

**Official Transcript of Proceedings**  
**NUCLEAR REGULATORY COMMISSION**

Title: Entergy Nuclear Vermont Yankee

Docket Number: 50-271-OLA; ASLBP No.: 483202OLA

Location: (telephone conference)

Date: Friday, March 10, 2006

DOCKETED  
USNRC  
March 14, 2006 (11:17am)  
OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Work Order No.: NRC-912

Pages 769-888

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

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

UNITED STATES OF AMERICA

+ + + + +

NUCLEAR REGULATORY COMMISSION

+ + + + +

ATOMIC SAFETY AND LICENSING BOARD PANEL

+ + + + +

PRE-HEARING CONFERENCE

\_\_\_\_\_  
 In the Matter of:                    ||  
 ENTERGY NUCLEAR VERMONT        ||  
 YANKEE L.L.C., ENTERGY         ||  
 NUCLEER OPERATIONS INC.,       ||  
 Applicant.                         ||  
 \_\_\_\_\_

ASLBP No. 483202OLA  
Docket No. 50-271-OLA

Friday, March 10, 2006

The above-entitled conference was convened, pursuant to notice, at 11:00 a.m.

BEFORE:

- ALEX KARLIN, Administrative Judge
- ANTHONY BARATTA, Administrative Judge
- LESTER RUBENSTEIN, Administrative Judge

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

## 1 APPEARANCES:

2 On Behalf of the Applicant:

3 JAY SILBERG, ESQ.; and

4 MATT DIAZ, ESQ.

5 of: Pillsbury Winthrop Shaw Pittman

6 2300 N Street, N.W.

7 Washington, D.C. 20037

8 (202) 663-8063

9

10 On Behalf of the Intervenors:

11 State of Vermont:

12 ANTHONY ROYCEMAN, ESQ.;

13 SARAH HOFMANN, ESQ.; and

14 BILL SHERMAN

15 Department of Public Service

16 112 State Street, Drawer 20

17 Montpelier, Vermont 05260-2601

18

19 New England Coalition:

20 RAYMOND SHADIS

21 New England Coalition

22 P.O. Box 545

23 Brattleboro, Vermont 05302

24

25

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

## 1 APPEARANCES (Continued):

2 On Behalf of the Nuclear Regulatory Commission:

3 SHERWIN E. TURK, ESQ.; and

4 STEVEN C. HAMRICK, ESQ.

5 U.S. Nuclear Regulatory Commission

6 Mail Stop O-15D21

7 Washington, D.C. 20555

8 (301) 415-1533

9

10 Nuclear Regulatory Commission Staff Present:

11 RICK B. ENNIS

12 DARRELL J. ROBERTS

13 NEIL A. SHEEHAN

14

15 ALSO PRESENT:

16 JONATHAN M. RUND, ESQ., ASLBP Law Clerk

17 KAREN S. VALLOCH, ASLBP Administrative

18 Assistant

19 CRAIG NICHOLS, Project Manager, Uprate

20 Project

21

22

23

24

25

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

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

(11:09 a.m.)

1  
2  
3 JUDGE KARLIN: This is Alex Karlin, a  
4 judge of the ASLBP. This is March 10th. We're having  
5 a pre-hearing conference call in the matter of Entergy  
6 Nuclear Vermont Yankee L.L.C., Entergy Nuclear  
7 Operations, Inc. regarding the Vermont Yankee Nuclear  
8 Power Station in --

9 MR. TURK: Hello.

10 MR. ROYCEMAN: Hello. This is Tony --

11 MR. TURK: Hello.

12 JUDGE KARLIN: Hello?

13 MR. ROYCEMAN: Tony Royceman.

14 MR. TURK: Hi, Tony. Sherwin Turk with  
15 company.

16 JUDGE KARLIN: Thank you, gentlemen, for  
17 joining us late. We've already started.

18 MR. ROYCEMAN: Your Honor, I apologize.  
19 Our phone was not working. We repeatedly were  
20 switching phones, trying to get through on the line.  
21 So I would apologize.

22 And when you're ready, I'll introduce the  
23 people I have with me.

24 JUDGE KARLIN: Thank you. We'll get to  
25 that in a moment. Thank you.

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

1 MR. TURK: All right. And my apology  
2 also, Your Honor.

3 JUDGE KARLIN: We are at docket number  
4 50-271, ASLBP number 483202OLA, the pre-hearing  
5 conference call for purposes of trying to schedule and  
6 establish some deadlines for the hearing, evidentiary  
7 hearing, in this matter.

8 Could we now ask everyone to go around the  
9 table, as it were, and identify themselves? I will  
10 start with our offices here in Rockville. We have Dr.  
11 Baratta is here with us as well as Jonathan Rund, law  
12 clerk and lawyer, with the Board; and Karen Valloch,  
13 administrative assistant. At his location out West  
14 Judge Rubenstein is here with us, correct? Judge  
15 Rubenstein?

16 JUDGE RUBENSTEIN: Yes. I'm here.

17 JUDGE KARLIN: He's on the line. Now,  
18 state, could you please identify yourselves?

19 MR. ROYCEMAN: This is Anthony Royceman.  
20 I am one of the attorneys for the state. And I am in  
21 a separate location from Sarah Hofmann and Bill  
22 Sherman, who will now identify themselves from their  
23 location in Montpelier.

24 MS. HOFMANN: Sarah Hofmann.

25 MR. SHERMAN: And Bill Sherman.

1 JUDGE KARLIN: Welcome. NEC, please?

2 MR. SHADIS: Yes. This is Raymond Shadis  
3 representing New England Coalition.

4 JUDGE KARLIN: Good morning, Mr. Shadis.

5 MR. SHADIS: Good morning to you all.

6 JUDGE KARLIN: Perhaps Entergy, then,  
7 could tell us who you all have on line, Mr. Silberg.

8 MR. SILBERG: Yes. This is Jay Silberg at  
9 Pillsbury Winthrop Shaw Pittman. With me in our  
10 offices here is Matt Diaz. On the phone from the  
11 Vermont Yankee plant is Craig Nichols, the project  
12 manager for the uprate project.

13 JUDGE KARLIN: Great. Thank you. And,  
14 Mr. Turk, from the staff participants?

15 MR. TURK: Good morning, Your Honor.  
16 Sherwin Turk. With me is Steven Hamrick, who is an  
17 attorney who has just filed a notice of appearance for  
18 this proceeding. And also with me in this room is Mr.  
19 Darrell Roberts, who is branch chief of the section  
20 involved in the EPU amendment.

