

RAS 10413

# Official Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

ORIGINAL

Title: Pre-Hearing Conference  
ITMO David H. Hawes

Docket Number: 55-22685-SP; ASLBP No.: 05-840-01-SP

Location: (telephone conference)

Date: Thursday, September 1, 2005

DOCKETED  
USNRC

September 6, 2005 (9:30am)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Work Order No.: NRC-591

Pages 1-48

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

TEMPLATE = SECY - 032

SECY - 02

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

+ + + + +

ATOMIC SAFETY AND LICENSING BOARD (ASLB)

CONFERENCE

-----X

IN THE MATTER OF: :

DAVID H. HAWES :

(REACTOR OPERATOR LICENSE : Docket No. 55-22685-SP

FOR VOGTLE ELECTRIC : ASLBP No. 05-840-01-SP

GENERATING PLANT) :

-----X

Thursday, September 1, 2005

The conference came to order  
telephonically at 10:30 a.m.

BEFORE:

JUDGE ANN MARSHALL YOUNG

JUDGE MICHAEL C. FARRAR

JUDGE PETER S. LAM

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

**APPEARANCES:**

**On Behalf of Mr. Hawes:**

*DAVID H. HAWES, Pro Se*  
*1522 Magnolia Church Road*  
*Perkins, Georgia 30822*  
*(478) 982-5447*

**On Behalf of the Nuclear Regulatory Commission:**

*SUSAN L. UTTAL, ESQ.*  
*Office of the General Counsel*  
*Mail Stop - O-15 D21*  
*U.S. Nuclear Regulatory Commission*  
*Washington, DC 20555-0001*  
*(301) 415-1582*  
*(301) 415-3725 fax*

**ALSO PRESENT:**

*SIEGFRIED GUENTHER*  
*DAVID TRIMBLE*

**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)

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

(10:29 a.m.)

JUDGE YOUNG: I'm Judge Ann Marshall Young. And here with me is Judge Michael Farrar and Judge Peter Lam.

Would staff counsel please introduce yourself and if there is anyone with you, let us know.

MS. UTTAL: Okay. This is Susan Uttal, representing staff. With me I have David Trimble and Siegfried Guenther, who are staff members.

JUDGE YOUNG: Okay.

JUDGE FARRAR: Are they lawyers or --

MS. UTTAL: No, they're staff members.

JUDGE FARRAR: The names again were what?

MS. UTTAL: David Trimble --

MR. TRIMBLE: T-R-I-M-B-L-E. I'm the Chief of Operator Licensing and Human Performance Section.

MS. UTTAL: And, Mr. Guenther, it's G-U-E-N-T-H-E-R. And he's --

MR. GUENTHER: I'm a license examiner. I work for David Trimble.

JUDGE YOUNG: What is your first name again?

MR. GUENTHER: Siegfried, S-I-E-G-F-R-I-E-

**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 D.

2 JUDGE FARRAR: And Mr. Reporter, that was  
3 Judge Farrar. I was the one who asked the question.  
4 Maybe Judge Lam could say a word or two.

5 JUDGE LAM: Okay. This is Judge Lam. I  
6 hope you recognize my voice.

7 JUDGE FARRAR: We'll try to remember to  
8 introduce ourselves whenever we speak. But if you  
9 have a problem, correct us.

10 JUDGE YOUNG: Okay. Mr. Hawes, you are  
11 present. Is anyone there with you?

12 MR. HAWES: Just myself, ma'am.

13 JUDGE YOUNG: Mr. Hawes, I guess one thing  
14 that I'd like to ask at the outset is you have  
15 indicated that you wanted to get counsel. And it  
16 sounds as though you have a lawyer but you've said  
17 that he or she is not present with you. Is that  
18 correct?

19 MR. HAWES: That's correct, ma'am. They  
20 told me that this was basically procedural. They  
21 wouldn't be here for this. I don't have a name yet.  
22 I'm still working -- I was telling -- excuse me, Ms.  
23 Uttal that I'm working through Employee Support, Guard  
24 and Reserve. And I also called the Department of  
25 Labor. And they're working on the lawyer issue now.

**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 JUDGE YOUNG: So you don't -- you know  
2 that you are going to have a lawyer but you don't know  
3 who that lawyer will be. Is that what you're saying?

4 MR. HAWES: Yes, ma'am. That's correct.

5 JUDGE YOUNG: Okay. It probably would  
6 have been helpful to have the lawyer present. In any  
7 event, once you get appointed a lawyer, make sure that  
8 the lawyer gets all the papers that are involved in  
9 the case along with anything relating to today's  
10 telephone conference.

11 MR. HAWES: Yes, ma'am, I will.

12 JUDGE YOUNG: All right. The last thing  
13 that came in before I issued the information about  
14 today's conference call I think was Mr. Hawes' reply  
15 to the staff's response on the issue of the waiver  
16 that the staff had raised in its response.

17 Ms. Uttal, does the staff -- what is the  
18 staff's response to Mr. Hawes' reply?

19 MS. UTTAL: Well, Judge, I really have not  
20 much of a response. I don't have any facts that can  
21 refute what he knows from his personal experience. So  
22 there's really nothing much I can say.

23 JUDGE YOUNG: Does that effect your staff  
24 position with regard to any of the issues that you  
25 raised in your response?

**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 MS. UTTAL: I think it raises a factual  
2 issue that I would have to leave to the Board to  
3 determine which way to go on that because I have  
4 nothing to respond to it with. It doesn't change the  
5 fact that the decision whether to let him take an exam  
6 is within the discretion of the Commission. And the  
7 staff has been delegated with that decision-making  
8 authority regarding the use of that discretion.

9 JUDGE FARRAR: Ms. Uttal, you never --  
10 this is Judge Farrar -- you never -- the staff never  
11 had a chance to exercise that discretion, I take it.  
12 So that would mean at this point neither you, nor we,  
13 nor Mr. Hawes knows whether if he had asked for a  
14 waiver, it would have been granted.

15 MS. UTTAL: I think the staff's position  
16 is that if he had asked for a waiver after the two  
17 years passed, he would not have gotten it. And since  
18 the application wasn't sent in until after the two  
19 years passed, then the staff would not have given him  
20 the waiver.

21 JUDGE FARRAR: Does his presence in Iraq  
22 have anything to do with that under the laws of the  
23 United States?

24 MS. UTTAL: Not that I'm aware of. The  
25 fact is that he returned from Iraq in the middle of

1 2004, I believe, and the two years didn't run until  
2 the end of 2004. So that there was time there for  
3 him. It's not like he was out of the country.

4 JUDGE LAM: Ms. Uttal, this is Judge Lam.  
5 The two years time period, is that something  
6 officially developed within the NRC's regulation? Or  
7 is it something in official policy?

