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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
+ + + + +
OFFICE OF INVESTIGATIONS
PETITION REVIEW BOARD MEETING

Tuesday, December 7, 2004

0-7B6

11222 Rockville Pike

Rockville, Maryland 20852

The above-entitled matter was conducted at 2:00 p.m.

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

(2:00 p.m.)

MR. MILANO: Do you have a quorum now, Mr. Judson (phonetic)?

MR. JUDSON: Yes, we do. We should be joined shortly by Robin Miller who will be dialing up in just a couple of minutes.

MR. MILANO: Do you want to wait for -- is it a her?

MR. JUDSON: Yes, well, we can go ahead.

MALE VOICE: Robin should be on the line.

MS. MILLER: I'm here.

MR. MILANO: Okay, great. Then we'll go ahead and get the meeting started.

MR. JUDSON: Okay, so I'm assuming that everybody got the agenda that we put together.

MALE VOICE: Yes, Gateway did.

MR. JUDSON: Okay, so what we figured we start with is --

MR. MILANO: Well, let me kick it off, Mr. Judson.

MR. JUDSON: Okay.

MR. MILANO: Okay, yeah, this is Patrick Milano. I'm the petition manager for your October 27th, 2004 petition and what I'd like to do now is

1 I'll introduce the NRC members at headquarters. Then
2 we have -- we have participants from NRC Region 1 and
3 we have the licensee representatives on hand also and
4 then from the petitioners. And what we'll do is we'll
5 go through and everybody can introduce themselves.

6 I'll begin with, again my name is Patrick
7 Milano. With me, I've got -- I'll introduce everybody
8 else. It's James Kim (phonetic) and Richard
9 Lauffer, (phonetic) both of which are with Division of
10 Licensing Project Management, Steven Lewis (phonetic)
11 from our Office of General Counsel, and James Lyons,
12 (phonetic) who's the Deputy Director for the Division
13 of Licensing Project Manager and the M.S. Fasbee
14 (phonetic) is the Petition Review Board Chairman and
15 our Petition Coordinator Donna Skay (phonetic), and
16 from our technical staff, Daniel Frumkin (phonetic).
17 Region 1, would you introduce yourselves?

18 MR. ROGEY: (Phonetic) Yeah, this is John
19 Rogey, I'm the electrical branch chief. With me, I
20 have Gene Colby, he is the branch chief in projects
21 that is responsible for the Fitzpatrick Site and I
22 believe Doug Dempsey is no the phone, the resident
23 inspector at the site.

24 MR. MILANO: Entergy?

25 MS. FAYE-DUNN: (Phonetic) This is

1 Charlene Faye-Dunn of Entergy in White Plains, New
2 York.

3 MR. PLATT: (Phonetic) And this is Rick
4 Platt, Entergy at the site, licensing engineer.

5 MR. MILANO: Okay. Mr. Judson, (phonetic)
6 would you go ahead and take care of your
7 introductions?

8 MR. JUDSON: Sure, what we figured what we
9 would do is the Petitioners who are on the line could
10 introduce themselves and make a couple of comments
11 about, you know, what their concerns are about -- and
12 why they joined on the petition. I'm Tim Judson, I'm
13 with Citizens Aware Network in Central New York and I
14 was the lead person in putting together the petition.

15 Deb, do you want to go?

16 MS. KATZ: (Phonetic) Yes, sure, Deb Katz,
17 Citizens Awareness Network. I'm the executive
18 director. We have been concerned about this violation
19 that's been in existence since 1992 with the
20 ventilation problem and we are concerned that it
21 remains unsolved and undealt with by the NRC and has
22 been allowed to fester for too long a time.

23 MR. BOARDWAY: (Phonetic) My name is
24 Lawrence Boardway. I represent Carl Patrickson
25 (phonetic). I'm an attorney representing Mr.

