

RAS 10448

Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

Title: Nuclear Management Company
Palisade Nuclear Plant

Docket Number: 50-255-LR; ASLBP No.: 05-842-03-LR

Location: (telephone conference)

DOCKETED
USNRC
September 14, 2005 (11:31am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Date: Monday, September 12, 2005

Work Order No.: NRC-605

Pages 1-18

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

APPEARANCES:

On Behalf of the Applicant:

PAUL A. GAUKLER, ESQ.

DAVID R. LEWIS, ESQ.

of: Pillsbury Winthrop Shaw Pittman, LLP

2300 N Street, N.W.

Washington, D.C. 20037-1122

(202) 663-8304 (PG)

(202) 663-8474 (DK)

(202) 663-8007 fax

Also Present on Behalf of the Applicant:

BRITTA JOHNSON, Nuclear Management Company

DOUG JOHNSON, Nuclear Management Company

On Behalf of the Petitioners:

TERRY J. LODGE, ESQ.

316 North Michigan Street

Toledo, Ohio 43624

(419) 255-7552

Also Present on Behalf of the Petitioners:

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

PAUL GUNTER, Nuclear Information and
Resource Service

ALICE HIRT, Western Michigan Environmental
Action Coalition

KEVIN KAMPS, Nuclear Information and
Resource Service

MICHAEL KEEGAN, Don't Waste Michigan

On Behalf of the Nuclear Regulatory Commission:

SUSAN L. UTTAL, ESQ.

of: 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 on Behalf of the Nuclear Regulatory
Commission:

SHERVERNE CLOYD

MICHAEL MORGAN

JONATHAN RUND

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

(202) 234-4433

www.nealrgross.com

P R O C E E D I N G S

(1:38 p.m.)

JUDGE YOUNG: Thanks everyone for calling in. I don't think we have a whole lot that we need to talk about today. But I do have a list that I wanted to go through. And then the last thing on the list is to ask if any of you have any questions that you would like to have addressed today.

First off, just sort of a housekeeping issue, we did see a reference to I believe under Contention One to the opinion of petitioner's experts. We wondered whether there was a written opinion somewhere that we don't have. And if so, we'd like to get a copy of that. Is there? Or is that a more generalized reference?

MR. LODGE: This is Terry Lodge. There is -- other than e-mail correspondence, there is not a written opinion. And the e-mail correspondence essentially is almost verbatim the wording that we used in that contention.

JUDGE YOUNG: Okay. The next thing is sort of a related thing. It would be helpful to us if we could get copies of the application. And I guess that would be one copy for each of the judges and one copy for our law clerk. Would that be possible Mr.

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 Lewis?

2 MR. LEWIS: Yes, Judge Young. Would you
3 like the CD version?

4 JUDGE YOUNG: Well, I actually find paper
5 copy -- would find a paper copy and a CD useful.

6 MR. LEWIS: I'll be glad to provide, you
7 know, whatever is requested and would expend the same
8 courtesy to the petitioners.

9 JUDGE YOUNG: Okay. Thank you.

10 MR. LODGE: Thank you.

11 JUDGE YOUNG: Let's see. Oh, one of
12 thing. It's sort of related. It would be helpful to
13 us also if we could get electronic, copy-able versions
14 of all the pleadings. I think we have that already
15 with the possible exception of Nuclear Management. It
16 seems like that was PDF that I didn't know how to
17 copy. Am I remembering that wrong, Mr. Lewis?

18 MR. LEWIS: We did file it as a PDF. I
19 can't remember whether we -- did we file the forms?
20 No, that was -- yes, we filed it as a PDF with the
21 Licensing Board.

22 JUDGE YOUNG: Would it be possible to get
23 a text version?

24 MR. LEWIS: Yes, we can do that.

25 JUDGE YOUNG: It's just -- I mean without

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 indicating how we're going to decide on anything, it
2 is helpful for us to have from all parties electronic
3 versions so that when we are writing up a decision, if
4 we should decide to use any portions or any cites or
5 anything like that from any of your pleadings, that
6 will save us time.

7 MR. LODGE: Your Honor, this is Terry
8 Lodge. I have a question. Prospectively, would it be
9 a good idea if we dual submitted electronically in say
10 Word Perfect and PDF?