8 MS. UTTAL: Okay. You find it in  
9 50.47(a)(1) which says that the Commission can waive  
10 any and all requirements for the written exam or the  
11 operating test if it finds that the applicant has  
12 extensive actual operating experience within two years  
13 of the application.

14 And if that is read together with 5535(a),  
15 which gives the Commission discretion whether to  
16 permit someone to get a waiver, the two year  
17 limitation applies.

18 JUDGE LAM: I see. So what you're saying  
19 is the two years was written into one part of the  
20 Agency's regulation together with the discretion that  
21 is how it is going to be applied.

22 MS. UTTAL: Yes. And it is also, of  
23 course, in the guidelines. And it is the staff's  
24 position for many years. Staff feels that 5535(a) is  
25 limited by 50.47(a)(1) and the time period contained

**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       therein.

2                   JUDGE YOUNG: All right. We're asking a  
3       number of questions. And I think we probably have  
4       some more. This is certainly an unusual case.

5                   And one of the reasons we're asking these  
6       questions is that it is important -- one of the things  
7       that you do in a pre-hearing conference is try to  
8       clarify the issues. And we think that it would be  
9       very helpful for all the parties and also for Mr.  
10      Hawes' attorney when that attorney is appointed to  
11      have as good an understanding of the issues as  
12      possible.

13                   So let me just make sure I understand.  
14      I'm not -- you are saying that the two-year period is  
15      something that can be waived itself? Or are you  
16      saying the waiver is limited to the two-year period?

17                   MS. UTTAL: No, the waiver has to do with  
18      waiving the requirement that they take a portion of  
19      the test that they've passed the last -- if an  
20      applicant passes the operating test but fails the  
21      written exam --

22                   JUDGE YOUNG: Right.

23                   MS. UTTAL: -- then the staff has the  
24      discretion to permit them to take just the written  
25      exam during the appropriate time period.

**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 Now that is limited by the fact that they  
2 have to request that within the two years.

3 JUDGE YOUNG: But what I'm trying to get  
4 an understanding of is you said the staff has the  
5 discretion to allow them to take the other part of the  
6 exam but not the part that they have already passed  
7 within an appropriate time period.

8 Are you saying that the staff has the  
9 discretion to waive the retaking of the part that they  
10 have already passed, here the written exam, only  
11 within a two-year period? Or are you saying that the  
12 staff has the discretion to waive the taking of that  
13 exam over again after the two-year period?

14 MS. UTTAL: Hold on. Can you wait one  
15 second? I'm going to consult.

16 JUDGE YOUNG: Also before you consult, let  
17 me just ask you this. I've looked up 50.47 and that  
18 relates to emergency plans. What --

19 MS. UTTAL: No, 55.47. I'm sorry, Judge,  
20 if I misspoke, 55.47.

21 JUDGE FARRAR: While the staff is  
22 consulting -- this is Judge Farrar, Mr. Hawes, let me  
23 reemphasize what Judge Young said. We're not going to  
24 -- all these questions we're asking the staff, we're  
25 certainly not going to come to any conclusions today.

**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 We don't expect you to be able to answer them  
2 yourself.

3 And if you'll just listen to the  
4 discussion and later on I guess you can get a  
5 transcript from our ADAMS system, make sure your  
6 lawyer has it so your lawyer can jump right in with  
7 both feet.

8 MR. HAWES: Yes, sir. I'll do that.  
9 Thank you.

10 MS. UTTAL: Judge, I have a response to  
11 your question.

12 JUDGE YOUNG: Okay.

13 MS. UTTAL: A person can -- regarding the  
14 two-year time period, a person can ask for an  
15 exemption pursuant to 5511.

16 JUDGE YOUNG: Now where is the two-year  
17 time period spelled out?

18 MS. UTTAL: That's in 55.47(a)(1).

19 JUDGE YOUNG: So let me find 5511 here.  
20 So in other words, this 5511 would authorize an  
21 exemption beyond the two-year time period is what  
22 you're saying?

23 MS. UTTAL: Yes, that's correct.

24 JUDGE YOUNG: Okay. All right. I think  
25 you also said earlier that you think that the staff

**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 would have denied the request had it been made. Is  
2 that what you said?

3 MS. UTTAL: After two years, yes.

4 JUDGE YOUNG: Okay. But you are saying  
5 that there is an authority under 5511 on the two-year  
6 period.

7 MS. UTTAL: There is. If their  
8 justification for an exemption is put forward and that  
9 the staff determines that the exemption is authorized  
10 by law and will not endanger life or property  
11 otherwise in the public interest.

12 JUDGE LAM: Ms. Uttal, this is Judge Lam.  
13 So what you are saying is the staff has the authority  
14 to grant an exemption to the two year and also has the  
15 authority to exercise discretion in granting of  
16 waiver. Now the waiver and exemption are two  
17 different matters here.

18 MS. UTTAL: That's correct. The exemption  
19 would go to the two-year time period. And the waiver  
20 would go to waiving the portion of the test that had  
21 been passed within less than two years.

22 JUDGE YOUNG: Okay. Mr. Hawes, have you  
23 followed what we are saying? I know it was a little  
24 complicated for me to sift out. Are you clear on what  
25 is being said at this point?

**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 If I could summarize and then see if that  
2 makes sense to you. The staff is saying that under 10  
3 CFR, which stands for Code of Federal Regulations,  
4 Section 50.47 -- 55 -- I'd written down 50 when Ms.  
5 Uttal said that before -- 55.47(a)(1), that refers to  
6 the waiver that the staff can grant if within the  
7 previous two years, there has been extensive actual  
8 operating experience, et cetera.

9 And then second, the Commission at 10 CFR  
10 Section 55.11, the Commission may, upon application,  
11 grant an exemption from any requirement, including  
12 that requirement.

13 Does all that make sense?

14 MR. HAWES: Yes, ma'am. Yes, ma'am, it  
15 does.

16 JUDGE YOUNG: Okay. One of the things  
17 that I guess was known -- I think Judge Farrar has had  
18 experience on these issues is that we are aware that  
19 there are some laws and actually we came across some  
20 proposed rules as well relating to the right of  
21 veterans.

22 Has the staff -- and I'm assuming Mr.  
23 Hawes and his advisors have been looking into that --  
24 has the staff considered any of those types of issues?

25 MS. UTTAL: I don't believe so, Judge. I

**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 know that I haven't looked into it.

2 JUDGE YOUNG: Are you aware of them?

3 MS. UTTAL: No. But I will make myself  
4 aware of them.

5 JUDGE FARRAR: Judge Young and Mr. Hawes,  
6 let me clarify. Were you there in Iraq as a member of  
7 the U.S. military or as a civilian contractor?

