent with what you would see in an
3 accident.

4 In fact, the statistics show that before
5 they changed the test records, between 1973 and 1996,
6 they have only four situations in which the leakage
7 rate was exceeded. And in every case they were able
8 to trace it to some mechanical problem.

9 Since 1996, they have had 10 instances,
10 and that's why they came up with the trend. Now they
11 came up with four explanations as to why this is
12 happening -- maintenance, the acceptance criteria are
13 being unreasonably restrictive, test methods, and the
14 design of the valves. None of these things is being
15 contested as such in the declaration that was filed.
16 They didn't say why that is not a good potential
17 explanation.

18 The point I'm trying to make -- and I
19 really don't want to belabor it -- is, sure, your
20 expert proved the initial fact, but he has to have in
21 something -- one basis that he's using, the document
22 that he's using, as his evidence; contradict what he's
23 saying. He has the obligation to explain the
24 contradiction.

25 I could go on. I mean, there's other

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1 things that can be said on this, but I think -- oh,
2 well, let me tell you one more thing that you ought to
3 know to put this in perspective. They increased -- by
4 the way, there is no -- as far as I know, there is no
5 proposal to change the test method.

6 The proposal that is in the proceeding,
7 not the EPU, is to change the acceptance criteria.
8 Before the application was filed in this other
9 proceeding, the acceptable leakage rate was 31
10 standard cubic feet per hour. It increases it to 62.

11 Now, the BWR Owners Group technical report
12 has been accepted by the NRC, which is cited in this
13 document. That says that leakage up to 200 are
14 acceptable, don't present a problem. So they
15 increased an acceptable leakage rate. It's not non-
16 conservative. It is way within what the Owners Group
17 says is okay.

18 JUDGE KARLIN: Okay. Thank you. Any
19 questions? No. All right.

20 Ms. Poole?

21 MS. POOLE: Here again, the Staff doesn't
22 have anything to add to its papers, although we'd be
23 happy to answer questions.

24 JUDGE KARLIN: All right.

25 JUDGE RUBENSTEIN: Try and get a little

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1 technical closure on the leakage rate, which I didn't
2 ask them, but I'll ask you. You have a project
3 manager there. Was there inspections on these items
4 by Region I? And any opinion issues, or any
5 violations?

6 MS. POOLE: This issue was considered
7 during the last outage, which was this spring. This
8 spring there was an outage. Overall leak rate was
9 within tech spec limits.

10 JUDGE RUBENSTEIN: Thank you.

11 JUDGE KARLIN: Anything? No further
12 questions from the Board at this point. Thank you.

13 MS. POOLE: Thank you.

14 JUDGE KARLIN: Mr. Block, do --

15 MR. BLOCK: Yes, I believe we have --

16 JUDGE KARLIN: Five minutes.

17 MR. BLOCK: Okay. Working backwards with
18 the points made by the Applicant's attorney, I believe
19 that the very same page of the affidavit that he
20 refers to -- the declaration by Mr. Gundersen -- makes
21 it clear, particularly at the bottom of the page, he
22 disagrees with the diagnosis that they're making.

23 He says that in his professional opinion
24 that the reason for this isn't that there is a design
25 less or -- less optimal design in these valves, but

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1 that there -- that the increasing rate of failure is
2 due to aging and corroding.

3 And one of the points that he's making
4 here is that their response is, "Well, we made our
5 testing more conservative, and so now we're having all
6 these -- all these failures are coming up." And he
7 said there's a completely adequate and disputed
8 explanation for that, and that is the age-related
9 aspect.

10 It is clear -- I mean, we know from
11 physical events that have taken place, you know,
12 particularly the explosion at the facility in Japan
13 where one of these pipes broke, that aging does not
14 always follow a smooth curve. And so that this is a
15 legitimate concern.

16 We provided the document that was relied
17 upon, and Mr. Gundersen, if one looks carefully at the
18 declaration, he referenced this in a reasonable way.
19 And so we would rely upon the way in which he used
20 that document, and ask the Board to take a look at the
21 underlying document and compare the use that he made
22 of it with the allegation that it's an improper use.

23 And certainly, if -- if you disagree with
24 us, that's, you know, your right, and --

25 JUDGE RUBENSTEIN: What are you -- excuse

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1 me. On the issue of aging per se, I thought I heard
2 the Licensee say that if it degrades, they take the
3 valve out and refurbish it. So -- and I assume they
4 refurbish it to original standards. So say a little
5 more about why you think he's questioning aging.
6 Maybe he's not aware that they complete refurbish the
7 valves.

8 MR. BLOCK: The failures have been
9 occurring. If you look at the data that's provided in
10 the report, and that he references, these failures
11 have been occurring from outage to outage to outage.
12 And they may be refurbishing them when they find the
13 problem, but what's going to happen when it occurs in
14 between those and they're in conditions where there's
15 much more pressure on these systems to perform
16 properly than there is now? That's really the issue
17 that we're concerned with.

18 They may be able to make those
19 refurbishments in the in-between time, but,
20 unfortunately, reality often has a way of not having
21 those breakdowns and accidents occur at the time when
22 we're ready to provide service. They often occur when
23 we're out on the road with that car, and the tire
24 suddenly blows.

25 JUDGE RUBENSTEIN: Thank you.

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1 JUDGE KARLIN: Anything else?

2 MR. BLOCK: Thank you. That's sufficient.

3 JUDGE KARLIN: Thank you. That was
4 helpful.

5 Okay. We will now turn to -- let me
6 confer with my brethren here. All right. I think
7 we're going to try to go with another contention right
8 now. We've gone pretty efficiently, so we'll move to
9 contention number 3, large transient testing, I guess,
10 by the Coalition.

11 MR. BLOCK: One minute.

12 JUDGE KARLIN: Sure.

13 (Pause.)

14 MR. SHADIS: I think we're ready.

15 JUDGE KARLIN: Oh, okay. Yes, Mr. Shadis.

16 MR. SHADIS: This contention points out in
17 the statement of fact that Entergy has declined to do
18 large transient testing. This would be the testing
19 typical of the licensing of any new reactors.
20 Certainly, classically, large transient testing was
21 done when reactors are licensed.

22 We'd like to pick up on the point that Mr.
23 Roisman made yesterday in that this whole application
24 can be viewed as new construction. If you try to find
25 a definition of a reactor, one of the definitions

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1 you'll come up with is that it is the fuel and
2 attending apparatus arranged in such a way as to
3 sustain a reaction.

4 And what we have here is a proposal to
5 plug in approximately a 100-megawatt electric reactor.
6 That's the equivalent of the modular design pebble bed
7 reactors. It's not out of scope to say that this is
8 a reactor's work of construction or addition or
9 additional thermal power being plugged into an old
10 unit.

11 But in terms of evaluating the risk, it is
12 no different, and perhaps even a greater risk of
13 plugging in this much additional thermal power to a
14 system that has suffered aging, that was built
15 according to 1960s standards -- although we can't, as
16 we said, find those standards, but we're sure that it
17 was.

18 And so, you know, from our point of view,
19 what we are saying here is that nothing less than
20 large transient testing should be done. We place no
21 confidence in the modeling -- computer modeling and
22 programs that try to assimilate the stress of large
23 transient testing, and we certainly don't want a large
24 transient test on the night shift sometime when nobody
25 is ready for it. We don't want the plant to --

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1 machine itself to initiate its own large transient
2 test at some point.

3 So, you know, that's the -- that's the
4 underlying thesis, if you will, of our concern. I
5 think that -- and that addresses the question of the
6 fact. And Mr. Gundersen, in his declaration, does --
7 and I'll highlight portions of documents that address
8 the concerns that I've just enumerated.

9 JUDGE KARLIN: May I ask, is the --
10 there's a justification for exception to large
11 transient testing. I'm sure Entergy will hopefully
12 answer this as well. But they -- in any case, they
13 planned to do this. Is this an application to the
14 NRC, or something they can do unilaterally, and it's
15 just a fait accompli? As I understand it, it's some
16 sort of application to the NRC to make such a change.

17 MR. SHADIS: That's my understanding of it
18 also. And I should mention here, you know, that in
19 reviewing some Entergy internal documents,
20 communications, with NRC, NRC internal communications,
21 we find that early last year they were talking about
22 the Arts Mella Application, which is the fuel
23 parameters application, the AST application, and the
24 EPU application, and pondering amongst themselves as
25 to whether or not these should all go in as one

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1 application or if they could be fed in separately,
2 serially, or in parallel.

3 And I have to say that we've also reviewed
4 Entergy documents with respect to tech spec changes,
5 to exemptions that have been filed over the last two
6 years, and there is a mountain of them. There's a
7 plethora of these things -- all of them adjusting, in
8 various ways, parameters for operating the plant that
9 apply to EPU. They're all getting ready for EPU.

10 We're an intervenor on a parking lot
11 expansion because of EPU. And, you know, in fact --
12 in fact, what the company has is a very ambitious
13 program to establish this plant at 120 percent of
14 power and --

15 JUDGE KARLIN: Well, let me ask on that --
16 I mean, is there -- I mean, any major plant probably
17 -- in a major regulatory oversight, probably there are
18 changes that occur, you know, modifications that are
19 requested. Is there anything you have to show some
20 statistically significant increase of these
21 modifications or license amendment requests in the
22 last two years versus what it was the last 10 years?

23 MR. SHADIS: Yes. There is a rapid
24 accelerating curve of applications of what, you
25 know --

1 JUDGE KARLIN: Of course, we don't have
2 anything in evidence here on that.

3 MR. SHADIS: Of course not. I'm only
4 relating to you as a pro se advocate, you know, what
5 I can see in terms of volume on these applications.
6 But with respect to this particular notion that they
7 are at some point going to ask for this exception,
8 they are asking for it in the context of extended
9 power uprate. It really identifies operating
10 parameters. It identifies testing parameters within
11 the extended power uprate and affected by it.

12 So, you know, we think this is the proper
13 place to bring this question. We disagree with the
14 reasons that they state for this, and, you know, and
15 our expert lays it out fairly well in his declaration.

16 I mean, we understand that reactors have
17 a limited life of just so many thermal cycles, and to
18 crank up the heat and bring it back down I think is --
19 upper limit of around just even 100 degrees change,
20 and you pretty much have gone through a thermal cycle
21 for one of these things. And it is a way of avoiding
22 that.

23 But to us, that's the cost of doing
24 business if you want to build a new reactor within an
25 old reactor.

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1 JUDGE BARATTA: Let me ask you a couple of
2 questions. I didn't understand Mr. Gundersen's
3 statement with respect to whether it makes a
4 difference if --

5 JUDGE KARLIN: There's a modification of
6 the license amendment request in the last two years
7 versus what it was the last ten years.

8 MR. SHADIS: Yes, there's a rapid
9 accelerating curve of applications.

10 JUDGE KARLIN: Of course, we don't have
11 anything in evidence here on that.

12 MR. SHADIS: Of course not. I'm only
13 relating to you as a pro se advocate what I can see in
14 terms of volume on these applications. But with
15 respect to this particular notion that they are at
16 some point going to ask for this exception, they are
17 asking for it in the context of extended power uprate.
18 It really identifies operating parameters. It
19 identifies testing parameters within the extended
20 power uprate and affected buyer, so we think this is
21 the proper place to bring this question.

22 We disagree with the reasons that they
23 state for this, and our expert lays it out fairly well
24 in his declaration. I mean, we understand that
25 reactors have a limited life of just so many thermal

1 cycles and to crank up the heat and bring it back
2 down, I think the upper limit is around 100 degrees
3 change, and you pretty much have gone through a
4 thermal cycle for one of these things, and it is a way
5 of avoiding that. But to us, that's the cost of doing
6 business if you want to build a new reactor within an
7 old reactor.

8 JUDGE BARATTA: Let me ask you a couple of
9 questions. I didn't understand Mr. Gundersen's
10 statement with respect to whether it makes a
11 difference if the transient were, indeed, unplanned or
12 if it were lever tested. Usually, when you do the
13 lever test about the only difference is you have more
14 instrumentation, you're more able to record the
15 information, but the performance itself is identical.

16 MR. SHADIS: Dr. Baratta, I'm having
17 difficulty hearing as if I'm picking up an echo, but
18 I'm having difficulty hearing simply mechanically
19 hearing. And I'm also, on top of that, not sure I
20 understand your question. Would you mind --

21 JUDGE BARATTA: I just wanted a further
22 explanation of why he highlighted the fact that in
23 some cases it was not known if these transients that
24 are referenced were indeed unplanned, or if they were
25 deliberate tests. In his statement, he makes a

1 distinction claiming there's a difference if they were
2 planned versus unplanned. And I was curious as to
3 what was intended there.

4 MR. SHADIS: I think I understand the
5 point that Mr. Gundersen was trying to make; and that
6 is that when you have a planned Large Transient Test,
7 you are very careful to measure all of the inputs and
8 all of the results. And you know very much what the
9 pathways for energy are, what all of the curves look
10 like when you do it.

11 When you have an unplanned transient,
12 you're trying to reconstruct all that, and you've got
13 a bet that your instrument is going to give you real
14 accurate reading on that stuff. And so I think that
15 what he's saying is that while there is work in
16 reviewing for lessons learned and so on what's
17 happened in accidental transients, it doesn't have the
18 same value for assaying plant performance that a
19 planned, carefully monitored transient would have. I
20 think that is his point.

21 JUDGE BARATTA: All right. That's fair.
22 Now I also wanted to ask you, you made a statement
23 earlier that called into question the -- I forget your
24 exact words, but the -- you had lack of confidence in
25 the ability to predict the stresses and that was the

1 experience. I think those were your words. I
2 apologize if I -- I didn't write them down, so could
3 you expand on that, as to what you meant by that;
4 because people have been predicting these types of
5 tests for many years, and I'm not aware of any
6 significant discrepancy between their predictions and
7 what occurred. And if you could enlighten me as to
8 what you were referring to, I'd appreciate that.

9 MR. SHADIS: I'm not sure that I or Mr.
10 Gundersen, or New England Coalition has in their
11 possession any evidence that would refute any
12 particular calculations that have been done, any
13 computer modeling that has been done.

14 What we see in the Extended Power Uprate
15 Program is we see a series of unpredicted, unexpected
16 failures of the steam dryers, of instrumentation being
17 swept away, of small bore pipe breaks. And what we're
18 saying here is that the calculations, the computer
19 programming that went into trying to predict these
20 things failed, obviously; because if it had predicted
21 them, measures would have taken to prevent them. So
22 when we say we don't have a great deal of confidence
23 in it, what we're doing is we're looking at
24 experience, and experience tells us if it could have
25 been predicted, it would have been predicted. And

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1 also, the failure of the discipline of predicting
2 these things leaves open the question of what else in
3 the Extended Power Uprate Program has the industry
4 failed to predict. What else is coming? When does
5 the next shoe fall? And so that experience, it's part
6 of a one-on-one kind of correlation, it tells us no,
7 a physical test is inevitably superior to a
8 theoretical test.

9 JUDGE BARATTA: Okay. There's also some
10 discussion in Mr. Gundersen's declaration with respect
11 to the difference between this power uprate and I
12 guess some previous ones in which there is a -- it
13 says, "Thirteen plants have implemented EPU's without
14 increasing reactor pressure." Could you expand a
15 little bit on that as to what he was referring to
16 there, actually that whole paragraph.

17 MR. SHADIS: Well, you're talking about
18 page 4 are you, sir?

19 JUDGE BARATTA: Yes. The first full
20 paragraph on page 4.

21 MR. SHADIS: Yes. Well, I mean, that
22 sentence begins with, "Entergy then argues", and he is
23 quoting Entergy. Apparently, we're supposed to take
24 some assurance from the fact that constant pressure
25 uprates have been done at 13 plants. And then Mr.

1 Gundersen just points out that Entergy is giving the
2 list a little boost by including two European plants.
3 We don't have any idea what regulations they operate
4 under, and certainly the regulations they operate
5 under don't apply to what we're considering. And I
6 think that's the point that he's trying to make with
7 that. If that makes any sense to you, I'm trying to
8 answer your question.

9 JUDGE BARATTA: I thought there was
10 something else he was trying to make there. I
11 apologize. Thank you.

12 MR. SHADIS: One thing, too, in response
13 to the previous question; I think it's a fact that NRC
14 approved regimes for Extended Power Uprate do require
15 a main steam line isolation valve test, a large
16 transient test.

17 JUDGE BARATTA: That's when the uprate
18 exceeds 10 percent.

19 MR. SHADIS: That's correct, yes. And so
20 what we're looking at here is -- I guess we're getting
21 ahead of a proposal that Entergy is making. I think
22 Entergy needs to properly bring that proposal under
23 Extended Power Uprate, make it a part of their amended
24 application. The failure of the application that it
25 doesn't include some major evolution they intend to

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1 undertake, include it in their application, and then
2 let's see if it's -- let's put it to the test and see
3 if it's a good proposal, but under the amendment
4 application is where it really belongs.

5 JUDGE KARLIN: Okay. Thank you. How much
6 time -- there's still some time reserved. Okay. So
7 you still have a rebuttal if you need it.

8 MR. SHADIS: Thank you. I appreciate
9 that.

10 JUDGE KARLIN: Counsel for Entergy.

11 MR. TRAVIESO-DIAZ: Thank you. Before I
12 address the contention itself, Mr. Shadis made a
13 number of factual statements which are both irrelevant
14 and wrong. Obviously, I'm not going to go into all of
15 them, but I want to address one, because this one can
16 be confirmed just by looking at the docket of the
17 Entergy Plant. In fact, in the last two years, there
18 have been fewer license amendments presented by
19 Entergy than the last 10, and you can verify that just
20 by looking at the docket.

21 JUDGE KARLIN: Okay. And my question was
22 perhaps inarticulate. The last two has it been the
23 greater than the trend that was in the last 10; that
24 is, for example, two per year, one per year, and ten
25 years versus two years, a different number. My

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1 question was in the last two years were there more
2 than the prior two years?

3 MR. TRAVIESO-DIAZ: It wasn't you who was
4 inarticulate, it was me. What I was trying to say is
5 that the number of amendments that have been put
6 forward in each of the last two years, compared to the
7 trend over the last 10 has been less.

8 JUDGE KARLIN: All right.

9 MR. TRAVIESO-DIAZ: So that's what I was
10 trying to say. I'm sorry I said it so poorly.

11 JUDGE KARLIN: No.

12 MR. TRAVIESO-DIAZ: Now let's go back
13 again. I'd like to talk about the contention itself.
14 The contention reads, and I'm glad that got some
15 clarification from NRC as to what they want, because
16 it makes it easier to address it. The contention
17 says, "The license amendment should not be approved at
18 this time or until it is agreed by all parties that
19 large transient testing will be a prerequisite to
20 Extended Power Uprate per the staff position on doing
21 Arnold Energy Center. Without adequate
22 characterization, there can be no assurance that the
23 license amendment will adequately safeguard public's
24 health by demonstrating compliance with 10 CFR Part 20
25 Standards."

