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NUCLEAR REGULATORY COMMISSION

Title: Vermont Yankee Nuclear Power Station

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

Location: (telephone conference)

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD
(ASLB)

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TELECONFERENCE

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

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Tuesday,
January 24, 2006

The above-entitled matter came on for
hearing, pursuant to notice, at 11:00 a.m.

BEFORE:

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

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

11:06 A.M.

1
2
3 JUDGE KARLIN: Good morning. This is Alex
4 Karlin. Thank you for joining our call today. This
5 is now on the record. We have a reporter, a court
6 reporter who is on the line and putting this on
7 transcribed record.

8 Here in Rockville, we have Judge Tony
9 Baratta; Jonathan Rund, our Law Clerk; Karen Valloch,
10 our administrative assistant; and in Tucson, we have
11 Judge Rubenstein.

12 This is a proceeding in the matter of
13 Entergy Nuclear Vermont Yankee, LLC and Entergy
14 Nuclear Operations, Inc., Docket No. 50-271-OLA before
15 the Atomic Safety and Licensing Board, set for this
16 matter.

17 I appreciate everyone being on this call.
18 It's pursuant to an order we issued on January 5th.

19 Let me just double check, as Ms. Valloch
20 indicates. Is the court reporter on? Is that
21 correct?

22 COURT REPORTER: Yes, I'm on the call.

23 JUDGE KARLIN: Okay, thank you. I want to
24 make sure that was there.

25 If everyone could identify themselves and

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1 all of the participants and attendees, starting with,
2 let's just start with the Staff, please?

3 MR. TURK: Good morning, Your Honor. This
4 is Sherwin Turk. I'm here with Jason Zorn. And also
5 with me is Rick Ennis, the Project Manager for the
6 Vermont Yankee EPU application, as well as Mr. Darrell
7 Roberts, who is Branch Chief of the Operating Reactor
8 Licensing Branch involved in this proceeding. Both of
9 them with the Office of Nuclear Reactor Regulation.

10 JUDGE KARLIN: Okay, great, good morning,
11 Mr. Turk.

12 Applicant, please.

13 MR. SILBERG: Good morning, Your Honor.
14 This is Jay Silberg from the law firm of Pillsbury
15 Winthrop Shaw Pittman. With me in our offices in
16 Washington is Matias Travieso-Diaz and on the phone
17 from I believe corporate offices in White Plains, New
18 York is in-house counsel Travis McCullough for Entergy
19 and at the plant Craig Nichols who is the Project
20 Manager for the power uprate and Len Guwa.

21 JUDGE KARLIN: Very good, thank you, Mr.
22 Silberg, good morning.

23 All right, the State of Vermont, please,
24 Mr. Roisman, I suppose?

25 MR. ROISMAN: Yes, good morning, Mr.

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1 Chairman. Actually, we are in two different places
2 today. I'm in Lyme, New Hampshire and in Montpelier
3 is Sarah Hofmann and Bill Sherman, the State's Nuclear
4 Engineer.

5 JUDGE KARLIN: Great, that's good. And
6 Mr. Shadis?

7 MR. SHADIS: Yes, good morning, Your
8 Honors. This is Ray Shadis representing New England
9 Coalition pro se.

10 JUDGE KARLIN: Is there anyone else from
11 New England Coalition on the line?

12 MR. SHADIS: No sir.

13 JUDGE KARLIN: Okay, fine. Good morning,
14 Mr. Shadis.

15 MR. SHADIS: Good morning.

16 JUDGE KARLIN: Now anyone else on the
17 line, would they please introduce themselves at this
18 point?

19 MR. SHEEHAN: Neil Sheehan, NRC Region 1,
20 Public Affairs.

21 MS. CASA: Kate Casa, Vermont Guardian.

22 JUDGE KARLIN: Ms. Casa, okay. Anyone
23 else? Great. All right, thank you for introducing
24 yourselves.

25 As I think you know, the ground rules for

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1 this call are basically that this is a public pre-
2 hearing conference call of the Board. The parties
3 will be allowed to address the Board on issues of
4 concern. The public and the press are welcome to
5 listen, as if this were being held in a courtroom or
6 auditorium, but not to participate or speak.

7 The court reporter will transcribe this
8 meeting and that transcript will be available in the
9 ADAMS system, I think in about 10 days it usually
10 takes.

11 As we proceed, if you would identify
12 yourself when you begin to speak, this would help the
13 court reporter and all of us to proceed in an
14 intelligent way.

15 The purpose of this call is to discuss and
16 plan the schedule and the oral hearing in this matter.
17 We haven't met since August, so it's been about six
18 months and it's probably a good idea to touch base and
19 see where we are.

20 In August, the Staff gave us some reports
21 in terms of what it's estimates were in terms of
22 finishing its activities, the draft SER, final SER,
23 environmental assessment. And it looks like,
24 according to these monthly reports that the Staff
25 submits that they're right on schedule. But we just

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1 want to double check that and have a report from the
2 Staff in a moment on that.

3 We also, as set forth in the October -- in
4 the January 5th order, want to hear from the parties
5 if you have any suggestions for simplifying or
6 clarifying the proceeding to make sure it's a fair and
7 expedited, if possible, basis. So those are the
8 purposes we have for this call.

9 Are there any other agenda items or other
10 items that any of the parties would like to raise or
11 present in this call?

12 (No response.)

13 Okay, hearing none, perhaps we could now
14 hear from the Staff, briefly, Mr. Turk, or whoever you
15 designate, Mr. Zorn. Looks like you're right on
16 schedule, but if you could give us a report that would
17 be great.

18 MR. TURK: Thank you, Your Honor. This is
19 Sherwin Turk. The Staff's most recent status report
20 which we filed about a week ago indicated that we're
21 on track to issue the final safety evaluation on our
22 scheduled date of February 24th. And we continue to
23 believe that that date will be met. There's always
24 the chance that we could slip it a little bit, if
25 necessary, if completion takes longer than we

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1 currently anticipate or other tasks interfere with our
2 being able to complete that by the 24th of February.
3 But if there was a slippage, it wouldn't be very
4 great, and we would notify you in our next status
5 report if it looks like that will happen.

6 I believe our next status report will be
7 filed approximately February 16th or 17th, so by then
8 we should have a pretty fair picture on whether we're
9 going to be able to meet the 24th date.

10 JUDGE BARATTA: Mr. Turk, this is Judge
11 Baratta. The week or so late ACRS letter then has
12 minimal impact on your schedule?

13 MR. TURK: That's correct. The second
14 item that we indicated that we're going to be
15 completing is the final environmental assessment. In
16 fact, we mailed that to the licensee on the 20th of
17 January and we also transferred that to the Federal
18 Register for publication. So that should be in the
19 Federal Register within a matter of a day or two or
20 maybe three, depending on how long it takes them to
21 take that notice and publish it.

22 The third item was the No Significant
23 Hazard Consideration. We did issue the proposed NSHC
24 determination and published that in the Federal
25 Register. We advised the public that comments

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1 submitted by February 10th would be considered by the
2 Staff in reaching a final determination as to whether
3 there is a significant hazard consideration or not.

4 So we're looking for February 10th
5 completion of comments coming in to the Staff. And
6 hopefully, approximately February 24th, we'd be in a
7 position to make a final determination, whether there
8 is a significant hazard consideration or not.

9 JUDGE KARLIN: Okay, thank you. Anything
10 else you've got to report?

11 MR. TURK: I believe that's it for our
12 scheduled actions.

13 JUDGE KARLIN: All right, that's helpful.
14 Thank you. I see that the environmental assessment
15 then, I guess, is coming in a bit early. I think you
16 had estimated it would be by February 7th.

17 MR. TURK: That's right.

18 JUDGE KARLIN: Good. Okay, fine. Very
19 helpful. Now one of the things we suggest that the
20 parties might want to try to get together and see if
21 they had any suggestions for simplifying or clarifying
22 the issues or managing the proceeding from here on
23 out, did you all get a chance to do that? Do you have
24 any suggestions or ideas that you would want to
25 present?

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1 MR. SILBERG: This is Jay Silberg. We did
2 have a series of calls with all the parties, separate
3 calls with the State, the Applicant, NRC and with
4 Coalition, the Applicant and NRC. And I think they
5 were very useful, productive calls.

6 We talked both about schedules and about
7 potential simplification or clarification of issues.
8 And if I might, let me first discuss our discussions
9 with the Coalition and invite Mr. Shadis to join in,
10 correct me if I overstep.

11 MR. SHADIS: Thank you, Jay.

12 MR. SILBERG: We talked about
13 clarification of the large transient test contention,
14 assuming as we were for the purpose of our discussion,
15 that it would remain in the hearing when we were first
16 awaiting the Board's ruling on our motion for summary
17 judgment and maybe I could ask at this time Judge
18 Karlin, if you have a schedule and when we might
19 expect that ruling?

