

# Official Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

Title: Vermont Yankee Nuclear Power Station

Docket Number: 50-271-OLA; ASLBP No.: 04-832-02-OLA

Location: (telephone conference)

DOCKETED  
USNRC

August 8, 2005 (1:30pm)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Date: Wednesday, August 3, 2005

Work Order No.: NRC-543

Pages 677-700

NEAL R. GROSS AND CO., INC.  
Court Reporters and Transcribers  
1323 Rhode Island Avenue, N.W.  
Washington, D.C. 20005  
(202) 234-4433

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

+ + + + +

ATOMIC SAFETY AND LICENSING BOARD

(ASLB)

+ + + + +

TELECONFERENCE

\_\_\_\_\_

In the Matter of           ||  
ENTERGY NUCLEAR VERMONT || Docket No. 50-271-OLA  
YANKEE LLC and ENTERGY   ||  
NUCLEAR OPERATIONS, INC. || ASBLP No. 04-832-02-OLA  
(Vermont Yankee Nuclear ||  
Power Station)           ||

\_\_\_\_\_

Wednesday,  
August 3, 2005

The above-entitled matter came on for  
hearing, pursuant to notice, at 2:00 p.m.

BEFORE:

ALEX S. KARLIN, Administrative Law Judge  
ANTHONY J. BARATTA, Administrative Law Judge  
LESTER S. RUBENSTEIN, Administrative Law Judge

**NEAL R. GROSS**  
COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

## 1 APPEARANCES

2 On Behalf of the Applicant:

3 JAY E. SILBERG, ESQ

4 MATIAS TRAVIESO-DIAZ, ESQ

5 DOUGLAS ROSINSKI, ESQ

6 Pillsbury Winthrop Shaw Pittman

7 2300 N Street, N.W.

8 Washington, D.C. 20037-1128

9 (202) 663-8063

10  
11 On Behalf of the State of Vermont, Department of12 Public Service:

13 SARAH HOFMANN, ESQ

14 Special Counsel

15 Department of Public Service

16 112 State Street - Drawer 20

17 Montpelier, Vermont 05620-2601

18 (802) 828-3088

19 ANTHONY Z. ROISMAN, ESQ

20 National Legal Scholars Law Firm

21 84 East Thetford Road

22 Lyme, New Hampshire 03768

23 (603) 795-4245

24

25

**NEAL R. GROSS**  
COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1                   On Behalf of the Intervenor, New England

2                   Coalition:

3                   JONATHAN M. BLOCK, ESQ

4                   94 Main Street

5                   P.O. Box 566

6                   Putney, Vermont 05346-0566

7                   (802) 387-2646

8                   RAYMOND SHADIS

9                   Staff Technical Advisor

10                  New England Coalition

11                  P.O. Box 98

12                  Edgecomb, Maine 04556

13  
14                  On Behalf of the Nuclear Regulatory Commission:

15                  BROOKE POOLE, ESQ

16                  ANTONIO FERNANDEZ, ESQ

17                  ROBERT WAGMAN, ESQ

18                  Office of General Counsel

19                  of: U.S. Nuclear Regulatory Commission

20                  Washington, D.C. 20555-0001

21                  (301) 415-1740

22  
23  
24  
25  
  
**NEAL R. GROSS**  
COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

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

2 2:02 P.M.

3 JUDGE KARLIN: Good afternoon, this is  
4 Alex Karlin. Thank you everyone for joining us today.  
5 This is a further conference in the ASLBP Docket No.  
6 50-271 in the matter of Entergy Nuclear Vermont Yankee  
7 LLC and Entergy Nuclear Operations, Inc.

8 We are now on the record and I would like  
9 each of the parties for the record to identify  
10 themselves to the court reporter once again, please.

11 MR. SILBERG: For the Applicant Licensee,  
12 this is Jay Silberg together with matias Travieso-Diaz  
13 and Douglas Rosinski from Pillsbury Winthrop Shaw  
14 Pittman. On the phone from Vermont Yankee are Craig  
15 Nichols, Len Gucwa and Dave McElwee.