21 On a separate line, I believe, Rick Ennis  
22 has dialed in. He is the NRC project manager. For  
23 the recorder's purposes, I will ask him to identify  
24 himself.

25 MR. ENNIS: Yes. This is Rick Ennis

1 dialing in from home.

2 JUDGE KARLIN: Welcome. Welcome. Anyone  
3 else, Mr. Turk?

4 MR. TURK: That's all for the staff, Your  
5 Honor.

6 MR. SHEEHAN: Neil Sheehan from Region I  
7 Public Affairs is also on, Your Honor.

8 JUDGE KARLIN: Right. Very good. I was  
9 going to get to that. I appreciate that.

10 Is there anyone else on the line?

11 (No response.)

12 JUDGE KARLIN: Okay. Hearing none, we'll  
13 proceed. I guess I will just recite the basic ground  
14 rules. Obviously, the public and the press are  
15 welcome to participate or listen in on these  
16 proceedings. They're not here. So we don't need to  
17 worry about that.

18 This matter will, of course, be  
19 transcribed. And the transcription will be available,  
20 I guess, on ADAMS in about ten days. As a general  
21 rule, if everyone could try to identify themselves as  
22 they begin to speak by name and party, if possible,  
23 this would help us because we're on a conference call,  
24 not here in the same room together.

25 The main purpose of this call, as set

1       forth in the order, I think, of February 2nd of '06 is  
2       to try to firm up a briefing schedule and so that we  
3       can set dates for an evidentiary hearing in this  
4       matter and also for a limited appearance statement  
5       session or sessions.

6                       And with that in mind, I will articulate  
7       our agenda, as it were, or basic items we think we're  
8       going to try to cover here today. And when I'm done,  
9       I'm going to ask if anyone has any other items that  
10      they think need to be covered.

11                      Okay. The overview of the agenda that we  
12      want to cover today. I think there are five main  
13      matters. One is some preliminary matters dealing with  
14      witness lists, new contentions, motion to modify  
15      schedule.

16                      Two is the scope of NEC contention 4.

17                      Three is pre-hearing briefing schedule  
18      issues associated with the initial scheduling order.

19                      Fourth are the dates and conduct of  
20      hearing or hearings, including limited appearance  
21      statement proceedings, evidentiary hearing location,  
22      length of evidentiary hearing, and dates for  
23      evidentiary hearing.

24                      And the final item I think we would want  
25      to cover is to talk about scheduling the next

1 pre-hearing conference call.

2 Are there any other burning issues or  
3 suggestions or requests?

4 MR. SILBERG: One other item that I think  
5 I would like to raise is the scope of NEC 3, which we  
6 had some discussions about on the prior conference  
7 call.

8 JUDGE KARLIN: Okay. We'll try to put  
9 that in. What is the scope question there?

10 MR. SILBERG: Scope has to do with which  
11 transients NEC believed needed to be tested.

12 JUDGE KARLIN: Oh, right. Okay. Yes.

13 MR. SILBERG: NEC I believe was supposed  
14 to have submitted a position on that, which has never  
15 appeared.

16 JUDGE KARLIN: All right. Fine. I think  
17 that's a reasonable request. And we'll try to add  
18 that in.

19 Anything else? Other suggestions?

20 (No response.)

21 JUDGE KARLIN: Okay. With that, let's  
22 proceed to what I called sort of the first item, some  
23 preliminary matters. We note that the staff issued  
24 the final SER on March 2nd. And the trigger date, as  
25 we were calling it in the last call, is then March

**NEAL R. GROSS**

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

(202) 234-4433

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

1 3rd, the trigger date from most of the deadlines under  
2 our initial scheduling order.

3 So under that, what we see are several  
4 activities that are required. First, the new  
5 contentions based upon the final SER would need to be  
6 filed within 30 days. That by my calculation is  
7 April.

8 Third, I would like to ask right now if  
9 Mr. Shadis, NEC, or the state contemplate at this time  
10 filing any new or amended contentions or late  
11 contentions or whatever you want to call them based  
12 upon the final SER.

13 MR. ROYCEMAN: Mr. Chairman, this is Mr.  
14 Royceman. On behalf of the state, we do not  
15 anticipate filing any amended or additional  
16 contentions based upon the issuance of the final SER.

17 JUDGE KARLIN: All right. Let me expand  
18 that question a little bit. Do you have any other  
19 new, amended, or late contentions that you know of or  
20 you're contemplating at the moment?

21 MR. ROYCEMAN: No, we do not.

22 JUDGE KARLIN: Thank you.

23 Okay. Mr. Shadis?

24 MR. SHADIS: Yes. Thank you. This is  
25 Raymond Shadis, New England Coalition. We have just

1 now received the 900-page final SER. And we are  
2 reviewing it with respect to whether or not our  
3 contention is latent in it.

4 In addition to that, we do have three  
5 additional contentions that we are contemplating. The  
6 problem that we're having in presenting them  
7 immediately is procedural. That is, we are reviewing  
8 the available documents to try to conform to the  
9 requirement that we are in dispute with the licensee.  
10 So we are reviewing oral licensing documents and also  
11 recent issuances from NRC.

12 JUDGE KARLIN: All right. And let me ask  
13 on that. The staff, I believe, represented that they  
14 sent this out on the 2nd for arrival on the 3rd of  
15 March. Did you not receive it on the 3rd of March?

16 MR. SHADIS: I picked up the SER at the  
17 post office yesterday.

18 JUDGE KARLIN: And, Mr. Turk, I guess may  
19 I ask you? You all sent it out to him on the 2nd for  
20 arrival on the 3rd?

21 MR. TURK: We did, Your Honor. We have  
22 certified proof that the package was sent overnight  
23 mail to his post office box by U.S. Postal Service  
24 overnight mail. I don't know why Mr. Shadis pick it  
25 up until yesterday.

1           You may recall also that when I sent out  
2           the SER, I provided information as to how the SER  
3           could be found on the ADAMS system. So that Mr.  
4           Shadis had it available to him on ADAMS almost  
5           immediately starting March 3rd.

6           JUDGE KARLIN: Okay. That's enough. I  
7           appreciate that information. So that does indicate  
8           the U.S. certified mail receipt, return receipt,  
9           indicating arrival on the 3rd of March.

10          MR. TURK: It's not certified mail return  
11          receipt, Your Honor. It was U.S. Postal Service  
12          overnight mail. And we have documentation of that.