20 JUDGE KARLIN: I think we'll see something
21 in the next couple of weeks and that's about as good
22 as I can say at this point.

23 MR. SILBERG: Okay. In terms of trying to
24 clarify that issue, what we did agree upon is that the
25 tests that were the scope of the contention would be

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1 considered the MSIV closure and the turbine generator
2 load rejection. Those are the two tests that
3 contention, as written, could be read to be a little
4 broader than that. But both Mr. Shadis and we agree
5 that that, in fact, was what our exception request was
6 aimed at in our application. That's what the Staff
7 addressed. That's what we thought the contention was
8 intended to address and Mr. Shadis has agreed with
9 that.

10 With respect to the other contention on
11 the cooling tower contention, we did explore what I
12 think is somewhat of a disagreement between the
13 parties. We have read the scope of that contention as
14 addressing the cooling tower itself and, as you
15 recall, there is a safety-related cooling tower cell
16 and then the adjacent cooling tower cell which is
17 analyzed to make sure it would not collapse in seismic
18 events, in a way that would damage the safety-related
19 cooling tower cell.

20 That's how we addressed the contention.
21 The ABS report, which as the Board recalls, was the
22 document that we submitted and relied on to dismiss
23 the initial contention, addressed the safety-related
24 cooling tower cell and the adjacent cell. And we
25 think a fair reading of the Board's decision admitting

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1 the new contention is limited to the cooling tower
2 cell itself.

3 The so-called ACS, the alternate cooling
4 system, includes not only the cooling tower cell, but
5 also peripheral equipment -- not peripheral -- but the
6 other equipment such as the pipes, the intake and the
7 river, electrical systems, and the like. And we think
8 it's clear that the initial contention was not aimed
9 at those components, that our response was not aimed
10 at those components, and that the Board's decision was
11 not aimed at those components.

12 Mr. Shadis believes that the contention is
13 broader, that it covers anything having to do with the
14 alternate cooling system, including the river intake
15 and the pumps and the electrical system and everything
16 else. And we agree to disagree as to the scope.

17 My suggestion, and I think it would be
18 helpful to get a clarification from the Board,
19 perhaps, because I think it's obvious at today's call,
20 but if the Board believes that that isn't obvious,
21 then we would suggest that the parties submit briefs
22 on a fairly short time frame that would lay out their
23 view of the scope of the contention.

24 I think if we go to the hearing with that
25 issue unresolved, one or both parties may not have the

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1 right witnesses there. If it's the much broader scope
2 that Mr. Shadis is suggesting, I think the testimony
3 will be far different and much more expansive, maybe
4 much more expansive. The hearing itself would be much
5 more expansive. And so I think a clarification from
6 the Board on that point would be worthwhile.

7 With respect to the schedule, I think both
8 we and Mr. Shadis are satisfied with the current
9 schedule, in general, with one exception that Mr.
10 Shadis can address. And that is the first deadline
11 which is 10 days following the issuance of final SER
12 for submittal of final witness lists. Mr. Shadis
13 explained to us that he is having some issues with
14 some of his witnesses which he may want to explain.
15 But in terms of the overall schedule and hearing,
16 which we anticipated would be sometime in the summer,
17 probably in July, that that schedule was acceptable to
18 both NEC and the Applicant.

19 JUDGE KARLIN: All right, thank you, Mr.
20 Silberg.

21 Mr. Shadis, did you want to speak on this
22 at all?

23 MR. SHADIS: If I may. Yeah, our
24 perceptions of the conversation and of the
25 information, relevant information are a little

1 different than what Mr. Silberg has represented, not
2 so far off, but we believe that the new contention
3 that was accepted by the Panel with respect to the
4 cooling towers is a stand-alone contention. It does
5 not hinge upon anything that was represented in the
6 first contention, except that it is of generally the
7 same topic. And rather than to speak of the cooling
8 tower cell, in particular, the second contention does
9 speak of the alternate cooling system.

10 What underlies this is a question of aging
11 mechanisms, degradation over time and additional
12 potential loads, demands as a result of EPU and
13 whether or not these factors combined, when examined,
14 can give some assurance that this thing would stand
15 design basis seismic events.

16 In addition to that, it's our contention,
17 it's our belief that there is new seismic information
18 and that may result in more stringent seismic
19 standards. This was mentioned in our expert's
20 testimony and that if there are components within the
21 system that are affected by EPU in such a way as to
22 affect their seismic resilience, then the new
23 standards need to be applied, the more contemporary,
24 more conservative standards than the original
25 licensing basis standards.

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1 So we're working at this. We're
2 consulting with our experts and consulting the
3 literature in the field and attempting to bring this
4 whole issue into a coherent presentation which we
5 think is what the brief is supposed to be about, that
6 and the law, of course. And we think that rather than
7 to entertain motions on this in the interim, that the
8 most efficient course would be for the Board to wait
9 and see what the briefs look like.

10 Entergy, by our reckoning, on notice as to
11 what the scope of our contention is. It's fairly
12 clear and that this can best be resolved on schedule
13 when we get to the briefs.

14 The other issue, main issue that Mr.
15 Silberg raised is something that we presented in our
16 talks which had to do with our witnesses. There are
17 some issues that have arisen. Mr. Arnold Gundersen
18 was the expert witness who underwrote the initial
19 submittal of our contentions, provided the expert
20 declaration. He has had on-going health problems and
21 we have been watching, touch and go, over the duration
22 of this proceeding to see if Mr. Gundersen would
23 physically be able to testify.

24 And as of last week in a call with Mr.
25 Gundersen, it became apparent that his health is

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1 failing and sad to report. His expert testimony will
2 be taken up in the contention regarding the cooling
3 tower by Dr. Ross Landsman. And my mind slips here,
4 but in our other contention, we have Dr. Joram
5 Hopenfeld, defending that contention. This is the
6 contention with respect to full transient testing.

7 There is a problem and I think maybe Judge
8 Baratta can help us on this. We have been advised
9 that Dr. Landsman has run into some issues that are
10 encapsulated in Title 18 of the U.S. Code. I forget
11 the particular section number, but having to do with
12 former NRC employees testifying on relevant issues.

13 Dr. Landsman was called upon to testify in
14 the Palisades Nuclear Station license renewal and NRC
15 Staff objected to his testimony and we are not certain
16 at this point on the basis. I asked Dr. Landsman, I
17 finally got a hold of him last night, via telephone.
18 He's been in the process of moving his residence. I
19 got a hold of him last night and he said basically he
20 doesn't know the basis that the -- the factual basis
21 for NRC Staff's objection to his testimony. So
22 whether we can rely on him at this point, you know,
23 we're uncertain. But we are looking real hard at
24 that.

25 Finally, I do want to say that we did

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1 agree with Entergy, with Mr. Silberg, that our full
2 transient testing contention was directed at the MSIV
3 closure and the load shedding as full transient tests.
4 So are we are in agreeing at least on that one point.

5 JUDGE BARATTA: This is Judge Baratta
6 again. Could I ask you a question with respect to the
7 transient testing. I just want to make sure I
8 understand the specific transients you're thinking of
9 making a class of transients. Are you talking
10 specifically about a turbine trip transient or a load
11 rejection where the load is increased in a step-wise
12 manner?

13 MR. SILBERG: This is Mr. Silberg, Judge
14 Baratta. The two transients, as I understand them,
15 and perhaps we can get clarification as needed from
16 either Craig Nichols or Len Gucwa, our technical
17 gurus, is the mainstream isolation valve closure for
18 the first and the turbine generator load rejection for
19 the second.

20 MR. SHADIS: Judge Baratta, this is Ray
21 Shadis. I agree with that description.

22 MR. SILBERG: If you need more
23 description, Judge, I would defer, frankly, to the
24 technical folks.

25 JUDGE BARATTA: Well, one thing I had in

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1 mind is this has all been very helpful and I'm glad
2 you all had these discussions. We may be getting into
3 some areas where it's more on the merits or we don't
4 want to obviously have arguments and you all have
5 refrained from that or tried to, but maybe a written
6 submission of some sort from the two of you that would
7 reflect what your agreement is on large transient
8 testing and would be helpful. I think it would be
9 helpful to us.

10 MR. SILBERG: We'll certainly be happy to
11 prepare that, run it by Mr. Shadis, and then submit it
12 to the Board.

13 JUDGE BARATTA: All right, that would be
14 helpful.

15 Mr. Shadis, would you cooperate with that?

16 MR. SHADIS: Yes, I agree. Except of
17 course, it may be the other way around. We'll
18 communicate with Entergy and see if we can't come up
19 with a mutually agreed-upon description. But I think
20 I can tell you at this point it would be based on the
21 GE licensing topical report.

22 MR. SILBERG: That's correct. That's our
23 understanding as well.

24 JUDGE KARLIN: All right, now with regard
25 to the witnesses, I understand you have a concern, I

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1 guess, Mr. Shadis, about the time frame we put the
2 list of witnesses down for and it sounds like there
3 are some health issues.