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1 A minor note, which we put in our answer,
2 Part 20 has absolutely nothing to do with this, and
3 I'm not even going to spend time talking about it.
4 But what I do want to spend time is telling you that
5 this justification is part of the EPU application.
6 It's currently before the NRC, so the relief they
7 want, which is to have NRC look at it, they have it.
8 It is going to be considered. NRC will approve it or
9 will deny it. It is part of the application. This is
10 not something like we're talking about the MSI Retest.
11 This is part of the application, and NRC obviously
12 will be reviewing it. So I think that what they're
13 asking for, they already got, so the contention is
14 moot in that respect.

15 Now talking about the contention itself --

16 JUDGE KARLIN: So the justification for
17 exception to Large Transient Testing that they refer
18 to is part of the Entergy application for the EPU.

19 MR. TRAVIESO-DIAZ: Yes. Entergy is
20 asking to be authorized to have an exception so that
21 they don't have to perform this Large Transient Test.
22 That is before the NRC as part of the application
23 currently being considered.

24 In fact, if you take a look at the
25 document that is referred to in the declaration, it

1 says PVY 03-80. This is Attachment 7 to the
2 application.

3 JUDGE KARLIN: All right.

4 MR. TRAVIESO-DIAZ: Now let's go back now
5 and talk about the contention itself, now that we
6 understand what they want and the fact that they have
7 it.

8 Another point that I want to make which
9 is, I think is causing our answer but because it's
10 addressed at such length in the declaration, it needs
11 just to be mentioned. It talks about an ARR at Duane
12 Arnold. Our answer clearly makes the point, and I
13 think it's beyond dispute that whatever the NRC is
14 asking another licensee at another plant, not even
15 ruling, but even asking, is totally relevant to what
16 we're doing here, so I'm not going to cover that
17 unless there is any questions on it. Talking about --

18 JUDGE RUBENSTEIN: What about -- is Duane
19 Arnold the lead plant for the BWR Owners Group or
20 something like that? Are the tests applicable?

21 MR. TRAVIESO-DIAZ: I believe that the
22 first plant in which this particular exception was
23 granted and is operating without having to do the
24 schedule was Hatch. Hatch is, in fact, referred to in
25 justification, and I'll talk about it a little later

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1 if you want me to. In fact, I will. But in any
2 event, I think that the reference to Duane Arnold is
3 absolutely relevant, and we shouldn't be spending time
4 talking about it.

5 Now there are a number of statements that
6 Entergy makes in their justification, which are not
7 refuted by the declaration or by the contention. The
8 statements include first that the EPU makes no change
9 to the plant, except for some changes in the setting
10 of some instruments that would have any effect on how
11 these transients evolve. So there are no
12 modifications, the exception is not an exception to
13 the design or operation to the plant. The exception
14 that they're seeking is not to have to perform this
15 test, and it's clearly - and I believe the declaration
16 at least with this concept - if these tests are
17 unnecessary, you are putting a stress on the system
18 that is just operation and not something you want to
19 do, so if you don't have to do these tests, you don't
20 have to do them. I don't think that the operation is
21 at ease with that either, so that's why they asked for
22 it.

23 JUDGE BARATTA: Could you care to comment
24 on the remark that was made a moment ago, with respect
25 to the inability to predict all the behavior that has

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1 been, in fact, observed during some of these power
2 uprates?

3 MR. TRAVIESO-DIAZ: I'm glad you asked.
4 There are three answers to that. Answer number one is
5 that every time that there is a unplanned transient,
6 all the instrumentation of the plant records how the
7 transient evolves, and after the event you can analyze
8 it to your heart's content; so there is no difference
9 between a planned transient and one that happens. You
10 get the same information and you do the same analysis.

11 Second, in fact, they are talking about --

12 JUDGE RUBENSTEIN: Excuse me. Do your
13 code analyses track with the results of these
14 transients?

15 MR. TRAVIESO-DIAZ: Yes.

16 JUDGE RUBENSTEIN: I think we had a
17 question from Judge Baratta before about the software.

18 MR. TRAVIESO-DIAZ: I apologize. You take
19 a look at justification page 8, at the very end they
20 talk about they used a code called ODYN Code that they
21 use to analyze transients, and the analysis that was
22 performed in the code predicts much of what
23 essentially the kind of behavior that has been
24 experienced at all the plants.

25 JUDGE RUBENSTEIN: And at Hatch.

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1 MR. TRAVIESO-DIAZ: I don't know the
2 answer to that. I may be able to have it in a minute.
3 Before I go -- actually, I cannot answer that one, but
4 I will ask -- I will tell you, assuming for the
5 moment, which I disagree with, that there is a
6 distinction between a planned test and one that just
7 happens, take a look at page 7 of the justification.
8 They talk about two circumstances, they have the same
9 result. One was unplanned event at Hatch, in which
10 the performance of Hatch from the transient that was
11 unplanned matched what you would expect, and there
12 were no problems. But the one that I want to talk to
13 you about is not Hatch.

14 At the bottom of page 7 they talk about
15 planned in advance, determined they were going to test
16 of the Leibstadt Plant in Europe. These were not
17 accidents, they were turbine trips that were planned
18 and performed precisely to see how the plant would
19 perform. And those actually again gave the same
20 results; the plant under a transient did exactly as it
21 was supposed to do. So I think that the idea that one
22 kind of test is better than the other is a canard.
23 Either of them gives you equally good and acceptable
24 results, and there has been no deviation in that
25 respect in terms of industry's experience.

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1 Okay. And just to mention as a footnote,
2 the distinction that Mr. Shadis was trying to make
3 with the plants in Europe not being regulated by the
4 NRC; a plant is a plant, a transient is a transient,
5 and what you're looking at is how the plant behaves,
6 not who's regulating it. So the results Leibstadt are
7 perfectly applicable, and they show that whether you
8 are indeed planning to perform this test, or it so
9 happens - by the way, this situation has also happened
10 three times. At Vermont Yankee they had unplanned
11 turbine trips that led to generator trips. In each
12 case the plant responded fine, and in accordance to
13 what you expect the behavior to be.

14 Now another point that is made, I'm going
15 to start talking about the facts, just getting them
16 all on the table. Another point they're trying to
17 make is a distinction that I don't understand, or
18 they don't understand, as to why a test which actually
19 happened because of operational reasons at 100 percent
20 power, it would be different than a test at 120
21 percent power. In fact, there is no difference. The
22 power, what you do when you have a transient is that
23 you are testing the operation of all the plant systems
24 that have to react to a quick closure of MSIV valves
25 and so on, so whether you are doing from 75 percent,

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1 100 percent, or whatever power it is, you are going to
2 examine in the results of your transient whether your
3 plant is behaving appropriately.

4 JUDGE BARATTA: All right. Now you're
5 telling me that the same situation would exist at 120
6 percent versus 100 percent, particularly in -- do you
7 have full steam dump capability, or do you have 25
8 percent steam dump capability?

9 MR. TRAVIESO-DIAZ: A hundred and five
10 percent, I understand.

11 JUDGE BARATTA: A hundred and five percent
12 steam dump capability.

13 MR. TRAVIESO-DIAZ: Right. Yes.

14 JUDGE BARATTA: So clearly then, you're
15 not going to be -- if you're at 120 percent, you're
16 not going to be at 105 percent, you're at 105 percent
17 relative to your current rating. Is that correct?

18 MR. TRAVIESO-DIAZ: Yes, that is correct.
19 The point that --

20 JUDGE BARATTA: Well, that's clearly a
21 difference.

22 MR. TRAVIESO-DIAZ: Well, the point I was
23 trying to make is that in terms of the ability to
24 observe the performance of your plant's components to
25 a transient --

1 JUDGE BARATTA: That's not going to be the
2 case, because you don't have the same steam dump
3 capability.

4 MR. TRAVIESO-DIAZ: Okay. I stand
5 corrected. If I go back, let me go back for a second
6 to the other things that the justification says that
7 are not challenged. As I said, I refer to the fact
8 that both Vermont Yankee has had transients similar to
9 the ones that you said, maybe not exactly the same
10 because we're having higher power, but for full power
11 they had a transient and the plant has responded
12 properly, and the experience of those transients is
13 now available.

14 Now second is that there is justification,
15 a very long explanation as to the analysis that
16 Entergy has performed looking at the two type of tests
17 for which exception has been sought, the MSIV closure
18 and the LOCA tests. There's three pages of analysis
19 that explain why the plant will perform adequately
20 under those situations, and why you don't need to have
21 a test. The analysis is not contested. It has not
22 been challenged.

23 Also not challenged, that in fact the
24 components -- you're not going to get different
25 information from the behavior of the plant components

1 under a transient of the site as you will get from the
2 exhaustive testing that is done with those components
3 under individual testing. Now, of course, actual
4 systems you may want to test, as well.

5 My point is that again as we were talking
6 about the MSIV contention, here we have the same
7 situation in which there is all that the declaration
8 says, that in his professional opinion this test
9 should be performed. Well, all the justifications
10 that Entergy offers as to why they don't need to be
11 performed are not rebutted, so we just have --

12 JUDGE RUBENSTEIN: How do you address the
13 question that the power distribution as handled by the
14 power flow curve is changed, which says that the rods
15 are in a different position going into a transient?
16 Have you had experience with this? Should I clarify
17 the question?

18 MR. TRAVIESO-DIAZ: Can I have that again?

19 JUDGE RUBENSTEIN: You control the plant
20 on the power flow curve, and this has a certain
21 control rod configuration initially. Well, you're
22 reshaping the core to get it -- your map has changed,
23 hasn't it? And your average discharge temperatures
24 change. Your flux distribution is changed, so now to
25 accommodate that, as opposed to 100 percent operation

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1 in previous times, you've had a certain rod
2 distribution in the core, and now you're entering a
3 transient with a differing rod distribution. Just say
4 a few words on that; control rod distribution.

5 MR. WACHTER: Two minutes.

6 MR. TRAVIESO-DIAZ: My understanding is
7 that under power uprate conditions, you are not
8 increasing the power, but you are increasing the
9 distribution. In other words, what you are changing
10 is the distribution of power generation, as opposed to
11 --

12 JUDGE RUBENSTEIN: And the way you control
13 the distribution of power is through the loading of
14 the fuel and through flattening the curves on the
15 power distribution. And you control this through
16 control rod placement, as you withdraw it, as to the
17 power -- are the initial conditions going into the
18 transient the same?

19 MR. TRAVIESO-DIAZ: I believe yes, that's
20 the case. The initial conditions are the same.

21 JUDGE RUBENSTEIN: Is that a lawyer's
22 answer, or --

23 JUDGE KARLIN: No testimony on that one.

24 MR. TRAVIESO-DIAZ: I'm trying to answer
25 the question. There are some things I know about, but

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1 I won't pretend that I know everything.

2 JUDGE RUBENSTEIN: Okay. I'm willing to
3 accept any answer that makes sense.

4 MR. TRAVIESO-DIAZ: Okay. The answer is
5 yes.

6 JUDGE RUBENSTEIN: So it's a slight
7 departure from the core configuration in terms of
8 power distribution, temperature and flow.

9 MR. TRAVIESO-DIAZ: I think that's
10 correct.

11 JUDGE RUBENSTEIN: Going into the
12 transient.

13 MR. TRAVIESO-DIAZ: I think that's right.

14 JUDGE RUBENSTEIN: Is that a way to --

15 MR. TRAVIESO-DIAZ: I believe that to be
16 the case.

17 JUDGE RUBENSTEIN: You would say it's not
18 the same, but there's a slight departure?

19 MR. TRAVIESO-DIAZ: It is similar.

20 JUDGE RUBENSTEIN: Okay.

21 JUDGE KARLIN: That's time. I think
22 that's the end of your time. Thank you, Mr. Diaz.

23 MR. TRAVIESO-DIAZ: Thank you.

24 JUDGE KARLIN: Okay. Four minutes -- no,
25 staff. Ms. Poole, yes.

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1 MS. POOLE: Here again, we won't add
2 anything to our papers, but we'll do our best to
3 answer questions.

4 JUDGE KARLIN: Okay.

5 JUDGE BARATTA: Good. I've got a few
6 questions.

7 JUDGE KARLIN: Okay. Could you enlighten
8 me a little bit about there's this statement which was
9 in Mr. Gundersen's -- that with respect to -- do you
10 have any information on the background as to why these
11 types of tests are required if there are power
12 increases above 10 percent, does NRC approve this
13 ELTR-1 requiring the MSIV Closure Test to be performed
14 - and I'm referring to page 4 again of his - "If the
15 power uprate is more than 10 percent above previously
16 recorded MSIV closure transient data, topical report
17 also requires the GLR test to be performed, if the
18 uprate is more than 15 percent of previously recorded
19 transient data."

20 And then there's also another statement,
21 too - that says with respect to the topical report
22 that was filed by GE, in here it says, "The NRC Staff"
23 - and this is going to page 3 now - "The NRC Staff
24 does not accept the proposal for the generic
25 elimination of Large Transient Testing." Could you

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1 comment on either one of those?

2 MS. POOLE: I'm afraid that we can't, but
3 we'd be happy to make a supplemental filing if the
4 Board would like. We know that it was required in the
5 NRC approved topical report, but I can't tell you why
6 at the moment.

7 JUDGE BARATTA: If they did, then, of
8 course, the parties would have the opportunity to
9 comment on their filing, I guess.

10 JUDGE KARLIN: Right. I'm not sure
11 whether we want to get into that. Perhaps we can talk
12 for a minute, and hold that in abeyance.

13 JUDGE BARATTA: Yes, we need to talk about
14 it.

15 JUDGE KARLIN: We'll take a recess at a
16 later point, and get back, open the record or
17 something. But you can't answer that question? This
18 is like a basic question. There's been cited, and NRC
19 approved ELTR-1, and it says you've got to require
20 certain testing with an uprate of more than 10
21 percent. I'm sorry to repeat your question, but it
22 seems like a reasonable one. And if it's 15 percent,
23 there's another test that has to be prescribed. And
24 now we have Entergy, which would seem in the face of
25 both of those guidelines or provisions, not

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1 requirements, not regulations, they seem to have a lot
2 of moxy to ask for elimination of those tests. And
3 it's under consideration there, but you're not ready
4 to address that?

5 MS. POOLE: I'm afraid we just don't know,
6 but what I can do is make a call at the break, and
7 perhaps I can answer it after the break? Maybe that
8 will help.

9 JUDGE KARLIN: Yes, that might be helpful.

10 MS. POOLE: Okay.

11 JUDGE KARLIN: Any other questions for the
12 staff?

13 JUDGE RUBENSTEIN: No.

14 JUDGE BARATTA: No.

15 JUDGE KARLIN: All right. Thank you, Ms.
16 Poole.

17 MR. SHADIS: Before my time starts --

18 JUDGE KARLIN: You will have four minutes.

19 MR. SHADIS: We'd like to get a written
20 copy of that reply, whatever it is that staff is
21 bringing in, and have the opportunity to reply to it.

22 JUDGE KARLIN: It will be on the record.

23 JUDGE RUBENSTEIN: You're going to make a
24 phone call?

25 MS. POOLE: I'm going to try to make a

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1 phone call at the break, and perhaps that will be able
2 to answer the question.

3 JUDGE KARLIN: All we're going to ask is
4 a question. We've asked a question, and they didn't
5 use up all their time, so we'll give them a little bit
6 of time to answer that question.

7 MR. SHADIS: I see. Well, it's
8 interesting that you raise this.

9 JUDGE KARLIN: And the point is,
10 essentially, we're trying to help your case.

11 MR. SHADIS: I understand that.

12 JUDGE KARLIN: We've asked the question,
13 how can they even consider an uprate or a reduction in
14 this when there's two existing NRC staff provisions
15 which apparently say you've got to do more testing,
16 not less, when you uprate.

17 MR. SHADIS: We feel you've been
18 consistently helping us, and we appreciate it. You
19 did raise the question, though; you said here NEC has
20 cited the NRC requirements and specific to these
21 topical reports and so on. And neither the staff, nor
22 the applicant, dealt with this in their answer. In
23 fact, and we pointed this out in the beginning of our
24 reply, neither the staff nor the applicant included
25 any exhibits in any of their answers, nor did they

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1 counter the testimony of our experts with any expert
2 testimony in their answers. I mean, it's apparent now
3 that, at least in terms of the applicant, they're
4 seeking to make up for that deficit by trying to slide
5 in evidentiary testimony here. For example, yesterday
6 we heard from a reactor operator, so I just want to
7 make that point so that when you consider our
8 contentions, that you consider them, this one and the
9 all the rest, as essentially unopposed by either
10 exhibits or expert testimony.

11 A couple of quick points. Yes, of course,
12 Mr. Rubenstein is correct - there are changes. Of
13 course, there are changes in the parameters affecting
14 transients under extended power uprate conditions. I
15 mean, that is -- I don't know why the assertion to the
16 contrary was made by the applicant. It's obvious. In
17 fact, wetter steam, decay heat, faster steam flow, the
18 list goes on, so that all changes.

19 And we're curious as to why the experience
20 at Duane Arnold is irrelevant when the experience at
21 some foreign reactor is relevant. You really can't
22 have it both ways on that kind of a split.

23 Also, we were taken to task in Entergy's
24 reply that Mr. Gundersen said that the staff made a
25 decision with respect to Duane Arnold. And, in fact,

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1 he misspoke. He should have said the staff took a
2 position, which is a little bit different than making
3 a decision, but he's not a lawyer, and he didn't make
4 that distinction. Our application - excuse me - our
5 request for a hearing and our reply are shot-through
6 with typographical errors and misreferences. And they
7 are small, they do not affect the basic thrust or
8 content, or import of what it is we say. We
9 mistakenly referenced Part 20 in this particular
10 contention, but I don't think it's a fatal error, and
11 we'd ask that you simply overlook the fact that the
12 relevant part of the statute wasn't cited. We meant
13 to speak to that part of 10 CFR that addresses
14 emergency response and releases under accident
15 conditions, not Part 20 which is environmental.

16 I think with that I'll close. I think
17 everything stands on its own.

18 JUDGE RUBENSTEIN: Thank you.

19 JUDGE KARLIN: Any questions? All right.
20 Thank you. Thank you, Mr. Shadis. I think we're at
21 the point we can take an adjournment. We've been
22 pretty efficient here so far. We've gotten three
23 contentions done, so let's take a 10 minute
24 adjournment.

25 (Whereupon, the proceedings in the above-

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1 entitled matter went off the record at 10:23 a.m. and
2 went back on the record at 10:37 a.m.)

3 JUDGE KARLIN: Okay. We'll go back on the
4 record. Ms. Poole, do you have an answer to the
5 question that Judge Baratta asked?

6 MS. POOLE: I do have an answer. May I
7 have 30 more seconds to confer with the staff?

8 JUDGE KARLIN: Yes.

9 MS. POOLE: Thank you. Okay. Thanks very
10 much for allowing me to make that call. I apologize
11 for having to do so, but we were able to reach a
12 testing expert who was able to give me an answer that
13 I think will satisfy your question.