8 MR. HAWES: Sir, excuse me, yes, sir. I  
9 was mobilized for Iraqi Freedom, Operation Iraqi  
10 Freedom. Yes, sir.

11 JUDGE FARRAR: And in what capacity?

12 MR. HAWES: As a soldier.

13 JUDGE FARRAR: So regular U.S. -- or Army  
14 Reserve?

15 MR. HAWES: Georgia National Guard, sir.

16 JUDGE FARRAR: Okay, fine.

17 MR. HAWES: Okay.

18 JUDGE FARRAR: Thank you.

19 JUDGE YOUNG: Okay. I'm just -- there are  
20 quite a number of statutes that have existed over the  
21 years. I think the most recent one President Bush --  
22 let's see -- that the original -- or one of the  
23 original acts was the Soldiers and Sailors Civil  
24 Relief Act. And I think, Judge Farrar, that's the one  
25 that you were familiar with.

**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           And then I have an indication here that on  
2 December 19th, 2003, President Bush signed the Service  
3 Members Civil Relief Act which is new legislation to  
4 ease the economic and legal burdens on military  
5 personnel called to active duty status in Operation  
6 Iraqi Freedom.

7           And then we came across some proposed  
8 rules by the Department of Labor. And part of those  
9 were dated September 20th, 2004. And that's at 69  
10 Federal Register starting at page 56266. And there is  
11 a provision in there that talks about -- well,  
12 basically, a lot of -- all of what these proposed  
13 rules appear to govern is rights of employees,  
14 responsibilities of employers.

15           And there is a provision in there and I  
16 guess we were wondering what the parties' view on it  
17 was. And we don't even know what the status of these  
18 rules are, whether they have been finalized or what's  
19 happened with them. But there is a provision at  
20 Section 1002.5, subsection (c), that defines employer.  
21 And it includes any person, institution, organization,  
22 or other entity that pays salary or wages for work  
23 performed or that has control over employment  
24 opportunities, including 1) a person, institution,  
25 organization, or other entity to whom the employer has

**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 delegated the performance of employment related to  
2 responsibilities; 2) the federal government.

3 So I guess we are wondering and would  
4 really like to get some edification from the parties  
5 on the rights of veterans under this law and possibly  
6 these rules if they have gone into effect or any other  
7 related laws. Because obviously at this time, the  
8 rights of service members who have been in Iraq is of  
9 national concern.

10 So we would like to get the staff's  
11 response on that. And also hear from Mr. Hawes  
12 through his lawyer. Because we feel that we sort of  
13 have a responsibility to make sure that we haven't  
14 overlooked any rights that he might be entitled to  
15 under that.

16 JUDGE FARRAR: Let me add to what Judge  
17 Young is saying. I think we'd be interested -- this  
18 is Judge Farrar -- interested not only in whether this  
19 regulation, proposed or final as the case may be,  
20 literally applies to Mr. Hawes' situation. But even  
21 if it embodies a policy that might help Mr. Hawes,  
22 that is something that the staff would consider in the  
23 exercise of its discretion.

24 In other words, if he filed a waiver,  
25 maybe this rule wouldn't help him. But the staff

**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 would say gee, we have discretion on whether to grant  
2 this extension of time. This regulation seems to or  
3 seems not to embody a national policy that touches on  
4 this kind of situation even if it doesn't govern it.

5 And is this something that we would want  
6 to exercise our discretion in? So if the staff and  
7 Mr. Hawes when you get your lawyer, if they would look  
8 at it from that point of view, that would be helpful.

9 Also because I think Judge Young has  
10 pointed to the national policy of protecting those who  
11 have served their country in wartime. Clearly there  
12 is also national policy of not letting people operate  
13 reactors if they are not qualified to operate them.  
14 And we certainly -- so you have those -- the case may  
15 or may not involve how you reconcile those two  
16 policies.

17 Maybe they don't have to be reconciled.  
18 Maybe the national policy of protecting soldiers  
19 returning does not apply in this situation. But if it  
20 does, maybe there can be some kind of reconciliation.

21 JUDGE LAM: This is Judge Lam. I  
22 certainly want to add to what Judge Farrar has said.  
23 And I think the staff -- I'm sure the staff doesn't  
24 need to be reminded that in exercising its discretion,  
25 the first major factor to be considered is make sure

**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 whoever takes the operator license examination is  
2 qualified, all right, because operating a nuclear  
3 reactor is kind of a tricky exercise.

4 So the qualifications of a licensed  
5 operator is paramount in the staff's discretion. I  
6 don't think the staff needs to be reminded of that.

7 MS. UTTAL: No, Judge, we don't need to be  
8 reminded of that.

9 Do you want me to respond now? Or you  
10 want a written response once Mr. Hawes has retained  
11 counsel?

12 JUDGE YOUNG: It sounds as though, from  
13 what you said earlier, you are not ready to respond at  
14 this point. And I think one of the things that we  
15 need to do before we complete this conference is talk  
16 about logistics and times and where we are and where  
17 we are going to go next.

18 But one thing that -- well, I guess there  
19 are two related things that I wanted to say that sort  
20 of mimic what Judge Farrar and Judge Lam have said.  
21 And that is obviously the need to make sure that  
22 operators are qualified is a critical need.

23 Related to that, I guess two related  
24 issues. As we know, the Commission has a -- if not a  
25 formal policy, certainly encourages settlement of any

**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 proceedings that can be settled between the parties  
2 without the need of litigation.

3 We can ask the Chief Judge to appoint a  
4 settlement judge if the parties think that that might  
5 be helpful in this case.

6 And it sounds as though there are a lot of  
7 issues floating around that might make this case one  
8 that would be appropriate to engage in discussions  
9 with a separate settlement judge who would not be  
10 having communications with us. We'd keep the two  
11 things separate -- to see whether that might lead  
12 somewhere.

13 A second related question that occurs to  
14 me -- we have wondered about this and that is I know  
15 that there is a reference in, I think it is 55.35 to  
16 time periods before exams can be retaken. But in the  
17 context of the exemption that you were talking about,  
18 would it -- and this is just to throw out and, you  
19 know, you can take it or leave it but would it be  
20 something to think about to consider allowing Mr.  
21 Hawes, for example, to study for and possibly retake  
22 the written examination outside the required time  
23 period?

24 Everyone still on?

25 MS. UTTAL: Yes.

**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 MR. HAWES: Yes, ma'am.

2 JUDGE YOUNG: Okay.

3 MS. UTTAL: Judge, that would be possible.

4 JUDGE YOUNG: Okay. Well that is very  
5 encouraging because, you know, we don't want to slow  
6 down our process because obviously there is a need to  
7 move things along both in general in the interest of  
8 efficiencies and also with respect to the interest of  
9 Mr. Hawes and also the staff in getting things  
10 resolved.