4 I think we are not adverse, necessarily to
5 your submission as a motion to ask for an extension of
6 time on submitting the list of witnesses. We have an
7 early date, 10 days after the FSER, in part because as
8 you will remember, perhaps a year ago, one of the
9 issues was what type of hearing do we have?

10 We have an L proceeding going on, right
11 now. And if at some late date new witnesses are
12 identified of whom on of the Intervenors, shall we
13 say, or someone has great umbrage and concern about
14 credibility, then there might be, I think it's remote,
15 but there might be someone who would say well, now we
16 need a G proceeding. I think that's very unlikely to
17 happen.

18 We want to know that as soon as possible.
19 And that's why the identification of the witnesses is
20 at an early date. And that's the main reason for it.

21 Barring that, I don't see a big problem
22 with granting some extension of time to NEC if there
23 are some legitimate problems. But I don't suspect,
24 although it's possible, that Staff or the Applicant
25 will be asking for a G type proceeding. But it could

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1 happen.

2 JUDGE RUBENSTEIN: This is Judge
3 Rubenstein. Mr. Shadis?

4 MR. SHADIS: Yes, Judge?

5 JUDGE RUBENSTEIN: Are Mr. Gundersen's
6 health problems transient or are they --

7 MR. SHADIS: No, I think this is a chronic
8 situation. He has been suffering from what has
9 loosely been diagnosed as pericarditis and his -- what
10 he represented to us a week ago is that he doesn't see
11 it getting any better and he cannot in his estimation
12 take on the burdens of being a witness for us. I
13 think it's over.

14 JUDGE RUBENSTEIN: He's not likely to be
15 at the hearing at all?

16 MR. SHADIS: Right, I think that's over
17 and done with. And so at this point we're relying on
18 back up and second tier and we're re-examining the
19 contentions to see what other witnesses we may need to
20 try to call and so the short time frame is problematic
21 for us. I would say that New England Coalition, at
22 least, is willing to stipulate. And I may need some
23 direction from the Board on this, so let me just hedge
24 that, if I may.

25 If the difference has to do with that

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1 requirement regarding the credibility of witnesses as
2 it was defined in our pre-hearing conference at the
3 onset of this proceeding, having to do with
4 eyewitnesses and their credibility and so on, if those
5 are the strictures, New England Coalition is willing
6 to stipulate that we would not request a Subpart G
7 proceeding. We would be willing to proceed forward
8 with a Subpart L and if that helps the Board to
9 consider allowing additional time to put together a
10 witness list and we're all for that.

11 JUDGE KARLIN: All right, I think that
12 would be helpful. And in fact, if we could get a
13 group stipulation to that effect, then that particular
14 deadline would be easily moved to a later time or
15 removed from the schedule entirely perhaps.

16 We will, obviously, be getting the names
17 of the witnesses, essentially when you submit your
18 testimony, so we will know at that point the direct
19 and rebuttal testimony who you propose or who your
20 witnesses will be.

21 MR. SHADIS: Yes sir, Your Honor. Ray
22 Shadis again. And we would provide our list of
23 witnesses ASAP, but we are working on that.

24 JUDGE KARLIN: Well, let me just ask then
25 are the other parties -- let's ask particularly the

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1 State, are you willing to similarly stipulate that --
2 waive any right to claim Subpart G based upon a new
3 witness that somehow pops out at the end here?

4 MR. ROISMAN: Mr. Chairman, this is Mr.
5 Roisman. I want to be clear what the scope of the
6 request is. Are you also asking that we not be in a
7 position to ask to do our own cross examination.

8 JUDGE KARLIN: No. That's not part of
9 this issue.

10 MR. ROISMAN: All right, as you know, Ms.
11 Hofmann and I are not physically in the same place.
12 We are in communication in an indirect way. I'd like
13 to, if you don't mind, to let that pass for a moment
14 and she and I will communicate on the side and later
15 in this conference, I'll give you an answer if that's
16 okay.

17 JUDGE KARLIN: Well, here's what I think
18 might the most efficient thing is perhaps we could ask
19 to give you 10 days. That would be as I calculate it,
20 February 3rd, Friday, maybe 10 days. Maybe we could
21 make it Monday, if you want to work on the weekend, to
22 come up with some joint -- whatever you can submit.
23 Perhaps there's a joint stipulation with regard to
24 waiving any party's right to request a G, based upon
25 newly identified witnesses.

1 That is not the same as a waiver of any
2 opportunity to at least request an opportunity for
3 cross examination in an L proceeding. This is going
4 to be an L proceeding, absent some significant change.
5 But let's say by February 3rd, we would ask you to
6 submit separately, if you have to, something regarding
7 the deadline set in the ISO, the initial scheduling
8 order, for the identification of your witnesses.

9 If you all will stipulate that there would
10 be no -- waive all right to any request for a G
11 hearing, based upon those witnesses, then we can
12 change that date.

13 Also, if you could submit to us by that
14 time and Applicant, Entergy, your agreement with
15 regard to the large transient testing and the two
16 tests that you've agreed are at issue there as being
17 contested.

18 Further, if you have something else
19 regarding the submission of briefs on your area of
20 disagreement with regard to the scope of contention 4,
21 that would be helpful. Perhaps you could submit
22 something jointly by the 3rd, if you can't submit
23 something jointly by the 3rd, submit something
24 separately by the 3rd. I think that would be helpful
25 to us.

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1 MR. ROISMAN: Okay, just so that I
2 understand, the briefs that you're referring to would
3 be to set forth our respective positions on the scope
4 of the cooling tower contention.

5 JUDGE KARLIN: Right, we're not looking
6 for the briefs by the 3rd, we're looking for a
7 proposal by you to say -- to set a schedule for the
8 briefing of that issue.

9 MR. ROISMAN: Oh, well, I would think
10 that's something that we should do on this call and
11 we're amenable to any schedule. We would file briefs
12 by the 3rd, although we certainly --

13 JUDGE KARLIN: Well, why don't we just --
14 submit to us a schedule for that. As I thought I
15 heard Mr. Shadis registering some concern about even
16 needing to brief this at this point. He may agree to
17 brief it. He may disagree to brief it. He can submit
18 whatever his position is on the 3rd and then we will
19 decide whether to have it briefed now or later.

20 MR. ROISMAN: Okay, the only comment I
21 would have on that, Your Honor, is if we're going to
22 keep to our schedule of submitting testimony and the
23 date for that, I believe, is April 25, it's reasonably
24 important that we know what the scope of the
25 contention is.

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1 I think I heard Mr. Shadis say that it
2 would be more efficient to put in our testimony and
3 that would be the scope. Well, that defeats the whole
4 purpose of defining a contention which is you know in
5 advance what the scope of the issue is that you're
6 supposed to have a hearing on.

7 And I would just as soon we set a schedule
8 today and if Mr. Shadis' position is that we shouldn't
9 brief it now, we should rely on the testimony, that's
10 fine. We can set forth that argument by whatever date
11 you set, but I really wouldn't want to push it off
12 because I think that will start to interfere with our
13 ability to prepare testimony.

14 The scope that Mr. Shadis is, I think,
15 suggesting is beyond that which we have been preparing
16 for and if it turns out to be a vastly different scope
17 of the contention I think that we ought to -- we and
18 the Staff and the Board ought to know that sooner
19 rather than later.

20 MR. TURK: May I offer a few comments
21 also, Your Honor?

22 JUDGE KARLIN: Yes, this is Mr. Turk?

23 MR. TURK: Mr. Turk.

24 JUDGE KARLIN: All right, Mr. Turk.

25 MR. TURK: In our conversations with Mr.

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1 Shadis, in the last few days, which I was party to the
2 conversations between Mr. Shadis and Mr. Silberg, I
3 heard things about the scope of the contention which
4 far exceeded what I believed I was saying we don't --
5 that the Staff does not object to.

6 Mr. Shadis indicated that he believed
7 there should be a new design basis earthquake. I
8 never thought that was part of the contention that I
9 determined that we did not object to its admission.

10 He also indicated that the scope of the
11 contention far exceeds the cooling tower. That was
12 not my understanding. I thought that what he was
13 permitted by the Board to do in submitting a late
14 contention was to address the analysis of the cooling
15 tower's ability to withstand a seismic event upon
16 receipt of the analysis of that from the licensee.

17 I did not understand that the Board gave
18 him permission to submit a new contention challenging
19 the entire alternate cooling system. That's something
20 that could have been contested or raised in a
21 contention at the commencement of the proceeding.

22 So I definitely think we need to brief the
23 issue and make sure that all parties understand what
24 is the admitted scope of the contention that we would
25 have to address in testimony.

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1 And if the scope is different from what I
2 had understood I was not objecting to when we said
3 that the Staff did not object to its admission, then
4 I need to consider whether, to submit a supplement to
5 my paper which did not oppose the contention, based on
6 a new understanding of what had been proffered, which
7 wasn't apparent from the contention itself.