1 Patrickson. Mr. Patrickson is one of the petitioners.
2 I'd like to explain, though, that I only represent Mr.
3 Patrickson in connection with this telephone
4 conference. I do represent him in connection with the
5 whistle blower complaint that he filed against Entergy
6 that is currently pending before an Administrative Law
7 Judge and thus, because this matter relates to the
8 whistle blower complaint, Mr. Patrickson has asked me
9 to sit in on the telephone conference. I don't
10 represent any other parties to the petition, however.

11 MS. GATELY: (Phonetic) I'm Susan Gately
12 with Lake Shore Environmental Action. I'm interested
13 in this safety violation potential as a generic issue.
14 I live midway between Fitzpatrick and the Ganay Plant
15 which might have a similar problem.

16 MS. MILLER: I'm Robin Miller. I'm co-
17 chair of the Justice of Peace, which is a peace based
18 group of education and awareness of the City of
19 Oswego. I also live in the City of Oswego, seven
20 miles from the power plant and I have great concerns
21 about its safety.

22 MR. HAWKINS: My name is Larry Hawkins,
23 I'm chair of the Green Party of Onanda (phonetic)
24 County, downwind from the plant.

25

1 MR. JUDSON: Okay, and is that everyone?
2 We also -- there are also two reporters on the line,
3 Dillon Goldberg (phonetic) from the Post Standard and
4 Sean Tracy from the Palladian Times (phonetic) who are
5 just listening in at this point. I'll start going
6 through some of these items. It may actually go
7 quicker than the time I allotted on the agenda.

8 MR. MILANO: Yes, also, excuse me for a
9 second. Mr. Lyons, he just has some opening remarks
10 that could set the stage for -- you know, for the
11 discussions this afternoon, and then we'll be turning
12 to over to you, Mr. Judson. Jim.

13 MR. LYONS: Thank you, Pat. Again, I'm
14 Jim Lyons and I'm the chairman of the Petition Review
15 Board and this conference call deals with the petition
16 filed pursuant to 10 CFR 2.206 on October 27th, 2004
17 by Mr. Tim Judson of the Central New York Citizens
18 Awareness Network on behalf of the Central New York
19 Nuclear Security Coalition. Petitioners have
20 requested that the NRC order suspension of the
21 facility operating license for the James A.
22 Fitzpatrick Nuclear Power Plant, owned and operated by
23 Entergy Nuclear Operations until the following actions
24 are completed.

25 Number one, conduct physical tests of the

1 ventilation and heat uprates of the pump room under
2 simulated fire scenarios with verification of the test
3 results by an independent third party, followed by an
4 open public meeting where the results are presented
5 and reviewed.

6 Two, seal floor and ceiling penetrations
7 between the basement level pump rooms and the first
8 floor. Three, provide alternate cooling and
9 ventilation for the emergency service water in fire
10 safety related pump rooms, and four, verify the
11 adequacy of actions by the NRC's Division of Reactor
12 Safety, Fire Protection and Inspection Team as the
13 Agency planned to do in 1997.

14 In addition, the petitioners request a
15 demand for information to provide for any document
16 related to a 2003 allegation that were not provided in
17 response to a prior FOIA, a Freedom of Information Act
18 request from the Citizens Awareness Network. In
19 accordance with the NRC's management directive 8.11,
20 on 10 CFR 2.206 process, the purpose of this
21 teleconference is to give the petitioners an
22 opportunity to address the Petition Review Board to
23 provide additional explanations or supporting
24 information for their petition.

25 It also provides an opportunity for the

1 NRC staff and the licensee to ask any clarifying
2 questions. However, the purpose of this conference
3 call is not to debate the specific merits of the
4 petition. Since we have members of the public who are
5 not petitioners, I want to insure that you understand
6 that this is a teleconference only between the
7 petitioners, the NRC and the licensee. Thus, I ask
8 that you refrain from asking questions or commenting
9 during the proceeding.