16 JUDGE KARLIN: Thank you.

17 MR. ROISMAN: For the Vermont Department  
18 of Public Service, this is Tony Roisman and on the  
19 phone with me is Sarah Hoffman.

20 JUDGE KARLIN: Thank you.

21 MR. BLOCK: For the New England Coalition,  
22 this is attorney John Block and on the phone with me  
23 is the New England Coalition Staff Technical Advisor,  
24 Raymond Shadis.

25 MS. POOLE: Good afternoon, for the NRC

**NEAL R. GROSS**  
COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 Staff this is Brooke Poole with the Office of the  
2 General Counsel. With me in the room are Robert  
3 Weisman and Antonio Fernandez, also with OGC. Richard  
4 Ennis, a Senior Project Manager in the Office of  
5 Nuclear Reactor Regulation, he is the Project Manager  
6 for the Vermont Yankee facility.

7 Richard Lobel, a Senior Reactor Engineer  
8 with the Plant Systems Branch; Darrell Roberts, he's  
9 the Section Chief for Project Directorate 11B in NRR;  
10 and Ed Miller, who is a Project Engineer with NRR.

11 I believe also Neil Sheehan may be on the  
12 line for Region 1 Public Affairs.

13 MR. DORFLINE: As well as Larry Dorflin  
14 from NRC Region 1.

15 JUDGE KARLIN: Okay, thank you. Anyone  
16 else?

17 JUDGE RUBENSTEIN: This is Judge Lester  
18 Rubenstein.

19 JUDGE KARLIN: Of course, Judge  
20 Rubenstein, thank you. But I think there's someone  
21 else on the phone or is that it? Is there anyone else  
22 on the line? Okay, fine.

23 Again, here in the room in Rockville,  
24 Maryland, we have Judge Baratta, Dr. Baratta is here.  
25 Dr. Rubenstein is also on the lines, calling in from

**NEAL R. GROSS**  
COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 who knows where, California, I think.

2 JUDGE RUBENSTEIN: Tucson, Arizona today.

3 JUDGE KARLIN: Tucson, Arizona. Sorry.  
4 Some idyllic location, I'm not sure. And we have  
5 Jonathan Rund here, Clerk to the Board is in the room  
6 here in Rockville, Maryland, as well as Karin Valloch  
7 who is our administrative assistant.

8 Thank you all for joining us. The  
9 purpose, let me just record the date here as August  
10 3rd. The location is not around the country, but we  
11 are here in Rockville, Maryland. The time is 2 p.m.  
12 Eastern Time.

13 The protocol for this call as I think you  
14 know, only the parties are going to be able to speak  
15 or counsel for the parties and the purpose of the call  
16 is really just to discuss the status of the case as  
17 per our June 29th order. This is not a place for oral  
18 argument on the motion by Entergy regarding NEC's  
19 Contention 4. So we won't be doing that today.

20 What I thought we would do is proceed by  
21 asking the staff, as we did in the June 29th order to  
22 give us its sort of report and its best estimates, not  
23 necessarily milestones as to when it thinks it will  
24 have the draft SER, final SER and other documents  
25 produced because they are for linchpins to the initial

**NEAL R. GROSS**  
COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 scheduling order.

2 And once we have the Staff give us a  
3 report, perhaps the Applicant may have some facts to  
4 report to us as well regarding the status of RAI  
5 answers and then we would have a bit of a discussion  
6 to see if there's a way to manage this case in an  
7 efficient way and move it along as best as possible.

8 So with that, I would ask Ms. Poole,  
9 perhaps if you could give us some information on where  
10 the Staff is on these things.

11 MS. POOLE: Certainly. Pursuant to the  
12 June 29th order, as well as the initial scheduling  
13 order, we have some milestones that we think might be  
14 helpful.