13          JUDGE KARLIN: Okay. All right. That  
14          question has been answered, new contentions  
15          contemplated. We have an answer from the state. And  
16          the NEC is I guess not able to answer, but you're not  
17          required to. I just want to get a good handle on your  
18          best estimate.

19          The next deadline that triggers from the  
20          filing of the SER is motions to modify the schedule,  
21          which originally would have been due before this  
22          conference call, but because of a week delay in the  
23          final NER, those are now due on Monday, the 13th,  
24          motions to modify the schedule in contemplation of new  
25          contentions or any other reason that you might think

**NEAL R. GROSS**

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

1 a change in the schedule is needed?

2 Does the state have any contemplation or  
3 plan to file such a motion? Mr. Royceman?

4 MR. ROYCEMAN: Yes. This is Mr. Royceman.  
5 Yes, Mr. Chairman, we do and, frankly, had hoped maybe  
6 that we would actually just discuss that here today on  
7 the phone. But, of course, we will also file, if that  
8 is appropriate, by Monday a formal request to modify  
9 the schedule.

10 And, if you like, I can discuss that now  
11 or we can discuss it. It seemed to me there were some  
12 places in your outline of issues where you wanted that  
13 discussed.

14 JUDGE KARLIN: Okay. Well, perhaps you  
15 can just tell us, if you could, the topic or the  
16 events that you are seeking some changes to. And  
17 maybe we have already got it covered in our outline.

18 MR. ROYCEMAN: Oh, okay. All right.  
19 Well, basically it begins from the premise that now  
20 that the schedule for the hearing has made clear that  
21 the first dates that we could hold a hearing are in  
22 September. And, inasmuch as the facility has already  
23 been issued the license under what we have to admit  
24 appears to be the somewhat dubious theory that there  
25 was no significant hazard involved in the

**NEAL R. GROSS**

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

(202) 234-4433

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

1 consideration of that, there is the pressure to  
2 maintain the kind of schedule that was originally set,  
3 which was set at a time when it was thought that until  
4 this hearing was over, there couldn't be any uprate  
5 seems to us to be unnecessary. And it does now begin  
6 to turn out that because everything has already been  
7 pushed out to this point, that some of these dates are  
8 we think unreasonably short.

9 JUDGE KARLIN: Okay. I think that is  
10 plenty. I get the gist of it.

11 MR. ROYCEMAN: Okay.

12 JUDGE KARLIN: You're suggesting because  
13 what appears to you that the earliest hearing date  
14 would be September, that perhaps some of the other  
15 intermediate dates can be relaxed.

16 MR. ROYCEMAN: Yes, without interfering  
17 with the, if you will, so-called critical path.

18 JUDGE KARLIN: Yes. Okay. That's  
19 helpful. I'm not sure whether we accept your premise  
20 that the earliest date is September. We intend to  
21 probe everyone and ask about some of these, your  
22 vacation plans, I guess, and whether or not they can  
23 be adjusted. But, that said, that is useful to know.  
24 Let's talk about that as we get to that issue later.  
25 I think we will get to that.

1 All right. So you plan to file some sort  
2 of motion to modify the schedule. Mr. Shadis, do you  
3 plan to file anything on the 13th? The deadline is  
4 the 13th.

5 MR. SHADIS: At this point, the answer is  
6 yes. This is Ray Shadis, the New England Coalition.

7 JUDGE KARLIN: Thank you. And could you  
8 briefly summarize what your concerns are, what you  
9 want to do to modify the schedule?

10 MR. SHADIS: Well, I think this is a rare  
11 moment when we concur with the state. Again, this is  
12 Ray Shadis.

13 JUDGE KARLIN: So am I hearing from both  
14 intervenors that you think the earliest that we can  
15 have this hearing is in September?

16 MR. ROYCEMAN: This is Mr. Royceman. Yes,  
17 we believe that is correct.

18 JUDGE KARLIN: Mr. Shadis?

19 MR. SHADIS: Yes. This is Ray Shadis. I  
20 did my very best to review the potential dates given  
21 the dates that the other parties had signaled for  
22 exclusion.

23 And I will say I have been unable to  
24 connection with my primary expert on contention 3, Dr.  
25 Happenfeld, who is currently in Australia. But, that

1       aside, I reviewed my own schedule. And we have made  
2       reservations for extensive travel through July and  
3       August. So I could not find where I could reconcile  
4       any of the dates for July and August.

5                   JUDGE KARLIN: All right. Thank you.  
6       Well, let's move on. Another item in the preliminary  
7       item area is I guess the witness list issue. We  
8       raised this in our last conference call. I guess the  
9       parties raised this in the last conference call. And  
10      since that time, you have filed a stipulation and  
11      waiver, I guess we would call it, all parties assigned  
12      that.

13                   And so we agree. The Board was just  
14      orally going to tell you now that you are not obliged  
15      to meet the requirement of the initial scheduling  
16      order, which is to file your final list of witnesses  
17      on the 13th of March, on Monday. That is going to be  
18      deleted from the scheduling order.

19                   Obviously you will be filing your  
20      witnesses when you file your testimony, currently set  
21      for 60 days from the final SER. So we're granting  
22      that, essentially, request to delete that requirement.  
23      And I hope that will help somewhat because I  
24      understood that NEC, in particular, was having some  
25      difficulty on establishing all of its lists of

**NEAL R. GROSS**

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

(202) 234-4433

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

1 witnesses by that early date.

2 Okay. I think now we can turn to the  
3 scope of NEC contention 4.

4 MR. TURK: Your Honor, this is Sherwin  
5 Turk. Can I address the question of the schedule for  
6 a moment?

7 JUDGE KARLIN: Yes, certainly.

8 MR. TURK: Thank you. I don't share the  
9 premise that hearings are not possible before  
10 September. Yesterday I sent out an e-mail to the  
11 Board and parties with a calendar showing which dates  
12 may be available for hearing on some but not all  
13 contentions.

14 There are numerous dates in July and  
15 August when we could go to hearing on the DPS  
16 contentions. Unless the state has more information to  
17 give us in terms of availability, I saw many dates  
18 when we could go to hearing on DPS contentions.

19 JUDGE KARLIN: Yes. That's a good point.  
20 I apologize for not going fully around the table and  
21 asking your thoughts on those issues. And that's  
22 useful input. And I think we are not operating on the  
23 assumption yet that, you know, July and August are  
24 unavailable.

25 MR. TURK: All right. And I would note

1 that on the schedule that I have, the dates of July  
2 10th through the 12th are available for DPS  
3 contentions on containment overpressure as well as the  
4 week of August 7th. And then we would have to wait  
5 until September for other dates that are clear for DPS  
6 contentions.