11 But while our process is going on, if  
12 separately from it you all want to talk about doing  
13 that to address the others, I think we would encourage  
14 that. And if you think that it would be helpful to  
15 have a settlement judge appointed, all you have to do  
16 is just let me know and I'll go to the Chief Judge and  
17 we can have that done fairly quickly. And then you  
18 can go ahead and start that process parallel to this  
19 one.

20 MS. UTTAL: Judge, regarding a settlement  
21 judge, I feel a little uncomfortable talking to Mr.  
22 Hawes if he doesn't retain counsel. So in that case,  
23 I wouldn't want a settlement judge. But if he does  
24 retain counsel, probably a settlement judge would not  
25 be necessary.

**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 JUDGE YOUNG: Okay. So you can just talk  
2 to -- Mr. Hawes, how soon do you think you'll know  
3 about this attorney being appointed?

4 MR. HAWES: Ma'am, it's been going on --  
5 for the last two days, we've been talking back and  
6 forth. And they're trying to decide who has that --  
7 who is the one that is involved in that. Is it  
8 Employee Support, Guard and Reserve, or is it  
9 Department of Labor? You know all that is above my  
10 head.

11 Also, they're working that issue right  
12 now. I would assume from my past conversations it  
13 will be within the next week.

14 JUDGE YOUNG: Okay.

15 MR. HAWES: But, ma'am, can I add  
16 something real quick?

17 JUDGE YOUNG: Go right ahead.

18 MR. HAWES: Something else that has been  
19 thrown into the mix here and I know it keeps getting  
20 pushed back and pushed back and I apologize to  
21 everybody in here in on this conversation but I am  
22 still a member of the National Guard.

23 And in light of what happened Monday in  
24 the southeastern United States, I am alerted and  
25 probably will go for relief missions in New Orleans or

**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 Mississippi. So that has to be kept in mind.

2 JUDGE YOUNG: Okay. Well, thank you for  
3 pointing that out. I guess I was referring to  
4 veterans before. But I don't think that the law -- I  
5 was incorrect. I don't think the law is limited to  
6 veterans.

7 But certainly if you are called back into  
8 duty to go to Louisiana or Mississippi, that would  
9 certainly effect this proceeding. When do you think -  
10 - have they told you when you would know?

11 MR. HAWES: No, ma'am, they have not. I  
12 know where we are on the priority list. And I stay --  
13 I don't know if anybody is familiar with that as far  
14 as ranks go but I mean I'm in the mix of a lot of this  
15 stuff. I'm a First Sergeant in my unit. So I'm  
16 involved in a lot of the preplanning.

17 And right now we are not preplanning. We  
18 are just preparing. So really it is just a 50-50  
19 chance right now. It depends on, you know, if law  
20 enforcement can get a handle on all this looting and  
21 tearing stuff up and everything.

22 Because we are engineers and that is what  
23 we do. We do repairs dams and we do fix roads and  
24 bridges and everything else. So, you know, it's a 50-  
25 50 chance. I mean I wish I could tell you more. And

**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 I wish I knew more. At this time, ma'am, I don't.

2 JUDGE YOUNG: Let me ask this -- this is  
3 Judge Young again, Ms. Uttal, would you have any  
4 objection if Mr. Hawes is called up, and, Mr. Hawes,  
5 I'm assuming you would let us know immediately if that  
6 were the case.

7 MR. HAWES: Yes, ma'am.

8 JUDGE YOUNG: If he is called up, do you  
9 have any objection to holding the proceeding in  
10 abeyance?

11 MS. UTTAL: No.

12 JUDGE YOUNG: Well, then let's just say  
13 that will occur if he is called up.

14 JUDGE FARRAR: Mr. Hawes -- and this is  
15 Judge Farrar -- I would say either by phone or e-mail,  
16 whatever is easiest for you, if you only have one call  
17 to make, call Judge Young or e-mail her. She'll get  
18 word to everybody else. And even if you don't hear  
19 back, you can safely assume the proceeding is off  
20 until you get back.

21 So you'll have enough on your mind without  
22 worrying about whether -- so you, you know, just make  
23 that one call or one e-mail and let us know. And then  
24 as far as you are concerned, go do your duty again.  
25 And we'll be waiting for you when you get back.

**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 MR. HAWES: Thank you, thank you, Judge.  
2 I should have -- I'll have time to make any of the  
3 arrangements like that as far as e-mail or a phone or  
4 anything like that. I'll be able to do that. And I  
5 will let all of you know to include Ms. Uttal. All of  
6 you will know just as soon as I know. I can promise  
7 you that. And it may not happen.

8 JUDGE YOUNG: Okay. Well if it does,  
9 probably e-mail would be better with copies to  
10 everyone because then it would be real clear what was  
11 said. If you, for some reason, did not have access to  
12 e-mail and you needed to call, you can call me. If  
13 I'm not here, you can ask to speak to any of the other  
14 judges and I'm sure they would take a message.

15 I think if you dial my number and then  
16 press zero, that will get you to our main number. And  
17 do you have my telephone number?

18 MR. HAWES: No, ma'am, I do not.

19 JUDGE YOUNG: Actually why don't I give  
20 you the main number. And then that will get you --  
21 they will find me or another judge if I'm not in the  
22 office. The main number is 301-415-7550. And, you  
23 know, Judge Farrar, Judge Lam might be in the office  
24 if I'm just not there right then.

25 In any event -- and you know our e-mails.

**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 So you'll let us know. And if that happens, we'll  
2 hold this in abeyance.

3 If that doesn't happen, it sounds as  
4 though -- I mean on the lawyer it would be quick  
5 enough that you could -- Ms. Uttal could talk to your  
6 lawyer and you could start that sort of separate  
7 negotiation process going parallel with what is going  
8 on in this adjudication proceeding.

9 Does that make sense to both of you?

10 MR. HAWES: Yes, ma'am, it does to me.

11 MS. UTTAL: Yes, Judge.

12 JUDGE YOUNG: Okay. Good. Well then  
13 let's -- is there anything else before we get back  
14 onto talking about this adjudication proceeding and  
15 where we go next in it? Judge Farrar?

16 JUDGE FARRAR: Yes, Mr. Hawes, you know,  
17 you may have the harder task than stopping up that  
18 levee, maybe getting the two branch of the federal  
19 government to work with each other. Do you sense they  
20 are responding to you well enough?