8 JUDGE KARLIN: All right, Mr. Shadis, any
9 last word on this before we figure out where we're
10 going to go?

11 MR. SHADIS: Well, yes. Thank you very
12 much, Judge Karlin.

13 Yes, I have to offer something here in
14 contradiction to what Mr. Silberg and Mr. Turk have
15 stated.

16 JUDGE KARLIN: Mr. Shadis, we don't want
17 to get into the merits. I'm afraid we've all sort of
18 eased into a little bit more into the merits of what
19 the contention says or doesn't say or its scope.

20 I mean our inclination is we think if the
21 scope needs to be -- and can usefully be clarified
22 before anyone starts putting witnesses out and this
23 sort of thing and that some briefing of that needs to
24 be done before the witnesses' testimony are presented.
25 It's just a matter of kind of when.

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1 We understand there's a dispute as to what
2 the scope is and we'd like to get it clarified.

3 MR. SHADIS: Yes, Your Honor. Ray Shadis
4 again. New England Coalition is perfectly willing to
5 work with Entergy and NRC Staff in terms of defining
6 and narrowing the scope on that contention. In fact,
7 in our discussions yesterday, we admitted that it is
8 our burden to show that any of the ACS, alternate
9 cooling system, components that we want to examine,
10 it's our burden to show that they would be affected by
11 extended power uprate in terms of their seismic
12 resilience.

13 And I'm thinking -- I can't think of
14 anything outside of the cooling tower itself, but
15 right now, for example, on the cooling tower still
16 would be potentially affected by extended power
17 uprate, both the temperature and the volume of water.
18 Those are the kinds of things that we're willing to
19 work on.

20 With respect to the schedule to get back
21 to the Board on this, I would ask that rather than
22 Friday, the 3rd of February, we would be looking at
23 Monday, the 6th and the reason for this is that we are
24 engaged in another hearing process before the Vermont
25 Public Service Board and it is running the week of

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1 January 30th and also the week of February 6th.

2 We would be asking that we be allowed
3 whatever break there may be to work over that weekend
4 and try to provide something on Monday, the 6th.

5 JUDGE KARLIN: All right, thank you.

6 MR. ROISMAN: Mr. Chairman, this is Tony
7 Roisman. I just wanted one clarification with regard
8 to your suggestion that we try to agree about the G
9 type hearing.

10 JUDGE KARLIN: yes.

11 MR. ROISMAN: If we were able to agree,
12 would it be a problem if the agreement stipulated that
13 by agreeing at this point forward, we would not seek
14 a G type hearing, that we were not waiving our claim
15 that at the outset the Board erred in failing to
16 determine that this should be a G type hearing? I
17 don't want to waive our legal rights on that issue.

18 We might conclude that at this point on
19 the basis of the law of the case, we couldn't prevail
20 and therefore waiving the G type hearing from this
21 point forward would be appropriate, but we wouldn't
22 want to have to waive our right to claim that there
23 was a flaw in the hearing process at a later date.

24 JUDGE KARLIN: I don't think any such
25 waiver would have been intended. Right now, what we

1 contemplate by the schedule, as it is, is that a very
2 narrow potential for someone to request a G hearing
3 based upon new witnesses that are identified in the
4 final witness list with whom you take great umbrage
5 and have some credibility concern that you think would
6 warrant a G proceeding, not revisiting the old issue,
7 nor would there be a waiver of the old issue on that
8 point.

9 Now I want to turn to the situation with
10 NEC at this point. Judge Rubenstein is on the line
11 and we may need -- I will ask you, Judge Rubenstein,
12 if you have any comment on this, please let me know.
13 We could hold a separate -- we could put this call on
14 hold and have a separate call amongst the three Judges
15 to see if we have a ruling on this. But what I think
16 I'm hearing, and therefore what I would like to
17 suggest, as a ruling, is that we will ask the parties
18 to brief the issue as to the scope of NEC contention
19 4, I guess it is, and whether it includes the
20 alternate cooling system or just the towers. I'm not
21 going to try to rename it, but ask for briefing on
22 that, for briefs to be submitted on the 7th of
23 February with reply briefs submitted on the 14th of
24 February. This will give everyone two weeks and three
25 weeks. The page limit would be short, let's keep it

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1 short. I would say 10 pages for the original briefs
2 and 5 pages for any reply.

3 Judge Rubenstein, if you think we need to
4 confer separately, or is that all right with you?

5 JUDGE RUBENSTEIN: That's fine.

6 JUDGE KARLIN: So that's what we're going
7 to ask. The 7th of February and the 14th, brief on
8 the issues you've raised here.

9 MR. ROISMAN: Thank you, Judge Karlin.

10 MR. SHADIS: Judge Karlin, this is Ray
11 Shadis again. And I don't have any strong objections
12 to this at all. But my understanding is that what you
13 were looking for and might have preferred in the
14 beginning of this conversation was some statement or
15 stipulation of agreement between Entergy and New
16 England Coalition as to what the scope of that
17 contention was.

18 I'm looking to try to work this out with
19 Entergy.

20 JUDGE KARLIN: Well, that's great. If you
21 all can come to such an agreement before the 7th or at
22 any point, really, that's wonderful and we'd be glad
23 to receive it.

24 MR. SHADIS: Thank you.

25 MR. SILBERG: We will certainly continue

1 to work with Mr. Shadis to try to reach that
2 agreement.

3 JUDGE KARLIN: All right, now we have --
4 I know you're going to move now to discussions, I
5 guess --

6 MR. SILBERG: Well, before we move to
7 discussions on the State, I think Mr. Shadis may want
8 to put on the record some developments that I think
9 the Board can expect in the next few days from the
10 Coalition.

11 MR. SHADIS: Thank you, Mr. Silberg. This
12 is Ray Shadis again. Yes, and I'm glad that you made
13 that opening.

14 New England Coalition has in the works
15 three late-filed contentions and we anticipate
16 completing them and submitting them by the end of the
17 week and they -- hopefully the arguments with respect
18 to timeliness and the other thresholds to be met will
19 be adequate and contained within the filings, so I
20 don't want to discuss them now, but I did -- when the
21 Board is contemplating the schedule as it goes
22 forward, and I did want the Board to be aware that
23 these may be coming in.

24 JUDGE KARLIN: All right, that's good to
25 know. Thank you for letting us know that and we will

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1 at them and review them and obviously they'll be
2 briefed.

3 Let me, before we move on to the
4 discussion with the State of Vermont, if there have
5 been any on stipulated issues, we have a concern, the
6 Board has talked about your New England contention 4
7 and it contains in it a sort of statement in the
8 alternatives which we find problematic and perhaps it
9 can be the subject of discussion, stipulation or
10 briefing that would be resolved.

11 The contention, New England contention 4,
12 new contention 4, says among other things, "Entergy
13 Vermont Yankee, license application, including all
14 supplements for an extended power uprate of 20 percent
15 over rated capacity is not in conformance with" and
16 now we seem to have three alternatives -- "not in
17 conformance with the plant-specific original licensing
18 basis and/or 10 CFR Part 50, Appendix S, paragraph 1A,
19 and/or 10 CFR Part 100, Appendix A.

20 Now we think it would be very useful to
21 have -- it sounds to us like a legal issue which one
22 applies.

23 MR. SHADIS: Yes.

24 JUDGE KARLIN: And I think the Staff may
25 have a perspective on which one applies and obviously

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1 Entergy and NEC. So I think that needs to be briefed
2 and addressed before we get to a hearing.

3 MR. SHADIS: This is Ray Shadis again,
4 Your Honor, and we would be pleased to do that. I
5 will tell you that we'll work at that diligently. I
6 can't begin to think about a time line, but as soon as
7 possible and I will say that our counsel -- one of the
8 last acts that our attorney provided was working on
9 that particular contention and I will need to consult
10 with him and try to sort that out for you.

11 JUDGE KARLIN: Well, that's fine. Is this
12 something where there's any possibility of an
13 agreement amongst the three parties? It sounds like
14 you just don't want to be caught out in the cold on
15 this one of them. But pick one and let's go with it.

16 (Laughter.)

17 Or pick some combination or hybrid that is
18 right.

19 MR. SHADIS: Yes.

20 JUDGE KARLIN: I mean one of these has got
21 to be right and maybe it's a hybrid, but we need to
22 know which one of these we're trying -- you need to be
23 compliant with and perhaps the Staff, Mr. Turk, do you
24 all have a perspective on which applies?

25 MR. TURK: It's NEC's contention, I think,

1 they should identify which one they're concerned about
2 being met.

3 JUDGE KARLIN: Well, I think it would be
4 helpful if the Staff could also tell us which one you
5 think applies to -- legally applies to Entergy here.