15 As things currently stand, we plan to  
16 provide a draft safety evaluation to the Advisory  
17 Committee on Reactor Safeguards. At the moment, the  
18 date is October 25, 2005. Now that is an aggressive  
19 schedule given the recent submissions by the  
20 Applicant. Provided we are able to make that  
21 schedule, we will then be able to have a series of  
22 ACRS meetings in the next couple of months. If that  
23 10/21/05 milestone is met, then the ACRS Subcommittee  
24 on Thermal Hydraulic Phenomena will consider the  
25 application in a meeting on November 15th and 16th of

**NEAL R. GROSS**  
COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 this year. That would be a two-day meeting held in  
2 Vermont.

3 There will be a second meeting of the  
4 Thermal Hydraulic Phenomena Subcommittee November 30th  
5 through December 1st in Rockville. The ACRS full  
6 committee meeting on the application would then be  
7 scheduled for December 8, 2005. That would be a half  
8 day meeting and the expectation thereafter would be a  
9 letter from the ACRS to the Chairman on or about  
10 November 15, 2005. Of course, the Staff is not in  
11 control of that milestone.

12 JUDGE KARLIN: On that did you say  
13 December 15th?

14 MS. POOLE: I'm sorry, it's December, if  
15 I misspoke.

16 JUDGE KARLIN: Okay.

17 MS. POOLE: But in any event, the Staff is  
18 not responsible and can't determine the -- how soon  
19 after the meeting the letter will come out, but that's  
20 fairly standard.

21 Subsequent to that, we would expect a  
22 final safety evaluation on or about February 24, 2006  
23 and in its initial scheduling order, the Licensing  
24 Board also requested information about the  
25 environmental assessment that would accompany this

**NEAL R. GROSS**  
COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 application. Our current schedule for that would be  
2 to publish a draft environmental assessment on  
3 November 8, 2005 and if the staff concludes that an  
4 EIS is not necessary, then a final EA would be  
5 published on or about February 7, 2006.

6 Now I would say that this is an aggressive  
7 schedule. It could flip, depending upon the Staff's  
8 consideration of the recent RAI responses and we, of  
9 course, plan to provide, if the Board still wants us  
10 to, we will continue to provide the monthly schedule  
11 updates in which we'll keep everyone informed of any  
12 changes that may take place.

13 JUDGE BARATTA: This is Judge Baratta  
14 here. When do you think you'll be in a position to  
15 have a little more confidence in that schedule? I  
16 sense there's a little hesitancy there. I'm not  
17 trying to rush you or anything like that. I'm just  
18 trying to get a sense of when we think we'll be able  
19 to go forward with that.

20 MS. POOLE: The hesitancy, I think, just  
21 arises from the fact that we just received from RAIs  
22 -- a considerable volume of RAI responses and those  
23 have not yet been reviewed by the Staff for their  
24 adequacy and I believe some additional responses are  
25 still pending. Therefore, I'm hopeful that we will be

**NEAL R. GROSS**  
COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 able to reflect any schedule changes in the next  
2 monthly update which would be due August 15th.

3 JUDGE BARATTA: Within the next two weeks.

4 MS. POOLE: Hopefully. May I take a  
5 moment and confer with the Staff?

6 JUDGE BARATTA: Yes.

7 MS. POOLE: Just to make certain?

8 JUDGE BARATTA: Yes.

9 MS. POOLE: Thank you.

10 MR. BLOCK: Judge Karlin?

11 JUDGE KARLIN: Yes.

12 MR. BLOCK: This is attorney John Block.  
13 Might I introduce a question that you could consider  
14 if you want to ask the Staff, that would be fine. I'm  
15 wondering exactly how many open RAIs there at this  
16 point. Mr. Shadis and I tried to count them and we  
17 lost count at around 150.

18 (Laughter.)

19 JUDGE KARLIN: I think I was going to ask  
20 something along that line, so thank you for that  
21 point.

22 MR. BLOCK: Okay, thank you.

23 MS. POOLE: This is Brooke Poole. I'm  
24 sorry to interject, if I may. The Staff advises me  
25 that we may still have some question around the time

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 of the August 15th update, but we would have greater  
2 confidence by the September 15th update.

3 JUDGE KARLIN: Okay, this is helpful.  
4 This information is helpful and it's in the nature of  
5 these estimates that I think are valuable to what we  
6 would like to see in the monthly report on the 15th.