21 Or if Judge Young issued an order for us  
22 that said it is imperative that you get counsel at the  
23 earliest possible opportunity. And then you could,  
24 you know, kind of a stern order that you could take to  
25 them and say look, I need to get this resolved

**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 quickly. Would that help you? Or do you sense you  
2 are having a good enough relationship with them as it  
3 is?

4 MR. HAWES: Sir, I've got a pretty good  
5 relationship. The only question really -- and the  
6 issue right now is the attorneys that I have been  
7 talking with, is if they are going to end up  
8 representing -- coming with me or someone else.  
9 That's the only issue right now.

10 JUDGE FARRAR: Well, then let us think  
11 about, as Judge Young crafts, she'll put out or we'll  
12 put out an order that will summarize what happened on  
13 the conference call today.

14 Maybe we can put in something like that so  
15 that there is, you know, some urgency to the matter.  
16 But when you get that order, don't let it put any fear  
17 in you that we're going to march off without you,  
18 particularly if you are off helping the poor folks  
19 we've been hearing about.

20 So use that order to help push them into  
21 getting an early resolution. But if it doesn't  
22 happen, you know, that's not your fault. And we  
23 certainly, you know, won't hold that against you.

24 MR. HAWES: Okay, sir.

25 JUDGE YOUNG: Okay. Given the issue 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 apart from the factual issue and the current things  
2 that are going on, the legal and related issues having  
3 to do with the national policies and laws and proposed  
4 rules on the rights of service members, it sounds as  
5 though it would be a very appropriate thing to get  
6 written filings from both sides on those issues and  
7 how they relate to this proceeding.

8 The timing on that is obviously somewhat  
9 contingent on the appointment of counsel for Mr.  
10 Hawes. However, it might be possible to go ahead and  
11 have the staff file something. And then once Mr.  
12 Hawes gets an attorney, to have him respond to that.  
13 That might get us moving a little bit faster.

14 Would the staff or Mr. Hawes have any  
15 problem with that?

16 MR. HAWES: I wouldn't ma'am.

17 MS. UTTAL: I don't have any problem with  
18 that but, Judge Young, I'm also on the Palisades case.  
19 I just got your order yesterday. So any response --  
20 and I'm the only attorney on both cases. So, I'd like  
21 to be able to work around that because we're going to  
22 have pleadings due in that one, too.

23 JUDGE YOUNG: Okay. Let me just clarify  
24 something related to what Ms. Uttal said. I was  
25 recently assigned a new case involving the Palisades

**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 Nuclear Plant. It's a license renewal application.  
2 And because of various schedules, we have set a very,  
3 very fast track schedule for that case. We have  
4 scheduled a telephone conference for next week and  
5 oral argument on contentions for the following week.

6 So what Ms. Uttal is referring to is that  
7 unless for some unforeseen reason those dates are  
8 extended, she is, I think, understandably going to be  
9 under a significant pressure in that case for the next  
10 couple of weeks at least.

11 We set a deadline in that case of Friday  
12 at five o'clock for any party that has any objection  
13 to moving in accordance with that schedule. So we  
14 won't know until then whether any party is going to  
15 raise a problem with it.

16 But let's assume that they don't, I  
17 certainly understand the pressure that is going to be  
18 on Ms. Uttal in that other case. So perhaps it would  
19 be good to set the deadline for the staff to file  
20 something for say two weeks after that which would be,  
21 I guess, the oral argument would be September 13th and  
22 14th.

23 So that would take us into the last week  
24 in September. Do you think you can have that by  
25 September 26th? And then maybe get -- if, assuming

**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 counsel has been appointed for Mr. Hawes by ten days  
2 after that?

3 MS. UTTAL: I will try my best to get this  
4 the 26th. I think that will give me enough time.

5 JUDGE FARRAR: Ms. Uttal, does the Office  
6 of General Counsel have some new legal talent showing  
7 up -- I know we have three new law clerks showing up  
8 right after Labor Day. Maybe there are some new  
9 people showing up.

10 MS. UTTAL: Well, Judge, the problem is we  
11 just lost a bunch of people. Mr. Fernandez is  
12 leaving. And Mr. Smith is leaving. And Brooke Poole  
13 is being detailed. And there are several more that  
14 are leaving. So I'm not so sure what kind of  
15 personnel we're going to end up with when the new law  
16 grads show up.

17 JUDGE FARRAR: Oh, this is an issue kind  
18 of out our -- the NRC mainstream, you know the rights  
19 of returning servicemen, whether that was kind of like  
20 a one shot --

21 JUDGE YOUNG: Members -- excuse me.

22 JUDGE FARRAR: I have four daughters so I  
23 am exempt from any -- one of whom is a doctor in the  
24 Navy over in Naples, Italy. I'm exempt from any  
25 claims of discrimination.

**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 (Laughter.)

2 JUDGE FARRAR: May that's just a one shot  
3 deal that could be assigned to a new person. But  
4 that's your business not ours. So we'll leave that to  
5 you.

6 MS. UTTAL: Thank you.

7 JUDGE YOUNG: I'm looking at my schedule.  
8 Right now unless anything changes, I'm scheduled to be  
9 out of the office for two weeks in October -- the week  
10 of the 10th and the week of the 17th. And will be  
11 back on the 25th.

12 So actually if I could get both things by  
13 the beginning of the week of October 3rd, that would  
14 help me a lot. So maybe we could move that back to  
15 say the 21st? And the 3rd?

16 MS. UTTAL: Well, this is Susan Uttal.  
17 Judge, I'll do my best. But if I need more time, I  
18 guess I know the process for trying to get it.

19 JUDGE YOUNG: Okay. Well then let's say  
20 September 21st for the staff and then October 3rd for  
21 Mr. Hawes. And so Mr. Hawes that you can also use to  
22 try to let the people that you are talking with know  
23 that it is real important to go ahead and get counsel  
24 on board.

25 Because even before the staff files what

**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 they file, I'm sure that they will want to look at the  
2 things that we've referenced in the conference  
3 already. Would it help you all to have in the order  
4 spell out what law and rules we're talking about?

5 MS. UTTAL: That would be very helpful,  
6 Judge.

7 JUDGE YOUNG: Okay. I'll do that.

8 JUDGE FARRAR: Mr. Hawes, again, I think  
9 this process to get, you know, legal briefs on the  
10 impact of these laws is something that the lawyers  
11 could do even while you are gone. So in other words,  
12 the case would be moving forward on the legal issues  
13 while you are gone.

14 And, of course, if it comes -- if you have  
15 a right to -- if we were to rule you had a right to a  
16 hearing and if it had to get into the factual matters,  
17 we would hold that off until you returned obviously.  
18 But this would let us make some progress on the legal  
19 issues even in your absence.