14 Start-up testing at initial plant
15 licensing, I was advised, is done primarily as a
16 quality check on analyses that were done, and also to
17 confirm that integrated plant behavior will be as
18 expected, and as analyzed by the licensee. Even
19 though analyses were done for individual systems, he
20 explained to me, when there's a transient, the staff
21 wants to ensure performance will be assumed. That
22 same logic has been used for the Large Transient
23 Testing in the EPU context.

24 It was explained to me that in the balance
25 of planned area on the secondary side, it was

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1 important for the staff to understand the details of
2 secondary system behavior; whereas, the staff does a
3 great deal of analysis on the primary system side in
4 individual plant systems looking at codes that are
5 used, et cetera, I was advised that the staff doesn't
6 have as good a feel for the secondary systems which
7 are unique by vendor; and, therefore, Large Transient
8 Testing is done to ensure the secondary side will
9 perform as analyzed, and the interaction between the
10 primary and secondary systems will perform as
11 analyzed. And I was told that the full load rejection
12 was a particularly good Large Transient Test because
13 it provided a great deal of data that was helpful for
14 further analysis later.

15 JUDGE KARLIN: Okay. Thank you.

16 MR. SILBERG: Excuse me. Before we
17 proceed with the next correction, I just want to make
18 sure that the technical responses we were giving in
19 response to the questions were correct, and we're
20 trying to get some wording straightened out just so
21 the record is clear.

22 JUDGE KARLIN: Well, unless the Board,
23 other members have some particular questions here, I
24 don't really think we want to reopen and go back to
25 that.

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1 JUDGE RUBENSTEIN: Can they add it --

2 JUDGE BARATTA: I mean, are you saying
3 that there was --

4 JUDGE KARLIN: Do you have a correction of
5 some kind?

6 JUDGE BARATTA: -- errata?

7 MR. SILBERG: Our technical people said
8 that some of the information might not have been as
9 clearly presented, and we just wanted to make sure
10 that it's clear on the record.

11 JUDGE BARATTA: If it's clarification, but
12 if it's -- I'm not particularly interested in hearing
13 it, but if there actually was an error made on a
14 statement, then that's different.

15 MR. SILBERG: No, there was clarification.

16 JUDGE BARATTA: Okay. Let's move on then.

17 JUDGE KARLIN: This is Contention 5
18 regarding the maintenance of documents.

19 MR. BLOCK: Yes. Again, relying on in
20 this case the need in order to safely accomplish the
21 proposed power uprate that's the subject of the
22 application, there has to be adequate documentation,
23 records maintained. And Mr. Gundersen, who is our
24 expert, had been reviewing documents in his particular
25 area of interest, the cooling tower documents, so he

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1 happened to have some extensive ones available in the
2 Public Service Board proceeding, about 15 inches he
3 describes. And in that case, he discovered a
4 succession of absences or missing information, some of
5 which is part of the design basis. One of those
6 caused him to, when he discovered that, to within, I
7 believe, 24-hours file the allegation that was
8 referred to yesterday. And the question really is how
9 many examples are needed to justify saying that there
10 needs to be, at least as a condition for allowing this
11 to go forward, an extensive review to clear up this
12 problem. He discovered these missing portions of
13 design basis documents, documents that support the
14 design basis, and we are contending that until at
15 least such a review is conducted to each one of the
16 informational areas that are relied upon to support
17 the application, that there can be no assurance that
18 regulations for record keeping are properly being
19 complied with; and, therefore, since the regulations
20 are there in order to, under the Atomic Energy Act,
21 protect occupational public health and safety
22 adequately, that there can't be any adequate assurance
23 of that because of these gaps. And I think that's
24 essentially it. If the Board has some questions, I'd
25 just reserve any time that's left over after

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1 questioning for some rebuttal.

2 JUDGE KARLIN: Okay. Give us a minute
3 here.

4 JUDGE RUBENSTEIN: Now this falls in a
5 class of your contentions similar to the QA/QC, in
6 which you justify or you - pardon me - you attempt to
7 justify that the current licensing basis operation and
8 maintenance of the plant is unsatisfactory, and which,
9 of course, you may have had discussions or had
10 recourse to 2.206 petitions to get this right, or to
11 get satisfaction. And the general part of your logic
12 is that the plant is not right, and this is an
13 assertion at the level until you have some
14 satisfaction from the NRC to 2.206, or some
15 recognition of this, that you can't go to the power
16 uprate. Is this a fair characterization of a number
17 of your --

18 MR. BLOCK: It's close. I think that Mr.
19 Shadis will touch on this in the next contention, but
20 it's clear that our experts were told that when they
21 had raised the 2.206 process in this matter, not in
22 this particular one, but in a related one, take it up
23 at hearing. And so we're trying to bring it up at
24 hearing, and I think I generally agree, but I think
25 that the QA/QC is a distinct one. I mean, I think

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1 perhaps it would have been possible to frame a broader
2 contention that included each of these elements and
3 group them together under that single heading of these
4 failings, that collectively but all individually, each
5 one individually undercuts the necessary basis to
6 provide safety assurance if you go ahead under this
7 application. So I guess if that's a point of
8 agreement, we would agree.

9 JUDGE BARATTA: In no sense am I wanting
10 to be dismissive of your concerns, but each of these,
11 there's a way to address them by petitioning NRC
12 directly. And I keep looking within the scope of our
13 hearing as defined by the Commission to relate it to
14 a power uprate, extended power uprate, how I can
15 create a nexus, other than a general concern that
16 things are not right, and maybe you shouldn't go
17 forward with the power uprate. But in our hearing
18 today, one has to reach a little bit of a closer
19 relationship between these general concerns and the
20 specific questions before us today, so I don't know if
21 there's an answer to that, but it's sort of a comment
22 from the Board, from me.

23 MR. BLOCK: Well, we certainly recognize
24 the problem that you're referring to, but what we're
25 left with is in a very similar situation when the

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1 experts raised the 2.206 petition, they said, "Take it
2 up at the hearing". And so we're left with a kind of
3 Catch-22 as to who is going to say the buck stops
4 here, and that clearly, from looking at the
5 declaration, you can see the number of instances Mr.
6 Gundersen cites for missing information that should be
7 there as part of their support for their design basis.
8 And it seems to us that this is a large change, as Mr.
9 Shadis pointed out, in a sense making a new reactor
10 inside the old one. And if you don't have that
11 documentation in place, I don't see how any kind of
12 assurance can be provided to the public that this is
13 going to be -- that the health and safety is
14 adequately protected.

15 JUDGE RUBENSTEIN: In essence, this is a
16 two-step process, not in this particular forum, but
17 you have to get some recognition of your assertion or
18 some agreement in the regulatory sense that (a) this
19 is a problem, and you're saying it's a problem in our
20 forum, and it's not necessarily a problem. It's your
21 viewpoint there's a problem, as it is today, and a
22 proper avenue is the 2.206 or some other petitioning
23 method to the Commission. And that would establish a
24 basis to us to deal with well, this is a power in
25 extended power uprate.

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1 JUDGE BARATTA: Could I --

2 JUDGE RUBENSTEIN: Sure.

3 JUDGE BARATTA: For example, you state
4 that the portions of the 1986 Chicago Bridge & Iron
5 Report on the 40-Year Design Life of the plant are
6 missing, and could you explain how that relates to the
7 power uprate as a specific example? Would that help
8 your question?

9 JUDGE RUBENSTEIN: Yes. It's a good
10 example of where I'm coming from.

11 MR. BLOCK: Right. It's part of the
12 design basis documents and it listed a number of
13 thermal cycles that the plant could go through, and
14 portions of the report were missing, just weren't
15 there.

16 JUDGE BARATTA: Okay. So that's a
17 document that deals with the ability of the plant to
18 withstand so many cycles. Is that correct?

19 MR. BLOCK: Correct. Yes. We believe it
20 deals with reactor ductility.

21 JUDGE BARATTA: Okay.

22 MR. BLOCK: Reactor vessel ductility.

23 JUDGE BARATTA: Okay. And then do you
24 know what portions are missing?

25 MR. BLOCK: Okay. What Mr. Shadis was

1 appraising me of is that when the issue was raised,
2 the document was missing large sections, which then
3 mysteriously were replaced so that once the issue had
4 been raised, that they then made some efforts to
5 replace the missing sections of the documents and put
6 them there, but during the time that the documentation
7 was missing, they were not in compliance with their
8 design basis. Those documents weren't available.

9 JUDGE BARATTA: Okay. When you say they
10 were replaced, were they replaced with original
11 documents?

12 MR. BLOCK: Apparently, but we have no way
13 of verifying whether that's a correct statement or
14 not; just that the pages that were missing were
15 replaced suddenly, once the issue was brought out.
16 And during the time, of course, that they're not
17 there, they're not in compliance.

18 JUDGE BARATTA: Okay. Thank you.

19 MR. BLOCK: Thank you.

20 JUDGE KARLIN: All right. You'll reserve
21 whatever time remains.

22 MR. BLOCK: Yes, thank you.

23 JUDGE KARLIN: Okay.

24 MR. ROSINSKI: Yes.

25 JUDGE KARLIN: Mr. Rosinski.

1 MR. ROSINSKI: I think the question here
2 was properly put forth, how many documents do you need
3 to create a design basis issue, and I think our
4 response will be at least one relevant document. The
5 assertion here is that Entergy has failed to maintain
6 adequate design basis information, contrary to the
7 requirements of 10 CFR 50.54. And for that, the
8 Coalition provides three and maybe four specific cites
9 to supposed design basis information that again are
10 purportedly missing.

11 The first one is a document that they
12 describe as a 1986 Chicago Bridge & Iron Report on the
13 40-year design life of the plant. There was some
14 discussion about this, but there was discussion of a
15 prior submittal of an anonymous allegation that such
16 a document was missing. We responded to that
17 allegation, again not knowing where it exactly came
18 from, that there was no such document to our knowledge
19 that ever existed related to Vermont Yankee, and we
20 didn't have any such document. The response came back
21 again anonymously through the NRC that they were
22 looking for some 1987 document of some sort, of which
23 we provided and said that it was available at the
24 plant.

25 Now whether this relates to that or not,

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1 I'm just building on the statements that were made
2 earlier, that it was related. Again we reiterate,
3 there is no 1986 Chicago Bridge & Iron Report that we
4 have any knowledge of. It is not the design basis of
5 what appear to be not the plant, but the reactor
6 vessel, talking about nil ductility.

7 What is the design basis of the reactor
8 vessel at Vermont Yankee is a 1969 General Electric
9 design document, which we have at the plant, which is
10 stamped and certified by a professional engineer which
11 contains all the original design basis information for
12 the vessel.

13 MR. BLOCK: We have to object at this
14 point. If you wanted to provide that, it would have
15 been properly provided by attaching it or referencing
16 it in the answer. This isn't the time to be doing
17 this, and we put that objection on the record.

18 JUDGE KARLIN: Well, I think I'll listen
19 to the note, but I believe that document is referred
20 to in the answer.

21 MR. ROSINSKI: That is my response. We
22 did cite that.

23 JUDGE KARLIN: And they're not putting it
24 in evidence, but they mentioned it in their answer,
25 and you had a chance to address it in your reply, so

1 I think that's all right. I'm going to overrule that.

2 MR. ROSINSKI: And again I want to
3 reiterate, we're not arguing whether it is or isn't.
4 That is our response to their apparent assertion that
5 the design basis for the reactor vessel cannot be
6 found.

7 JUDGE KARLIN: If I may, I read your
8 answer where you said look, we have no idea what this
9 1986 Chicago Bridge & Iron Report is, we never heard
10 of it, there's no such document. How could there be
11 a problem with it? And then you made some reference
12 to this 1969 design basis document or whatever, and I
13 just didn't see any answer or response in the reply to
14 that; and so, apparently that's just a bit of a
15 strange one, because according to what your answer
16 says, there is no such document, never was.

17 MR. ROSINSKI: Well, again --

18 JUDGE KARLIN: But you'll have an
19 opportunity for reply here.

20 MR. ROSINSKI: The second time we've
21 looked for this type of document, regardless of what -
22 - we did a broad search and we just don't know what
23 they're speaking about.

24 Just briefly, our response is that the
25 whole contention, the whole basis of this contention

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1 is out of scope of this hearing, as we briefly
2 discussed here. But factually, also, documented
3 problem about tracking of material in 1979 just
4 doesn't have any relationship to either design basis
5 or EPU. The undocumented cracks on the steam dryer --

6 JUDGE KARLIN: When you say 1979, this is
7 the missing fuel rod documentation.

8 MR. ROSINSKI: Right.

9 JUDGE KARLIN: I guess the issue came up
10 recently, but the documentation problem goes back to
11 '79?

12 MR. ROSINSKI: Yes. It's my understanding
13 that that was as far back as they traced the lack
14 traceability document that establishes --

15 JUDGE KARLIN: But this just came up last
16 spring or something?

17 MR. ROSINSKI: It did, but it's also
18 important to note that the material is where it was
19 supposed to be, it was the paperwork that was --

20 JUDGE KARLIN: The materials where they
21 were supposed to be, but the paperwork was a problem.

22 MR. ROSINSKI: And it is also not a design
23 basis issue in any regard.

24 JUDGE KARLIN: Well, paperwork is very
25 important.

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1 MR. ROSINSKI: Design basis paperwork is
2 also very important. This is not design basis
3 paperwork.

4 JUDGE KARLIN: Okay.

5 MR. ROSINSKI: The undocumented cracks in
6 the dryers, using their term "undocumented", there
7 were no inspection requirements for the steam dryer
8 until quite recently. The first opportunity was in
9 April of 2004 for a steam dryer inspection. That
10 inspection was conducted, and as noted in the
11 application, supplementary application, and extensive
12 inspection of that dryer was performed and documented
13 in at least four inspection reports and numerous
14 analyses, and the indications or cracks as they refer
15 to them that were found were documented.

16 Essentially what we're saying is, as soon
17 as they were found, they were documented, so the only
18 time they were undocumented was when Vermont Yankee
19 was unaware that they were there.

20 JUDGE KARLIN: Let me ask, I think at page
21 34 of your answer, if I've got my notes right, you
22 make reference to inspection of steam dryer, April of
23 '04. And then refer to a document BVY 04058,
24 Attachment 1. Was that attached to your answer?

25 MR. ROSINSKI: No, that is Supplement 8,

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1 Attachment 1 to Supplement 8 of the application. It
2 was an RAI response, a pretty extensive RAI response
3 where they asked a specific question, and we got the
4 specific 20-some page --

5 JUDGE KARLIN: So that wasn't attached to
6 your answer.

7 MR. ROSINSKI: No.

8 JUDGE KARLIN: All right. That clarifies
9 it. I mean, again I don't want to burden the
10 pleadings with a lot of documents, but if you
11 reference something of importance, we need to -- it's
12 valuable to see that document if you ask us to really
13 consider the validity of what you're asserting in your
14 pleadings; just as I think that
15 Petitioner/Intervenor's attached documents - if
16 there's something important, we need to see it.

17 MR. ROSINSKI: I understand your comment.

18 JUDGE KARLIN: We're not asking for it
19 now, but --

20 MR. ROSINSKI: We did not attach docketed
21 information. And finally, there is a vague discussion
22 of the 1998 response to the again Vermont Yankee,
23 prior to Entergy owning Vermont Yankee, response to
24 the 1997 Commission 50.54F request for information
25 regarding design basis. What relevance that has to

1 Entergy, EPU, or the current issues escapes me.
2 Again, it's outside the scope.

3 I would just also comment on this document
4 which was raised where they got a partial document in
5 a second copy. That was, as I understand what the
6 description was, appears to relate to a discovery
7 issue in the state hearing, where an incomplete copy
8 of a document was provided. Apparently, a second
9 copying issue arose where the blank pages weren't
10 included in the document and the pages, the one of
11 whatever it was, weren't complete. And then a
12 complete document, including all the blank pages, was
13 provided. That's my understanding of that. It wasn't
14 a 1986 Chicago Bridge & Iron Report in any event. I
15 don't know exactly what it was, but it was a document
16 they requested, and eventually they got a full copy,
17 including the blank pages. How that relates to this
18 at all, I have no idea. With that, I'll be happy to
19 answer any of your other questions.

20 JUDGE RUBENSTEIN: This is sort of a
21 general question on licensing basis, but you can
22 answer it in the context of your plant, and it's for
23 my edification. In a number of older plants, not
24 necessarily your's, had an imperfect licensing basis
25 documentation in past years, and then the NRC put out

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1 a requirement or initiative that all plants would have
2 to have a proper licensing basis documentation. What
3 period of time did you update your's, and when was it
4 reviewed and approved, or considered to be done?

5 MR. ROSINSKI: I can't answer that
6 question. Following the 1997 Commission request for
7 information and the '98 response, Vermont Yankee
8 undertook approximately a two-year effort, something
9 on the order of \$20 million to review its design basis
10 and to ascertain what wasn't in the condition that
11 they wanted it to be, and did the upgrade. One of the
12 outputs of that, my understanding, is what was called
13 design basis documents, which a good number exist on
14 systems important to the plant where they specifically
15 collated the design basis information into a document,
16 a plant document which is used in design reviews and
17 design basis, to answer design basis questions.

18 JUDGE RUBENSTEIN: This is sort of a
19 publicly available document?

20 MR. ROSINSKI: It is not publicly
21 available. It's a controlled procedure, controlled
22 document within the plant.

23 JUDGE RUBENSTEIN: Okay.

24 MR. ROSINSKI: So it wouldn't necessarily
25 be available.

1 JUDGE RUBENSTEIN: But you have an
2 established design basis document that defines your
3 current licensing basis, and it's been sort of blessed
4 by the NRC?

5 MR. ROSINSKI: I'll just be careful with
6 the difference between --

7 JUDGE RUBENSTEIN: I didn't say reviewed
8 and approved.

9 MR. ROSINSKI: I was going to quibble a
10 bit with the licensing basis versus design basis.

11 JUDGE RUBENSTEIN: Okay.

12 MR. ROSINSKI: Design basis is defined in
13 50.2, the particular group of information. Licensing
14 basis, as you know, is a bit broader than that.

15 JUDGE RUBENSTEIN: I stand corrected.

16 MR. ROSINSKI: We do, it's my
17 understanding, try to incorporate all the licensing
18 basis, but because that changes more often with the
19 administrative --

20 JUDGE RUBENSTEIN: The licensing basis is
21 in your license.

22 MR. ROSINSKI: Right. Right. That's
23 defined by license --

24 JUDGE RUBENSTEIN: With the tech specs,
25 environmental tech specs, and the LCOs, and the LSSS,

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1 and other good things that define your operation.

2 MR. ROSINSKI: Yes, sir. As the title
3 would suggest, the design basis documents, the purpose
4 of those was to collate the design basis information.

5 JUDGE RUBENSTEIN: Okay. Thank you.

6 JUDGE KARLIN: Any more questions?

7 JUDGE BARATTA: So you have no knowledge
8 of this report that is referenced by the Intervenor,
9 the Chicago Bridge & Iron Report. Is that correct?