7 JUDGE KARLIN: Right. I see that. And we  
8 will get to that when we talk more specifically about  
9 dates for the hearing.

10 MR. TURK: And I would also note that the  
11 schedule does not reflect any input from Mr. Shadis  
12 because until this conference call, I had not received  
13 any information from him and I imagine nor had the  
14 Board in terms of his availability.

15 JUDGE KARLIN: That's correct. We have  
16 not received anything from Mr. Shadis. We will ask  
17 him that question when we get to this point.

18 MR. SHADIS: May I just interject, Your  
19 Honor? This is Ray Shadis.

20 JUDGE KARLIN: No, no. We'll proceed.  
21 And we'll get to that at some later point.

22 MR. SHADIS: Thank you, sir.

23 JUDGE KARLIN: So now we're turning to the  
24 -- let me ask the applicant, Entergy. Any thoughts in  
25 terms of motions to modify the schedule?

1 MR. SILBERG: No. We're not planning to  
2 file any.

3 JUDGE KARLIN: Do you posit that the  
4 hearing must wait until September?

5 MR. SILBERG: No. I agree with Mr. Turk  
6 that there are dates in July and August when certainly  
7 hearings on the DPS contentions should take place.

8 We did receive from Mr. Shadis this  
9 morning an e-mail which generally stated he was  
10 unavailable in July and August because of foreign  
11 travel, contractual commitments, and other matters,  
12 but it was not specific. It just said, "I'm  
13 unavailable in July and August." So I don't know if  
14 that's true for every date or --

15 JUDGE KARLIN: All right. We'll now turn  
16 to the scope of NEC contention C-4. We believe there  
17 are two parts to that question or issue. Roughly we  
18 could say one of them is the factual scope.

19 And the other is more of the legal  
20 standard scope, the factual scope being the one that  
21 was briefed in February, I guess, as to whether or not  
22 the contention is limited to the alternate cooling  
23 system towers and cells or whether it covers the  
24 entire system.

25 That has been briefed. We appreciate

1 those briefs. And we will be ruling on that soon, but  
2 we don't have a ruling for you today. I think we will  
3 hope to get something out to you in the next two  
4 weeks, as early as possible.

5 The second issue was one we discussed last  
6 conference call as well, which is what I would call  
7 the legal standard for contention 4. The contention  
8 reads, in part, that the application is "not in  
9 conformance with the plant-specific licensing basis  
10 and/or 10 CFR Part 50, Appendix S, paragraph 1.A  
11 and/or 10 CFR Part 100, Appendix A."

12 And our question last time was which one  
13 is it because we're now getting down to brass tacks,  
14 I guess, in terms of trying to have a hearing. And we  
15 kind of would like to know against what legal standard  
16 must compliance or inadequacy of compliance be  
17 measured.

18 Have the parties had a chance to talk  
19 about this any further or try to seek any stipulations  
20 or clarifications? Mr. Shadis?

21 MR. SHADIS: To my best recollection,  
22 since our last conference, we have not discussed that  
23 with Entergy.

24 JUDGE KARLIN: Okay. All right. That  
25 creates a problem. I think that sends some

1 stipulation or agreement we want to establish a  
2 schedule for you all to address that issue and so we  
3 can get clarification and ruling on it. And so we  
4 will be setting a briefing schedule for that.

5 We want the schedule to be such that it  
6 gives us or gives you a ruling before May 3rd, May 3rd  
7 being the date when you are obliged to submit your  
8 initial round of testimony. And we want you to be  
9 able to have the testimony focus on the right issues.

10 So the briefing schedule will be a  
11 one-week, two-week, three-week type of situation. And  
12 we'll issue that in the next week or so as well.

13 MR. SILBERG: Mr. Chairman?

14 JUDGE KARLIN: Yes?

15 MR. SILBERG: Jay Silberg, if I might. In  
16 setting that briefing schedule, I would request that  
17 you recognize that this is the contention of the  
18 coalition. So I would hope that they would go first  
19 and say what it is that they think the contention is  
20 about since it is theirs.

21 For us to respond without knowing their  
22 position I think would put us in a very difficult  
23 position because we don't know what their contention  
24 is about.

25 JUDGE KARLIN: Well, we heard some of this

1 last call. And I appreciate that concern. And Mr.  
2 Shadis also addressed it. But let me tell you this.  
3 I think there is some merit to what you say, but we  
4 need to understand, I guess, what deficiencies NEC is  
5 concerned about and is alleging exist. And they  
6 presumably can tell us against which standard they  
7 think it applies. We will then require the staff and  
8 Entergy to agree or disagree as to which standard  
9 applies.

10 What we don't want to happen is for us to  
11 get to a hearing and have NEC prove that in some way  
12 the application fails to conform to legal requirement  
13 A and for the staff and Entergy to say, "Ah, but  
14 that's the wrong legal requirement. It should have  
15 been B." Before the hearing, we want to know whether  
16 it's A, B, or C. And then we can all work towards  
17 that end.

18 MR. SILBERG: I certainly would not  
19 disagree with that. It's just a question of who goes  
20 first so we can respond to what NEC believes their  
21 contention is saying.

22 MR. SHADIS: This is Ray Shadis, New  
23 England Coalition. That's no problem for us. And I  
24 would now commit to getting a statement or a brief in  
25 on this legal question by next Friday, I guess it

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

1 would be, March the 17th.

2 JUDGE KARLIN: March 17th?

3 MR. SHADIS: Yes, Your Honor. Am I  
4 looking at the right month?

5 JUDGE KARLIN: Yes. That's one week from  
6 today, St. Patrick's Day.

7 MR. SHADIS: Yes.

8 JUDGE KARLIN: All right. That would be  
9 useful. And so, Mr. Shadis, NEC could file its  
10 initial brief on this issue on the 17th. The staff  
11 and Entergy would have one week, I guess, to reply.  
12 Well, I'm getting all of the signals here. Why don't  
13 we make it four days.

14 MR. SILBERG: Yes. If you could have that  
15 on Monday, March 27th, that would probably --

16 JUDGE KARLIN: Oh, no, no, no, no. I  
17 think we're going to say the 24th of March, one week.  
18 And then, Mr. Shadis, we'll give you a chance to reply  
19 on the 31st. Okay? And we're talking briefs ten  
20 pages and five pages for the reply.