10 After this phone call, the PRB will meet
11 to determine whether the NRC will accept the petition
12 under the 10 CFR 2.206 process and whether the issues
13 should be dealt with under another agency program.
14 The PRB's meeting will not determine whether we agree
15 or disagree with the contents of the petition. This
16 teleconference is being transcribed, so anyone
17 desiring to make a statement needs to first state his
18 or her name clearly. The transcript will become a
19 supplement to the petition and will be made publicly
20 available.

21 Since Mr. Judson, you've previously agreed
22 to be the point of contact for petitioners, I will now
23 ask you to briefly discuss the supporting basis for
24 the actions requested in the petition and to describe
25 any supporting information that was not provided when

1 filing the petition. In particular, Mr. Judson
2 notified us yesterday that one of the petitioners had
3 submitted additional information for inclusion as part
4 of the petition. The PRB has not seen or received
5 this information as yet, so we'd like a brief
6 explanation of the description of this new
7 information.

8 Furthermore, the petition notes that the
9 issues were reviewed in the past under the agency's
10 allegation program. Thus, we would like your
11 statement to point out or emphasize any new or
12 different information that is now being provided in
13 this petition from that previously provided to the
14 NRC. With that, I will now turn over the discussion
15 to Mr. Jordan and thank you for your patience.

16 MR. JUDSON: Yes, Mr. Judson? You said
17 Mr. Jordan and I --

18 MR. LYONS: I'm sorry, I misspoke.

19 MR. JUDSON: Well, first, you know, we'd
20 like to thank the NRC for the opportunity to have this
21 conference call. We're very concerned about this
22 issue and to some extent, there's a question about
23 what happens when, you know, one branch of the NRC
24 who's reviewed a safety issue, has done so
25 inadequately and has failed in their regulatory

1 function in our view? And you know, and that the
2 2.206 petition is really the only other avenue that
3 the public has to try to have, you know, some justice
4 in this matter.

5 And you know, I also wanted to make clear,
6 you know, that there are a number of petitioners who
7 weren't able to make it on this conference call who
8 were very concerned because we're having it during the
9 work day and they have work obligations to attend to.
10 With that said, I guess the first item of business is
11 to clarify that since we've submitted the petition, we
12 do have three new petitioners. One is the Green Party
13 of Onandaga (phonetic) County, also the Nuclear
14 Information and Resource Service and Carl Patrickson
15 has signed on. So that should clarify the number of
16 petitioners that we have at this point.

17 Now, as far as the technical basis for the
18 petition, we believe that the licensee event report
19 from 1991 that originally documented this problem
20 stands on its own as far as being able to identify
21 that there is a potential problem with the
22 ventilation, the emergency service water and prior
23 safety related pump rooms at Fitzpatrick and in fact,
24 that that technical evaluation was affirmed when NIFA
25 (phonetic) applied in 1992 for a temporary exemption

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1 to postpone installing modifications that they
2 expected to be quite extensive at that time and that
3 NRC understood this when they granted that exemption
4 on September 10th, 1992. So rather than dwell too
5 much on the technical details which are very well laid
6 out in the OER (phonetic), what we'd like to focus on
7 is a couple of other things.

8 But prior to stating that, you know, what
9 we wanted to make sure it was clear is that it isn't
10 just the emergency service water and more residual
11 heat removal that are at issue in this. The OER in
12 1991, clearly identified that the fire safety related
13 pumps, were perhaps even more clearly than a problem
14 with inadequate ventilation than the other sets of
15 pumps that we're talking about. And that, in fact,
16 none of NIFA's responses to NRC about this issue,
17 addressed the problems of the fire safety related
18 pumps and instead focused exclusively on the ESW and
19 RHR pumps.

20 This was a major oversight and we're not
21 sure why the NRC didn't catch it in its allegations
22 department review. In fact, you know, as far as the
23 diesel fire pumps are concerned, just to quote
24 directly from the LER, "The dampers to the room must
25 be open for proper operation of the pumps". There is

1 no ventilation air or air for combustion for those
2 pumps except for what comes through the fire dampers
3 which will be closed in the event of a fire. And
4 that, as Mr. Patrickson has confirmed, was never done.
5 And the NRC doesn't seem to have ever followed up to
6 inspect the plant to make sure that those
7 modifications were installed.