10 MR. ROSINSKI: Vermont Yankee cannot
11 identify any document even reasonably close to that
12 description.

13 JUDGE BARATTA: What was the document,
14 though, that was provided in an incomplete form during
15 the state --

16 MR. ROSINSKI: We can provide that
17 information. I do not have it right -- I do know it
18 was a specific Vermont Yankee calculation that they
19 were seeking, and that was what was provided.

20 JUDGE BARATTA: Was that related to the
21 reactor vessel?

22 MR. ROSINSKI: I don't know.

23 JUDGE KARLIN: All right. Thank you, Mr.
24 Rosinski. Staff.

25 MS. HIGGINS: We have nothing further to

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1 add, unless you have any questions you'd like us to
2 answer.

3 JUDGE KARLIN: Okay. And could you
4 introduce yourself again, I'm sorry.

5 MS. HIGGINS: Marisa Higgins, attorney
6 with OGC.

7 JUDGE KARLIN: Any questions? No. Mr.
8 Block.

9 MR. BLOCK: Briefly. Our expert tells us
10 that, in fact, he has a copy of the Chicago Bridge &
11 Iron Report, and from his point of view, he described
12 it as being the straw that broke the camel's back in
13 getting provision of the missing portions of it,
14 getting the Public Service Board to sanction Entergy
15 for \$51,000 for violating discovery. And I guess we
16 can get in touch with him and produce a copy to the
17 Board if you'd like to have that from us.

18 We also note that on the steam dryer
19 issue, that we believe that the crack failure was only
20 first noted in 2002, and isn't something that would
21 have been assessable until they had a refueling.
22 Those were the only two points I wanted to address.

23 JUDGE KARLIN: Okay.

24 JUDGE BARATTA: That document that -- I'm
25 a little confused because Entergy alluded to a

1 document that was entered into some prior proceeding
2 as the document that they thought you were referring
3 to. And I gather that's not the document?

4 MR. BLOCK: There may have been another
5 document. You know, there may well be another one,
6 but there is, according to Mr. Gundersen, the Chicago
7 Bridge & Iron Report. And apparently, that was
8 provided to him by way of discovery after sanctions
9 had to be imposed. And he was an expert witness in
10 that case.

11 JUDGE KARLIN: Any further questions?

12 JUDGE RUBENSTEIN: No, thank you.

13 JUDGE KARLIN: All right. Thank you.

14 MR. BLOCK: And I just wanted to close by
15 saying in any case, in these instances they've offered
16 no document to refute what Mr. Gundersen is saying.

17 JUDGE KARLIN: All right. Thank you. I
18 guess we proceed to your contention, Coalition
19 Contention 7.

20 MR. BLOCK: Right.

21 JUDGE KARLIN: Will you be arguing that?

22 MR. BLOCK: This last one is Mr. Shadis.

23 JUDGE KARLIN: Okay.

24 MR. SHADIS: I'm sorry.

25 JUDGE KARLIN: Well, we were waiting for

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1 you to proceed.

2 MR. SHADIS: I thought you were reviewing
3 the contention in your own --

4 JUDGE KARLIN: No, I'm sorry. We're
5 waiting for you to proceed. Go ahead.

6 MR. SHADIS: I'm ready to go.

7 JUDGE KARLIN: I'm sorry.

8 MR. SHADIS: Thank you very much. At the
9 heart of this contention is the requirement to keep
10 documents and the regulation cited is 50.71(E),
11 although I think that we intended a small "e", but
12 nonetheless, this part of the regulation refers to the
13 keeping of updated final safety analysis reports. The
14 FSAR, as the Board knows, is the constitution of any
15 given power plant, its physical and operational
16 constitution. It embodies any determinations with
17 respect to the material condition of the plant, to its
18 operating parameters, to its operating rules. And it
19 is New England Coalition's position that before you
20 can assess whether or not proposed changes and
21 modifications such as those in the EPU application can
22 be reviewed with assurance to public health and
23 safety, the reviewer must have ready access to a
24 complete and coherent, and understandable FSAR and all
25 the attendant design basis documents.

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1 Our expert, Mr. Blanch, has provided
2 testimony with respect to his experience in trying to
3 find out what design criteria and what regulations the
4 plant now operates, or is supposed to be operating in
5 conformance with, and how they will apply under
6 uprate. And he explains his frustrations in being
7 directed by both the plant owners and by NRC to a
8 specific portion of the UFSAR, only to find out that
9 that portion says "for historical purposes only, see
10 elsewhere", and there's really a broken trail of
11 information that he refers to.

12 It is clear that in terms of licensing
13 proceedings for new construction, that the NRC has
14 found dating back to the early 1980s, that yes, they
15 must make a finding that there is compliance with all
16 applicable NRC safety regulations. And if not,
17 whether the safety review process provides a legally
18 adequate basis for an affirmative finding of
19 compliance. In there early work referenced, Section
20 185 of the Atomic Energy Act provides that operating
21 licenses are issued upon a finding that the facility
22 authorized has been constructed and will operate in
23 conformity with the rules and regulations of the
24 Commission. So the Atomic Energy Act itself requires
25 a finding of compliance with all applicable

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1 regulations before issuance of an operating license.

2 JUDGE BARATTA: That's for initial
3 operating license.

4 MR. SHADIS: That's correct.

5 JUDGE BARATTA: There's different
6 proceedings with respect to amendments on license.

7 MR. SHADIS: That's correct. And I offer
8 you that the same kind of requirements, if not as
9 stringent, need apply when you are changing,
10 significantly changing the thermal power license, and
11 when you are changing attendant equipment, and
12 adjusting all the operating parameters of a plant. As
13 we discussed earlier, we are in essence plugging in
14 100 megawatt plant within this whole 500 megawatt
15 plant, and this is - and I know you're not going to
16 accept this, but this is, in our view, tantamount to
17 building a new plant. Nonetheless, it is also a major
18 significant evolution, and NRC, as I've also explained
19 earlier, initially refused to do an independent safety
20 assessment or an independent engineering assessment
21 asserting that their standard regime of inspection
22 found the plant to be in conformance.

23 What we're saying is the plant is not in
24 conformance. It certainly is not in conformance with
25 all of the applications - excuse me - with all of the

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1 regulations regarding maintaining an updated final
2 safety analysis report. And it goes right to the
3 core, to the heart of design basis. It goes to the
4 heart of beginning to risk-inform regulation. You may
5 recall that in 1996, that NRC Chairman, Shirley
6 Jackson, issued a confirmatory letter requiring all
7 the licensees to pony-up and get their licensing basis
8 in order. It gives us very little confidence to find
9 Entergy now asserting that in the last few years they
10 spent \$20 million trying to upgrade the licensing
11 basis of Vermont Yankee, and still that they do not
12 have a coherent, you can find it all in one place,
13 updated final safety analysis report. I think that's
14 at the core of our problem.

15 JUDGE KARLIN: Well, let me -- I want to
16 focus on that. I mean, Contention 7 I'm looking at.
17 "Entergy has failed to comply with the Regulation
18 50.71(E), maintenance of records. Observe of this
19 rule is essential. Our records provide a measure upon
20 which future activities can be predicated. Without
21 accurate and clear records, no meaningful review of
22 the proposed uprate can take place. Therefore, NRC
23 should deny the amendment." That's it, that's the
24 whole thing that you state there.

25 Now you then have the Blanch declaration

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1 attached, and so I'm studying that. And it appears on
2 page 3, "Failure to comply with the requirements of
3 50.71(e), maintenance of records." Then he goes on to
4 quote the regulation at some length, and that's fine.
5 And then he indicates that there's a reg guide from
6 the NRC, and the reg guide makes a reference to NEI
7 98-03 for methods or guidelines acceptable to the NRC
8 staff for complying with provisions of that reg.

9 Then we have in that guideline attached to
10 a guideline a statement saying, "Historical
11 information is that which is provided in the original
12 FSAR to meet the requirements of the regulation", such
13 and such, "and meets one of the following bullets."

14 We get apparently to the gist of the
15 problem, the only specific thing you seem to have
16 raised here, is that the Vermont Yankee in its
17 proposed Rev 18 to the UFSAR is misapplying the label
18 "historical information"; that apparently, they've put
19 information in there which Mr. Blanch believes is
20 improperly labeled as "historical information". And
21 by classifying the compliance with the general design
22 criteria as historical, Vermont Yankee is proposing to
23 remove all commitments to the basic regulatory
24 requirements. While I think it's patently incorrect
25 to think that some label in some document submitted by

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1 Vermont Yankee could possibly change the regulatory
2 status of those requirements, and that's -- there's
3 another page to this declaration by Mr. Blanch. I'm
4 not sure -- the gist of this is simply that on one
5 document they put the wrong label on a certain segment
6 of information.

7 JUDGE KARLIN: I'm not even sure it's the
8 wrong label, but I'll posit that for a minute.

9 JUDGE BARATTA: All right. I'll let you
10 posit that. I apologize for interrupting.

11 JUDGE KARLIN: The question is, is that
12 all you've got to support this allegation?

13 MR. SHADIS: No.

14 JUDGE KARLIN: Well, that's all you put
15 down on paper.

16 MR. SHADIS: Well, I think that it is
17 clear from Mr. Blanch's declaration in our reply, and
18 also from this declaration that Mr. Blanch has
19 attempted to ascertain the conformance or non-
20 conformance of Vermont Yankee with applicable
21 regulations, that he went to the FSAR, as we've heard,
22 and after consulting with NRC and with the licensee,
23 he went to the FSAR to the section referred to, and
24 there he found this reference to documents being there
25 for historical purposes only. And if that's the case,

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1 then they're not there to demonstrate compliance. And
2 so it's --

3 JUDGE KARLIN: I don't think that
4 dichotomy exists, necessarily. I don't see that in
5 the --

6 MR. SHADIS: Pardon me?

7 JUDGE KARLIN: The guidance to a guidance
8 has a concept of the definition of historical
9 information, and even in that which has no regulatory
10 power or it doesn't say that historical information is
11 not enforceable.

12 MR. SHADIS: Yes.

13 JUDGE KARLIN: And I don't see anything in
14 the reply. I mean, where in the reply are we given
15 anything on this? There's two pages dedicated in the
16 reply to this issue, and I didn't see anything more
17 cited. I mean, I'm trying to understand what you're
18 saying here; pages 41 --

19 MR. SHADIS: I'm trying to --

20 JUDGE KARLIN: -- to page 43, top two
21 lines.

22 MR. SHADIS: Yes. I was referring to the
23 famous floating declaration, the one that got detached
24 from our reply.

25 JUDGE KARLIN: Is it addressed there?

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1 MR. SHADIS: Yes. Well, Mr. Blanch says,
2 "My review of the UFSAR and all other design and
3 licensing basis documents failed to uncover the
4 referenced information."

5 JUDGE KARLIN: Okay.

6 MR. SHADIS: We do have an electronic copy
7 of what purports to be the UFSAR. It's some 20,000
8 pages worth, I think, as I recall; and he's done a
9 fairly sophisticated electronic search on it, and we
10 are unable to determine if Vermont Yankee is in
11 compliance or not in compliance as it sits at 100
12 percent, never mind going to 120.

13 JUDGE KARLIN: Where is that? Help me,
14 where is that in Mr. --

15 MR. SHADIS: Mr. Blanch says on page 3 of
16 his declaration in support of our reply, "My review of
17 the UFSAR and all other design and licensing basis
18 documents failed to uncover the referenced
19 information."

20 JUDGE KARLIN: Okay.

21 MR. SHADIS: And he starts actually - I
22 think he starts on page 2 with a history of his
23 search. Let me see. He says, "Finally, in examining
24 the UFSAR for Vermont Yankee Nuclear Power Station,
25 one finds the following statement concerning Entergy's

1 compliance regarding compliance with design criteria."
2 And it's regarding compliance with the design criteria
3 - "information regarding the application of the
4 general design criteria can be found elsewhere in the
5 UFSAR and in other design and licensing basis
6 documents." And that is a quote from that portion of
7 the UFSAR. And Mr. Blanch was then referred to
8 Appendix F, and he says that my review of this and all
9 the other documents failed to uncover the referenced
10 information.

11 Additionally - I don't know if we provided
12 it or not - I guess we did. We mentioned it
13 yesterday; that Mr. Blanch and Mr. Gundersen both
14 assessed that this was an issue at Vermont Yankee, and
15 they took it to a 2.206 Petition Review Board. And
16 Mr. Dyer of NRR referred them here, so here we are.

17 JUDGE KARLIN: So a 2.206 petition was
18 filed and was rejected?

19 JUDGE RUBENSTEIN: Put in abeyance, I
20 guess.

21 MR. SHADIS: It isn't -- at this moment it
22 was refiled. They insisted on amending it and
23 refiling it, and we're in anticipation of a letter
24 from the Petition Review Board, and it's been a few
25 weeks in coming. For some reason or another, that's

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1 held up, but the letter denying the initial petition
2 from Mr. Dyer refers Mr. Blanch and Mr. Gundersen to
3 this proceeding. And even though I think their
4 petition actually went beyond what we're covering in
5 this proceeding, that's what they were directed to.

6 JUDGE KARLIN: Well, I'm not sure what
7 they did, but I think for the public and so you know,
8 the scope of what we're doing here today

9 So, a 2.206 petition was filed and was
10 rejected.

11 JUDGE RUBENSTEIN: Put in abeyance I got
12 the impression.

13 MR. SHADIS: It isn't at this moment, it
14 was refiled. They insisted on amending it and
15 refiling it and we're in anticipation of a letter from
16 the petition review board and it's been a few weeks
17 and coming. For some reason or another that's held up
18 but the letter denying the original petition from Mr.
19 Dyer refers Mr. Blanch and Mr. Gundersen to this
20 proceeding and even though, I think their petition
21 actually went beyond what we're covering in this
22 proceeding, that's what they were directed to.

23 JUDGE KARLIN: Well, I mean, I'm not sure
24 what they did but I think for the public and you know,
25 our scope of what we're doing here today is the Delta

1 or the increase, the upgrade of 20 percent. There is
2 an existing license for this facility. It's been in
3 existence for many years. There are a lot of
4 regulatory requirements in that license and you have
5 raised issues as to whether they are in compliance
6 with some of those regulatory requirements. We don't
7 know anything about that other than what's been
8 presented in the pleadings here in the last two days,
9 but for the audience, we've been referring to 2.206
10 and what that is, is a mechanism whereby someone who
11 thinks that a current licensee is in violation of some
12 requirement, can go to the Commission, to the staff,
13 not to this board, and ask them to do something about
14 it, take an enforcement action or make some change.
15 Apparently that has been requested here. What we're
16 doing is not regulating -- what this board is here to
17 do doesn't have anything to do with the existing
18 license of whether they've complied with it.

19 It is whether they should get the 20
20 percent upgrade and to some extent compliance with the
21 current license may be relevant and you're raising
22 these arguments. But if Mr. Dyer or someone says,
23 come here, you come here, we're trying to deal with it
24 but I think we think that a current non-compliance, if
25 you allege that exists, the proper venue is to

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1 petition for the staff to take action under 2.206 and
2 apparently you've been trying to do that.

3 MR. SHADIS: So we get ping-ponged back
4 there but --

5 JUDGE KARLIN: We're not trying to ping-
6 pong you back there but I think you know and we know
7 that this is an uprate and that's compliance with the
8 existing permit and we can't really get into enforcing
9 them -- against them.

10 JUDGE RUBENSTEIN: Excuse me, let me add
11 to that before you answer it. What I tried to do with
12 my previous question was pretty much to set the stage
13 for Judge Karlin, in a sense. The design basis
14 documents were updated and documented and are in the
15 plant and were inspected, I'm going to use that word,
16 by the NRC that they exist. The licensing basis and
17 documentation is in the license and amendments.
18 That's the current state of the plan.

19 Now, the Commission -- the NRC can the
20 commissioners take very important to them the concern
21 that the review of the upgrade is technically
22 competent. And in that view and in a letter from the
23 chairman of the NRC to Mr. Dworkin, who I guess is
24 chairman of the DPS, they outlined the review
25 procedure special to the extended power uprate of the

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1 plant. And in this they referenced a document which
2 they had -- I don't know -- much agony in producing or
3 many man-hours if one wants to talk about it
4 specifically, review Standard 001. And they also said
5 that in addition to the standard inspection and the
6 fact that they have a site representative on the site
7 here in Vermont, and I assume DPS has an individual at
8 the plant full time doing an -- not full time? Well,
9 has a representative there part time.

10 But that's for them to do. NRC
11 obligations are fulfilled by the NRC and they also
12 executed a special inspection whose results are
13 pending. So for this particular instance, we're
14 dealing with the SAR that the licensee has proposed
15 and auxiliary documentation that goes with it for the
16 extended upgrade and any things that the staff will
17 have found in the Review Standard 001. So I want to
18 give a complete picture of the review process
19 understanding at the plant. And if you have a
20 different understanding, we would love to hear it.

21 MR. SHADIS: Well, I have Mr. Dyer's
22 letter to Mr. Gundersen and Mr. Blanch and, indeed,
23 you know, RS 001 and the new engineering inspection
24 regimented team, engineering inspection are mentioned.
25 Those things are being done. But we have a

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1 description of a design basis of Vermont Yankee,
2 information regarding current design configuration.
3 It's found elsewhere meaning not in Appendix F, found
4 elsewhere in the UFSAR and in other design basis
5 information which is fine, you know. It doesn't tell
6 us where that is and then it says that the -- for
7 purposes of performing the inspection that we're
8 talking about the design basis of Vermont Yankee as
9 described above is the design basis that will use the
10 -- will be used by the engineering inspection team.

11 Our contention here is that that design
12 basis is not in order. This letter from Mr. Dyer
13 draws the clear connection that the inspection,
14 special inspection, for extended power uprate is being
15 based on this loosely described design basis. It is
16 not a coherent find it in one place UFSAR as described
17 in the regulation. And so what we're saying is,
18 there's -- without having it, there's no way that NRC
19 can provide assurance that the plant is operating in
20 conformance with regulation and therefore, it cannot
21 provide assurance that it is operating in a way to
22 protect public health and safety.

23 And finally, I need to say --

24 JUDGE KARLIN: Was there a two-minute
25 warning?

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1 MR. WACHTER: I'm sorry, I didn't hear it.

2 JUDGE KARLIN: You can finish your
3 sentence.

4 MR. SHADIS: Notwithstanding the position
5 discussed in this response, I remind you that the
6 application for extended power uprate provides the
7 public with an opportunity to request a hearing on any
8 issues relevant to the uprate. And for this reason,
9 the staff will not treat this request under 10 CFR
10 2206 process because these issues can be addressed
11 through the ongoing licensing proceeding and I will
12 tell you that this letter, in essence, the same body,
13 the same information, was sent to Vermont's
14 congressional team when they made the same inquiry.