11 JUDGE YOUNG: That's fine. I don't know
12 that we particularly need the PDF.

13 MR. LODGE: Oh, okay. All right.

14 JUDGE BARATTA: Well, the PDF are helpful
15 because it preserves the pages.

16 MR. LODGE: Right.

17 JUDGE YOUNG: Okay, okay.

18 JUDGE BARATTA: And Word doesn't.

19 JUDGE YOUNG: Yes, that would be --

20 JUDGE BARATTA: I'm sorry. That was Judge
21 Baratta.

22 JUDGE YOUNG: But yes, thank you. That
23 would be helpful.

24 MR. LODGE: Okay.

25 MS. UTTAL: Judge, this is Susan Uttal.

1 I think for ADAMS purposes, the PDF may be required.
2 I'm not sure on that though.

3 JUDGE BARATTA: I think you're right. As
4 a result, it would be helpful for us to get both.

5 JUDGE YOUNG: Okay. Anything else on just
6 sort of housekeeping paperwork kind of things?

7 (No response.)

8 JUDGE YOUNG: Okay. A question that I
9 have in getting now to the oral argument that we have
10 scheduled for November 3rd and 4th. First of all, I
11 guess just a couple of ground rules.

12 We would encourage all of you to pay close
13 attention to the contention rule and to the decisions
14 that are cited in the original scheduling order in
15 this proceeding so that you will be fully familiarized
16 with the existing law and rules relating to license
17 renewal proceedings.

18 Related to that, when we're in oral
19 argument, I don't think that we're going to
20 necessarily set rigid timelines. We will be issuing
21 an order setting the beginning times and the location
22 and so forth.

23 But we would strongly encourage you not to
24 merely repeat what you've said in your pleadings but
25 address issues that you feel have not been adequately

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 argued to us. And we will definitely probably have
2 questions for you.

3 One thing I noticed in the answers, it
4 does not appear that standing is going to be a
5 significant -- or an issue at all. Mr. Lodge, do you
6 -- I think the staff had distinguished between the
7 representational standing and the organizational
8 standing. Do you have any -- I guess you can indicate
9 that in your reply but we, I think, are expecting the
10 argument to be primarily on the contentions.

11 MR. LODGE: And so are we, Your Honor.
12 And I appreciate, frankly, the staff and the utility
13 responses kind of laying that issue largely to rest.

14 JUDGE YOUNG: Okay. All right. Let's
15 see. One of the things that we have been discussing
16 and we think we'll go ahead and do probably in the
17 early evening of the 3rd is hold limited appearance
18 statements, a time for that. And we're thinking about
19 doing that between five-thirty and seven-thirty in the
20 evening.

21 I don't know, Mr. Lodge, if you are
22 familiar -- I'm sure Mr. Gunter and the NIRS people
23 are familiar with those from past participation in NRC
24 proceedings. That is an opportunity for members of
25 the public -- any member of the public to come in 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

1 make a short statement that will be included in the
2 record. It's not evidence for us to consider. But it
3 is an opportunity for the public to contribute.

4 What we would do is adjourn the oral
5 argument at around five and then come back at five-
6 thirty so that people who have been working during the
7 day can come if they wish and make statements.

8 We'll probably limit those statements to
9 five minutes for each person depending upon the number
10 of people. If there are a much larger number of
11 people then would allow for that, we might reduce that
12 a bit.

13 But we wanted to notify you of that at
14 this point. We will confirm that in a written order.

15 With regard to that and with regard to the
16 oral argument, we will have security in some form
17 there. And there are some sort of basic ground rules
18 for adjudication proceedings. And that is we know
19 people feel strongly about these issues but we won't
20 allow signs, posters, or anything like that.

21 We're going to try to get a room large
22 enough for anyone who wants to come to fit into and we
23 will probably do that in a conference room in a hotel
24 in South Haven. We'll notify you of that when we know
25 the exact location.

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 It would be helpful for us to know from
2 all parties how many you expect to attend. Or if you
3 have any idea also how many other members of the
4 community may wish to attend. Any of you can start.

5 MR. KEEGAN: Michael Keegan. I don't have
6 a notion at this point. I know there is quite a great
7 deal of interest of the members over there. Could I
8 get back to you closer to the date?

9 JUDGE YOUNG: Well, we're going to need to
10 reserve a room. I think we may have access to a room
11 that would hold 100 people. Does anyone think that
12 that might not be sufficient?