8 The other issue which falls somewhat
9 outside the issues which was raised in the 1991
10 Licensee Event Report, are the four ceiling
11 penetrations between the basement pump rooms and the
12 first floor. And we believe that in combination with
13 the ventilation problem, this presents -- those
14 penetrations present a serious security vulnerability
15 as well as an ongoing safety problem and the only
16 reason that those penetrations themselves do not have
17 any fire dampers on them is because NIFA applied in
18 1986 for an exemption from the fire safety regulation
19 and the NRC granted that on the basis that they were
20 going to minimize the amount of combustible material
21 in the building.

22 We believe that especially post-9/11 with
23 the possibility for terrorist attacks that could
24 exploit such a vulnerability deliberately, for
25 instance, you know, by using you know, jet fuel, that

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1 that decision is invalid at this point and needs to be
2 revisited, that in combination with the ventilation
3 problems that we discussed makes a clear case that
4 those penetrations need to be addressed as a
5 comprehensive solution to the problem.

6 Moving on from there, the issue that we're
7 especially concerned about at this point, is that --
8 is that NIFA basically pulled a bait and switch in
9 1992 when it applied for a temporary exemption from
10 having to install modifications. And then the NRC
11 granting that acknowledged that, in fact, NIFA had
12 made a commitment to make extensive modifications to
13 the plant to address this issue. Now, subsequent to
14 that none of NIFA's responses to the NRC beginning in
15 1997 with Carl Patrickson's first allegations, even
16 addressed this commitment which was enforceable and
17 made under its license in order to gain permission to
18 restart the reactor in 1992.

19 In fact NIFA's response to Mr.
20 Patrickson's 1997 allegation which served as NRC's
21 sole basis for deciding not to investigate this
22 problem at that point, does not even acknowledge their
23 commitment under that exemption request. As well,
24 NIFA submitted to NRC its own internal response to Mr.
25 Patrickson's concerns which were reported to the

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1 company's "Speak Out" program and that response also
2 ignores those commitments.

3 In fact, it's impossible to tell whether
4 the actions that that report cites as completed
5 corrective actions for the LER were in fact relevant
6 or even adequate since no information about them was
7 presented to NRC. And not even a date on which the
8 calculations at the site were performed. We don't
9 even know if those were calculations that were
10 performed prior to the submission of the LER.

11 Now, there's two indications that
12 especially this latter document provided by NIFA lack
13 credibility. One is that despite a memo about the
14 pump room ventilation requirements, a meeting that was
15 held in which the report mentions as though it were
16 evidence that corrective actions in the LER were
17 completed, now that memo was issued before the LER was
18 written and, in fact, seems to have been the memo that
19 provided the basis for the creation of the LER in the
20 first place. So, in fact, that would not have been a
21 corrective action.

22 The report also indicates that at least
23 four of the dampers were reclassified to have their
24 safety significance downgraded. Now, not only did
25 downgrading their safety rating not a corrective

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1 action, it doesn't address, you know, the ventilation
2 problem that was identified in the LER, but it is in
3 direct contradiction to NRC's denial in 1996 or 1986
4 of NIFA's request for an exemption from Appendix R for
5 those same fire dampers.

6 And I'd like to read a quote from that,
7 from that exemption notice that illustrates this.
8 "With regard to the remaining 12 fire dampers", these
9 fire dampers are included in this, "the licensee's
10 approach is based on quote 'downgrading' existing
11 multi-hour fire barriers and justifying the absence of
12 fire dampers on the basis of test results and that the
13 National Fire Protection Association does not require
14 fire dampers in one-hour fire related walls. However,
15 this report should negate the basis by which we
16 accepted the fire protection program at Fitzpatrick
17 during our review of the program. In addition, since
18 these barriers, as designed, possess a fire rating in
19 excess of two hours, the Fire Protection Association
20 Standards requires the fire dampers be installed where
21 HVAC duct penetrations exist. Fire excess on one-hour
22 rated walls with unprotected HVAC duct penetration
23 were not conducted with continuous air ducts without
24 air registers.