7 We're not asking the Staff to commit to a  
8 schedule, but to just give us your best estimate,  
9 qualified as you see fit on the 15th and the  
10 information you gave us today, for example, is quite  
11 helpful to us trying to think through and understand  
12 the timing of this matter and how we juggle it with  
13 other cases we've got we're trying to handle at the  
14 same time.

15 So if this kind of information could be  
16 placed in the report on the 15th or at least your best  
17 estimates of the SER and the draft SER and the EA  
18 without all the intermediate steps, that would be  
19 quite helpful.

20 MS. POOLE: We'd be happy to do that.

21 JUDGE KARLIN: Thank you. You raised in  
22 your report of July 15th, I think, the discussion of  
23 this 200 RAI questions that you would have and be  
24 posing and that obviously sounds like quite a number  
25 and it sounds also like you've already posed -- have

**NEAL R. GROSS**  
COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 you already posed all those, that first round of RAIs?

2 MS. POOLE: Yes, that round is dated July  
3 27, 2005 and a nonproprietary version of those  
4 questions, I believe was released on ADAMS today.

5 JUDGE RUBENSTEIN: This is Judge  
6 Rubenstein. Are all those RAIs specific to the drying  
7 to steam separation?

8 MS. POOLE: No.

9 JUDGE RUBENSTEIN: Or are those general  
10 across the board?

11 MS. POOLE: They are across the board.

12 JUDGE RUBENSTEIN: Thank you.

13 JUDGE KARLIN: Okay, and so you've posed  
14 all the 200 or so you were referring to on July 15th  
15 and they're on the record and you've gotten, I guess,  
16 responses from them very recently or not? Have you  
17 gotten responses from those?

18 MS. POOLE: A partial set of responses was  
19 submitted August 1st.

20 JUDGE KARLIN: Okay, just a couple of days  
21 ago.

22 MS. POOLE: That's correct.

23 MR. SILBERG: This is Jay Silberg. We  
24 submitted responses to 93 on Monday and responses to  
25 the remainder, 107, are scheduled to go into tomorrow.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 JUDGE KARLIN: All right, great. That's  
2 very helpful.

3 And of course, you really can't -- I guess  
4 one of your hesitancies is you're expressing Ms. Poole  
5 is that if there are any follow-up RAIs required  
6 because maybe you didn't get quite the full answer or  
7 the answer you wanted or whatever, there may be  
8 additional round of RAIs.

9 MS. POOLE: That's correct.

10 JUDGE RUBENSTEIN: This is Judge  
11 Rubenstein again. Does the Subcommittee of the ACRS  
12 have plans to conduct their meetings even if the draft  
13 SER is submitted?

14 I'm trying to get a better sense of any  
15 parallelism in the schedule.

16 MS. POOLE: I'm sorry, could you repeat  
17 your question? I don't think I understand.

18 JUDGE RUBENSTEIN: Sure. Do you have a  
19 sense as to whether the ACRS Subcommittee would  
20 continue with their subcommittee meeting in Vermont  
21 and prior to the submittal of the draft SER.

22 MS. POOLE: I would guess not.

23 JUDGE RUBENSTEIN: Okay, so one could look  
24 at the timing with adjustments for the ACRS schedule  
25 itself and assume the whole thing slips week for week

1 with the submittal or nonsubmittal of the draft SER?

2 MS. POOLE: The slip would probably not be  
3 quite week for week since the ACRS doesn't meet in  
4 January. If the slip is long enough, it could slip a  
5 couple of months.

6 JUDGE RUBENSTEIN: Okay, that's what I was  
7 trying to get at.

8 JUDGE KARLIN: So the entire schedule is  
9 somewhat dependent on the issuance of the draft SER on  
10 October 21st and if that doesn't happen, then, of  
11 course, the ACRS won't meet and discuss it and the SER  
12 won't come out in the same time frame either. Okay,  
13 that's helpful.