6 They're just saying they don't think it
7 complies with the law and they're not sure which of
8 the regulatory regimes apply. Presumably the Staff
9 knows which regulatory regime applies or at least have
10 an opinion.

11 MR. TURK: It depends what the issue is
12 that NEC is asserting as to how it's not being
13 satisfied by Entergy.

14 JUDGE KARLIN: I see.

15 MR. TURK: You know, the original
16 licensing basis continues to apply in some respects,
17 Part 50 continues to apply. Part 100 applies. The
18 issue is what does NEC say is not being satisfied.

19 JUDGE KARLIN: Okay, so you're saying some
20 parts of each of those three apply or legally apply to
21 the uprate?

22 MR. TURK: Sure, and the issue is what do,
23 what particular aspect of plant operation is NEC
24 concerned with in its assertion that the applicable
25 legal standard is not being satisfied. Once we know

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1 what their claim is, then we can say okay, what's the
2 applicable legal standard.

3 So I think they should clarify in the
4 first instance what it is that they feel is remiss.

5 JUDGE KARLIN: Okay.

6 MR. TURK: I'd like to ask you a question
7 also about schedule, Your Honor. When you established
8 a briefing schedule for the seismic contention, we
9 were not aware that NEC would be filing its
10 contentions this Friday. We had understood previously
11 from NEC that they'd be filing yesterday or today.
12 But if they're going to be filing three contentions on
13 Friday, the 27th, our response time to those three
14 contentions would come in about the same time that
15 you're asking for briefs to be filed on February 7th.

16 So I'd like to request a modification of
17 that portion of the schedule that you just established
18 and see if it's possible for you to ask NEC in the
19 first instance to file its brief on February 7th to
20 assert what it believes is within the scope of its
21 contention and then to allow responsive briefs after
22 that from Entergy and the Staff and to give NEC a
23 chance to reply to our responsive briefs.

24 JUDGE KARLIN: I think that may make
25 sense.

1 MR. SHADIS: This is Ray Shadis again,
2 Your Honor. We're going to be really jammed up in
3 order to be able to put out two filings by that same
4 day. And I'm not certain why NRC Staff doesn't
5 believe that this can't go forward. We're not looking
6 at an issuance of a final SER until the 24th and the
7 first action thereafter was initially 10 days
8 following that. There's time in here to address these
9 things. I don't know why we need to jam them up to
10 the 7th.

11 MR. TURK: You know, I may have
12 misunderstood. What is due on the 7th? I thought all
13 parties were supposed to be filing their briefs on the
14 scope of the seismic contention on the 7th?

15 MR. SHADIS: That's correct.

16 MR. TURK: All parties. And what I'm
17 suggesting is that instead of all parties doing that,
18 that NEC files its on the 7th, giving Entergy and the
19 Staff a chance to reply to that afterwards when we're
20 also going to filing approximately on the 7th our
21 replies to your three new contentions.

22 MR. SHADIS: Well, addressing the Board
23 again directly, my understanding was that it was
24 briefed on the 7th and reply briefs on the 14th. We
25 all have the order in hand with respect to that brief,

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1 so we have the material that we are to be discussing
2 in our brief and reply brief. So I don't know why we
3 can't simply follow the Board's direction here and do
4 briefs and reply briefs.

5 JUDGE KARLIN: Well, I think that it is
6 somewhat news for the Staff to realize that three new
7 proposed contentions are going to be filed and that
8 will put some burden on them. Staff is well staffed
9 and there are good people over there, but it still is
10 a goodly amount of work to respond.

11 I would think in light of that, it's fair
12 enough to say and I don't think it's any additional
13 burden, to ask NEC to submit its brief in terms of the
14 scope of contention 4 on the 7th as we had previously
15 said and ask -- and then have the Applicant and the
16 Staff respond on the 14th, one week later, and they
17 have 10 pages each. And then NEC will get until the
18 21st to file a 5-page reply, if you wish.

19 All right? That's how we're going to
20 proceed on that. So we can get this behind us and
21 move on.

22 As to the second issue which is our
23 concern about which one is it, plant-specific original
24 licensing basis and/or 10 CFR Part 50 and/or 10 CFR
25 Part 100, we'll hold that in abeyance. If you all

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1 have any suggestions as to how to resolve that issue,
2 we'll look forward to it, otherwise, we may have to
3 set a schedule for you all to brief that issue, to
4 help it -- to get it resolved before we end up going
5 to hearing on this thing. But that is an area that is
6 ripe for resolution at some earlier juncture.

7 MR. SHADIS: Thank you, Your Honor, we'll
8 work on it.

9 MR. SILBERG: Judge Karlin, before we move
10 off the topic of the new contentions, since we're all
11 together, I want to get an understanding as to what
12 the time frame for response would be. I think there's
13 one, if you treat it as a contention at the beginning
14 of the process, if you treat it as a motion it would
15 normally be a 10-day and I guess not knowing the
16 volume of material that these contentions will
17 represent, I just want to make sure I know how much
18 time we have. Once we see it, we may need to ask for
19 an extension, but if I know going in what the nominal
20 case is, that will at least give me some idea what to
21 shoot for.

22 JUDGE KARLIN: I recognize the question
23 you're raising and I think our answer will be 25 days.
24 We use the normal schedule for responding to new
25 contentions or for contentions at initiation of

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1 proceeding, 25 days.

2 MR. SILBERG: Okay, that's fine.

3 JUDGE KARLIN: And then seven days for
4 reply.

5 MR. SILBERG: Great.

6 JUDGE KARLIN: Well, this will be in the
7 form or a motion for leave to file a new contention a
8 la 309(f)(2). And it will obviously have to meet the
9 criteria for any contention of C -- no, (f)(1).

10 So in any event, you will file it in the
11 form a motion for leave to file a new or amended
12 contention.

13 MR. SILBERG: Thank you, Your Honor.
14 That's the way it's shaping up.

15 JUDGE KARLIN: But rather than responding
16 like a motion, i.e., within 10 days, the Staff and
17 Entergy will have 25 days to respond with full force,
18 with whatever you've got, both as to the timeliness of
19 the motion and to the substance of the contention and
20 then there will be a 7-day reply period.

21 A good point, Mr. Silberg, thank you for
22 helping us clarify that. It could have been
23 confusing.

24 MR. SILBERG: Thank you.

25 JUDGE BARATTA: This is Judge Baratta

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1 again. Before we move on, I just want to respond to
2 your -- respond to Mr. Shadis' question about Mr.
3 Landsman. That was discussed, but to be honest with
4 you, I've forgotten the details. My suggestion would
5 be that you go on on ADAMS and try to locate the
6 transcript for that session and I think it was
7 discussed the second day if I recall correctly, but
8 that's about all I can help you with at this point.

9 MR. SILBERG: Judge Baratta, we've already
10 located the transcript and provided copies of it, both
11 to Mr. Shadis and Mr. Turk. And having read it, it's
12 not as illuminating as one might like.

13 JUDGE BARATTA: Sorry, I can't help you
14 there.

15 (Laughter.)

16 JUDGE KARLIN: Thank you, Judge Baratta.

17 MR. TURK: For the record, this is Sherwin
18 Turk. It's my understanding that what was involved
19 there was the fact that the witness had been involved
20 directly in some aspect of the expert opinion that he
21 was then going to be offering on behalf of the
22 Intervenor. And I don't know that that would apply
23 here.

24 But it's also my understanding after
25 talking to Staff counsel from the Palisades proceeding

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1 that the witness, Dr. Landsman, was in communication
2 with the conflicts counselor in OGC for clarification
3 of what he is and is not permitted to do.

4 So I think the witness himself has an
5 understanding of that and perhaps he should share that
6 with NEC. Maybe that would help Mr. Shadis and his
7 efforts to move forward.

8 JUDGE KARLIN: All right, that's helpful.

9 MR. SHADIS: Judge Karlin, and I want to
10 thank Mr. Turk for that input, but again, we did speak
11 with the witness yesterday and Mr. Turk and I are now
12 trading hearsay with respect to what the actual
13 circumstance is. All I wanted to do was to put the
14 Board on notice that we see something as problematic.
15 We're investigating it. We're trying to come to
16 resolution, ASAP. It might be helpful if the other
17 parties were to stipulate that there would be no
18 objection to Mr. Landsman offering testimony, but
19 absent that, we're doing the best we can to sort this
20 out.

21 JUDGE RUBENSTEIN: This is Judge
22 Rubenstein. I don't think that's within the purview
23 of the Board. All employees have certain
24 restrictions. Some are for life, if they've been
25 intimately involved in deciding certain decisions and

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1 some are for short periods of time. So I think the
2 regulations stand by themselves.

3 JUDGE KARLIN: Right. I agree with all of
4 that. And you have basically got until Friday,
5 February 3rd to submit to us with regard any joint
6 proposal on these issues. And if you all want to
7 stipulate this out, that will be fine. If not, and at
8 the appropriate time, NEC can submit a motion for some
9 delay if they have to seek a delay in submitting their
10 list of -- final list of witnesses. So let's move on
11 from that.