25 The licensee has not established that the

1 configuration of ducts at Fitzpatrick reflected the
2 tested configuration. Therefore, the results of these
3 tests may not be applicable to this issue. If fire
4 dampers were not installed in these barriers, we would
5 not have reasonable assurance that a fire, if one
6 should occur, would be confined to the room of
7 origin".

8 Now, what NIFA's response I 1997 indicates
9 is that there's a repeated approach by NIFA of
10 attempting to get out of regulatory requirements of
11 fire protection by pretending that necessary safety
12 systems were expendable and we believe that this is
13 further evidence that NIFA was essentially trying to
14 wiggle out of the requirement and that NRC failed to
15 notice this was going on. Now, as far as the
16 requested actions that we've listed, I was hoping that
17 Carl would be able to speak to some of the engineering
18 issues involved in this and what should have been done
19 as a proper response to the '91 LER.

20 MR. MILANO: Would the 9/11 change things,
21 the overall fix to seal the ceiling penetrations and
22 seal the side wall penetrations at the elevation of
23 the pump rooms and provide one or two-unit coolers for
24 each of the pump rooms to cool the rooms for the pump
25 heat and any external heat to come through the outside

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1 walls especially through a narrow fire, that type of
2 thing so that if there was a terrorist attack, it
3 would minimize the chance of fuel or heat coming from
4 the fire getting into the pump room and then the
5 cooler core would again, cool the heat generated by
6 the motors and any external heat coming through
7 especially from a fire? That's really about all it
8 would take and not take a major shutdown of the plant
9 or a major shutdown of the emergency pump room to
10 install that modification.

11 MR. JUDSON: And how about, do you also
12 want to comment on the diesel --

13 MALE VOICE: And the diesel fire pumps
14 would basically need just a small hole either up
15 through the building roof or through the north outside
16 wall to provide an outside combustion air for the
17 diesel so they's have a short air supply.

18 MR. JUDSON: Great. Item 2 on the agenda,
19 the next thing we were planning to discuss was the new
20 information that we'd like to submit at this point and
21 the first item in that is, obviously, the information
22 that Carl Patrickson submitted to Dr. Reyes'
23 (phonetic) office, or Mr. Reyes' office subsequent to
24 our submission of the petition. And am I correct in
25 understanding that the Petition Review Board has not

1 seen that information yet?

2 MR. MILANO: That is correct. That
3 information had not been provided. The only thing
4 that's been -- the only thing that we got subsequent
5 to -- you know, to your October submission was the
6 item that was -- or the two-page letter that you sent
7 to me yesterday, dated November 16th and it has -- you
8 know, is that the -- all the information or was there
9 something attached to it?

10 MR. JUDSON: There was nothing attached to
11 the letter. Carl, maybe you could clarify what you
12 sent and when?

13 MR. BOARDWAY: This is Lawrence Boardway,
14 the attorney representing Mr. Patrickson. Before we
15 discuss the materials that Mr. Patrickson provided to
16 the NRC, we need to address the fact that Mr.
17 Patrickson is bound, by virtue of his employment for
18 Fitzpatrick by a confidentiality agreement and while
19 he can disclose the information to the NRC, he cannot
20 disclose it to any members of the public. So we can't
21 really discuss the substantively what this information
22 that he provided was in this conference.

23 If you want to talk about it, we'll have
24 to do that solely with the NRC and to the members that
25 are present at the conference that are employed by

1 Entergy.

2 MR. MILANO: Okay, I understand that, Mr.
3 Boardway. What we'll do is we'll make -- the Petition
4 Review Board will make an attempt to try to obtain
5 that information from the Office of the Executive
6 Director for Operations and you know, and we'll
7 proceed from there. If we need further discussions,
8 we'll work through Mr. Judson to attempt to contact
9 you and Mr. Patrickson.