21 MR. SHADIS: Thank you, Your Honor.

22 JUDGE KARLIN: Thank you. That would be  
23 helpful.

24 And what I want to make clear is that the  
25 brief needs to address, Mr. Shadis and Mr. Silberg,

1 first, Mr. Shadis, you need to tell us what  
2 deficiencies you are alleging and against which  
3 standards they might apply. For example, as I  
4 understand it, you have identified several  
5 deficiencies. A, B, and C let's call them.  
6 Deficiency A may be measured against regulation or  
7 standard X. Alleged deficiency B may be measured  
8 against a different one. I don't know. You have to  
9 tell me what you think.

10 MR. SHADIS: Thank you, Your Honor. Ray  
11 Shadis again. Thank you. We will.

12 JUDGE KARLIN: Okay. That will be  
13 helpful. The 17th, 24th, and 31st of March, initial  
14 brief, answer, and reply, 10, 10, and 5 pages. Great.  
15 That's good.

16 Pre-hearing briefing schedule is the next  
17 sort of item I wanted to cover, whether there are any  
18 other adjustments or activities we could do or should  
19 do to adjust this. You know, maybe this will be other  
20 items in the motion.

21 First, I note that the state, Mr.  
22 Royceman, you were indicating last time that there was  
23 an issue with regard to orthodox Easter being on April  
24 23rd and you wanted an additional week of time for Mr.  
25 Sherman. But, as I see it from the one-week delay 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](http://www.nealrgross.com)

1 the final SER, that is no longer a problem. And so  
2 we're okay there.

3 MR. ROYCEMAN: Yes, Mr. Chairman. That's  
4 correct.

5 JUDGE KARLIN: Okay. Next I want to raise  
6 an issue of the schedule. Hopefully you have the  
7 initial scheduling order nearby or at hand. It has a  
8 requirement at article 2, item 10. This is the  
9 deadline for filing motions in limine.

10 Let me back it up a little bit. There's  
11 obviously the direct testimony submitted. The  
12 rebuttal testimony is submitted. Fifteen days  
13 afterwards, after that, the rebuttal testimony,  
14 parties have the opportunity to pose questions that  
15 the Board should ask the witnesses.

16 At the same time, the parties have the  
17 opportunity to submit motions to conduct their own  
18 cross-examination of specific witnesses. And then 15  
19 days after those submissions, we have set forth the  
20 deadline for motions in limine.

21 I am contemplating accelerating the  
22 motions in limine date up to the same date as for  
23 filing of the direct examination questions and the  
24 cross-examination questions. And the reason for that  
25 is that my thought is that the parties are not

**NEAL R. GROSS**

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

1 required to share with the other parties the direct  
2 examination or the cross-examination plans. And,  
3 therefore, I don't see any reason to wait until the  
4 submission of the direct examination or the  
5 cross-examination proposals for anyone to file a  
6 motion in limine.

7 So discussion?

8 MR. ROYCEMAN: Mr. Chairman, this is Mr.  
9 Royceman.

10 JUDGE KARLIN: Yes?

11 MR. ROYCEMAN: I think that the logic of  
12 what you just said is impeccable but that it doesn't  
13 take into account -- and this will go to what we'll  
14 have in our motion that we file on Monday, but it goes  
15 to the problem of trying to get all of the things that  
16 are now due dealing with cross-examination questions  
17 and requesting an opportunity to do the  
18 cross-examination directly, rather than from the  
19 Board.

20 Now you would also add on that same  
21 deadline all to be done within that same short 15-day  
22 period motions in limine. That happens to be a topic  
23 on which I have some experience. And if one were to  
24 do a motion in limine and do it properly, you're  
25 talking about a very substantial amount of work 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](http://www.nealrgross.com)

1 briefing and involvement of your own expert in  
2 preparing that motion.

3 So that I think that would be an overload  
4 on what is on the schedule. If nothing is changed on  
5 the present schedule, you're talking about all of that  
6 happening on June the 6th.

7 So I think that that would be too much of  
8 a load to place on that date, particularly if the time  
9 periods that precede that for the preparation of  
10 direct, the preparation of rebuttal testimony, and  
11 then the time for doing questions are all kept at  
12 exactly the current numbers, as they are under the  
13 current schedule.

14 JUDGE KARLIN: Okay. All right. I think  
15 I understand that point. Mr. Silberg, your thoughts  
16 on that issue?

17 MR. SILBERG: I would agree with Mr.  
18 Royceman. I think to move it up so it's coincident  
19 with the filing of cross-examination plans and the  
20 rest -- and, by the way, the date that we have  
21 calculated for that is June 8th -- I think would be  
22 putting a burden.

23 I could conceive moving it up a week  
24 perhaps, but I think moving it up, you know, the  
25 amount of time that you're contemplating probably is

1 not a wise thing to do from my standpoint.

2 JUDGE KARLIN: Do you agree with the  
3 proposition that since most parties, if not everyone,  
4 will be filing any motion for direct examination by  
5 the Board or cross-examination by the parties, that  
6 both of those sets of materials will be filed in a  
7 confidential way so that it's not an event that will  
8 help or affect someone's motion in limine?

9 MR. SILBERG: I think that's correct. And  
10 I think that has been the practice in prior cases.

11 JUDGE KARLIN: Yes. Okay. Both of you  
12 are speaking to generally just an overload problem for  
13 moving it up.

14 MR. SILBERG: Correct.

15 JUDGE KARLIN: Mr. Shadis, any thoughts on  
16 this, moving this up two weeks?

17 MR. SHADIS: The only thing I can say,  
18 Your Honor, is that we are represented pro se. And  
19 this entire process is something of an unknown forest  
20 to us. I mean, if Mr. Royceman believes that this  
21 will be a load to him and to the state with their  
22 experience and resources, it certainly would be to us.

23 JUDGE KARLIN: All right. I can  
24 appreciate that. Mr. Turk, any thoughts from the  
25 staff on this one?

1 MR. TURK: I agree with the overload  
2 concern, but I have another concern that we have not  
3 addressed yet.

4 JUDGE KARLIN: All right.

5 MR. TURK: Under the current schedule, the  
6 initial testimony is due in May 2nd. And parties have  
7 to respond to that 20 days later. But if we're going  
8 to respond to testimony that raises issues that are  
9 outside the proper scope of the contention, it seems  
10 like we really should not have to do that.

11 And, rather than address matters in  
12 rebuttal that are outside the scope, we should be able  
13 to file a motion in limine to make sure that it's  
14 clear that those matters raised in the initial  
15 testimony which are objectionable did not have to be  
16 addressed in rebuttal testimony.