14 Anything else from the Staff that you'd  
15 like to report or inform us about here?

16 MS. POOLE: I don't believe so.

17 JUDGE KARLIN: Okay, Mr. Silberg from  
18 Entergy's perspective that you want to add here,  
19 factually?

20 MR. SILBERG: No, I think we've answered,  
21 we'll by tomorrow have responded to the questions the  
22 vast majority of which don't relate to any of the  
23 admitted contentions by the way.

24 JUDGE KARLIN: Okay. Very good. All  
25 right, we've got I guess a factual foundation and it

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 sounds a little bit more optimistic and moving along  
2 and then perhaps we had anticipated. Things seem to  
3 be languishing, but perhaps will be moving along here.  
4 Obviously, the Staff and the Applicant seem to be  
5 working pretty diligently on some of this stuff, but  
6 I was and I think the Board was concerned that if we  
7 were going to be facing a long and indefinite sort of  
8 delay while the Staff and Applicant had to work on  
9 things, that there might be some action or appropriate  
10 way to better manage everyone's time on this.

11 Right now, sounds like there's something  
12 going to be moving along relatively quickly in  
13 October, two months from now, that sort of thing. But  
14 under these circumstances is there any action from the  
15 Board in terms of adjustment to the scheduling order  
16 or other activities that might better help us manage  
17 this case, given the facts we've received just now?  
18 I'd like to hear from the Applicant first, I guess, on  
19 this issue and then from the State and then Mr. Block  
20 from NEC and then from the Staff.

21 MR. SILBERG: There are two things I'd  
22 say, Mr. Chairman. First, you now have before you a  
23 briefing on the summary disposition motion on NEC  
24 Contention 4 which is generally ripe for decision of  
25 the NEC's answer came in yesterday.

1 JUDGE KARLIN: Yes.

2 MR. SILBERG: We also at least are  
3 considering whether to raise with the Staff and the  
4 parties, excuse me while a police car goes by -- the  
5 possibility of perhaps going ahead with litigation on  
6 some of these pending issues apart from the overall  
7 SER EA schedule once the staff has reached a position  
8 on those issues. To the extent that a contention is  
9 not necessarily bound up with the reasons for a delay  
10 in SER issuance, it might be feasible to break the  
11 schedule linkage that is now I think in most people's  
12 contemplation between the SER and the hearing.

13 We have not addressed that with the Staff  
14 or NEC or the State, but that's something at least  
15 that has been in our mind, depending on how the rest  
16 of the review process goes.

17 JUDGE KARLIN: Okay. That is permissible  
18 under 2.332B. Hearings on issues can be commenced in  
19 advance of the SER if that would expedite the  
20 proceeding.

21 All right, Mr. Roisman, anything from the  
22 State?

23 MR. ROISMAN: We're very encouraged by the  
24 Staff's report and feel that it provides all of us  
25 with some assurance that there is an end in sight

1 which I think the Board was understandably concerned  
2 about and certainly so were we.

3 The obvious disadvantage of fragmenting  
4 the hearing process is that it can only be a time  
5 saver if there is some substantial amount of time that  
6 is going to pass that would otherwise be completely  
7 lost.

8 I don't see that we're in that situation.  
9 I think if the Staff had come back and reported that  
10 it was not until the end of 2006 that they thought  
11 they'd see a draft SER or something as extreme as  
12 that, then yes, maybe we could think about doing  
13 something alternatively.

14 In addition, the Staff would still be  
15 submitting the SER in evidence in the proceeding, the  
16 ACRS letter would still be coming in, so the hearing,  
17 if you would, would have to be replicated. We've got  
18 a -- at least from the State's perspective, we have a  
19 relatively narrow set of issues that I don't think  
20 will be well dealt with in terms of just human  
21 resources and efficiency if we hear it, part say at  
22 the end of this year and part again at the -- say of  
23 March of next year.

24 So given that I think there's relatively  
25 little to be saved in terms of time, if any, and the

**NEAL R. GROSS**  
COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 likelihood that we might actually lengthen the process  
2 by splitting the issue up, I think the Board should  
3 continue with what it's already ruled in the initial  
4 scheduling order and wait and see should the Staff  
5 come back on that September 15th date and report some  
6 dramatic change in this proposed schedule. I don't  
7 see reason to seriously consider the fragmentation  
8 approach.