10 MR. BOARDWAY: Thank you.

11 MR. MILANO: You're welcome.

12 MR. LYONS: This is Jim Lyons. Just a
13 quick question for clarification. What was the date
14 of that letter that was sent to Luis Reyes' office?

15 MR. BOARDWAY: You're talking about the
16 letter that I sent?

17 MR. LYONS: Yeah, that --

18 MR. BOARDWAY: That was sent -- my letter
19 is dated September 29th, 2004 but it was mailed in
20 close proximity to Tim Judson's 2.206 petition.

21 MR. JUDSON: Okay, it should have been
22 received within a day or two after we submitted the
23 petition.

24 MR. LYONS: Okay.

25 MR. JUDSON: The letter that we sent to

1 Mr. Reyes' office was on November 16th.

2 MR. LYONS: We have the November 16th
3 letter. It's the September 29th letter that we need
4 to go find. Given the -- if we have the date it helps
5 us a little bit of trying to track it down.

6 MR. JUDSON: Sure.

7 MR. LYONS: Thank you very much.

8 MR. JUDSON: Uh-huh.

9 MR. MILANO: Briefly, in regards to this
10 issue, what we wanted -- I mean, because we understand
11 that this is, in some sense, an unusual circumstance
12 where one of the petitioners has submitted information
13 into the proceeding that the other petitioners haven't
14 been able to review --

15 (End of first audio)

16 -- will be transcribed in its entirety and
17 will be made part of the petition itself and the
18 transcript will also be provided to you for your
19 records.

20 MR. JUDSON: Pat, you said that the
21 recommendation will be made to -- within a month after
22 reviewing the new information. Now, seeing that we're
23 waiting on a FOIA request and we haven't been able to
24 obtain the 1992 violation, how -- you know, is that 30
25 days a moving, sort of target at this point?

1 MR. MILANO: No, that's -- excuse me if I
2 misled you there. The -- that process for the final
3 decision on the part of NRC management will be made in
4 about 30 days. So the Petition Review Board will make
5 its recommendation to management sooner to that such
6 that the final decision back to you and the other
7 petitioners will be made within about 30 days.

8 MR. JUDSON: Is that 30 days after we've
9 been able to submit this information that we're
10 waiting on?

11 MR. MILANO: No, that's 30 days --

12 MR. LEWIS: This is Steve Lewis with
13 General Counsel's office. The additional information
14 that you're speaking about, you know, will certainly
15 be important to us when we get, but you know, if we
16 feel that we're able to go ahead and make the decision
17 as to whether or not you've met the threshold of 2.206
18 based on what we have, we'll go ahead and make that
19 decision. And you know, whatever additional
20 information comes in later, we'll certainly look at
21 and see how it relates to your petition.

22 MR. JUDSON: Well, in that case, I mean,
23 we're not sure what the rush is.

24 MR. MILANO: Are you saying a rush to make
25 a decision as to whether to accept or reject your

1 petition?

2 MR. JUDSON: Yeah, 30 days from today, I
3 mean, you know, clearly there's information that we're
4 waiting on that we haven't been able to obtain for
5 outside reasons and we're just not sure, you know, why
6 -- why the clock starts today as opposed to when NRC
7 has actually been able to -- you know, to have that
8 information in hand.

9 MR. LEWIS: This is Steve Lewis, again.
10 Mr. Judson, I really don't think -- the way I see it
11 is I don't really think that you're disadvantaged
12 here. We're going to make a very good faith effort to
13 make a determination as to whether or not you -- you
14 know, you've met the threshold. You know, it's --
15 let's just hypothetically make the situation whereby
16 we might say, "Well, you didn't meet the threshold",
17 and but (inaudible)*** and you know, the week after
18 that you have some information from the Department of
19 Labor proceeding which you think, you know, shows that
20 we were wrong in making that. Well, you know, we
21 certainly would want to consider that and bring it to
22 our attention but you know I just think we're doing
23 nothing other than following our normal process at
24 this point.