17 JUDGE KARLIN: Yes. That's an alternate  
18 approach that we're aware of and have thought about.  
19 It's a question of extending and delaying the  
20 schedule, I think.

21 MR. TURK: I don't think it would delay  
22 the schedule. I think if there's something that's  
23 improper and beyond the scope, we should file an  
24 objection to that promptly at the same time perhaps  
25 that we file our rebuttal testimony.

1 MR. SILBERG: Mr. Chairman, if I might,  
2 this is Jay Silberg. I don't see that there is any  
3 bar to doing that. The deadline for the motions in  
4 limine is a deadline. I think you could file that at  
5 any point in the process once you have the testimony.

6 JUDGE KARLIN: I think that's correct.  
7 It's certainly not a bar. And I think Mr. Turk would  
8 recognize and acknowledge that. He is raising a  
9 reasonable point. There is not a bar. If you want to  
10 file a motion in limine at an earlier point, fine.

11 If, for example, if in May, -- we all have  
12 this calculated, May 3rd -- the direct testimony is  
13 filed by everyone 60 days or whatever and someone has  
14 an objection to one of those witnesses or some of that  
15 testimony, they can and should file their motions in  
16 limine appropriately.

17 Then there is an answer that needs to be  
18 briefed. That will take another. So we've got ten  
19 days from the 13th. That's from the 3rd. And there's  
20 an answer filed. And then the Board presumably will  
21 have to look at it and rule on it.

22 I don't think we're going to be in a  
23 position to have a ruling for you by the 23rd. Nor  
24 are we going to postpone the 23rd, which is the date  
25 for rebuttal testimony, merely because a motion is

1 pending. That's not our contemplation at this point  
2 in any event.

3 So what would happen is the parties would  
4 put through a little bit extra effort to provide  
5 rebuttal testimony, even to those portions of the  
6 direct testimony they might think need to be deleted  
7 or excluded. I see your point, Mr. Turk.

8 MR. TURK: There's a very strong practical  
9 problem here. Even though Mr. Silberg is correct that  
10 we could file a motion in limine sooner, --

11 JUDGE KARLIN: Yes.

12 MR. TURK: -- if hypothetically a party  
13 submits testimony which raises improper matters, until  
14 we get a ruling on the proper scope of that testimony,  
15 we don't know if we need to address it in our rebuttal  
16 or not.

17 And, for instance, if hypothetically an  
18 intervenor in some case, perhaps not this one, raised  
19 additional matters in their testimony that we believe  
20 are outside the scope of the admitted contention, it  
21 would be wrong for us to have to devote resources to  
22 responding to it and would take additional time to  
23 respond to it when it would have been simpler simply  
24 to file a motion in limine and say, "That matter is  
25 beyond the scope, and we do not need to respond to it

1 in our rebuttal."

2 JUDGE KARLIN: While I understand the  
3 logic of that, it would make your job perhaps easier,  
4 it would delay the schedule, and we think it might be  
5 easier for us to deal with it, all those motions, at  
6 a later point.

7 Let me say that my current read is that if  
8 you file a motion in limine in response to the initial  
9 testimony and are seeking to have certain initial  
10 testimony excluded and you don't have a ruling by the  
11 20th day, you had better file some testimony to rebut  
12 it. Do not operate on the assumption that your motion  
13 will be successful.

14 MR. SILBERG: This is Mr. Silberg again,  
15 if I might. There is another possibility. And that  
16 is to speed up the briefing process, we are allowed to  
17 file oral motions. We can certainly have oral  
18 responses. And I suspect one possibility is to have  
19 a status conference, pre-hearing conference, at which  
20 these things could be argued orally and presumably a  
21 ruling made promptly thereafter.

22 JUDGE KARLIN: That has a possibility.  
23 And I think we do -- well, I can't speak entirely for  
24 all of my comrades, but I think we, the Board, will be  
25 having other conferences, pre-hearing conferences,

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

1 between now and the hearing. And there may be  
2 opportunities for that, yes.

3 MR. ROYCEMAN: Mr. Chairman, this is Mr.  
4 Royceman. Mr. Turk raises I think a point which we  
5 could make probably at a number of stages in the  
6 schedule. And it goes back to the point that I was  
7 making earlier and that I will make later.

8 If there is a good reason to squeeze the  
9 schedule to the point where we create these  
10 inefficiencies, then obviously the inefficiencies have  
11 to be endured.

12 But clearly the inefficiency of any party  
13 having to prepare testimony on issues which are  
14 ultimately ruled out of the proceeding wouldn't be  
15 worth it if there was nothing to be gained, if we  
16 didn't gain anything. And it's difficult for me to  
17 see why we would do that.

18 Now, is there something that would lead us  
19 to believe that there are substantial inefficiencies?  
20 We already know that there is an ongoing battle  
21 between NEC, on the one hand, and Entergy and I guess  
22 the staff, on the other, about the scope of what NEC  
23 can say and what its contentions have to say. And I  
24 imagine that, regardless of the rulings that the Board  
25 is going to make on some of that in the next couple of

1 weeks, that is going to continue.

2 In addition, there are issues regarding  
3 the scope of the appropriate testimony from the staff  
4 and the applicant since it appears from the SER that  
5 they have dramatically changed the justification for  
6 using containment overpressure from what they  
7 originally proposed. Certainly we have not made a  
8 decision on this, but there is certainly the  
9 possibility that the state will take the view that  
10 they may not offer PRA evidence, that that is outside  
11 the scope of the contention that we raised, which was  
12 based upon the license application as it was presented  
13 at the time of the notice of hearing.

14 All that is to say that this is a case in  
15 which the scope of contentions could be a major  
16 question, not easily dealt with in some oral hearing,  
17 but requiring a fair amount of briefing and  
18 consideration by the Board and counter-briefing and so  
19 forth.

20 On top of that, we have the question about  
21 whether or not expert witnesses will be excluded,  
22 which is one of the other ways in which in limine  
23 motions are used. And those are inherently complex  
24 motions. Again, if a whole area of testimony of a  
25 party is going to be excluded on the basis that the

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

1 witness who is offering it is not going to be allowed  
2 to testify, it dramatically will change what the  
3 rebuttal testimony is going to look like.

4 All of that would suggest that if, instead  
5 of contracting, we expanded a little on the periods of  
6 time that are now in the schedule, we could gain the  
7 efficiencies that everybody seems to think are  
8 worthwhile at no cost.