9 JUDGE KARLIN: All right, and I didn't  
10 hear Mr. Silberg is making a motion to that effect.  
11 He just thought that a consideration that might be  
12 worth thinking about at some point.

13 All right, very helpful, Mr. Roisman.

14 Mr. Block?

15 MR. BLOCK: Yes. I would tend to agree  
16 with Mr. Roisman on a number of points. Our position  
17 is that there's a higher priority when we're  
18 considering the remaining process and schedule to do  
19 this with the primary consideration on a reasonable  
20 assurance of public health and safety and due process  
21 to citizens' groups such as ours and that I'm sure  
22 that that's high in the Board's mind.

23 However, Entergy's plans and their desire  
24 to perhaps accelerate the schedule we think should be  
25 put in a perspective. We feel that they have very

1 much single-handedly extended this schedule up to this  
2 time and the idea that we would develop a breakaway  
3 here because it suits them and maybe they have  
4 considerations about their refueling outage or  
5 whatever is on their mind doesn't seem reasonable.

6 After all, they filed the application in  
7 September 2003 and it didn't conform to the EPU review  
8 standard. And as a result, following their  
9 preliminary review in November of 2003, the Staff  
10 asked them to rewrite major portions of the  
11 application. They did that, but they didn't submit  
12 their rewrite until January 2004. And that adds  
13 almost five months to the review schedule.

14 So the history of this application seems  
15 to be that with individual requests for additional  
16 information not yielding full and appropriate answers,  
17 the Staff has been obliged to repeat their questions  
18 again and again. And these questions such as the ones  
19 involving thermal hydraulics weren't really  
20 satisfactorily answered by Entergy when they were  
21 asked in November 2004, nor when they were repeated in  
22 March of 2005.

23 And I know that Entergy subsequently asked  
24 for a meeting with the NRC to propose a new  
25 methodology for dealing with those issues. I think it

**NEAL R. GROSS**  
COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 was May 9th of 2005. But we have in front of us a  
2 most recent round of RAIs including outstanding  
3 issues, not satisfactorily addressed in the initial  
4 application, in supplements 1 through 20 and in the  
5 more recent supplements, 25, 26 and 28.

6 More recently, on June 30th, Entergy  
7 proposed dispensing with the analysis that it didn't  
8 provide in November and March by simply establishing  
9 a limiting condition of operation. The fact is that  
10 no analysis has been provided to show that the  
11 limiting condition of operation would bound the issue  
12 in question, that is, GE fuel failures. And you know,  
13 this is, I think, typical of the licensing approach  
14 they've taken. You can look at the situation that  
15 took place with the MU uprate of Pilgrim in 2003.  
16 There, the administrative target of the NRC was six  
17 months review which became an 11-month review.

18 JUDGE KARLIN: Mr. Block, I think that's  
19 been very helpful, but I think you're going a little  
20 bit off course here.

21 Unless there's something specific you  
22 suggest in terms of adjusting the schedule --

23 MR. BLOCK: I am just suggesting with all  
24 due respect, Judge, that when the Board considers  
25 what's fair under the circumstances in terms of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealgross.com](http://www.nealgross.com)

1 accelerating the schedule by breaking it apart or  
2 doing anything else, that they put in perspective who  
3 has been in control here over the speed at which  
4 things are moving and consider, for instance, that for  
5 people like ourselves we're catching up on discovery  
6 supplement five, reading as fast as we can, moving  
7 into six, to do our summary judgment with piles of  
8 material here.

9 JUDGE KARLIN: All right --

10 MR. BLOCK: And I think that in fairness  
11 when a proposal is made or even just proffered briefly  
12 as Mr. Silber did, it certainly arouses our fear that  
13 the next step will be something that puts us on a  
14 rapid treadmill that we think is undeserved under the  
15 circumstances.