12 I think where we left off was Mr. Silberg
13 was now going to move to the discussions with the
14 State of Vermont, or Mr. Roisman, whichever. Are we
15 at that point now?

16 MR. SILBERG: I believe we are.

17 JUDGE KARLIN: All right.

18 MR. SILBERG: We did have a series of
19 calls, a call with Mr. Roisman and Ms. Hofmann. I
20 think we both agreed that there wasn't any need or
21 possibility for clarification, simplification of the
22 issues and I think there is a schedule matter that
23 probably best let Mr. Roisman.

24 We are comfortable with the current
25 schedule.

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1 JUDGE KARLIN: Okay.

2 MR. ROISMAN: Mr. Chairman, this is Mr.
3 Roisman again. It turns out and of course, we weren't
4 able to pin this down until we knew, as we now do,
5 with a fair amount of certainty the exact date on
6 which the final written statements of position are due
7 from the parties, that that date would be April 25th.

8 Our principal witness, although not our
9 only witness, is Mr. Sherman. And I don't know if the
10 Board is aware, but Mr. Sherman is actually -- he
11 moonlights for the State of Vermont. His real job is
12 that he is an ordained orthodox minister. And in that
13 capacity his time at the particular time of April 25th
14 is substantially taken up with the Easter celebration.
15 And as a result of that, it turns out that that moment
16 is right in the middle of when he is doing what he
17 does in his regular work.

18 So we were -- and we spoke to the Staff
19 and to the Applicant about the possibility, assuming
20 that the Staff continues on its current schedule and
21 the final SER comes out on the 24th of February, we
22 had asked them if they would object to us moving the
23 date from April 25th one week to the following week,
24 the date of which I don't have right here in front of
25 me, but to slide that date one week.

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1 We also raised with them the question of
2 whether or not they felt that the time between when
3 the testimony of everyone is filed and the rebuttal
4 testimony of everyone is filed, is adequate. We
5 thought it might be a little too tight and had
6 suggested adding an additional week into that portion
7 of the schedule as well. They were not convinced that
8 that was so, but our conversation quickly turned to
9 the question of the real issue which is well, when
10 were we going to hold a hearing?

11 If the hearing dates were such that moving
12 some of these dates wouldn't impact the hearing dates,
13 then it didn't seem as important. On the other hand,
14 if it looked like moving these dates would impact the
15 hearing date, then it would seem important.

16 So we had an extended discussion about our
17 availability starting in the middle of July which is
18 when the Staff and the Applicant believe on the
19 current schedule we would be ready for hearing,
20 assuming the Board was ready for hearing.

21 And based on that conversation, we came up
22 with the following from the State's perspective. The
23 State is able to have a hearing at which both Ms.
24 Hofmann and I can be present prior to the end of the
25 summer only in the second week of August. However,

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1 Ms. Hofmann is available the last two weeks of July.
2 I am not. And Mr. Silberg has suggested the
3 possibility of a bifurcated hearing process in which
4 the State issues were heard at one time; the NEC
5 issues were heard at another.

6 Ms. Hofmann and I have discussed that and
7 we believe that if the Board felt that that was an
8 appropriate thing to do, and if it were satisfactory
9 with NEC, that the last two weeks of July could be the
10 hearing on NEC contentions or as much of that as was
11 needed. Ms. Hofmann would be able to attend. I would
12 not, but since our role is substantially reduced, that
13 didn't seem to be a problem.

14 And then the hearing on the State
15 contentions could occur at the second week of August.
16 And I think that we believe that the State contentions
17 could be addressed in that one period.

18 So if those were the hearing dates, I
19 think then that the change in the schedule that we
20 suggested to both dates, both moving the 25th by one
21 week and moving the date for reply of testimony
22 wouldn't interfere with the hearing schedule. And
23 that the hearings would still be able to proceed on
24 those dates and the changes we suggest wouldn't
25 interfere with that.

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1 Anyway, that's sort of where we stood, and
2 as you can tell from what I'm saying, I don't think we
3 reached closure with the Staff or with Entergy on any
4 of those specifically and NEC was not party to that
5 conversation, so we did not have an opportunity to
6 hear from Mr. Shadis at all on any of those questions.

7 MR. SILBERG: And this is Mr. Silberg.
8 The one issue that we had no input on was the Board's
9 schedule during those weeks where we might have a
10 hearing.

11 MR. ROISMAN: Right. And one thing that
12 we did also suggest, I'm sorry I forgot to mention
13 this, that deals with scheduling, actually deals with
14 the Board. We move with great caution when we try to
15 suggest to the Board how it should do its business.
16 But it did seem to us that the intending filing by NEC
17 of three new contentions which we also thought was
18 going to have happened yesterday or today and now I
19 understand will happen by the end of the week, might
20 substantially alter a lot of the thinking of
21 scheduling or might not. We don't know the answer to
22 that and we thought maybe -- and the Staff, of course,
23 is still hoping that the 24th of February is going to
24 be their date, but if it slid by a week, much of our
25 concern is certainly with Mr. Sherman's scheduling,

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1 would be gone. Because then April 25th wouldn't be
2 the deadline for testimony. It would be a week later.

3 So we were thinking maybe this issue of
4 the scheduling of hearings and any modification to the
5 schedule itself on the items that I just discussed, we
6 might better discuss two weeks from now with the Board
7 than we can fully discuss them today. So we were
8 thinking if the Board were amenable, that we could
9 have a second phone call in two weeks, the purpose of
10 which would be to try to set the hearing dates then
11 and to see if we had reached an agreement about any
12 schedule changes to the current schedule as it's now
13 put together.

14 JUDGE KARLIN: All right, that's helpful.
15 We're happy to hear that you all have been discussing
16 the timing of the hearing. We are not here today able
17 to set or do we propose to try to set the dates for
18 the hearing, but we all have to think pretty hard
19 about that at this juncture and we look at the initial
20 scheduling order, as you all have studied it and we've
21 studied it and if you just lay that out, it does put
22 us into the middle of July, August time frame, looking
23 like the earliest opportunity if everything goes
24 according to Hoyle to have the hearings or the hearing
25 or hearings that we will need.

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1 As to the 25th being an issue for Mr.
2 Sherman and his ministry, we weren't aware that that's
3 around the same time as Easter. We'll take that into
4 consideration and try to see what can be done. We
5 think it's appropriate and we have planned this call
6 with the idea that another call will be needed some
7 time in the next month or so to then set down a
8 relatively hard schedule for the hearing dates
9 themselves.

10 Things, I guess, are going to happen in
11 the next few weeks. Included in that are the filing
12 of, I guess, these new contentions we've just heard
13 about. If we map that out on some sort of schedule
14 and figure the Board takes some time to rule on their
15 admissability or not, that may affect the schedule.

16 It may also be that the final SER, when
17 that is issued, there might be contentions filed based
18 upon any new information that comes out of that. That
19 might affect the schedule for hearing. We could
20 bifurcate the case and have different hearings on
21 different matters, but I think it's our general
22 preference to avoid that, particularly if the issues
23 are related, reasonably related. So we're not
24 prepared to do a schedule right now. And we are going
25 to look some sympathetically on the State's concern

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1 about Mr. Sherman and April 25th. It may not
2 materialize as a problem, but because the SER may not
3 come out on that date, but I don't think -- we're
4 going to work on that issue before the next month is
5 out, I think.

6 Between the State and Entergy and the
7 Staff, no other suggestions regarding resolution or
8 stipulation, this sort of thing?

9 MR. SILBERG: No, Your Honor. One thing
10 that would be helpful is if this time period that
11 we're talking about beginning let's say with the
12 middle of July through the end of the summer, if there
13 are times during that period when the Board knows it
14 cannot be available, it would help all of us.

15 JUDGE KARLIN: All right, right now we
16 don't have that information. I don't know that
17 anything is absolutely out of the question, you know.
18 But we'll have to address that when we get to it.
19 Right now, we think we've got enough on a schedule.
20 I mean because we have to think about and we ask you
21 think about it at some point how will filing a few
22 contentions, whether they're admitted or not, affect,
23 if at all, the schedule here, the request for new
24 contentions.

25 At this point, does the State contemplate

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1 any new contentions being filed, new or amended
2 contentions?

3 MR. ROISMAN: Not at this moment.

4 JUDGE KARLIN: All right. That's helpful
5 to know. And let me say at this point, I was going to
6 save it, but might as well cover it here, a lot of
7 this case hinges upon or is triggered by the Final
8 SER. There is some confusion on what exact date that
9 is as was raised in the Motion for Summary
10 Disposition. The question arose. That was briefed.
11 There is some ambiguity. It's probably the Board --
12 of the Board's making. We used the word "issuance."