20 MR. HAWES: Okay, sir.

21 JUDGE FARRAR: Without any, you know,  
22 prejudice to you because I guess any -- you certainly  
23 don't want things done while you are gone that are  
24 prejudicial to you. But by the same token, the faster  
25 the case moves, you are the person, you know, looking

**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 for the license. And so if we can keep things moving  
2 with prejudicing you, that would be, I think, in your  
3 interests.

4 MR. HAWES: Yes, sir.

5 JUDGE YOUNG: All right. We will spell  
6 out the law and rules. And we may also spell out if  
7 we have any specific questions that occur to us. We  
8 would try to incorporate those in any order that goes  
9 out as well.

10 Judge Farrar, Mr. Hawes, mentioned earlier  
11 the ADAMS system. Are you familiar with that?

12 MR. HAWES: No, ma'am, I'm not.

13 JUDGE YOUNG: That's something that you  
14 probably want to tell your lawyer about. And also  
15 indicate that there is a public document room at the  
16 NRC that you or your lawyer can call to get help on  
17 anything about using the NRC Electronic Document  
18 Management System, ADAMS, and how to get access to any  
19 other NRC documents.

20 MS. UTTAL: Judge, there's also the  
21 website, the NRC website that can connect you to the  
22 public document room.

23 JUDGE FARRAR: That's something, Mr.  
24 Hawes, that, you know, you can sit there at your  
25 computer and tap into all these documents, including,

**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 I think, a copy of this transcript after the Court  
2 Reporter produces it and gives it to the parties who  
3 paid for it. It ends up on the ADAMS site where, I  
4 think, then it is accessible to you. And your counsel  
5 would want to have that.

6 MR. HAWES: Okay, sir.

7 JUDGE YOUNG: And the website is, the  
8 public website -- what's the address for that, Ms.  
9 Uttal?

10 MS. UTTAL: I believe it's www.nrc.gov.

11 JUDGE YOUNG: Okay. That's simple. Did  
12 you get that, Mr. Hawes?

13 MR. HAWES: Yes, ma'am, I did.

14 JUDGE YOUNG: Okay. Good. All right  
15 then. It looks as though the staff wants to indicate  
16 any change in position at this point on the right to  
17 a hearing, it looks as if we have a couple things  
18 going on.

19 And one is our ruling on the right to a  
20 hearing. And then two is the briefs that are going to  
21 be filed on the rights as a service member of Mr.  
22 Hawes. Those may or may not be related. I know there  
23 is at least some case law that talks about entitlement  
24 to a hearing in cases like this in the Emerick  
25 McDaniel case from 1996. I'm not sure that was

**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 published. But I can give you the information about  
2 it.

3 Is the staff, based on our discussion  
4 today, are you still objecting to Mr. Hawes' right to  
5 a hearing? Are you objecting to granting him a  
6 hearing at this point? Do we still need to rule on  
7 that? And related to that, would you ask that we hold  
8 off on our ruling until after you file your briefs on  
9 his rights as a service member? I guess I'd like to  
10 hear from both parties on that, primarily the staff  
11 counsel.

12 Anything else? Judge Farrar? Judge Lam?  
13 Ms. Uttal?

14 MS. UTTAL: Are you waiting for me, Judge,  
15 because I'm missing part of what you are saying.

16 JUDGE YOUNG: Oh, well what I said was --

17 MS. UTTAL: I heard the part that you want  
18 to know whether we've changed our position. But I'm  
19 just asking now is it my turn now? Because I didn't  
20 hear that part. Thank you.

21 I guess the staff is not too strong on the  
22 decision about whether he is entitled to a hearing or  
23 not. The contention was weak. And still is. I  
24 believe he raised a factual issue regarding the  
25 staff's argument related to the contention. So I

**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 think we'll just submit it. We don't feel strongly  
2 about it.

3 JUDGE FARRAR: Well, let me -- this is  
4 Judge Farrar -- let me ask a question. Does staff  
5 believe that the contentions rule --

6 MS. UTTAL: Judge, I'm sorry. I'm missing  
7 a lot of what you are saying.

8 JUDGE YOUNG: If anyone is on a speaker  
9 phone and has papers, try to keep those still. I  
10 think that sometimes interferes.

11 JUDGE FARRAR: I'll say it again, Ms.  
12 Uttal. Does the staff believe that the contentions  
13 rule which we are most familiar with in terms of  
14 intervenors coming -- you know, citizens coming in and  
15 opposed to an electric utility's license application  
16 of one kind or another -- does the staff believe that  
17 the contentions rule applies to a case like this where  
18 Mr. Hawes is not an intervenor opposing an applicant.  
19 He's the real party in interest.

20 It's in a sense his case. Does the  
21 contentions rule apply there?

22 MS. UTTAL: Yes, it does. You know that  
23 the Commission has recently amended the rules. And  
24 prior to the amendment of Part 2, all Mr. Hawes would  
25 have had to have done is submit areas of concern. But

**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 now, the contention rule applies to this kind of  
2 proceeding.

3 JUDGE FARRAR: I know it applies to  
4 proceedings under whatever the letter of the new rules  
5 is, the alphabet letter. But I guess I would then  
6 expand my question.

7 Under the old rules, did the areas of  
8 concern apply to a person in Mr. Hawes' position as  
9 opposed, for example, to an intervenor opposing an  
10 electric utility's application? In other words, Mr.  
11 Hawes is not an intervenor here.

12 MS. UTTAL: No, I understand that, Judge.  
13 But an intervenor opposing a licensee's action would  
14 have to, under the old rules, submit admissible  
15 contentions or one admissible contention. And under  
16 the old rules, a reactor operator candidate would only  
17 have to submit areas of concern.

18 And yes, he would have to submit a valid  
19 area of concern and say why essentially he was filing  
20 his appeal. So now the rules have changed to say that  
21 you also must provide a contention that meets with the  
22 regulations.

23 JUDGE FARRAR: All right. Well then we'll  
24 look anew at all of this. But I think --

25 JUDGE YOUNG: I had a couple more

**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 questions.

2 JUDGE FARRAR: -- but I think we probably  
3 shouldn't rule on this in the absence of Mr. Hawes  
4 having a lawyer. Or certainly shouldn't rule against  
5 him in the absence of his having a lawyer. So we'll  
6 think about that I guess.

7 MS. UTTAL: Judge, I want to make this  
8 easy for everybody. So in this particular case, we're  
9 going to withdraw our objection. And I'm not making  
10 any statements about whether -- I'm not conceding that  
11 the contention rule does not apply to this kind of  
12 case. It is my position that it does.

13 But in this case, under these  
14 circumstances, we'll withdraw our objection to him  
15 getting a hearing.

16 JUDGE YOUNG: Okay. Well then in that  
17 instance, we will go ahead and order that I -- or that  
18 we issue, following this conference, indicate that  
19 withdrawal and grant the right to a hearing.