15 So that is how we are directed, thank you
16 for the additional time.

17 JUDGE KARLIN: Thank you. Mr. Rosinski.

18 MR. ROSINSKI: Yes, once again, I think we
19 need to refocus on the actual contention. We've had
20 some pretty broad discussion of licensing, design
21 basis and ancillary issues. Let's look at what the
22 contention says. It only says a few things as the
23 Chairman has pointed out. But it does say that
24 allegedly update final safety analysis report
25 improperly classifies compliance with GDC historical

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1 information. I think we touched upon that but this
2 does illustrate the potential slippery slope of
3 granting Reg Guides regulatory recognition because now
4 they're using the Reg Guide and the Reg Guide is
5 concurrent with an industry guide and you know, how
6 far down do we go?

7 They're trying to apply that standard
8 here. So regardless of whether it's properly
9 historical or not, which we contend it is for the
10 reasons we described in our brief, we're trying to
11 apply a second here suggestion or guidance as a
12 regulatory impact. The only regulation here that was
13 cited is 5071(e), 10 CFR 5071(e) which simply says --
14 requires licensees to update periodically the final
15 safety analysis report annually or six months after
16 each refueling outage. There's not even an allegation
17 that we haven't done that.

18 Whatever else is here, is that is
19 factually incorrect. The citation and the only
20 citation that the Chairman noted to any portion of the
21 UFSAR is the supposed pending or proposed Revision 18.
22 As we said in our brief, that was submitted in April
23 of 2003. So again, whatever the merits of the
24 argument, which we contend there aren't any, this is
25 on a segment or a revision, an annual revision that

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1 was required per 5071(e) that went in well over a year
2 before this contention was written.

3 The next assertion is that Appendix F of
4 the Vermont Yankee updated final safety analysis
5 report wrongly states that compliance with draft GDC
6 is addresses elsewhere in the FSAR. I think this gets
7 down to a question of what the "it" is that they're
8 looking here for. If they're looking for a specific
9 citation or a table of GDC compliance, that is not
10 what is in the FSAR, nor what is required or should be
11 in the FSAR. The FSAR is not the constitution, we'll
12 take objection to that language. It is a document
13 that is supposed to describe the safety analysis and
14 the basis for the safety analysis of the plant. It
15 does. It does not describe it in the general terms of
16 the GDCs or the draft GDCs. It describes it in much
17 more detail than that.

18 If this electronic word search they were
19 doing was looking for the word "GDC", it probably
20 didn't find it. VY has gone to great effort to update
21 and provide more detail than just the GDC. It
22 describes the codes and standards, for example, that
23 are actually applied. It describes and lists the
24 calculations and the codes, the electronic codes that
25 we talked about before that the analyses are based on.

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1 It goes into a different level of detail. Without
2 knowing, because they didn't describe in their
3 contention what they were looking for, it's hard to
4 argue with them that they couldn't find it.

5 The key here is that regardless of all
6 these errors, the issue of the updating of the FSAR is
7 just outside any reasonable scope of an EPU
8 proceeding. Not only -- none of these examples have
9 anything to do with updating the FSAR. It also has
10 absolutely nothing to do with EPU.

11 JUDGE KARLIN: Well, let me ask you on
12 that, I'm not so sure. If you've got the current
13 licensing basis and you're asking or Entergy is asking
14 for a 20 percent increase. In order to evaluate what
15 the 20 percent is, we have to know what the baseline
16 is, don't we? And if the baseline is unclear, vague
17 or not there at all, then don't we have a problem in
18 understanding what that 20 percent is if we don't know
19 what this 100 percent is? We don't have that line in
20 between the two, then how can we know where the border
21 is on the 20 percent because we're looking at the 20
22 percent but there's no line there. Isn't that
23 relevant?

24 MR. ROSINSKI: Two answers, it is relevant
25 to the scope of the design basis that would possibly

1 be impacted by the proposed change. I think matching
2 the scope of the proceedings to the scope of the
3 design basis information, that is relevant to the
4 proceeding. The design basis information that is
5 relevant to the proceeding has been submitted in the
6 application.

7 JUDGE KARLIN: No, I think the point
8 you're making is there has to be some specific problem
9 with regard to some element of the current licensing
10 basis which is in question as opposed to just the
11 abstract principle.

12 MR. ROSINSKI: That was my second point.
13 Not only do you have to define scope right, but then
14 you have to point to what you consider improper. If
15 the question here, they don't say GDCX, I would submit
16 that doesn't matter. That's immaterial. What they
17 want to say is the basis for this flow or for using
18 this code is incorrect. We could respond to that. We
19 can't respond to, "I didn't find what I was looking
20 for". It's a big document. It's 20,000 pages. It's
21 also a lot larger when you say you've looked at all
22 the licensing data. That's incredibly much larger.
23 In any event, it is not the basis for a contention
24 that we looked and we couldn't find it because we
25 don't even know what it is here.

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1 They just said they can't find it.

2 JUDGE KARLIN: Yes.

3 JUDGE RUBENSTEIN: As a general comment,
4 not out of your time, to help Mr. Shadis, the NRC has
5 a standard review plan for each section in the FSAR.
6 And I think the first paragraph in the standard review
7 plan is the GDC and the regulatory basis for that
8 section and what the requirements are and in a minute
9 or two when it's the staff's turn, I'll ask them to
10 expand on that.

11 MR. ROSINSKI: I appreciate the setup. My
12 next point was that in Supplement 4 -- Attachment 4 to
13 Supplement 4 of the application, which went in well
14 before the contentions were due. We have a revised
15 safety evaluation template for GDC. That is the title
16 of the document. Now, I'll refer you to Section 2.12
17 since they raise pressure -- ductility issues here.
18 In it, it describes the regulatory evaluation criteria
19 for this section, for this EPU.

20 JUDGE KARLIN: Is this the document you
21 refer to in your answer?

22 MR. ROSINSKI: I don't believe we
23 specifically refer to this. This is the application.
24 It's on the docket.

25 JUDGE KARLIN: Well, yeah, it's on the

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1 docket but we don't have it and we're not going to go
2 look through 20,000 pages to find what you're
3 referring to.

4 MR. ROSINSKI: I understand your point.
5 I will put this section of it, just to be clear, even
6 if they were looking for GDCs, this specifically says,
7 "The NRC inspects the area for PT limits are based on
8 one, draft GDC 9, insofar as it requires", et cetera.
9 Number two, "Draft GDC 33" further language, Number
10 three, Draft GDC 34 and on and on. This is the plant
11 specific, this is Vermont Yankee's submittal to the
12 NRC staff of what the design criteria are so that they
13 can apply back to see if we meet them.

14 Now, I apologize for not having submitted
15 this but this is on the docket and this is what the
16 staff are going to use to address their contentions.
17 They have an iron clad responsibility to review the
18 application before submitting and it just went it, I
19 can't give you the date, but it was well before --
20 January 31st, 2004 is Supplement 4 and before that,
21 just to keep it even simpler, in the original --
22 Supplement 1, which was in 2003, it provider an even
23 simpler one which was a matrix. It's entitled
24 "AEC/GDC Matrix" from the AEC draft GDC numbers for
25 each one to the 10 CFR Appendix A GDC, cross

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1 referencing each one. That was in the supplement that
2 came in very shortly after the original application.

3 JUDGE KARLIN: Okay, I think we understand
4 that.

5 MR. ROSINSKI: That's all I have unless
6 you have some questions.

7 JUDGE KARLIN: Question? Okay, Ms
8 Higgins?

9 MS. HIGGINS: Yes, I'll start out
10 answering Judge Rubenstein's question.

11 JUDGE RUBENSTEIN: Okay, would you want me
12 to repeat it?

13 MS. HIGGINS: Yes, that would be great,
14 thank you.

15 JUDGE RUBENSTEIN: Okay. I guess, in
16 trying to help the Petitioner look for a way to assess
17 whether something in the FSAR is in regulatory
18 compliance, an easier way than to go through the
19 20,000 pages would be to start with the Standard
20 Review Plan which in the initial section cites the
21 regulatory requirements, the GDCs and the basis for
22 that review and what the review is. And if you want
23 to expand on it or amplify that, please do.

24 MS. HIGGINS: I would note that we did ask
25 Entergy to revise Standard Review Plan 0, Review

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1 Standard 001 to reference their specific licensing
2 dates as -- especially with respect to the safety
3 evaluation, the draft safety evaluation, we included
4 in there. We asked them to revise it.

5 JUDGE RUBENSTEIN: Okay.

6 JUDGE KARLIN: Anything else to present?
7 Questions?

8 MS. HIGGINS: We have nothing further, if
9 you have questions.

10 JUDGE RUBENSTEIN: Thank you.

11 JUDGE KARLIN: Okay, thank you. I think
12 that concludes this contention and actually all the
13 contentions. I think it's gone quite well.
14 Appreciate the input. We're going to take a break now
15 and we now have the final, you know, issues relating
16 to the hearing, format of the hearing and right to
17 cross examination and we'll finally get to put Mr.
18 Roisman to work. He's had the morning off and now we
19 can hear from him. I suggest we take a 15-minute
20 break. There are some wonderful machines down the
21 hall. Everyone can get some nourishment and we'll
22 just go right through and finish it up. I think it's
23 an hour and 15 minutes total, so if we can reconvene
24 in about 15 minutes, we'll finish it up. Thank you.

25 (A brief recess was taken.)

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1 JUDGE KARLIN: Sorry to keep you waiting.
2 It seems like you're raring to go for our finale. The
3 nature of the hearing that would be sought and
4 appropriate, if in fact contentions are admitted and
5 Mr. Roisman, I think you have 20 minutes.

6 MR. ROISMAN: Okay, I'm going to leave
7 five of those for rebuttal, please.

8 JUDGE KARLIN: All right.

9 MR. ROISMAN: At root, we should focus on
10 what the differences are between Subpart G and Subpart
11 L. And essentially, for purposes of this discussion
12 this morning, there are two crucial ones. Under
13 Subpart L there is no discovery other than that
14 provided by Section 2.336 and under L, cross
15 examination by the parties is restricted to those
16 instances in which the Board and upon application
17 determines that such cross examination is quote
18 "necessary to insure development of an adequate record
19 for decision", that's Section 12.04(b).

20 My main thesis today is that given what
21 you have heard in the last day and a half, to the
22 extent that you rule on the admissibility of any of
23 these contentions. I believe that you will determine
24 and should determine that in order to have the most
25 efficient, effective process that Subpart G will work

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1 markedly better than Subpart L would work, given the
2 nature and complexity of these contentions.

3 First of all, under Subpart L, the way in
4 which questions get asked is extraordinarily
5 convoluted. The parties submit a set of questions to
6 the Board which are not served on the other parties.
7 The Board then decides which of those questions it
8 will ask. There's no way, of course, for the question
9 to then tell the Board what the follow-up question
10 should be because, of course, the Board doesn't know
11 what the answer is going to be so you don't know what
12 the follow-up should be. This is something similar to
13 the way congressional hearings take place in which
14 congressmen and senators ask questions handed to them
15 by their staff, then they get back the answer that the
16 staff hasn't predicted they'd see and then you don't
17 know what will happen. The difference here, of
18 course, is that the three of you, with all due respect
19 to the congressmen and senators, are substantially
20 more sophisticated about the substantive issues that
21 you're going to be addressing.

22 That said, it doesn't mean that you will
23 think in terms of the follow-up in the same way that
24 the parties would. The process by which a party can
25 then submit to you a question during the course of the

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1 hearing is even more complex and even more restricted
2 but every one of those steps. The filing of the
3 questions in the first place and then the filing
4 during the hearing of an attempt to get you to do
5 follow-up questions is what is known in the business
6 as red tape. It's a lot of bureaucracy. It's a lot
7 of your spending your time and us spending our time
8 doing something that has no direct substantive payoff.
9 It's lawyering. It's not technical and what it means
10 is that it gets in the way of using the limited
11 resources available whether it's the of the parties or
12 of the Board to talk about legal standards rather than
13 to get to the merits. So that's number one.

14 Number two, when it comes to discovery
15 it's even more serious. The discovery provisions of
16 Section 3.36 leave an enormous amount of latitude to
17 the party that's making the production. Let me give
18 you a couple of examples. Section 3.36 says that a
19 party is required once a contention is admitted in a
20 hearing that has been convened to identify all of the
21 persons upon whose opinion they intend to rely for the
22 positions they're going to take. Let's just take some
23 of the examples in this case.

24 The applicant has claimed that there is
25 sufficient knowledge about how debris loading will

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1 occur in the event of an accident such that they can
2 confidently say that the NPSH calculations they've
3 done are reliable and then use containment over-
4 pressure. However, that said, that's not based upon
5 the opinion of any one of their experts alone. Rather
6 their experts are relying upon the opinion of other
7 experts. In fact, if you take a look at the PUSAR in
8 this case, it's identified as a GE proprietary
9 document which means that GE had a major hand in
10 writing it and GE subcontractors had a major hand in
11 doing the underlying work. And some researchers
12 someplace under contract to one of the NRC's or DOE's
13 labs, did some of the basic research. All of those
14 are opinions that form the basis with the opinions
15 that are going to ultimately be offered here. I
16 promise you I will stake my reputation that when the
17 3.36 disclosures are made in this case, the applicant
18 will not disclosure to us every one of the people
19 whose opinions formed a basis for the opinions that
20 are being offered and frankly, I think it would be
21 crazy to expect that they would do that.

22 But that tells you that the 3.36
23 disclosure is not going to be complete in that regard.
24 Secondly, we leave to the party making the disclosure
25 to decide what they think is relevant and what they

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1 think is not relevant. You've just spent a day and a
2 half listening to us argue in response to your
3 questions and each other's charges and counter-charges
4 and we clearly have very different views about what we
5 think is relevant and what we think is not relevant.
6 So what I think is relevant is not what Entergy thinks
7 is relevant and vice versa.

8 So all the means is, is that kind of
9 discovery is not a substitute for real discovery. It
10 hasn't worked in the federal court system from which
11 it's taken. It doesn't work in this process. So
12 you're going to be pushed into a situation in which in
13 the course of asking questions yourselves. If you
14 were in a Subpart L format, you're going to hear a
15 witness start talking about information just as you
16 heard hear in this two days that no one disclosed
17 before.

18 JUDGE KARLIN: Mr. Roisman, I mean,
19 certainly discovery, cross examination, they
20 understand there are clear distinctions between G and
21 L and you're laying them out quite articulately. What
22 we need to understand is how you would ask or upon
23 what regulation or statute you would rely upon to try
24 to grant a G type proceeding or those rights,
25 discovery and cross examination.

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1 JUDGE RUBENSTEIN: What would you have the
2 Board rely on in order to make that determination?

3 MR. ROISMAN: Okay, all right. It's not
4 that this isn't something you should rely upon. You
5 are under a direction from the Commission to conduct
6 this process efficiently and so part of what I'm
7 saying to you is, you cannot run the complexity of
8 these issues through an L type hearing as efficiently
9 as you can run the very same issues through a G type
10 hearing.

11 JUDGE KARLIN: But didn't the Commission
12 in promulgating those regulations or these regulations
13 specifically eliminate complexity as being a criterion
14 or standard for distinguishing or granting a G? They
15 flatly eliminated that.

16 MR. ROISMAN: I'm not saying that
17 complexity alone is the reason for it. What I'm
18 saying is what they did say, what they gave you as
19 your over-arching marching order was and I quoted it
20 yesterday, was that this process should be efficient.
21 And so what I'm telling you is that because these
22 issues are complex, it will not be efficient. I'm not
23 saying the complexity alone would be a justification.
24 I'm saying that because complexity will make this less
25 efficient, that's one reason, but I will get -- and

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1 let me get to the statutory basis as well.

2 As you know, there is a disagreement
3 between us and the staff and the applicant over what
4 the regulation says. They point to statement of
5 considerations which say that in making determinations
6 about whether or not there should be an evidentiary
7 hearing, that you should only have an evidentiary
8 hearing, a so-called G type hearing, if you find both
9 that there's a material dispute of fact, and that
10 resolution of it depends upon the credibility of a
11 witness. You've got to have both of those things. If
12 you read the regulatory language, that's not what the
13 regulation says. Those two concepts are separated by
14 a comma.

15 JUDGE RUBENSTEIN: Can you point to
16 specifically what you're referring to in the
17 regulatory language?

18 MR. ROISMAN: Yes, if you go to -- go to
19 first of all to 2.309(g) and that says, "The request
20 petition must demonstrate by reference to the
21 contention and the bases provided on the specific
22 procedures in Subpart G of this part, that resolution
23 of the contention necessitates resolution of material
24 issues of fact which may be best determined through
25 the use of the identified procedures".

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1 Now, I've explained to you in the opening
2 statements why it would be best determined by use of
3 the Subpart G procedures and not the Subpart L
4 procedures. But on top of that when you then go to
5 Section 310, 2.310(d), it says, "In proceedings for
6 the grant", et cetera, et cetera, "there will be a
7 Subpart G hearing where the presiding officer by order
8 finds that resolution of the contention or contested
9 matter necessitates resolution of the issues of
10 material fact relating to the occurrence of a past
11 activity, where the credibility of an eyewitness may
12 reasonably be expected to be at issue, and/or issues
13 of motive or intent of the party or eyewitness
14 material to the resolution of the contested matter".
15 So I submit that those are separate. They cite to the
16 statement of considerations which admittedly don't put
17 the comma in and put the first two clauses together
18 and make them appear to be one clause.

19 And I submit that the NRC's resolved any
20 ambiguity that may be created by that inconsistency
21 which I don't think you need to get to the ambiguity
22 when the statutory or in this case regulatory language
23 is clear, by their filing in front of the First
24 Circuit in the case of CAN v. NRC, where they told
25 everybody, the told the First Circuit that the

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1 touchstone of deciding whether you get these
2 adjudicatory hearing rights is this one issue, the one
3 that they identify in G, what will be the best way to
4 determine the dispute.

5 JUDGE KARLIN: Are you suggesting -- are
6 you suggesting that we read 2.310(d), that it in fact,
7 identifies three situations where --

8 MR. ROISMAN: Correct.

9 JUDGE KARLIN: -- where we could grant or
10 you can grant one where it's past activity, two, where
11 it's credibility of an eyewitness and three where
12 there are motives or intent?

13 MR. ROISMAN: Yes.

14 JUDGE KARLIN: Past activity would swallow
15 just about every application that would come down the
16 pike then.

17 MR. ROISMAN: Well, I think it depends.
18 If it's in dispute --

19 JUDGE KARLIN: Okay, well, that's an
20 interesting reading but even if we get past that, are
21 you suggesting, you know, credibility, motive and
22 intent. I was expecting actually the New England
23 Coalition to focus on this more and help us with the
24 state type of issues but motive or intent or
25 credibility, even if we break those apart, motive,

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1 intent or credibility.

2 MR. ROISMAN: Right, we also, in our reply
3 went through and I know you've read this so I don't
4 want to take my time to repeat it, but through the
5 reply we identified several instances in which there
6 is evidence that the credibility in the sense of being
7 -- remember what a witness says when they take the
8 stand. They swear to tell the truth, the whole truth,
9 and nothing but the truth. The applicant's response
10 in this case is full of half truths and we identified
11 several of those; places where they said one thing,
12 which was technically true, only if you disregarded
13 another fact that they already knew about and didn't
14 disclose to you.