9 And I would note since there has been some  
10 discussion about it, that the suggestion that we could  
11 actually start the hearing on the week of July the  
12 10th, on which there are, at most, three available  
13 hearing days, disregards that one or more of those  
14 days are probably going to be used for limited  
15 appearances and that it would certainly not be  
16 efficient to take an issue as complex as the one that  
17 the state is raising and try to split that between one  
18 or one and a half hearing days during the week of the  
19 10th of July and then have it go over to some other  
20 time.

21 If that is true, then we are really  
22 talking about hearings that are not realistically  
23 available until sometime in September, at least on the  
24 DPS issues.

25 All of that is to say I think we have the

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

1 time to have a more efficient hearing process. And I  
2 don't see a good reason why we shouldn't take  
3 advantage of it.

4 JUDGE BARATTA: Mr. Royceman, this is  
5 Judge Baratta. I'm a little confused by some of the  
6 underlying philosophy. I mean, you have put forth  
7 what you believe to be significant safety issues that  
8 have a special impact on the state and community.  
9 Yet, I keep hearing that while the license has been  
10 granted and the plant is operating, et cetera, that  
11 seems to be completely inconsistent.

12 If these are serious safety issues, are  
13 you now saying that maybe they're not as serious?

14 MR. ROYCEMAN: No, not at all, Judge.  
15 What we're saying is that the amount of time that  
16 we're talking about during which the plant -- first of  
17 all, the plant, as you may know, has not gone up to  
18 full 20 percent. And most of the safety concerns that  
19 we had are more likely to be triggered at those higher  
20 levels.

21 But we're also talking here about the fact  
22 that we're talking about a few months when the plant  
23 might be running versus an inadequate consideration of  
24 the merits of our concerns by the Board.

25 And yes, it would be ideal if the plant

1 were not running and we weren't under that kind of  
2 gun, but the reality is that we would rather get a  
3 full and fair airing of these issues in front of a  
4 board with this expertise than we would be to rush to  
5 hearing and rush to judgment and have this not  
6 adequately considered.

7 If we are wrong and the Board mistakenly  
8 agrees with us, the applicant and the people in the  
9 State of Vermont have a great deal at stake also. So  
10 it works both ways. And to our way of thinking, it's  
11 better to let the process be due, even if the plant is  
12 now already powering up, than it would be to  
13 unnecessarily rush it.

14 And I think that under the current  
15 circumstances, we have the time and that it would be  
16 to the benefit of everyone to take advantage of it.

17 JUDGE KARLIN: All right. Any other --  
18 Judge Rubenstein, do you have any questions or points  
19 you want to make?

20 JUDGE RUBENSTEIN: No. I think I followed  
21 it rather well. I've sort of agreed that we ought to  
22 go in a deliberate way and make sure we cover all of  
23 the issues.

24 JUDGE KARLIN: Okay. Good. All right.  
25 Well, I think that covers generally the pre-hearing

**NEAL R. GROSS**

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

1 briefing schedule adjustments we were thinking through  
2 and thinking about.

3 MR. SHADIS: Judge Karlin, this is Ray  
4 Shadis, New England Coalition. I do have a question  
5 with respect to something that was discussed here.  
6 And I didn't get a chance to get a word in on it.

7 JUDGE KARLIN: All right.

8 MR. SHADIS: Mr. Silberg raised the  
9 proposition of oral argument on objections during  
10 pre-hearing conferences or teleconferences such as  
11 we're having.

12 I would like to comment that this weights  
13 very heavily against the intervenor, in part, because  
14 we have to be awful fast on our feet to answer the  
15 legal arguments that would be presented in such  
16 objections.

17 And then, secondly, it is to the advantage  
18 of the objector if they raise those objections without  
19 pre-notice that they can prepare to defend the  
20 objection. And the party against whom they are  
21 objecting has no preparation time and simply has to  
22 operate extemporaneously.

23 I think that if the Board thinks it wise  
24 to entertain oral argument on objections, that there  
25 ought to be some provision for notice so that we can't

1 be surprised in these hearings by the objections.

2 JUDGE KARLIN: All right. Okay. We hear  
3 that concern. And we'll take that into consideration.  
4 We understand that some of the issues with regard to  
5 scope, motions in limine that would deal with the  
6 scope and the use of various experts, might be pretty  
7 important and should not certainly be done in an  
8 impromptu or casual way. And everyone will have an  
9 opportunity to address the issue when it comes up if  
10 they come up.

11 JUDGE RUBENSTEIN: This is Judge  
12 Rubenstein.

13 JUDGE KARLIN: Yes?

14 JUDGE RUBENSTEIN: Mr. Royceman, this will  
15 come up later, I'm sure, under schedule. But it was  
16 coupling the limited appearance process with some of  
17 the DPS testimony. And you may want to address that  
18 now that we were contemplating decoupling those  
19 periods and perhaps having that maybe limited  
20 appearances and that we would want to hear opinions on  
21 that.

22 JUDGE KARLIN: Okay. Good. Now, can we  
23 hold that off just for a moment? I think that will be  
24 pretty quick, but there is one other thing I think we  
25 might cover first. And then we will get to that.

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

1 That is a good point that we are contemplating the  
2 limited appearance statement proceeding to be at some  
3 earlier date and not necessarily have to wait until  
4 the evidentiary hearing begins. We will talk about  
5 that in a moment.

6 Before we do, I think this might be a  
7 reasonable time to ask, I guess -- is it Mr. Silberg?  
8 Did you raise the NEC contention number 3, scope  
9 question?

10 I mean, this is something that came up  
11 last time. And perhaps I would like to ask you to  
12 confront that or address that right now.

13 MR. SILBERG: Yes. We did have a  
14 discussion on that last time. And, as I recall the  
15 discussion, -- and Mr. Diaz can correct me if I am  
16 wrong -- we had attempted to reach a stipulation with  
17 Mr. Shadis on the scope of the contention.

18 There are two transients which we  
19 understood the contention to be addressed at that  
20 testing was needed for. And Mr. Shadis had suggested  
21 that maybe there were others, although I don't believe  
22 he had ever formally stated that in any pleading, but  
23 he was going to think about that and I think file  
24 something with the Board, suggesting, at least setting  
25 forth, what he thought the scope of the contention

1 was. And we've heard nothing back from Mr. Shadis on  
2 that topic.

3 Again, it's something I don't want to have  
4 sitting around until the last minute and then suddenly  
5 we find that we have testimony that we are not  
6 prepared to address with witnesses that we haven't  
7 identified. That's why we raised it a month or more  
8 ago. And we've had no progress in resolving that.