13 MR. LEWIS: Judge Young, I hope that would
14 be sufficient. This is David Lewis. I haven't got
15 the number of people who will attend for NMC but I
16 would guess that in addition to Mr. Gaulker and
17 myself, it might be a half dozen.

18 JUDGE YOUNG: All right.

19 MR. GUNTER: Judge Young, this is Paul
20 Gunter with Nuclear Information Resource Service. I
21 noticed that with regard to the signs, it is my
22 understanding that the Commission does allow signs
23 that are 18 by 18. And that it does not allow any
24 signs over that.

25 Is there any particular reason why there

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 is this blanket statement on signs?

2 JUDGE YOUNG: Yes, I think that there --
3 I have two answers to that which I don't know how
4 satisfactory they are. But one is that in
5 adjudication proceedings, it's a little bit different
6 than other types of public meetings. And two,
7 security. We've been more, obviously, security
8 conscious since 9/11. And security figures that that
9 is an issue that we want to -- I don't know whether it
10 is a view line. I know that they have asked us to
11 follow that rule.

12 And when I say rule, I don't think there
13 is a written rule but -- or do you think there is a
14 written rule?

15 JUDGE BARATTA: Yes, I think that -- this
16 is Judge Baratta, I think the maintenance of a decorum
17 of an adjudicatory proceeding is such that signage is
18 just not appropriate. That's been a longstanding
19 tradition. It's nothing new if that's what you are
20 getting at.

21 It is true that for staff hearings that
22 may be conducted such signage of that nature is
23 allowed. However, signage at these adjudicatory
24 proceedings is not allowed.

25 MR. GUNTER: This is Paul Gunter again.

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 I would respectfully request that we could see in
2 writing because I know that the current Code of
3 Federal Regulation applies to not only staff but also
4 Commission meetings. So I'm just -- I'm inquiring
5 because this is news to me.

6 JUDGE YOUNG: And could you give us either
7 now or subsequently through Mr. Lodge the cite to the
8 provision that you are talking about?

9 MR. GUNTER: Yes, ma'am.

10 MR. LODGE: We'll definitely forward it.

11 JUDGE YOUNG: Okay. And once we get that,
12 we'll consider your argument and your request.

13 MR. LODGE: Yes, for the record, this is
14 Terry Lodge. I would just like to embody what Mr.
15 Gunter was saying into an oral motion that the Panel
16 please reconsider the prohibition against signs
17 subject to our providing the regulation.

18 JUDGE YOUNG: Okay. When you provide the
19 regulation, why don't you just provide a short motion
20 as well.

21 MR. LODGE: Very good.

22 JUDGE YOUNG: Okay? And I don't want you
23 to wait until the last minute. So could you do that
24 within a week or so?

25 MR. LODGE: 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

1 JUDGE YOUNG: Okay. So let's see that
2 would be September 19th. Is that a -- okay, that's
3 next Monday, September 19th?

4 MR. LODGE: Fine.

5 JUDGE YOUNG: Okay. Let's see. I think
6 that is all from my list. Do either of you have
7 anything else before we ask the parties if they have
8 any questions?

9 (No response.)

10 JUDGE YOUNG: Do any of the parties have
11 any issues that we may have overlooked or that you
12 would like to raise at this point?

13 MS. UTTAL: Judge, this is Susan Uttal.
14 I have a couple of issues.

15 First of all, I didn't get -- I don't have
16 in my file a notice of appearance from counsel. And
17 I was wondering whether a notice of appearance was
18 filed for both counsels.

19 MR. LODGE: Are you talking -- is that
20 required of the petitioners?

21 MS. UTTAL: The petitioner's counsel.

22 MR. LODGE: I will file one to perfect the
23 record. My apology. I assumed that submission of a
24 petition constituted that. But I'll certainly file
25 something separate.

1 MS. UTTAL: And my second issue also
2 relates to notices of appearance. I see that
3 representatives from each organization have filed
4 notices of appearances. And they are also represented
5 by counsel.

6 And I think that the Board should lay down
7 some ground rules for who will speak during oral
8 argument because usually the retained counsel or the
9 counsel representing the parties that does the oral
10 argument, not representatives of the various
11 organizations. So I'd like to make that clear.