15 So you remember they criticized Mr.
16 Sherman for making a quite "unsupported assertion"
17 that there was a history of leakage with the isolation
18 valves, when they knew that there was a report and
19 yesterday you all in questioning the applicant even
20 got into that a little bit more. There was such a
21 history and Mr. Sherman had every basis to say what he
22 said. That's not the candor. That's a credibility.
23 That means that when you are trying to cross examine
24 a witness on your own and the witness is standing
25 there and telling you something, you can't be sure

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1 whether you're getting a true, full answer to the
2 question. And with all due respect to you, that's
3 what people like Jon Block and I make our living at,
4 finding out what the person is hiding and that's why
5 allowing us to cross examine rather than allowing us
6 to submit questions to you which you all have to try
7 to cross examine on -- remember your rights to cross
8 examine aren't abolished by giving us rights.

9 JUDGE KARLIN: Well, I understand that
10 you're trying to make our lives easier and that we
11 have this responsibility in L proceedings, if an L
12 proceeding is appropriate, to conduct the examination
13 of the witnesses with some exceptions in our
14 discretion. But again, I'm trying to get into what
15 in the reg are you relying on, motive, intent,
16 credibility? We're dealing, as I see it, pretty much
17 with technical experts, experts who are testifying to
18 two different things and that is exactly, I think the
19 area where we don't really get into credibility. We
20 get into professional judgment of experts. They may
21 disagree.

22 MR. ROISMAN: Well, I guess it depends on
23 what you mean by credibility. My understanding of
24 what credibility means is, that the witness, when they
25 tell you they're going to tell you the whole story,

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1 will tell you about the warts and not just the beauty
2 marks. And you've seen it here in this hearing
3 already. You're hearing about beauty marks and not
4 warts and that's a credibility question. I'm not
5 talking about somebody getting up here and telling you
6 that the plant is located in another state, you know,
7 a lie like that. I'm talking about the credibility
8 whether you can rely upon what you're hearing without
9 having to know more and that's credibility. I don't
10 think -- at least, I don't think motive is an issue
11 here. This isn't a question of some --

12 JUDGE KARLIN: All right, so it's on the
13 credibility.

14 MR. ROISMAN: I think there's plenty on
15 the credibility. I think there's also plenty on the
16 fact that past activities are at issue here, you know,
17 what standards are being applied, why were they being
18 applied, who applied them. A lot of the evidence that
19 we rely upon is based upon did the ACRS have the
20 opinion that Mr. Sherman believes they had and does
21 that help support his position?

22 The other thing that I think is
23 illustrative of this is the fact that if you take a
24 look at what happened here in these one and a half
25 days is the best evidence that you could have that

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1 there are material facts in dispute that warrant using
2 cross examination. Let me give you an illustration or
3 two. Contentions one and two, one of the issues that
4 we had at issue was uncertainties exist that create a
5 basis, that's our basis, the existence of
6 uncertainties, identified by a number of specific
7 uncertainties which were the supporting evidence, we
8 submitted in both our petition and our reply.

9 They said we have a lot of conservatisms
10 and the conservatisms make up for all of those
11 uncertainties. We said the experts thought the
12 uncertainties were so high that you should not use
13 containment over-pressure. They said, ah, but we have
14 an RAI response and is showed the conservatism that we
15 used and you didn't attack them, but they didn't
16 disclose that those conservatisms that they were
17 talking about, which were conservatisms associated
18 with pressure and temperature, were already in place
19 when the experts who were relying upon said, "Don't
20 use containment over-pressure". So you have to track
21 that through all of those different steps before you
22 finally get to the truth and I'm not sure that even
23 now, assuming you had been looking at the merits, that
24 you're convinced that you've heard the whole story.

25 The same thing is true with regard to the

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1 earthquake issue. We said the earthquake analysis
2 today are more -- I'll take two minutes of my reply.
3 Earthquake analysis today are more sophisticated and
4 that the safe shut-down earthquake number for the PGA
5 should be higher. They said, "Oh, the NRC has
6 rejected the 2500 year return period", which is what
7 you're pointing to. And they quoted, and they cited
8 the ISFSI decision that was reached. What they didn't
9 tell you was that SECY 03-0118 the final rule on
10 geologic and seismological characteristics presiding
11 in design of dry cask independent spent fuel storage
12 facilities, which was the issue in the case they
13 cited, that NRC staff said the staff also believes
14 that the potential radiological consequences of a
15 seismic event at an ISFSI in dry cask or canisters are
16 substantially less than the potential consequences of
17 a similar event at an NPP.

18 This is an NPP. So they gave you half the
19 story and thought that that would be enough. Then
20 they pointed to the fact that they said, "Hey, we've
21 already evaluated this issue", and they pulled out for
22 the first time, page 10-17 of the PUSAR. What they
23 didn't tell you is that page 10-17 of the PUSAR is
24 part of a section of the PUSAR that deals with
25 probabilistic risk assessment but the SSE is not to be

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1 done on a probabilistic risk assessment.

2 Number two, they tell you in this document
3 but they didn't tell you yesterday that what they did
4 was a deterministic evaluation of the safe shutdown
5 earthquake. What they didn't tell you is that in 1997
6 the NRC amended its regulations to say we're not going
7 to use deterministic any more. We're going to use the
8 very procedure that our experts said should be used
9 for this plant now that we are in the new design basis
10 context of using containment over-pressure. So when
11 we go behind what they tell you to look at the whole
12 document, we get a different story.

13 I submit to you that you cannot do your
14 job, which is to get at as best you can the truth and
15 decide the truth by leaving this in the L process.
16 Let Mr. Block and myself do our jobs. Please assist
17 us. Your technical expertise has been tremendous.
18 Assist us by stepping in, raising your questions but
19 do what the Commission says, send this case into the
20 Subpart G where it will both be more efficient, will
21 get at these credibility problems, will allow us to
22 explore the factual disputes that existed on past
23 events, thank you.

24 JUDGE KARLIN: All right. Mr. Shadis, or
25 Mr. Block, I'm sorry.

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1 MR. BLOCK: I seem to be short of cord
2 here. Thank you. We agree with everything Mr.
3 Roisman said particular his interpretation of
4 2.310(d). I can't disagree as I have to confess to
5 being the attorney that briefed and argued CAN v. NRC
6 on behalf of Citizens Awareness Network. So my
7 reading of that is at parallel instance with Mr.
8 Roisman's. I didn't mention reservation of time and
9 what I want to do is just reserve the balance of the
10 time that's left for rebuttal.

11 We differ in our emphasis just slightly
12 from the state. Our concern is given the structure
13 that's available for making the G versus L
14 determination in the rule, I think it's important for
15 this panel to also look at what will best accommodate
16 the needs of ordinary citizens who are participants in
17 this proceeding and who face with extremely limited
18 resources the need to get on at least some kind of an
19 equal playing field with the applicant and the staff
20 and I'm afraid even the Department in obtaining
21 information. And I just want to say briefly, and this
22 is not the Department's fault but they've had access
23 to information, these supplements, that we haven't
24 had.

25 And after I was approached by the

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1 applicant's attorney on the issue of supplements and
2 told, "Oh, the reason you're not getting them is
3 they're privileged", I spoke with Mr. Sherman who
4 assured me that there are redacted copies available of
5 all this information. And it's this kind of
6 gamesmanship that makes it necessary for Mr. Shadis at
7 the eleventh hour to turn to his board and say, "I
8 need help here". And you know, I'm not able to
9 provide the resources of a giant law firm in a
10 proceeding with the few experts we have, we need to be
11 able to rely on cross examination to achieve the
12 purpose that's stated here, to get at factual issues
13 of the past that are in dispute. I think any
14 reasonable reading of the two declarations and the
15 additional declaration furnished with Mr. Shadis'
16 contentions and his reply, raise issues, clear issues
17 that they licensee has shown by its behavior here in
18 trying to testify to this board, are in dispute and
19 these are past matters. They deal with the
20 availability of the information, whether the
21 information was there or not, the meaning of
22 calculations that were done, the adequacy of the
23 analysis that were done, all of this in the past
24 tense.

25 This is a future oriented behavior. This

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1 isn't an enforcement proceeding. This is about
2 whether the material they supplied is material that's
3 adequate to support the application. And I think in
4 this regard, when we're confronted with this
5 disparity, that without the tools that are provided by
6 Subpart G, is it made an insurmountable difficulty for
7 an intervenor to get on that playing field.

8 JUDGE KARLIN: Well, let me stop you, if
9 I might there. I think one of the reasons behind the
10 rule is that this Board is composed of impartial and
11 experts in the field and we can ask questions and we
12 can conduct examinations and under -- even at L
13 proceedings you would submit plans and allow us to
14 conduct cross examination and I think this, in a
15 sense, is designed to be a help to a pro se who might
16 not have the power or the ability to have the
17 technical expertise. I mean, you all have that, I
18 guess. But you know, this is one of the rationales of
19 our cross examination.

20 Further, under appropriate circumstances,
21 it's within the discretion of the Board on a
22 particular issue to allow, you know, the attorneys to
23 conduct the examination, the cross examination. So I
24 think there was -- I'm not sure what your reasoning
25 is. This is designed to help pro se, not to hurt

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1 them, I think.

2 MR. BLOCK: Well, the thing is, I don't
3 want to reargue my case, but if it was designed to
4 help pro se, they would have lowered the standard to
5 get into the proceeding to begin with. And the fact
6 that they didn't indicates that it was designed to
7 achieve what we believe is a different purpose, but we
8 won't go down that alley. I am not dissatisfied with
9 -- as Mr. Roisman is not, with the ability of this
10 Board to raise questions. I, as he, am capable of
11 conducting that examination and know from my study of
12 the material that it's only just begun, that there are
13 a lot of questions that I would like to ask of a
14 witness. I think, as I was indicating before,
15 credibility has been put in issue, but if I might --

16 JUDGE KARLIN: Well, can I ask on a
17 credibility and perhaps I should have asked this
18 before, maybe raising questions is the credibility of
19 the attorneys but what witness -- obviously there are
20 not witnesses here, but can you name me some
21 individual that we are saying there's a past event,
22 the credibility of that individual is problematic?

23 MR. BLOCK: Sure, Jay Thayer signed that
24 application and he signed it under oath.

25 JUDGE KARLIN: Right.

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1 MR. BLOCK: And I assume he's somebody
2 that can be called as a witness. We also have
3 material that's raised in the Gundersen application,
4 documents that should have been there that weren't,
5 that then appeared. You know, there's a pattern of
6 conduct that's shown in that declaration that's
7 questionable. The other thing that you get in Subpart
8 G is discovery procedures, the ability to conduct a
9 formal discovery. We're beginning with a proceeding
10 where material wasn't placed in the public document
11 room where we could get at it. And we now know that
12 state had it, redacted copies have been available, but
13 it wasn't put there for us.

14 Now, I say to go into the proceeding at
15 the beginning with that on your shoulders is a very
16 interesting situation. I would hope the Board might
17 conclude from that, that we're not being dealt the
18 same cards that the other people have in their hand.
19 We're getting a few cards short each time and only
20 discovery orders are going to equalize that kind of
21 problem. You know, we begin with what we don't have
22 and it's that redacted material that could have been
23 provided but is being held back. You know, the staff
24 tell us just a few moments ago that they've conducted
25 a review and created a review matrix. We don't have

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1 that.

2 We don't have any of their conclusions,
3 you know, and it would be nice to be able to have that
4 material available to use when we were framing
5 contentions, for instance, so that we could get into
6 the meat of some of these things. But these are the
7 kinds of things that the discovery process was
8 designed to allow you to do. You know, it isn't so
9 much a question of whether a person of a professional
10 and technical background would have reason to
11 prevaricate with the Board when they're a witness.
12 The issue is when you have people who are coming in
13 and it is less their professional credential that's on
14 the line than their employment, you know, they owe a
15 duty to their employer. And so when they testify, the
16 eyes are on them for what they're going to say.

17 This isn't an ordinary situation of the
18 peer review of some kind. You know, it's an
19 extraordinary situation and there are a lot of people
20 who are concerned in this extraordinary situation, as
21 I know the Board is aware. It's probably not every
22 day that a Board is treated to having you know, the
23 aide to a senator on the phone when you're having your
24 scheduling conference. Clearly, there's a lot of
25 attention here and without more formal proceedings, I

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1 think that it will become very difficult to structure
2 this in a way that allows people to get at the truth
3 and that's really what we all want to do here. We
4 want to get at the truth of whether this application
5 is something that is going, if approved, to adequately
6 protect the occupational public health and safety.

7 And in order to do that, we need to use
8 the engines that have been available to conduct
9 examination since the time of Edward the Confessor.
10 The engine of cross examination in the hands of a
11 skilled advocate is something that allows you to get
12 at the truth. The use of discovery as a tool to find
13 information that's not available, to bring that to the
14 Board's attention is another tool, and these have been
15 framed over the whole history of what we'd like to
16 call civilized conduct in order to arrive at a point
17 where hearings are conducted in a way that we do get
18 to the truth.

19 And I think I'll rest at this point and
20 take the balance in rebuttal when it comes. Thank
21 you.

22 JUDGE KARLIN: Questions. Okay. I think
23 we're with Entergy.

24 MR. TRAVIESO-DIAZ: Mr. Chairman, I'm
25 going to try to answer the question that you asked how

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1 do we decide what procedure to apply. But before I do
2 that I feel compelled to answer to two or three things
3 that Mr. Roisman and Mr. Block has said which meets
4 requirements. The first and perhaps in some ways the
5 most significant is Mr. Roisman is making the argument
6 that he wants this Board to second guess the
7 Commission's carefully laid out procedure for the
8 selecting procedure and go on what your view of what
9 the most efficient way to go about having hearings.
10 That is not at all in the regulation and, in fact, I
11 would say that the Commission made a decision as to
12 what the most efficient way to conduct hearings was
13 and the decision was that except in two narrow sets of
14 circumstances, the procedure for amendments is Subpart
15 L. So I think that telling that you can find
16 something more efficient is something that you
17 actually shouldn't be able even to think about.

18 More significantly, I think that both Mr.
19 Roisman and Mr. Block are demeaning you by questioning
20 the ability of this Board to have -- to handle
21 testimony, being handed cross examination questions,
22 not being able to frame from where you sit,
23 appropriate probing questions to whatever witness come
24 before you. I don't know what they're talking about
25 but the part that says let Mr. Roisman and Mr. Block

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1 help you and assumes that you need help and I'm not
2 willing to concede the particularly given the last two
3 days.

4 JUDGE KARLIN: Well, let me ask a point on
5 your first point. Certainly, we are not in a
6 position, it's not within our power to overturn
7 regulations promulgated. We have to implement them
8 and try to comply with them, but with regard to the
9 state's argument under the Atomic Energy Act 274(1),
10 they argue, it seems to me that there's a statutory
11 provision that grants them the right to interrogate
12 witnesses. And this seems to be inconsistent with --
13 or they argue it's inconsistent with some of the
14 regulations. How do we grapple with that?

15 MR. TRAVIESO-DIAZ: Well, Mr. Chairman,
16 that was not originally Mr. Roisman's argument, but I
17 will answer it.

18 JUDGE KARLIN: Well, I think it's in the
19 brief, he didn't argue it orally.

20 MR. TRAVIESO-DIAZ: All right. And we
21 will answer it, but I will tell you very briefly what
22 the answer is. Section 274 of the Atomic Energy Act
23 was enacted in '59. 1962, three years later, the
24 Commission passed the predecessor of the current
25 2.315^o which was 2.751 -- 15^o and --

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1 JUDGE KARLIN: Would you repeat that?
2 What's the cite?

3 MR. TRAVIESO-DIAZ: Yes, until January it
4 was 10 CFR Section 2.715[©] which is identical to
5 315(c).

6 JUDGE KARLIN: 715, all right.

7 MR. TRAVIESO-DIAZ: For the purposes of
8 what we're talking about. Now, the Commission thought
9 later on in similar consideration that in doing so, in
10 fashioning 2.715[©] they were fully implementing the
11 statutory mandate of Section 274 of the Act and I will
12 cite to you the -- it is 69 Federal Register 2188 and
13 this is in 1977. So the Commission's view, which I
14 believe is a binding view, is that 2.715[©] and 2.351[©]
15 fully implement and give the state all the rights that
16 the Atomic Energy Act gives them, and I think that's
17 the end of the story.

18 JUDGE KARLIN: Does that reference 274(1)
19 of the Atomic Energy Act?

20 MR. TRAVIESO-DIAZ: Yes, expressly.

21 JUDGE KARLIN: And what's the date on
22 that, what's the date? 69 Federal Register 2188?

23 MR. TRAVIESO-DIAZ: It is 69 Federal
24 Register -- well, wait a second, let me just see if I
25 can make sure I don't give you the wrong citation.

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1 Okay, here is the citation. May 2nd, 1977, 42 Federal
2 Register, 22169/22169.

3 JUDGE KARLIN: 42 Federal Register --

4 MR. TRAVIESO-DIAZ: 42.

5 JUDGE KARLIN: And then what's the rest of
6 it, the page number?

7 MR. TRAVIESO-DIAZ: 42 Federal Register
8 22168, the discussion is on page 22169, 1977.

9 JUDGE KARLIN: All right, thank you.

10 MR. TRAVIESO-DIAZ: Okay, so the reality
11 is that the combination of the right to seek a hearing
12 under 2.309(b)(2) and the right under 2.315[©] fully
13 implements for state all the rights that Atomic Energy
14 Act has but again, let me just finish what I was
15 trying to get to to follow my thought of mine.

16 They raise a number of concerns or issues
17 or arguments about complexity --

18 JUDGE KARLIN: Well, let me ask again, on
19 2.315(c), the regulation, participation by a person
20 not a party, this is the state issue, and it talks in
21 there, "The representative of a state shall be
22 permitted to introduce evidence, interrogate
23 witnesses, and advise the Commission without requiring
24 the representative to take a position. Now, that's
25 what the statute says.

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1 MR. TRAVIESO-DIAZ: Yes.

2 JUDGE KARLIN: The regulation says, "The
3 representative of the state shall be permitted to
4 introduce evidence, interrogate witness, where cross
5 examination by the parties is permitted, and advise
6 the Commission". So I think they point out that the
7 regulations is inconsistent with the statute by adding
8 that language. What's your response?

9 MR. TRAVIESO-DIAZ: Well, my response is
10 two-fold. First, the Commission, and I think it says
11 someplace in the statement of considerations for the
12 rules, the Commission has a right to decide and the
13 cases uphold that right what kind of hearing
14 procedures or hearing rights is going to be given to
15 a particular party. It's not automatic that because
16 you're a party you have the right to cross examine.
17 And in fact, the whole foundation of this new set of
18 rules is that there is a right to cross examination
19 only under the second presence of ****.