25 MS. MILLER: Robin Miller here. My

1 biggest concern as a citizen of the Town of Oswego is,
2 how is the public to benefit if there's no real
3 disclosure of important information concerning public
4 safety and it's constantly kept from us?

5 FEMALE VOICE: We do get that impression.

6 MS. MILLER: That's the impression I get
7 and that's what certainly my neighbors get.

8 MR. MILANO: I'm not sure I understand
9 what information you think is being withheld?

10 MS. MILLER: Information about safety at
11 the plant. If there's a safety issue and we're not
12 kept informed and the problem isn't repaired and we're
13 not kept updated in that, then you know, we don't have
14 the sense of security.

15 MR. MILANO: Well, I understand that and
16 with this process, we should be able to address those
17 issues. So --

18 MR. JUDSON: Here's another question in
19 this vein. I mean, the Petition Review Board in its,
20 you know, review of this petition going to rely on the
21 Allegations Division regarding Mr. Patrickson's
22 allegations?

23 MR. MILANO: Yes, we look back on all the
24 information that we have here in the NRC to make a
25 determination of whether or not we should move forward

1 on this petition was requested.

2 MR. JUDSON: Well, I mean, for instance in
3 this case, I mean one of the major issues in our
4 petition is, of course, the lack of confidence in the
5 Allegations Department's review of this issue. You
6 know, how does the Petition Review Board deal with
7 issues like that?

8 MR. MILANO: We would consider that. We
9 would consider that you felt that it wasn't adequately
10 addressed and we would look at that.

11 MR. JUDSON: Does the Petition Review
12 Board have the authority to supersede the Allegations
13 Department's review?

14 MR. MILANO: Certainly, if there is
15 additional information that would lead us to call into
16 question the -- you know, the previous Agency actions,
17 we would consider that. It's similar to what Steve
18 Lewis was saying about if you had additional
19 information even after -- even if the Petition Review
20 Board were to say this petition doesn't warrant to be
21 handled under 2.206, if you had additional information
22 that came to light after that and you provided it to
23 us, we would relook at that and relook at our decision
24 and determine if that would change our decision and
25 we've done that in the past. We've picked up reviews

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1 that we had originally put aside.

2 MR. JUDSON: Well, I mean, just sort of
3 probing further with this, is you know, for instance,
4 you know, there's the most recent allegation that Mr.
5 Patrickson made in 2003, the allegation that the
6 Department had conducted a review, that information
7 that we haven't been able to review ourselves, is that
8 -- you know, is that Allegation Department information
9 going to be considered in denying our petition or
10 approving it whichever way it goes?

11 MR. LEWIS: This is Steve Lewis again. I
12 was just mentioning that I could add a little
13 something to this. I mean, once again, my concern is
14 the same one I voiced before, which is that the NRC
15 has available to it information that Mr. Patrickson
16 has supplied which was done in connection with an
17 allegation process. I think that you know, the way
18 the NRC would handle a matter that is being handled
19 under 2.206 would -- we would probably erect a barrier
20 between reliance on what was a basis for a
21 determination and an allegation process and what we're
22 considering now.

23 And that's because we -- because the
24 public needs to know what we're relying on. Now, to
25 the extent that anyone who is assisting you with

1 regard to your petition has chosen to use the
2 allegation process, you know, that was an option that
3 they exercised and of course, I think we always make
4 it clear to people in the allegation process is a
5 confidential process and a non-public process and
6 whereas 2.206 is a public process. So I mean, I want
7 to be candid with you.

8 Certainly we'll look at things that are
9 available to us and if, in fact -- if, in fact, it
10 turns out that it was very important to out thinking
11 to probe into, you know, why a certain matter that was
12 handled or an allegation process, you know, was not
13 satisfactory, I think at that point, you know, the
14 Petition Review Board would be talking quite a bit to
15 me and the Office of General Counsel because, you
16 know, that's a problem area.