20 Actually, the next thing I was going to  
21 ask was Section 21.03, it talks about the right of the  
22 applicant to demand a hearing. But since that is sort  
23 of moot at this point, I won't even ask you to respond  
24 to that.

25 MS. UTTAL: Judge, I wanted to make one

**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 thing clear. In conceding this and in the discussion  
2 that we've had today, the staff is by no means  
3 conceding any of the issues on the merits regarding  
4 Mr. Hawes' qualifications to be reactor operator  
5 notwithstanding any laws that may protect him as a  
6 member of the military or as a veteran because as  
7 Judge Lam pointed out, our major concern is the safety  
8 and the protection of public health regarding the  
9 operation of nuclear facilities.

10 JUDGE YOUNG: Certainly. And I don't  
11 think any of us would have construed your withdrawal  
12 of your objection to the right to a hearing as going  
13 to the merits in any way.

14 And I think everyone, and I'm sure Mr.  
15 Hawes understands that in addition to the traditional  
16 issues that come in in cases like that and in addition  
17 to any rights as a service member, that the interest  
18 in power plants being operated by qualified operators  
19 is a strong interest that the NRC identifies as an  
20 extremely important concern. So all those issues  
21 remain.

22 I think that what we would like to get in  
23 the briefs that you are going to be filing is what  
24 impact any rights as a service member may have on this  
25 proceeding. Since we also now know that Mr. Hawes

**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 may be called up, it is probably premature to set a  
2 hearing date. And since we have the briefing  
3 schedule, it might make sense to hold off on setting  
4 a hearing date until after we've gotten those briefs.

5 And incidently, in those briefs, how any  
6 rights as a service member might effect the procedure  
7 in this case would be something that would be  
8 something that would, I think, be relevant for all our  
9 consideration.

10 JUDGE FARRAR: Let me add into what Judge  
11 Young is saying. This is Judge Farrar. That everyone  
12 recognizes the need -- the country's need to only have  
13 qualified people operating reactors. I think as we  
14 looked at these different laws that protect returning  
15 service members, perhaps they go more to the  
16 procedure.

17 In other words, obviously if you came back  
18 two days late for the, you know, only exam that was  
19 held every five years, there might be room to have a  
20 special sitting for that exam. You still have to pass  
21 the exam. But if a person missed it because they were  
22 called up -- so I think, you know, that's what we are  
23 looking for, not whether those laws change the bedrock  
24 requirements to be a reactor operator. They obviously  
25 can't.

**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 But whether the procedures that a person  
2 goes through to show that he or she is qualified would  
3 be effected by those laws. So I think, you know,  
4 maybe we didn't state that clearly or I didn't state  
5 it clearly at the beginning. But that's what we're  
6 thinking of.

7 JUDGE LAM: And this is Judge Lam. Not to  
8 divert from this discussion, I really had a comment  
9 for Mr. Hawes. My reading of the staff's position,  
10 based on today's conference, is I think the staff is  
11 receptive to settlement negotiation with you, Mr.  
12 Hawes.

13 Therefore, I think I really want you to  
14 think seriously about initiating that type of  
15 discussion with the staff so that an equitable  
16 settlement that would both serve the staff's interest  
17 and your interests should be initiated in parallel to  
18 what we are doing here.

19 MR. HAWES: Yes, sir, I agree.

20 JUDGE YOUNG: And that would be -- I guess  
21 that would apply either to a complete settlement or to  
22 along the way, as we had discussed earlier, maybe the  
23 staff waiving any relevant time periods and letting  
24 you study for and retake the exam as a separate -- a  
25 totally separate issue. That's something that I'm

**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 sure you will want to discuss with your attorney.

2 And the effect that that might have on  
3 this proceeding would be something that all parties  
4 would want to look into. But we're going to leave  
5 that aspect of it up to the parties. And, again, if  
6 you should decide that it would be helpful, even after  
7 counsel is appointed, to have a settlement judge help  
8 you out and mediate with you, that's an option that we  
9 could implement fairly quickly.

10 All you have to do is request it. And  
11 I'll ask the Chief Judge to appoint a settlement  
12 judge.

13 MS. UTTAL: Judge Young, there's one more  
14 thing. I have to throw a fly into the ointment here.  
15 Can you all hear me?

16 MR. HAWES: Yes, ma'am.

17 MS. UTTAL: Taking the exam and becoming  
18 an operator is also contingent on what the facility  
19 wants to do, whether they want to retest somebody. So  
20 we'll have to consult with the facility also.

21 JUDGE YOUNG: Actually, that's a very good  
22 point. I don't think we know whether the facility  
23 might want to even participate in this proceeding to  
24 some extent. Would that be an approach to look at?  
25 Or maybe we can just sort of leave that in the hands

**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 of the parties at this point.

2 MS. UTTAL: I have call into General  
3 Counsel for Southern Nuclear.

4 MR. HAWES: Would that be Ms. Terry?

5 MS. UTTAL: What's her name? I don't  
6 remember her name. But I called her. And I haven't  
7 gotten a return call yet.

8 MR. HAWES: This is Ms. Uttal, correct?

9 MS. UTTAL: Yes.

10 MR. HAWES: Yes, I got an e-mail from her  
11 this morning. She was originally going to be involved  
12 in this phone conference. But she's one of the ones  
13 that made the comment that this was procedural so she  
14 didn't need to be involved although she did say she  
15 had tried to call you yesterday.

16 MS. UTTAL: Yes.

17 MR. HAWES: So obviously you all are just  
18 missing each other.

19 MS. UTTAL: Okay. Well, I will call her  
20 again and glean out the facility's position on it.

21 MR. HAWES: Okay.

22 JUDGE FARRAR: I think as far as the  
23 judges -- this is Judge Farrar -- as far as the judges  
24 are concerned, if they want to participate, they  
25 should let us know. And if they don't want to, you

**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 know, that's fine, too. It's, you know, we certainly  
2 would welcome their involvement.

3 MR. HAWES: Okay, sir.

4 JUDGE YOUNG: I've just been sort of  
5 jotting down some dates here as we're talking. If we  
6 follow the schedule that we had looked at before on  
7 the briefings, it occurs to me that it might be good  
8 to have another telephone conference prior to holding  
9 a hearing.

10 And then we can either hold off on setting  
11 the hearing date until that conference or go ahead and  
12 set a hearing date now. The dates that I was looking  
13 at for another telephone conference were October 5th  
14 or October 26th. And that is assuming that I still  
15 will be gone out of the office for those two weeks in  
16 October.