20 JUDGE KARLIN: But doesn't the statute
21 override a regulation?

22 MR. TRAVIESO-DIAZ: Well, and even the
23 statute doesn't override it because the statute says
24 that they don't have unlimited opportunity -- in fact
25 it says, reasonable opportunity. I think the

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1 Commission would decide what's reasonable, so I don't
2 think that's -- I believe that, in fact, they have two
3 avenues, either to seek to be a party as they have
4 done, or to become an interested state and do what an
5 interested state can do on the 2.315(c). And if there
6 is no cross examination, they don't get it any more
7 than anybody else.

8 I think I -- I'm sorry.

9 JUDGE RUBENSTEIN: I have a question. If
10 Part L permits such cross examination as is necessary
11 to insure development of an adequate record for
12 decision, and this is equivalent to the APA provision
13 such as may be required for a full and true disclosure
14 of facts. So if one examines this type of hearing
15 that we're in, and say we had a contention that was
16 entered, how do you visualize in the rebuttal time and
17 Mr. Roisman, I would be interested in his answer also,
18 how do you visualize the Board defining the limits to
19 the cross examination? In other words, we would say
20 the cross examination is -- we have discretion to
21 limit the cross exam under Subpart L.

22 And if we use the option of using the
23 cross examination in Subpart L, how do you envision it
24 limits on -- how would we put the limits on? Would we
25 say cross examination is limited to these parts or

1 these issues within the contention or the whole
2 contention or what kind of an argument should we have
3 on that?

4 MR. TRAVIESO-DIAZ: Well, the party
5 wishing to do cross examination which is said to be
6 exceptional -- exceptional circumstances, would have
7 to prove to you that this issue is so complex or so
8 far-ranging that the Board may have difficulty getting
9 to all the parts on each specific without some
10 assistance and that we are prepared to give you
11 assistance than otherwise you can get, that's
12 essentially what they're saying. Now, they will have
13 to be able to prove to you what part of a contention
14 that applies to, why that is the case, why the briefs,
15 the written testimony and you are able to question the
16 experts, doesn't do it. So I think it's very limited
17 and you have the right and I suspect you will
18 exercise, to grant the right to cross examine but
19 limit it as to what you can get into or for how long.

20 JUDGE RUBENSTEIN: So you visualize the
21 process as evolving from the discussion during a
22 Subpart L hearing between the parties as to what is
23 too complex an issue to be given only by the Board's
24 questioning.

25 MR. TRAVIESO-DIAZ: Let me --

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1 JUDGE RUBENSTEIN: Do you think it would
2 evolve from there or do you think the Board would read
3 this and define it?

4 MR. TRAVIESO-DIAZ: May I?

5 JUDGE RUBENSTEIN: Yes.

6 JUDGE KARLIN: Go ahead, you should have
7 an answer to that.

8 MR. TRAVIESO-DIAZ: I'm sorry?

9 JUDGE KARLIN: You should have a pretty
10 crisp answer to that.

11 MR. TRAVIESO-DIAZ: Yes, the reality is
12 the Board knows how -- let me tell you how it works,
13 because I have done it. In a similar proceeding in
14 Subpart M, what happens is the applicant and people
15 who oppose the application raise issues and file
16 testimony on those issues and they file a lot of
17 testimony. They file cross examination plans and
18 detailed questions for the Board to ask the parties,
19 the witnesses.

20 The Board goes ahead. During the hearing,
21 if for some reason there are more questions you want
22 the Board to ask, you make a motion that they Board
23 accept additional questions that you're proposing to
24 them. You can further make the motion that, if that's
25 the one we're talking about, that if it's too

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1 difficult to do it that way and you have to explain
2 why, the Board may allow you limited cross examination
3 on the narrowly defined issues. That's the way it
4 works.

5 JUDGE KARLIN: Let me ask a question on
6 that as well. I mean, in this case, I think the
7 relevant rule is 2.1204(b)(3) which lays out when
8 cross examination would be allowed to the parties and
9 it's limited certainly but assuming this would be an
10 L proceeding, do you now concede -- let's say and the
11 Board thought it was of value to use the excellent
12 counsel we have here, I mean we can't -- I will take
13 note that Mr. Roisman and Mr. Silberg both litigated
14 the Calvert Cliffs case of NEPA in 1971, one of the
15 fundamental cases in administrative law, excellent
16 counsel and if we were to rely upon their assistance
17 in conducting some of the cross examination, don't you
18 think that would be within our discretion under this
19 rule?

20 MR. TRAVIESO-DIAZ: Yeah, the rule in fact
21 says that you can make a motion at the hearing, not
22 now. This is not where hearing rules apply.

23 JUDGE KARLIN: Right.

24 MR. TRAVIESO-DIAZ: It's presumed that you
25 have a Subpart L proceeding and that is a decision, by

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1 the way that they can brief before the first session
2 and what the staff was saying there and what we're
3 talking about here. That was talking about precisely
4 what happened in Subpart L hearings. At the hearing,
5 you can make a motion to the Board saying this is an
6 area, at topic as to which is so complex and we have
7 it so well developed based on whatever, that we feel
8 like it's more efficient to let us do some questioning
9 and the Board will look at the factors that are set
10 here in 104 -- 2.1204(b), (1), (2), and (3) and then
11 determine whether, in fact, it's going to allow it and
12 to what extent and there are a number of factors.

13 Mr. Chairman, given where we are, I'll try
14 to make this second point very, very short. There is
15 a lot of intimation from Mr. Roisman and Mr. Block
16 about credibility and lack of candor. If I had the
17 time, I'd talk to you about that for 20 minutes
18 because this, I think, I take personal exception to
19 that. I question the lawyers to be more candid, but
20 more importantly you put the point well across.
21 Suppose that the lawyers are not candid, that doesn't
22 say anything about the witnesses and those are the
23 ones we focus on.

24 JUDGE KARLIN: Isn't it difficult for us
25 at this stage, the early stage on contentions, to

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1 evaluate, you know, whether the credibility of a
2 witness is going to be an issue? I mean, we're just
3 dealing with the admissibility of contentions?

4 MR. TRAVIESO-DIAZ: Exactly, and let me
5 tell you what the criterion is. And you have to make
6 -- with respect to making an issue out of credibility,
7 there has to be the credibility of a witness relating
8 to a question that's been propounded and the
9 credibility not only has to be a question of his
10 credibility, but it cannot be historical, something
11 that happened three years ago, maybe discovered in a
12 state proceeding. It has to be something that he may
13 be accused of doing here and now that effects his
14 credibility as a witness here. And the citation for
15 that is Dominion Nuclear Connecticut CLI 301.24, 54
16 NRC 346,356.

17 JUDGE KARLIN: That's in your brief, isn't
18 it?

19 MR. TRAVIESO-DIAZ: Yes. Issues of
20 credibility have no place, I believe as a point of
21 deciding what protections should be admitted. Now, if
22 I may try to answer your first question, how do you at
23 selecting procedures. Actually the Commission gives
24 you a very simple -- the section that deals with
25 selection procedures is 310 which is entitled

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1 "Selection of Procedures". 2-310(a)(6), that, "For
2 all licensing actions, including amendments, the
3 presumed procedure unless exceptions apply, is Subpart
4 L". So we're stuck on the proposition that you have
5 to prove that Subpart L doesn't apply.

6 With respect to specifically license
7 amendments that procedure, or the section or
8 regulation that deals with the exceptions is 310(b)
9 and provides to exceptions. Now, I'll go back to
10 those in a second but I want to try to clarify a
11 confusion that has been raised by Mr. Roisman, the
12 effect of 309(g).

13 Section 2.309(g), if in the section of the
14 case that the intervenor has to make to have to have
15 its exceptions, and what the section says that you, as
16 an intervenor are trying to get the exceptions in
17 Subpart B applies, this is the case you have to make.
18 You must demonstrate by reference to a contention and
19 the basis provided that the resolution of the
20 contention necessitates the solution of material
21 issues of fact which may be best determined through
22 the use of identified Subpart G procedures. This
23 section indeed, does not enlarge the category of
24 situations in which you have a Subpart G hearing.

25 It restricts it by telling what you have

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1 to prove to show that one of those two exceptions
2 apply. It's very clear. In the case that the person
3 says, like Mr. Roisman, that we should have reference
4 to a specific Subpart proceedings, why do we need the
5 positions and what part of the contention would they
6 apply to and why do they meet one of the two rules in
7 (3) (b) that are exceptions? That's the way it works.

8 Now, when we're talking about what those
9 two portions of (b) (1) and (b) (2) are, I'm not saying
10 that -- the Commission explains very well and very
11 clearly as to what they have in mind and I'd like to
12 refer to you to a very extended discussion in 69
13 Federal Register 2222. In there they say, what do we
14 mean by this exception? The first type of exception
15 is a situation in which for example a worker alleges
16 that a supervisor directed him to do an illegal act
17 and the supervisor denies it. So the first
18 circumstance is a situation where we want to find out
19 what happened and what happened as a matter of fact is
20 material to a solution relation.

21 Contentions don't have that context even
22 -- it isn't clear whether my supervisor asked me to do
23 something wrong, that's the first exception. The
24 second exception is one that goes as to what the
25 motive for doing something is. For example, I'm

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1 reading from the Federal Register." "A contention
2 alleging deliberate and knowing actions to violate NRC
3 requirements by applicant's representative,
4 necessarily requires a solution of the motive or
5 intent of the applicant's representative". These two
6 exceptions, very simply, don't apply to the cases that
7 we have. In fact, cases in which misconduct is being
8 alleged and the credibility -- well, what actually
9 happened and the credibility of a witness is at stake.
10 I am confident and in fact I am sure that you agree
11 with me, that the contentions that we have raised here
12 as to seismic design or as to whether you should have
13 containment over-pressure has nothing to do with
14 misconduct or who said that to whom or when.

15 MR. WACHTER: Two minutes.

16 MR. TRAVIESO-DIAZ: All right, let me see
17 what else. Let me see. Oh, yes, yes.

18 JUDGE KARLIN: On the motive and intent,
19 isn't an applicant always motivated to want to see its
20 application granted? Is that what they're talking
21 about?

22 MR. TRAVIESO-DIAZ: I don't believe so
23 because in fact, the motive for why you want to get
24 more power, we discussed yesterday, has nothing to do
25 with what we're talking about here, at least as far as

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1 safety. The motive goes as to why an act was done
2 one way or another, a specific act by somebody.

3 JUDGE KARLIN: If we use the sort of
4 general proposition that an applicant is always
5 motivated to have its application approved, in other
6 words, swallow the --

7 MR. TRAVIESO-DIAZ: Absolutely, you took
8 the words right out of my mouth, exception will follow
9 the rule entirely.

10 JUDGE KARLIN: So what's the standard that
11 we judge by, something less than that?

12 MR. TRAVIESO-DIAZ: The standard is, if in
13 fact, whether the crucial issue in resolving a
14 contention is what the motive of the person was in
15 doing a specific act. I read your -- you know,
16 somebody filed a misleading statement with NRC. Did
17 they do it deliberately or was it negligent, that is
18 the kind of thing that they want to get asked in which
19 you may need to have probing cross examination,
20 depositions or whatever because it goes not only to
21 technical facts, but it goes to getting into a
22 person's mind which is not what we do here.

23 JUDGE RUBENSTEIN: Do you think this would
24 apply more to enforcement actions in materials area?

25 MR. TRAVIESO-DIAZ: Definitely would apply

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1 to that or an enforcement actions.

2 JUDGE RUBENSTEIN: Or operator licensing
3 issues.

4 MR. TRAVIESO-DIAZ: Operator misconduct,
5 where an operator was asleep on the job and what
6 happened, that's the kind of thing that you may want
7 to have, you have a hearing.

8 MR. WACHTER: Time.

9 MR. TRAVIESO-DIAZ: My time is up?

10 JUDGE KARLIN: All right, thank you.
11 Staff, Ms. Higgins?

12 MS. HIGGINS: All right, I'm going to
13 start out discussing the Subpart G discussion and then
14 go onto the Atomic Energy Act discussion. I'll start
15 our by saying neither the Department nor the coalition
16 have put forth any issue or motive or intent are at
17 issue nor have they demonstrated a past activity where
18 the credibility of an eyewitness is at issue as is
19 required by the regulations.

20 The Department states that because
21 Entergy's witnesses worked with attorneys in preparing
22 their testimony that the Department cannot assume such
23 witnesses will be completely truthful. They also
24 stated in their brief that they cannot rely ultimately
25 on engineering judgment without adequate cross

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1 examination. Again, as we stated with other things,
2 we feel that this cannot be an adequate justification
3 for a Subpart G hearing. If that were the case, then
4 again, the exception would swallow the rule as almost
5 all cases before the Board and all appeals to the
6 Commission rely on engineering judgment and also
7 involve witnesses who are assisted by attorneys in
8 preparing their testimony.

9 JUDGE KARLIN: Well, but aren't they
10 raising questions of credibility or motive. They've
11 thrown up or identified situations where it appears
12 the NRC challenged the forthcomingness of some of the
13 Entergy's people. It's in their briefs, somewhere,
14 the NEC's briefs, that the Department of Public
15 Services of Vermont has fined or sanctioned them
16 \$51,000.00 for some deliberate misinformation or
17 failure to provide discovery on something. Don't
18 those provide questions on credibility?

19 MS. HIGGINS: I'm not -- the first example
20 that you gave did you say that the NRC had problems
21 with Entergy coming forth with information?

22 JUDGE KARLIN: Yes, yes, I believe there
23 was an allegation of that. I can't put my hands on it
24 right now.

25 MR. BLOCK: Vermont Public Service

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1 Department.

2 JUDGE KARLIN: Pardon?

3 MR. BLOCK: Vermont Public Service
4 Department.

5 JUDGE KARLIN: Vermont Public Service
6 Department, not NRC, I'm sorry. Okay, well, there was
7 a \$51,000.00 penalty or sanction imposed, not penalty,
8 for discovery costs. But my point is, they assert
9 they have raised a number of credibility issues. How
10 do you respond to that? Dismiss it?

11 MS. HIGGINS: Right, no, I agree with what
12 Entergy's counsel is saying, that that is not -- those
13 descriptions of motive, that definition, does not
14 comply with how the Commission described how they
15 would define credibility or motive in the statements
16 of consideration, and that's 69 Federal Register 2222.

17 JUDGE KARLIN: The preamble, the statement
18 of consideration gives some examples but those are not
19 exhaustive.

20 MS. HIGGINS: Right. Well, I would say
21 that if there were problems with discovery, for
22 example in this case there are regulations that deal
23 with that and that they offer a plethora of options,
24 for example, in a Subpart L proceeding if there were
25 issues with a counsel or licensee coming forth with

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1 documentation, the presiding officer can impose
2 sanctions, dismiss contentions, dismiss adjudications
3 or use the discovery provisions in a Subpart -- under
4 Subpart G.

5 JUDGE RUBENSTEIN: Is this comparable to
6 when a licensee or applicant has an executive sign a
7 document to the NRC that he's liable, legally liable
8 to action?

9 MS. HIGGINS: I'm not sure I understand
10 that question. I'm sorry.

11 JUDGE RUBENSTEIN: An executive of a
12 utility, if he signs off a transmittal letter, ha a
13 certain liability as a criminal --

14 MS. HIGGINS: Okay, if I understand your
15 question correctly, which I hope I do now, the
16 executive motive would not be at issue in that
17 situation and the basis for the application would be
18 found in the application itself. Does that answer
19 your question?

20 JUDGE RUBENSTEIN: Yes.

21 MS. HIGGINS: Okay.

22 JUDGE KARLIN: Anything else?

23 MS. HIGGINS: Yes, I would also just --
24 well, I did just note that there are opportunities for
25 discovery and for cross examination under the Subpart

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1 L procedures. I would just like to make that part
2 clear.

3 JUDGE KARLIN: Let's talk about the
4 discovery. What opportunities are there for discovery
5 under L? I mean, there's mandatory disclosure.

6 MS. HIGGINS: Right, there are --

7 JUDGE KARLIN: Do we have discretion or is
8 there some opportunity for discovery in there?

9 JUDGE BARATTA: Yeah, for example, the
10 case that was brought up with respect to the existence
11 of redacted copies of GE proprietary, would that be
12 subject to a discovery dispute?

13 MS. HIGGINS: Those would be in the
14 hearing file automatically.

15 JUDGE BARATTA: But would the complete
16 document be -- would it be possible to generate a
17 protective agreement and get the complete document or
18 not?

19 MS. HIGGINS: Yes. NEC would be able to
20 execute such an agreement.

21 JUDGE KARLIN: But beyond the basic
22 disclosures that are required at the outset under
23 Subpart L, there's -- I don't know that I understand
24 that there's any further discovery available and I
25 thought it was prohibited.

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1 MS. HIGGINS: Correct, there is not.
2 However, I was just saying that if there was any sort
3 of allegation or complaint on a party's behalf that
4 something was not being provided that needed to be
5 provided, that there -- that there are other options
6 for the presiding officer and you can see that in
7 Section 2.336(c).

8 JUDGE KARLIN: So inadequacy of the
9 initial disclosure, the mandatory disclosure, could be
10 subject to remedies for the Board.

11 MS. HIGGINS: Right, exactly.

12 JUDGE RUBENSTEIN: That's 10 CFR 2.336?

13 MS. HIGGINS: Correct, and I'm just
14 checking, it's (e) not (c). I misread my handwriting,
15 sorry. It's (e). And I'd also like to note that
16 there is a continuing obligation to update the hearing
17 file as the case continues and the disclosures.

18 JUDGE KARLIN: Yes, does the staff believe
19 that we would -- if this Board thought it would be
20 appropriate and valuable and it met the criteria,
21 1204(d), given the expertise, I think, of some of the
22 counsel here and the long distinguished careers
23 they've had that we would be within our discretion to
24 ask them to assist us with some of the cross
25 examination?

1 MS. HIGGINS: I'm sorry, I --

2 JUDGE KARLIN: Do you concur that that
3 would be within our discretion under the circumstances
4 of this case --

5 MS. HIGGINS: Yes, it would be.

6 JUDGE KARLIN: -- not within the abstract.

7 MS. HIGGINS: Right.

8 JUDGE KARLIN: Okay. Now, do you want to
9 address the statutory, 274(1), I'm interested in that
10 one?

11 MS. HIGGINS: Sure.

12 JUDGE RUBENSTEIN: That's 10 CFR 2.336?

13 MS. HIGGINS: Correct. And I'm just
14 checking. I think it's -- it's E, not C, I misread my
15 handwriting, sorry. It's E.

16 And I'd also like to note that there is a
17 continuing obligation to update the hearing file as
18 the case continues and the disclosures.

19 JUDGE KARLIN: Yes. Does the staff
20 believe that we would -- if this Board thought it
21 would be appropriate and valuable and it met the
22 criteria of 1204(d), that given the expertise, I
23 think, of some of the counsel here in the long
24 distinguished careers they've had, that it would be
25 within our discretion to ask them to assist us with

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1 some of the cross examination?