12 JUDGE YOUNG: I think my expectation would
13 be that argument would be made by counsel. Mr. Lodge
14 -- now I know we've let Mr. Gunter speak before. He's
15 participated in NRC proceedings before. So in this
16 somewhat informal context, I have no problem with
17 that.

18 But I think that argument should be
19 through counsel unless a specific request is made that
20 someone else do some portion of an argument.

21 Mr. Lodge, do you have any problem with
22 that?

23 MR. LODGE: As a sort of general rule, no,
24 except for the fact that as you have correctly noted,
25 my friends from NIRS do have uncommon expertise in

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 some technical areas in particular. And it may be
2 more efficient for the purpose of the proceedings from
3 time to time to have Mr. Gunter or even Mr. Kamps
4 participate as our designated speakers.

5 We haven't worked that out, of course,
6 yet. But I would ask that the Board keep an open mind
7 on that possibility.

8 JUDGE YOUNG: Could you perhaps when you
9 file your reply indicate whether you wish to have any
10 of the oral argument made by anyone other than
11 yourself? And I guess in that context, we expect the
12 oral argument to be, as in any proceeding, to be
13 primarily legal argument. So that would address the
14 requirements in the contention rule and in the
15 relevant case law.

16 So if you do make a request that someone
17 else make an argument -- and I guess let me just give
18 you my reasoning for this, lawyers are trained and
19 know what types of argument they are expected to make
20 in an oral argument. And sometimes non-lawyers may
21 not make the distinction between the type of argument
22 that -- legal argument on legal issues and factual
23 argument which would not necessarily be very relevant
24 at this point.

25 MR. LODGE: I understand. And I will

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 certainly make that type of request when we reply.

2 JUDGE YOUNG: Okay. Great. Anything
3 else? And, Ms. Uttal, does that address your
4 concerns?

5 MS. UTTAL: Yes, it does. I have one
6 final point. And I'm not too clear on it regarding
7 the limited appearances. I was looking for the
8 regulation that governs that to see whether parties
9 are permitted to make limited appearances when they
10 are also appearing as parties.

11 JUDGE YOUNG: I know we've had proceedings
12 where say employees of parties have made limited
13 appearance statements. So I mean I don't think there
14 is any limitation on that. But --

15 MS. UTTAL: Well, Judge, how about this,
16 if I find something, I'll let the Board and the
17 parties know.

18 JUDGE YOUNG: Okay.

19 MS. UTTAL: That's all I have.

20 JUDGE YOUNG: Anybody else?

21 MR. LEWIS: Yes, Judge, just on your
22 request for copies of the application, I was going to
23 provide you a paper copy as well as a CD. In the
24 interest of saving trees, is it okay for me to provide
25 the other judges and the petitioners CD copies? Or

1 does anybody else need a paper copy?

2 MR. LODGE: The petitioners will certainly
3 accept it on CD.

4 MR. LEWIS: Thank you. That will save me
5 some postage.

6 MR. LODGE: Thank you.

7 JUDGE YOUNG: Okay. Thank you. We'll
8 share the one paper copy. I guess I'm still living in
9 the Dark Ages sometimes.

10 (Laughter.)

11 JUDGE YOUNG: I like books still.

12 All right, let's see. Anything else?

13 (No response.)

14 JUDGE YOUNG: All right. Then we'll look
15 forward to hearing from petitioners I guess both this
16 Friday and then Monday on your motion on the signs,
17 from Ms. Uttal on anything related to who can provide
18 a limited appearance statement. And if anything else
19 arises, you are free to file anything in writing with
20 us.

21 Try to communicate with each other,
22 obviously, on anything as well so that anything you
23 can work out between you, you can do that.

24 We will send you more specific
25 notification on the time and also on the location for

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 the oral argument in South Haven. And we'll look
2 forward to seeing everyone November 3rd.

3 MR. LODGE: Very good.

4 JUDGE YOUNG: Does the Court Reporter need
5 anything else from us? Do we still have the Court
6 Reporter?

7 COURT REPORTER: Yes, I'm still here. I
8 don't need anything right now.

9 JUDGE YOUNG: Okay. Thank you all.

10 (Whereupon, the above-entitled conference
11 was concluded at 1:58 p.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

CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: Nuclear Management Company

Palisades Nuclear Plant

Docket Number: 50-255-LR

ASLBP No.: 05-842-03-LR

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