13 For purposes of the schedule, both in the
14 initial scheduling order and for the deadlines we laid
15 out in our January 17th order on the deliberative
16 process privilege, Motion to Compel No. 3, at the end
17 there, we are going to approach this as the -- at the
18 time the deadlines trigger on the posting of the FSER
19 on ADAMS, so use that as a starting gun for all those
20 activities. Even in the January 17th document which
21 says issued and delivered, ignore the word "delivered"
22 and basically the time is when it's posted on ADAMS,
23 that's when the bell goes off for all the deadlines.

24 MR. SILBERG: Judge Karlin, could I ask if
25 the Staff would send out a notice when that happens so

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1 everybody knows, otherwise we'll all just be looking
2 up on the computer every couple hours or days.

3 JUDGE KARLIN: Yes, that's a good idea.
4 Mr. Turk, would you do that, please?

5 MR. TURK: Yes.

6 JUDGE KARLIN: Thank you. The same day
7 that it happens, please send an electronic notice to
8 everyone on the call, on the certification list. That
9 will be helpful. That should clarify that.

10 Anything else, Mr. Silberg, Mr. Roisman on
11 this?

12 MR. SILBERG: I don't have anything
13 further, Your Honor.

14 MR. ROISMAN: Nor do I, Your Honor. Thank
15 you.

16 JUDGE KARLIN: Okay, this is good. I
17 think we've covered a lot. Let me just see what else
18 we've got here. Okay, we have one matter we'd like to
19 -- we were currently grappling with the Motion for
20 Summary Disposition by Entergy and responded to by
21 NEC. And we have an issue we'd like to be -- a
22 factual question really for you, Mr. Silberg, if you
23 could help us with this.

24 MR. SILBERG: Yes.

25 JUDGE KARLIN: If everyone can hopefully

1 pull out their pleadings on this and look at New
2 England Coalition's answer of December 22nd and you
3 probably will remember this, Mr. Silberg. I'm sure if
4 you read it, you would have noted it. In there, Mr.
5 Shadis raises the concern and objection in terms of
6 this new requirement. There's a new requirement in 10
7 CFR 2.323(b) which calls for parties to make a sincere
8 effort to contact and resolve issues before filing
9 motions. And that's a new reg. It's untested.
10 There's no law on the subject. So there may be some
11 confusion at first.

12 But we're just trying to figure out what
13 actually happened during the call or calls, whatever
14 happened there. And Mr. Shadis has given a version of
15 that on page 6 of their December 22nd answer.
16 Hopefully, you can pull that out and look at that, Mr.
17 Silberg.

18 MR. SILBERG: Yes, I probably remember it
19 because that's where he accused me of being breezy.

20 (Laughter.)

21 JUDGE KARLIN: We would never accuse you
22 of being breezy. Well, Mr. Shadis -- well, you may be
23 breezy sometimes. I don't want to prejudge that.

24 And also there was an affidavit or a
25 declaration that Mr. Shadis filed on the subject and

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1 -- is that basically an accurate reflection of the
2 discussion -- the substance of the discussion you had?

3 MR. SILBERG: Well, without looking at the
4 affidavit, what I recall is I think it was the day
5 before we filed, bearing in mind that we knew we had
6 an obligation to consult with Mr. Shadis. I did call
7 him and I guess it was not an adversarial
8 conversation.

9 I try not to make my conversations with
10 anybody, whether they're Staff or the Applicant or
11 clients or Intervenors, adversary. And I said
12 something to the effect that we were planning to file
13 a motion for summary disposition, that I didn't
14 imagine that he was willing or in a position to
15 withdraw the contention. We thought that it had been
16 resolved, but I didn't expect that they would withdraw
17 it and therefore we would file.

18 I didn't attempt to negotiate whether we
19 would do part of a test or we would test something
20 other than what we said we wanted to, because we have
21 a test plan, presented that to the NRC. It's on the
22 record. The Coalition did not agree with that as
23 being adequate and the choices at that point basically
24 were is the resolution that we're going to test or not
25 going to test?

1 And I said to Mr. Shadis that I assumed
2 that they were not going to withdraw the contention,
3 i.e., that they would not agree that the testing was
4 unnecessary and therefore we would file the motion.

5 I believe Mr. Diaz was probably in my
6 office when I made that call, but I don't recall that
7 at this point.

8 MR. TRAVIESO-DIAZ: I was there. I heard
9 his part of the conversation, so I can vouch for both
10 sides.

11 JUDGE KARLIN: All right, and the date on
12 this? Mr. Shadis reflects that it was on or about
13 December 2nd.

14 MR. SILBERG: Right, I believe it was the
15 day before we filed, but I have to go back and --
16 think it was December 1st.

17 JUDGE KARLIN: December 2nd is the day
18 that you filed.

19 MR. SILBERG: And I believe that we had
20 the conversation the day before.

21 MR. TRAVIESO-DIAZ: I believe that's the
22 case.

23 JUDGE KARLIN: Let me ask another
24 question. Did you have any other conversations with
25 Mr. Shadis or anyone at NEC about this motion or the

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1 attempt to resolve it?

2 MR. SILBERG: Not at that point, no. I
3 think we had been through the issue. We had talked
4 about it in a variety of forums, including the pre-
5 hearing conference.

6 JUDGE KARLIN: Okay. Mr. Shadis, do you
7 have anything to add on that? Is that basically the
8 same thing you recollect?

9 MR. SHADIS: Yes. I would say that the
10 answer to your second question, Your Honor, would be
11 no, that the discussion or attempt to resolve
12 differences on this was limited to a phone
13 conversation that lasted, in my estimation, about
14 three minutes. There's some confusion on whether it
15 was on the first or the second, only because there
16 were two calls, one on an unrelated topic. And so
17 there may be a little bit of confusion there. But
18 basically what took place was -- and I didn't tumble
19 to this.

20 I am a pro se and not all that experienced
21 in this. I didn't tumble to what was going on. But
22 essentially, our view was that it was a perfunctory,
23 putting a check mark in the box of yes, we contacted
24 NEC, but if you look at the description in Part 2 of
25 this, the description is an earnest effort. It's not

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1 -- the effort wasn't there.

2 JUDGE KARLIN: Okay.

3 MR. TURK: Your Honor, this is Sherwin
4 Turk and I offer two sentences or perhaps three on the
5 issue?

6 JUDGE KARLIN: Well, we don't want to get
7 into a legal interpretation of the phrase. We just
8 wanted sort of the facts of what happened during the
9 call. If you can contribute to that, Mr. Turk, that
10 would be helpful, but --

11 MR. TURK: I cannot contribute anything
12 factually.

13 JUDGE KARLIN: Okay, well, then we don't
14 want to get into what the legal interpretation is.

15 What we would like to know, I guess I
16 would like to know and perhaps give you a day to
17 submit something Mr. Silberg, just simply all I want
18 to know what was the day you made this call, the first
19 or the second. Could you give me that by tomorrow?

20 MR. SILBERG: If I can find a record of
21 it, certainly. If I don't have a record of it --

22 JUDGE KARLIN: Right, right.

23 MR. SILBERG: I can recall it was the day
24 before we filed, whenever that was.

25 JUDGE KARLIN: Well, check your billing

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1 records. You might have it there.

2 (Laughter.)

3 You probably have that. You have to keep
4 track, you know. If you would, please check and if
5 you can tell us what your best recollection of what
6 the day was, that would be helpful. Thank you.

7 All right, let's see if we've got anything
8 else we want to cover here.

9 We want to schedule another pre-hearing
10 conference call. Given the amount of material we have
11 coming in, I'm not sure when we want to do that. Our
12 initial inclination would be to do it promptly after
13 the Final SER was issued, issued meaning posted on
14 ADAMS as we say here. It may be appropriate to have
15 something earlier than that. But I don't know that
16 the dust is going to clear -- how clear it will be
17 until after the Final SER comes out.

18 So we're going to take that under
19 advisement as to when we will have the next call, but
20 we are going to schedule one. We need to schedule one
21 some time in the next month or so I would think. It
22 might be after the FSER, after the 10 days occurs on
23 the FSER. Because what we contemplate is 10 days
24 after the FSER is issued, if you've got any need to
25 adjust the schedule such as by virtue of the fact that

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1 a few contentions have been filed or are going to be
2 filed, then we want to know that and sort that out and
3 see what that does to our schedule.

4 MR. ROISMAN: Mr. Chairman, this is Mr.
5 Roisman. Just one request. I'm starting a trial on
6 the 6th of February. I'll be in trial through the
7 15th and then I'm an extended business trip in a time
8 zone that is six hours earlier than this time zone,
9 the 16th through the 24th. While I'm in trial, being
10 on a conference call would be extremely difficult.
11 The only open day that's now scheduled is the 13th of
12 February. When I'm on the extended business trip,
13 it's not a problem. I can be available on a
14 conference call, but I would like you to not schedule
15 the call in the morning, if possible, because it would
16 mean I would have get on the call at 3 a.m. or
17 something like that.