17 The only hesitation I have about it is if  
18 the scheduling in the other case took one of those  
19 dates. So I was thinking we could set those maybe as  
20 alternative dates for our next telephone conference by  
21 which time, Mr. Hawes, we would expect that you would  
22 have a lawyer who would definitely participate.

23 And the lawyer from Southern Nuclear might  
24 want to participate either informally or in whatever  
25 capacity -- all the parties appropriate for Southern

**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 Nuclear want to argue would be the best way.

2 Would those dates work as alternative  
3 dates for another telephone conference? I'm think we  
4 could set another conference earlier than that  
5 certainly.

6 The reason I was thinking of those dates  
7 was because since Ms. Uttal ask that we move back in  
8 line for the briefings, it would be helpful to have  
9 already gotten that briefing by that point.

10 MS. UTTAL: I have no problem. I will be  
11 here on both days. And the staff has no problem with  
12 those dates.

13 I will not be in the 3rd or 4th of  
14 October. So I don't know if I will have read Mr.  
15 Hawes' response by then because it is the Jewish  
16 holidays. So perhaps the 6th if that is a weekday?

17 JUDGE YOUNG: The 6th? Let's see. The  
18 6th would be Thursday. That would be okay. So  
19 October 6th or 26th. Mr. Hawes, would those dates --  
20 and we understand you may not be here. And if you are  
21 called up, then we will hold the proceedings in  
22 abeyance.

23 And then when you let us know about that,  
24 if you want to also let us know whether you and your  
25 attorney would like to hold in abeyance the briefing

**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 as well or whether your attorney could go ahead with  
2 that in your absence.

3 But let's assume unless that occurs,  
4 October 6th or 26th as alternative dates for another  
5 telephone conference, would they work for you, Mr.  
6 Hawes?

7 MR. HAWES: Yes, ma'am.

8 JUDGE YOUNG: Okay. Then we'll set those  
9 as alternative dates. And after the schedule for  
10 Palisades is nailed down, I can get back and if  
11 October 6th is still open, we'll take that date.

12 Now what do the parties have to say about  
13 going ahead and setting a tentative hearing date at  
14 this point? Or would you rather wait until the next  
15 conference?

16 MR. HAWES: I have no -- ma'am, this is  
17 David Hawes. I have no opposition to setting one now  
18 but I mean that's fine with me.

19 MS. UTTAL: Judge, I don't have my  
20 calendar and staff doesn't have their calendar that  
21 goes that far in advance. And also I would want to  
22 discuss with Mr. Hawes' attorney regarding what kind  
23 of proceeding because under Subpart L, we can have an  
24 oral proceeding or a written proceeding.

25 And I had also opined that perhaps Subpart

**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 N might be applicable. So we'd want to take care of  
2 those issues also.

3 JUDGE YOUNG: That makes sense. So taking  
4 that into account, let's just hold off on setting a  
5 hearing date until after the staff has had a chance to  
6 look into those issues and also Mr. Hawes has an  
7 attorney who can speak to that because obviously we'd  
8 want a time that would work for the attorney.

9 And you raised the last issue that we do  
10 need to address. And that may be a good one to also  
11 put off until that next telephone conference. And  
12 that is the hearing procedures and how we expect this  
13 hearing would proceed.

14 I think that more or less takes care of  
15 everything on my list. Does anyone else have any --  
16 Judge Farrar? Judge Lam, do you --

17 JUDGE FARRAR: I would only add, Mr.  
18 Hawes, I hope it is obvious to you by now but it is  
19 not always to outsiders. Ms. Uttal represents a whole  
20 bunch of people over on the NRC staff who do the  
21 regulations.

22 We also work for the NRC but we do not  
23 work for the NRC staff. They do not work for us. We  
24 are independent within the Agency, judges who have no  
25 interest in anything else the NRC staff does other

**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 than matters that come before us in the hearing.

2 So as I hope you have observed already,  
3 you know we are on no one's side. We have no interest  
4 in this. We are impartial judges who will treat you  
5 the same as we treat the staff. And so you can count  
6 on that.

7 It is sometimes confusing to people on the  
8 outside. We may or may not run into Ms. Uttal in the  
9 hallways of these buildings here. But no one will  
10 ever discuss your case outside of your presence and  
11 your counsel's presence.

12 MR. HAWES: Thank you, sir.

13 JUDGE YOUNG: Thank you very much, Judge  
14 Farrar. And in relation to that, I guess, the other  
15 thing I'm sure your attorney will be aware of but it  
16 might be worth saying and that is the way that we do  
17 our jobs to make sure that we are impartial is that we  
18 base our rulings on the facts that come before us,  
19 that are presented to us by the parties, and on any  
20 governing law and rules.

21 The law includes not just statutes but  
22 case law. And that protects all parties in terms of  
23 we don't make our rulings based on what we think  
24 personally or on sympathy or how we think things  
25 should go but on what the law says and what the rules

**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 say.

2 And so that is something that I think you  
3 are probably already aware of. But maybe it bears  
4 repeating.

5 Did either Ms. Uttal for the staff or Mr.  
6 Hawes have anything -- do either of you have anything  
7 further that you'd like to discuss or ask any  
8 questions about before we adjourn for today?

9 MS. UTTAL: Staff has nothing, Your Honor.

10 MR. HAWES: No, ma'am, I have nothing.

11 JUDGE YOUNG: Okay. Well, thank you all  
12 for being present. In the near future -- also I guess  
13 I should say taking into account the schedule with the  
14 Palisades case, but in the near future, we will get  
15 out an order incorporating our discussion today and  
16 the decisions we've made today, granting the hearing,  
17 and setting the deadlines and alternate dates for an  
18 additional telephone conference.

19 I look forward to talking to everyone at  
20 that next conference. And, again, if you will let us  
21 know that you have been deployed -- preferably do that  
22 by e-mail or by telephone. If possible, let us know  
23 at that point whether you want to hold off on the  
24 briefing as well -- hold that in abeyance as well --  
25 or whether that portion of the proceeding might go

**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 forward.

2 And let's see. I think there was one  
3 other scheduling thing that was in the back of my  
4 mind. But it is not coming to the front of it right  
5 now. So I think that takes care of everything.

6 Thank you all. And we'll talk to you next  
7 time.

8 MR. HAWES: Thank you.

9 MS. UTTAL: Thank you, Judge.

10 (Whereupon, the above-entitled conference  
11 was concluded at 1:37 a.m.)

12

13

14

15

16

17

18

19

20

21

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](http://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: Pre-Hearing Conference

In the Matter of

David H. Hawes

Docket Number: 55-22685-SP

ASLBP No. 05-840-01-SP

Location: teleconference

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.



William Click  
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)