17 We're trying to -- we certainly welcome
18 any one's participation in your petition but I just
19 want to make it clear that we have to be able to
20 proceed on the basis of information that is publicly
21 available basically, and when I start to hear things
22 about how Mr. Patrickson is bound by a certain
23 confidentiality agreement he has with Entergy and
24 things of that nature, well, you know, that's another
25 matter. That will have to be dealt with elsewhere and

1 so, you know, that's my response to it.

2 MR. JUDSON: Let me ask this. I mean, if
3 for instance, you know absent putting our information
4 together with information that Mr. Patrickson has
5 provided, you know, to the PRB, the Petition Review
6 Board decided that an investigation wasn't warranted,
7 but with Mr. Patrickson's information it became clear
8 that an investigation would be warranted, even though
9 that information isn't available to the public, would
10 the PRB then still decide that an investigation wasn't
11 warranted just because there's this firewall that
12 you're discussing?

13 MR. LYONS: No, no. And, in fact, I think
14 there are two points that I'd like to make and I hope
15 this helps, and this is Jim Lyons. We have not been
16 good about giving our names all the time. First of
17 all, with respect to the technical concerns, we're
18 going to judge the technical concerns that you
19 provided in here regardless of whether we treat this
20 as a 2.206 petition or not. So you will get a
21 response on those technical concerns one way or the
22 other. So I want you to know that.

23 And the other is, you know, as your
24 petition stated that you had some concerns about the
25 way this was handled in the past. We have referred

1 those comments to our Inspector General who will also
2 look at any problems as to the way would had handled
3 things previously. So there are things that are going
4 to happen whether or not we accept this as a 2.206
5 petition or not. I just wanted to let you know that.

6 MR. JUDSON: Uh-huh. Now on this point,
7 I mean, one thing that, you know, I mean, this is
8 obviously sort of -- you know, moving target but based
9 on the FOIA request we put into the Department of
10 Labor, if those -- you know, if and when those
11 documents are provided to us, then, in fact, we -- you
12 know, it can turn out that the information that Mr.
13 Patrickson has provided, you know, would not be
14 information that isn't available to the public and
15 then, in fact, could change that entirely.

16 MR. MILANO: Yeah, I guess it could.

17 MR. JUDSON: And in certain events, you
18 know, this is a little bit of a red herring because,
19 you know, obviously as I said earlier, those documents
20 have already been discussed in public and Entergy
21 didn't bother to object to that being done. So, in
22 fact, you know, in a certain sense, we're waiting for
23 the documentary record to catch up with history.

24 MR. LEWIS: Well, we'll just acknowledge
25 -- this is Steve Lewis. We're acknowledging your

1 point and certainly, we want you to provide us with
2 whatever information that after your review, you
3 believe is relevant to our -- to the issues that you
4 have raised in the petition at whatever time --
5 whenever that happens.

6 MR. JUDSON: Okay.

7 MR. MILANO: All right, well, with that,
8 I really appreciate the information you've given us
9 and the time you've taken to put this together and to
10 provide us with your thoughts today and thank you very
11 much for the phone call. And with that, we'll sign
12 off.

13 MR. BOARDWAY: When will the transcript
14 become available? Do you know?

15 THE REPORTER: A week or two.

16 MR. MILANO: Within about a week or two
17 we should have it.

18 MR. BOARDWAY: Do you know where it will
19 be accessible from?

20 THE REPORTER: It will be sent to the
21 Petitioners.

22 MR. MILANO: Yes, it will be sent to the
23 Petitioners.

24 MR. BOARDWAY: And Tim, you'll make that
25 available?

1 MR. JUDSON: Yes, I will.

2 MR. BOARDWAY: Okay, thanks.

3 MR. MILANO: All right, well, thank you
4 very much.

5 (Whereupon the Teleconference concluded.)

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