16 JUDGE KARLIN: All right, thank you, Mr.  
17 Block.

18 Ms. Poole?

19 MS. POOLE: In response to the Board's  
20 question regarding the initial scheduling order, the  
21 Staff does not propose any changes or have any  
22 questions about that at this time. As to Mr. Silber's  
23 suggestion, I would just say I think obviously  
24 breaking apart the issues as contemplated under the  
25 rules and the Staff, we considered it in theory.

1           At the moment, we're fully occupied in  
2           preparing the draft safety evaluation and would be  
3           unable to put resources toward that at this time. But  
4           I think we would discuss it in the future if it became  
5           a topic that the other parties and the Board wanted to  
6           discuss.

7                           That's all I have. Thank you.

8                           JUDGE KARLIN: Thank you. Let me note one  
9           thing. We, in our initial scheduling order, we did  
10          not include and it was conscious at the time, a  
11          deadline for filing of late contentions or untimely  
12          contentions or new contentions.

13                          We note, however, that in the April 20,  
14          2005 Federal Register where the Commission established  
15          some model milestones, they did establish a model that  
16          would have deadline for untimely and new contentions.  
17          I don't know that I see any particular reason and I  
18          haven't discussed this with fellow Members of the  
19          Board why we need to amend the ISO to add a deadline  
20          for late, untimely or new contentions. But I think  
21          we've been operating on the approach that there is a  
22          short time frame and those things must be filed very  
23          promptly, I believe, even a 10-day rule might apply  
24          under 2.323. So unless anyone thing otherwise, if  
25          there are additional or new contentions or late-filed

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 contentions that need to be filed, they need to be  
2 done very promptly. The absence of a formal deadline  
3 in this thing is not going to mean we're going to  
4 allow things to just wait until the end. Apparently,  
5 there's a lot going on here, a lot of RAIs, a lot of  
6 answers to RAIs and as the Intervenors see and follow  
7 that, presumably you should be alert, as Mr. Shadig,  
8 Mr. Block has indicated here, following this and file  
9 something promptly if you feel there's an issue that  
10 you have to raise.

11 Is there anything else that the parties  
12 think need to be covered at this point?

13 All right, I thank everyone for  
14 participating.

15 (Off the record.)

16 JUDGE KARLIN: We will go back on the  
17 record.

18 MR. SHADIS: This is Raymond Shadis with  
19 the New England Coalition and just as a matter of  
20 clarification with respect to late-filed contentions  
21 our understanding was that it was 30 days from proper  
22 notice. Is there some other standard to which we must  
23 adhere?

24 JUDGE KARLIN: I'm not going to -- I don't  
25 think we're going to try to rule on that at the

**NEAL R. GROSS**  
COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 moment. I think we just have to refer to the  
2 regulations themselves. We have no deadline for late-  
3 filed contentions in the initial scheduling order. I  
4 think there are time frames set -- well, there are  
5 several rules that apply, 2.309(c) for untimely  
6 contentions where a motion is required, I believe.  
7 Also 2.309(f), (f)(1) and (f)(2) for amended and for  
8 new contentions. I don't know whether -- I don't  
9 believe that they set forth any specific time frame.

10 Certainly, I don't think they say 30 days,  
11 but there is a rule 2.323 which does say motions need  
12 to be filed within 10 days of the action or issue upon  
13 which they're based. Many Boards establish a 30-day  
14 rule for late-filed contentions. We do not have that  
15 rule in this case.

16 All I'm saying is they need to be timely.

17 MR. SHADIS: Thank you, Your Honor.

18 JUDGE KARLIN: Are there any other  
19 questions while we're back on the record or issues?

20 Okay, I didn't think so. Thank you.  
21 Unless the court reporter has any other questions he  
22 has of you, I think we're -- are call is closed.

23 (Whereupon, at 2:33 p.m., the  
24 teleconference was concluded.)

25

**NEAL R. GROSS**  
COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

CERTIFICATE

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.

Pre-hearing Conference

Docket Number: 50-271-OLA and

ASLBP No.04-832-02-OLA

Location: (Telephone conference)

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.



John Mongoven  
Official Reporter  
Neal R. Gross & Co., Inc.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)