2 MS. HIGGINS: What's your -- I'm sorry?

3 JUDGE KARLIN: Do you concur that that
4 would be within our discretion --

5 MS. HIGGINS: Yes.

6 JUDGE KARLIN: -- under the circumstances
7 of this case --

8 MS. HIGGINS: Yes, it would be.

9 JUDGE KARLIN: -- not just in the
10 abstract?

11 MS. HIGGINS: Right.

12 JUDGE KARLIN: Okay. Now we ought to
13 address the statutory 274(L). I'm interested in that
14 one.

15 MS. HIGGINS: Sure. I guess I would start
16 out by summarizing that we feel that the Commission
17 has interpreted the statute 274(L) in the recently
18 revised 10 CFR Section 2.315(c), which has been cited
19 here numerous times, which states in pertinent part,
20 the presiding officer will afford an interested state,
21 which has not been admitted as a party under Section
22 2.309, a reasonable opportunity to participate in a
23 hearing.

24 And in answer to Judge Baratta's question
25 yesterday regarding --

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1 JUDGE KARLIN: That's the regulatory
2 provision you're citing, right?

3 MS. HIGGINS: Right. And we think that's
4 --

5 JUDGE KARLIN: Is there in anything in the
6 promulgation of that that specifically -- where the
7 Commission talks about 274(L)? Maybe I'm missing it.
8 I mean is that what you just said? But when these new
9 Part 2 rules were promulgated, you know, I don't think
10 they talked about 274(L), did they?

11 MS. HIGGINS: No, they didn't. This is
12 the way the reg --

13 JUDGE KARLIN: It would have been helpful
14 if they did.

15 (Laughter.)

16 MS. HIGGINS: I'll pass that along.

17 JUDGE KARLIN: And I know we're not --
18 this is not the CAN litigation in the First Circuit
19 nor should it be. But we have to grapple with this
20 statutory provision that seems --

21 MS. HIGGINS: That is the way --

22 JUDGE KARLIN: -- to give them the right
23 to interrogate witnesses.

24 MS. HIGGINS: Right.

25 JUDGE KARLIN: You know, it has to be

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1 reasonable but certainly in any court proceeding or
2 any Board proceeding, we regulate the reasonableness.
3 It can't go on for hours. It can't be duplicative.
4 It can't be repetitive. It can't be harassing.

5 But can the Commission simply exclude an
6 entire category and say that's just out regardless of
7 what the statute says? And do we have the power to do
8 anything about it?

9 MS. HIGGINS: Well, I would say that
10 Section 2.315(c) in its reference to cross examination
11 is the Commission's reasonable interpretation of what
12 the Atomic Energy Act states.

13 JUDGE KARLIN: I saw the discussion in the
14 Part 2, you know, Statement of Considerations and they
15 talked about the Administrative Procedure Act in great
16 detail and the evolution of the Commission's position
17 on that --

18 MS. HIGGINS: Yes.

19 JUDGE KARLIN: -- and different -- but I
20 never -- no one ever seemed to pick up on 274(L) hence
21 the relatively novel issue, although I believe it is
22 briefed in the CAN litigation in some of the amicus
23 briefs.

24 MS. HIGGINS: The CAN litigation went more
25 to whether or not specifically Subpart L satisfied the

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1 APA requirements.

2 JUDGE KARLIN: Right. But there amicus
3 briefs filed that address the 274(L) issues.

4 MS. HIGGINS: Okay. I'm not aware of
5 those.

6 JUDGE KARLIN: Okay.

7 JUDGE BARATTA: You're about ready to --

8 JUDGE KARLIN: Go ahead, I'm sorry.

9 JUDGE BARATTA: -- you're about ready to
10 answer my question from yesterday.

11 (Laughter.)

12 MS. HIGGINS: We would say that's -- as we
13 quoted before, Section 2.315(c) it says that the
14 representatives shall be permitted to interrogate
15 witnesses wherever cross examination by the parties is
16 permitted. And we would contend that that is a
17 reasonable interpretation of Atomic Energy Act 274(L).

18 And what they would mean by that, in that
19 case, is that under -- it depends on which hearing
20 track the proceeding was continued under. If it were
21 a Subpart G proceeding -- for -- I mean for which
22 contention, excuse me. So if the contention was under
23 a Subpart G hearing, the State would be afforded all
24 rights that are afforded under Subpart G for cross
25 examination.

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1 If the contention were under Subpart L,
2 the party would be afforded all the rights that are
3 afforded under the Subpart L proceeding.

4 Does that answer your question?

5 JUDGE BARATTA: That seems to be the
6 question as to whether or not that is consistent with
7 the Atomic Energy Act though.

8 MS. HIGGINS: Well, we don't see a
9 conflict between that. We think it is a reasonable
10 interpretation of the rights provided in the Atomic
11 Energy Act.

12 JUDGE BARATTA: Okay, thanks.

13 MS. HIGGINS: And we think that's the
14 Commission's interpretation of the statute. And
15 should be afforded such deference.

16 JUDGE BARATTA: Thank you.

17 MR. WACHTER: Two minutes.

18 MS. HIGGINS: I guess just one last thing
19 that I would like to reiterate is just that what I was
20 just now elucidating is that I just wanted to make
21 sure it is clear that each contention must be referred
22 individually to a Subpart G hearing.

23 And that each contention would have to
24 individually meet the requirements for a Subpart G
25 hearing for the entire hearing to be held under

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1 Subpart G.

2 JUDGE KARLIN: So if some contentions have
3 issues of credibility, then they go to an L or go to
4 a G --

5 MS. HIGGINS: G, right.

6 JUDGE KARLIN: -- and the others go to an
7 L?

8 MS. HIGGINS: Correct.

9 JUDGE KARLIN: And we've got to clone
10 ourselves into two Boards --

11 MS. HIGGINS: Two parallel --

12 JUDGE KARLIN: -- and have two separate --

13 MS. HIGGINS: -- proceedings --

14 JUDGE KARLIN: -- hearings?

15 MS. HIGGINS: -- yes.

16 JUDGE KARLIN: Where is that written?

17 MS. HIGGINS: Well, in Section 2.310(d),
18 it refers specifically to the contentions. It's also
19 at 69 Federal Register 2222, which --

20 JUDGE RUBENSTEIN: Do that one a little
21 slower, 59 --

22 MS. HIGGINS: Oh, sorry, 69 Federal
23 Register 2222, which states that if the presiding
24 officer has determined that one or more admitted
25 contentions do not meet the criteria in 2.310(d),

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1 those contentions will be resolved by the presiding
2 officer in a separate Subpart L hearing.

3 JUDGE BARATTA: That's your Federal
4 Register cite?

5 MS. HIGGINS: Yes, sorry.

6 JUDGE BARATTA: Who wrote these
7 regulations anyway?

8 (Laughter.)

9 JUDGE KARLIN: All right. Gee, thanks.
10 Anything else?

11 MS. HIGGINS: No, that's all I have.

12 JUDGE KARLIN: Do we have reserved time,
13 Mr. Roisman?

14 MR. ROISMAN: What have we got?

15 MR. WACHTER: Three minutes.

16 MR. ROISMAN: Good, okay.

17 Let me start with 274(L), I think that
18 what Mr. Diaz has quoted to you from the Statement of
19 Considerations of the initial adoption of 2.715(c) is
20 very telling on this issue because if you look at the
21 Statement of Considerations that went along with the
22 regulations that we're now working under and you look
23 at the Commission's brief in front of the First
24 Circuit, you will see the Commission has had an
25 evolving history.

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1 At the time they wrote 2.715(c), when they
2 said that the State gets the right to cross examine in
3 every instance where that right is available, the
4 right was available in every amendment and licensing
5 proceeding that was going on in front of the NRC.

6 When they adopted it in toto in 2.315(c)
7 without comment, the best reading of what they were
8 doing is that they were incorporating that initial
9 Statement of Considerations, which meant that the
10 State would have the same right to cross examine that
11 it would have had at the time the 2.715(c) was
12 adopted.

13 Which would mean that even assuming the
14 State's rights are limited to contentions that are
15 admitted, even assuming that that -- which I don't
16 think passes statutory muster but I understand the
17 limitations on the Board here, it would mean that we
18 would have the right to conduct cross examination if
19 we would have had that right for those contentions
20 back at the time the 2.715(c) was adopted.

21 Number two, the question was asked, I
22 think, by Mr. Rubenstein, how do you limit cross
23 examination? You limit cross examination, the
24 provisions in the regulation is at 2.711(c). And it
25 describes what a party must do to get -- and this is

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1 under Part G -- to get cross examination even though
2 you are entitled to it.

3 And it means we submit cross examination
4 plans. If you thought that areas of cross examination
5 that we propose to carry out were not appropriate, or
6 were redundant, or missed the point, you would then
7 say I'm going to let you do it on these two areas but
8 not on the third area or the fourth area.

9 So you maintain significant control over
10 the cross examination rights. The difference is we
11 don't have the same kind of burden of proof that we
12 would have under Subpart L and the presumptions aren't
13 running against us. But you still have substantial
14 control.

15 Third, the question was how can we
16 establish that the witnesses that we haven't heard are
17 going to be less than candid in order to meet the
18 criteria that is -- what I call the second criteria
19 under 310(d). The answer to that is that the language
20 says may reasonably be expected.

21 I submit that if the lawyers who are
22 working for this company can't be relied upon to be
23 completely candid with you and give you all the
24 information that is relevant to the question that they
25 are purporting to answer, then you can reasonably

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1 expect that the people who are working as full-time
2 employees for these companies will be equally less
3 than candid.

4 And I want to emphasize here, I'm not
5 talking about what we call in law malum in se. I'm
6 not talking about bad motivated people. And I'm not
7 talking about liars.

8 I'm talking about a natural tendency that
9 every one of us would engage in if we could and
10 probably we do. When your wife asks you, "Where were
11 you today?", you don't always tell her all the
12 details. "I was at work." You don't necessary say,
13 "and I spent two hours talking to my secretary over
14 lunch." That doesn't mean that you are a liar.

15 But if we needed to know the answer to
16 that, cross examination would be the way we'd find it
17 out.

18 JUDGE KARLIN: Before your time expires,
19 I do need to understand an issue we talked about
20 yesterday, which is the State's right to participate
21 cross State, cross party. Does it make any
22 difference? Should we worry about that issue? Or is
23 it just a way to get to cross examination?

24 MR. ROISMAN: No, it makes a great deal of
25 difference but candidly it depends upon what you do.

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1 If all of the contentions or all of the -- you know,
2 enough of the contentions that the State feels that
3 we're going to get a fair opportunity to make our case
4 under the 309 process are admitted, and if the Board
5 grants us the opportunity to do the amount of
6 discovery or cross examination that we think we need
7 to do, then we don't need to be a 274(L) State.

8 But we hold that in reserve. And we use
9 that, and we've used it here to say to the Board there
10 is a good reason for you, to the extent that you need
11 a reason to be inclined to give the State the rights
12 it is asking for, because we've got another way that
13 we could go --

14 JUDGE KARLIN: Well, it seems to me
15 there's three ways you can argue -- you're arguing for
16 the right to cross examination -- 274(L) of the
17 statute, two, under the regulations, interpret them in
18 a way that a Subpart G hearing should be provided, and
19 three is under an L proceeding, there is the
20 discretionary opportunity or there is some
21 opportunity, albeit limited, for the Board to turn to
22 experienced counsel and to assist them in their cross
23 examination.

24 Now you are arguing all three of those,
25 I'm sure.

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1 MR. ROISMAN: Yes, yes, absolutely,
2 absolutely. And our ability to operate under 2.315(c)
3 doesn't arise under that until after you've ruled on
4 whether contentions are admitted.

5 JUDGE KARLIN: All right.

6 MR. ROISMAN: So there's nothing we could
7 do at this point.

8 JUDGE KARLIN: All right. Thank you.

9 MR. WACHTER: Five minutes.

10 JUDGE KARLIN: You have five minutes.

11 MR. BLOCK: Thank you. I don't think I'm
12 going to use all five. It depends on whether there
13 are some questions.

14 I want to begin with a few observations.
15 One is that we have a licensee here who doesn't want
16 any proceeding, doesn't want any of the contentions
17 admitted. If you're going to have a proceeding, it
18 should be Subpart L. And I find that a bit
19 disingenuous.

20 I also wonder about the staff's insistence
21 --

22 JUDGE KARLIN: Why? I don't understand
23 that. I mean because if the licensee doesn't want a
24 hearing and if you're going to have one, they want the
25 least burdensome type of hearing.

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1 MR. BLOCK: Why waste time --

2 JUDGE KARLIN: Isn't that consistent?

3 MR. BLOCK: -- arguing about the hearing
4 if you don't think there should be a hearing at all,
5 you know?

6 JUDGE KARLIN: Yes.

7 MR. BLOCK: It just seems to me it's a
8 waste --

9 JUDGE KARLIN: Well, because we asked them
10 to address that issue.

11 MR. BLOCK: Yes.

12 (Laughter.)

13 MR. BLOCK: Well, that brings me to the
14 question of insult. And I just wanted to point out to
15 the applicant that when I want to insult somebody, I
16 know how to do it. And if I do, I know that you'll
17 know.

18 But I think that we thank the Board, and
19 we do thank the Board. We feel that the Board has
20 indicated its ability to deal with the issues as I
21 said and as Mr. Roisman said. And I don't think
22 there's any intention here to denigrate the Board's
23 ability to conduct the hearing in saying that we
24 believe that what is appropriate here is a more formal
25 hearing.

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1 And we believe it because, as Mr. Shadis
2 pointed out when he was discussing his QA/QC
3 contention, you know, when Mr. Thayer was asked to
4 produce discovery, he produced zero, nothing, nada,
5 even though he signed each one of those documents as
6 being material, correct, and complete.

7 And so when the NRC staff then says well,
8 the executive's motive isn't an issue, I agree with
9 Mr. Roisman. It's not a question of, you know,
10 whether there is some kind of malicious intent. It's
11 a question of whether people who are paid to do a job
12 are going to try the best they can to do what their
13 employer wants to have done. And are not always going
14 to be as forthcoming as they might.

15 And so --

16 JUDGE KARLIN: But doesn't that exception
17 swallow the entire rule and make every proceeding a G
18 then?

19 MR. BLOCK: No, because there are going to
20 be proceedings that have less at stake than is at
21 stake in this proceeding. There are going to be a lot
22 of license amendment proceedings where they are much
23 more minor, where, you know, the informal proceedings
24 would apply.

25 But here, this is something where there is

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1 a lot at stake. This is one of a dozen plants getting
2 EPU. And, you know, this review process appears to be
3 faltering.

4 JUDGE KARLIN: Well, I think if you went
5 to, you know, hearings, the interveners -- I think you
6 would very rarely find someone who would say there is
7 not a lot at stake here. I mean most of them think --

8 MR. BLOCK: Well,

9 JUDGE KARLIN: -- there are important
10 issues at stake.

11 And so they'd all say just what you are
12 saying. And where would we be? I mean that would
13 swallow the rule.

14 MR. BLOCK: I'll give you an example, I
15 mean there are materials proceedings where they've
16 been using Subpart L for quite a while. And they
17 manage to find a way to deal with the evidence and the
18 people who are in them manage to deal with it.

19 JUDGE KARLIN: Yes.

20 MR. BLOCK: You don't have the range of
21 issues that are here in many of those proceedings.
22 They are much narrower. And they are more naturally
23 suited to that.

24 All I meant is when you have a narrowly-
25 focused amendment, where instead of the whole

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1 licensing basis being on the table, you know, you've
2 got one particular issue, I think that in a situation
3 like that, you're going to have less questions of
4 credibility.

5 Here, when the proposal on the table is
6 the difference between generating, you know, 20
7 percent more profits or not, you're going to have
8 people who have a lot more at stake when they sit down
9 in the witness stand to offer the whole truth and
10 nothing but the truth.

11 Anyway, I wanted to close with just a
12 sense, leaving the Board with a sense that -- if I
13 might use some of my time -- okay, right -- Mr.
14 Roisman brings to my attention --

15 MR. WACHTER: Two minutes.

16 MR. BLOCK: Okay, Mr. Roisman brought to
17 my attention that in the NRC's brief, which you have
18 through their answer, was it --

19 MR. ROISMAN: Your reply.

20 MR. BLOCK: -- your reply at page 46,
21 there is a piece of information worth noting about the
22 Commission's belief that cross examination does not
23 appear to be either necessary or useful in
24 circumstances where the dispute falls on the
25 interpretation or inferences arising from otherwise

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1 undisputed facts.

2 But the Commission goes on to say that the
3 presiding officer is the one best able to assess the
4 record as to the hearing's progress and to determine
5 whether cross examination is needed to help develop an
6 adequate record.

7 And that's a very helpful segue because
8 what I wanted to say to close is that New England
9 Coalition has a long and proud history of
10 participation in such hearings and being able to help
11 develop adequate records.

12 They have two experts here with almost 70
13 years of nuclear experience, extensive history of
14 interaction with -- over Vermont Yankee, that is in
15 the issuances that can be looked at, the Nuclear
16 Regulatory Commission issuances.

17 They have an in-house special advisor.
18 And he tells me that they have an attorney with a
19 record of experience on nuclear law. I wish it was as
20 great as Mr. Roisman's or Mr. Silberg's. But, you
21 know, I'll do what I can.

22 I think that if you give us the right kind
23 of hearing structure and you are inclined to grant a
24 number of these significant contentions, that we will
25 give you a record that will be useful to the

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1 Commission in making the right determination in this
2 case.

3 Thank you very much.

4 JUDGE KARLIN: Thank you.

5 I think we've completed the proceedings.
6 I appreciate the effort of counsel to move forward
7 diligently. And I think we've covered a lot of
8 ground.

9 You all have answered the questions
10 candidly and fairly and very professionally from all
11 of you. And I hope the public has had a chance to
12 understand a little better what we're trying to do
13 here in some of the issues.

14 It's pretty technical. It's pretty legal.
15 And we're going to go back down to Rockville, Maryland
16 and read the transcript, go over the information in
17 the briefs again, confer, and try -- we will issue a
18 decision to the best of our ability resolving these
19 and deciding whether any of the contentions are
20 admissible and, if so, what kind of hearing would be
21 granted, an evidentiary one with cross examination or
22 not.

23 So, again, thank you all. We'll close for
24 the day and hope you all have good flights or trips
25 home.

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Thank you.

(Whereupon, the above-entitled pre-conference hearing was concluded at 1:22 p.m.)

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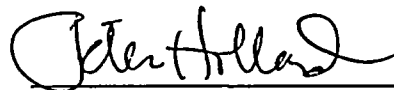
This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: Entergy Nuclear Vermont
Yankee, LLC and Entergy
Nuclear Operations, Inc.

Docket Number: 50-271-OLA and
ASLBP No.04-832-02-OLA

Location: Brattleboro, VT

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.



Peter Holland
Official Reporter
Neal R. Gross & Co., Inc.

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