18 So just in terms of scheduling, I just
19 wanted you to know what that schedule is for the month
20 of February.

21 JUDGE KARLIN: Okay, well, that's helpful.
22 I'll probably ask Ron to contact all of you at some
23 point to get your schedules so we can see where we are
24 and schedule the next conference call.

25 MR. TURK: Your Honor, Sherwin Turk. I

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1 wanted to ask you one clarification.

2 JUDGE KARLIN: Yes, please.

3 MR. TURK: It may be that the Staff's
4 posting of the SER on ADAMS comes after we're able to
5 deliver it to the Board and parties either
6 electronically or by overnight mail. I would assume
7 the important date is the date that we make it
8 available, via transmitted electronically or delivered
9 to the Board and parties.

10 JUDGE KARLIN: Well, I want an objective
11 date that's the same for everybody. If you're saying
12 that you're going to deliver it to everyone on the
13 simultaneous date at some point, perhaps earlier than
14 the posting on the ADAMS, that might be a better date
15 to use.

16 MR. TURK: Okay, Your Honor, thank you.

17 JUDGE KARLIN: Is that what you're saying?

18 MR. TURK: Yes, and it will be the date
19 that we put it in your hands and the parties' hands.
20 For instance, if we do an overnight delivery, it will
21 be the next day, rather waiting for ADAMS which may
22 not be available perhaps for up to a week after we've
23 already made it available to the parties and the
24 Board.

25 I would use the actual delivery date to

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1 the Board and parties as the trigger date.

2 MR. ROISMAN: Mr. Chairman, this is Mr.
3 Roisman. Mr. Turk suggested the possibility of
4 electronic, given the size of the FSER, its delivery
5 electronically does not seem to be satisfying
6 delivery. I don't mind the overnight delivery and I
7 don't mind using that as the date, but I don't think
8 an electronic delivery of a document of this size,
9 assuming that the emails of everyone would accept it,
10 is the equivalent of getting it.

11 JUDGE KARLIN: I think that is right and
12 I think I hear Mr. Turk saying they have physical hard
13 copy delivery, is that right, Mr. Turk?

14 MR. TURK: Yes.

15 JUDGE KARLIN: So you would on this one
16 date, send it out to everybody at the same time for
17 overnight delivery to everyone?

18 MR. TURK: Yes, we'll use that as the
19 trigger date.

20 JUDGE KARLIN: All right, let's use the
21 date -- the date of actual delivery which we will take
22 to mean the day after you send it out in the mail for
23 next day delivery. So if you send it out on February
24 22nd, then it's for next day delivery on the 23rd.
25 Then the date is the 23rd from which all other

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1 calculations of time will apply. Okay?

2 MR. TURK: Yes. We're conferring on the
3 process. Just a moment, Your Honor.

4 (Pause.)

5 Yes, Your Honor.

6 JUDGE KARLIN: Okay, and if you could
7 send, electronically file with us on the date that you
8 send it out for next day delivery, file something with
9 all parties saying we have sent it out for next day
10 delivery as of this day, everyone will then know that
11 the following day is the trigger date for the 10-day
12 period, the 30-day period, the 60-day period, all the
13 periods relating to the FSER. Okay?

14 MR. TURK: Yes.

15 JUDGE KARLIN: Great. Well, I think we've
16 covered all we need to cover in this call unless
17 someone else has something else that needs to be said.

18 MR. SHADIS: Your Honor, this is Ray
19 Shadis and I have a request and that is that the Panel
20 issue a memorandum and order with respect to this
21 scheduling conference as soon as possible.

22 I attempted to keep track of all of the
23 different obligations that we've acquired in this
24 conversation and I must admit I'm a little confused on
25 deadlines for the various actions that we have to

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1 undertake. So the sooner, the better, with respect to
2 getting an order out. That's the only thing.

3 JUDGE KARLIN: Well, we didn't contemplate
4 issuing an order.

5 We're supposed to be taking good notes.

6 (Laughter.)

7 MR. SHADIS: I see. Well --

8 JUDGE KARLIN: What dates do you have a
9 question about?

10 MR. SHADIS: I've done the best I can
11 here. I --

12 JUDGE KARLIN: Well, let's --

13 JUDGE RUBENSTEIN: This is Judge
14 Rubenstein. Maybe a conversation between Mr. Shadis
15 and Jonathan later?

16 MR. SHADIS: That would be fine. I could
17 call the Clerk, your assistant Jonathan Rund and try
18 to clarify with him what is expected and when.

19 JUDGE KARLIN: No, I don't think that
20 would be appropriate.

21 MR. SHADIS: Okay.

22 JUDGE KARLIN: Let me just see if I can
23 recap.

24 MR. SHADIS: Thank you, Your Honor. I
25 appreciate this.

1 JUDGE KARLIN: On February 3rd, 10 days
2 from now approximately, we would ask for joint
3 stipulations from the parties with regard to
4 expediting the proceeding, with regard to your
5 agreement on what constitutes the large transient
6 testing, scope of the large transient testing.

7 If you have an agreement regarding the
8 waiver of -- any claim to subpart G proceeding, please
9 submit it to by that date, the 3rd. If all of you can
10 waive that -- any claim to a G proceeding based upon
11 the identification of the witnesses, then we will be
12 able to adjust the schedule with regard to the final
13 identification of witnesses as currently set forth in
14 the ISO. So those things are due on February 3rd.

15 With regard to the scope of the alternate
16 cooling tower system, on February 7th, Mr. Shadis, we
17 are asking you or directing you to submit a brief to
18 us as to what you think the scope of what your
19 contention is on that matter. And that has to be no
20 longer than 10 pages.

21 On the 14th, one week later, the Staff and
22 Entergy have an opportunity to answer that or respond
23 to that. That will be 10 pages.

24 And one week later on the 21st, you have
25 a 5-page reply opportunity, Mr. Shadis.

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1 You have indicated to us you are going to
2 file, have three late-filed contentions by the end of
3 the week. We're not imposing a deadline on that. If
4 you want to file them, you file them. Obviously, the
5 requirements associated with that, you've indicated
6 you'd be doing that.

7 MR. SHADIS: Sure.

8 JUDGE KARLIN: Let's see, what else do we
9 have here?

10 MR. SILBERG: Twenty-five day response
11 time for the new contentions.

12 JUDGE KARLIN: Twenty-five day response
13 time for new contentions, whenever they are filed.
14 And the seven-day reply time for that.

15 I think those are the deadlines we laid
16 out. Oh, Mr. Silberg is going to give us
17 something by tomorrow just as to what his records
18 reflect or the date of when he called Mr. Shadis.

19 MR. SILBERG: While we were on I had my
20 secretary to give me back my time entries.

21 JUDGE KARLIN: Okay.

22 MR. SILBERG: And I do see on Friday, the
23 2nd, it indicates telecons with Sherwin Turk, Ray
24 Shadis, re summary disposition. As I remember the
25 contention was filed and I looked at it on my screen

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1 at about -- after 9 o'clock that night and I remember
2 the call was in early or mid -- I think like 1 or 2 in
3 the afternoon is my recollection.

4 JUDGE KARLIN: Okay, great, that's good.
5 Then we don't need to have anything filed tomorrow by
6 you, Mr. Silberg.

7 I think that's all we covered in terms of
8 deadlines.

9 All right, thank you all for participating
10 in the call. I found it helpful. I think it was
11 useful.

12 Court Reporter, are you still on?

13 COURT REPORTER: Yes, Your Honor.

14 JUDGE KARLIN: Do you have any questions
15 or identifications from the parties?

16 COURT REPORTER: I do. But do you want to
17 go ahead and close the transcript and then I'll ask?

18 JUDGE KARLIN: Yes, we'll close the
19 transcript and then you can do your technical work.

20 We're now adjourning the call. Thank you.
21 We will be scheduling a new conference call some time
22 in the near term. This matter is adjourned. Thank
23 you for your participation.

24 (Off the record.)

25 MR. SILBERG: Judge Karlin, I checked with

1 my assistant and there is one item that you didn't
2 cover in your summary and that is the issue of which
3 of the three alternates in the cooling tower
4 contention, the NEC was arguing should apply.

5 JUDGE KARLIN: We're back on the record,
6 please, Mr. Court Reporter.

7 We did not set out a time frame for that,
8 nor do we intend to in this call. I think we will
9 need to set a time frame for that, but we're not going
10 to do that now. Okay?

11 MR. SILBERG: Okay.

12 JUDGE KARLIN: Okay, thanks for the
13 checking in on that. We'll schedule that later.

14 MR. SILBERG: Okay. Thank you.

15 JUDGE KARLIN: With that, we will adjourn
16 and close the record. Thank you all for your help and
17 cooperation.

18 (Whereupon, at 12:42 p.m., the
19 teleconference was concluded.)

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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: 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
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