9 And my recollection was that Mr. Shadis  
10 was going to address that in a filing either, you  
11 know, informally to us or to the Board. And then we  
12 were going to respond.

13 I think Mr. Shadis was going to put a  
14 pleading in to the Board saying, "Here is what I think  
15 the scope of that contention is."

16 JUDGE KARLIN: All right. Well, we all  
17 remember that conversation the last session. And I,  
18 quite frankly -- maybe I missed it, but I thought Mr.  
19 Shadis had filed something acknowledging that there  
20 were two specific large transient tests that NEC had  
21 in mind that they thought needed to be done and  
22 weren't being done, but perhaps I've got that wrong.

23 Mr. Shadis?

24 MR. SHADIS: One of the defenses, if you  
25 will, in our filing of our initial contention was that

**NEAL R. GROSS**

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

(202) 234-4433

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

1 the General Electric template and their capital letter  
2 report required full transient testing on two systems.  
3 Thereafter, arguments went to the general proposition  
4 that there should be full transient testing.

5 . And in reviewing the licensee applicant  
6 materials and NRC filings since, the single additional  
7 full transient test for station blackout came up.

8 And, anyhow, I think that at this point we  
9 were still trying to sort out whether or not that was  
10 included in our general proposition that full  
11 transient testing was necessary.

12 MR. SILBERG: Well, it seems to me, Mr.  
13 Chairman, that we need to resolve this now. I was  
14 really surprised that we didn't get something from Mr.  
15 Shadis so we could have the Board address that in  
16 ample time to know prior to filing of our testimony  
17 what the scope was.

18 We thought it was quite clear. And it was  
19 really at the last minute that Mr. Shadis suggested  
20 that there might be other transients that needed to be  
21 looked at. And I would urge the Board to set a firm  
22 schedule for Mr. Shadis to put that pleading in so we  
23 can address it.

24 JUDGE KARLIN: Yes. I think we have a  
25 situation, as everyone I think knows, where the

1 initial written testimony is filed at a certain date.  
2 The 60th day we have it. And then the rebuttal  
3 testimony is filed 20 days thereafter, I guess we have  
4 it. And these are, as I see it, two fuselage that  
5 occur at the same time.

6 It's not sequential. Each side files its  
7 initial written testimony. This expedites the  
8 proceeding. That's what the rules say. It may not be  
9 the most efficient, but I think the parties need to  
10 have some understanding of what the issue is so that,  
11 Mr. Shadis, you can obviously file your initial  
12 testimony appropriately and the Entergy can file its  
13 initial testimony. They're responding in the dark, as  
14 it were, if they don't know what your complaints are,  
15 what you're concerned about.

16 So I think we will take that under  
17 advisement. And I think we do need to ask you or  
18 direct you, Mr. Shadis, to help us be more -- to  
19 understand what your concerns are and what large  
20 transient tests you think need to be done. And then  
21 we can all focus on that as to whether they need to be  
22 done or not and a briefing schedule. I think we'll  
23 probably have to set a briefing schedule for that as  
24 well.

25 I'm not sure whether you want to agree to

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

1 the 17th, 24th, and 31st on that issue as well.

2 MR. SHADIS: Your Honor, one of the  
3 holdups here is that our principal witness on this,  
4 Dr. Happenfeld, left on the 28th of February, I  
5 believe, for an extended trip out to Australia.

6 I have not been able to confer with him on  
7 this. And he is scheduled back the 28th of March. So  
8 it would be helpful if we had a week or ten days  
9 beyond that.

10 And this was something I was going to  
11 address in the filing on Monday with respect to  
12 schedule amendment. We simply -- and I have been  
13 unable to plan in such a way as to keep our experts on  
14 tap and ready to go without understanding, you know,  
15 where we were in the scheduling process.

16 So, in any case, we are somewhat hampered.  
17 I would make this commitment that I will, with Mr.  
18 Silberg's agreement, contact Entergy this week; that  
19 is, this week coming, and try to come to terms on  
20 this. And if that's not able, we will file a brief at  
21 the very earliest possible time.

22 MR. SILBERG: We tried to do that after  
23 the last call. And we sent Mr. Shadis a detailed  
24 analysis of why we thought the scope of the contention  
25 was limited to the two transients. We have never

1 gotten a response back to that, to my knowledge.

2 If we wait until the 28th of March and  
3 then start a briefing process, we're really, I think,  
4 being unfairly penalized in terms of the deadlines of  
5 trying to get testimony put together.

6 We thought the contention was fairly  
7 straightforward. And, actually, we thought that this  
8 was a no never mind to get an agreement. Contention  
9 by definition has to be specific. As at this late  
10 date, we're struggling to understand the scope of the  
11 contention, then I think there's something amiss.

12 We were always -- and I think everything  
13 that we have filed in this case shows that there are  
14 two transients, all the documents that we have made  
15 available. We have gotten nothing in response from  
16 NEC that would suggest anything to the contrary.

17 JUDGE KARLIN: Mr. Silberg, can I ask,  
18 when did you send? You said you sent something to Mr.  
19 Shadis and me. When did you send that?

20 MR. SILBERG: Let's see. I have it in my  
21 computer. I had it a minute ago.

22 JUDGE KARLIN: Okay.

23 MR. SILBERG: It was in February. Let's  
24 see. I have an e-mail from Mr. Diaz addressed to Mr.  
25 Shadis, Mr. Turk dated February 2nd. I believe there

1 is another one dated February 1st. So, I mean, it  
2 goes back over a month.

3 JUDGE KARLIN: Okay. And, Mr. Shadis,  
4 when did Dr. Happenfeld or whatever leave for  
5 Australia?

6 MR. SHADIS: Not until late in February.  
7 And my recollection is February 28th, but I can't be  
8 sure about that. I will say -- and I am again caught  
9 at some small disadvantage here trying to go back  
10 through my computer files and find what they sent.

11 My recollection of it was that, number  
12 one, it was not extensive; number two, that it was  
13 argumentative and repetitive of what we had already  
14 gone through in our conversation. I did not believe  
15 that it needed to have a response.

16 MR. SILBERG: Well, Mr. Shadis, the  
17 February 2nd e-mail says, "I look forward to receiving  
18 your signed stipulation on hearing procedures." And  
19 we sent you a stipulation that I believe said what the  
20 scope of this contention was all about. It was dated  
21 February 3rd. It was in form ready to be signed.

22 It was not argumentative. It was a  
23 stipulation as to what the scope was.

24 JUDGE KARLIN: Okay. Well, we want to  
25 have oral argument on this right now. We will not.

1 But I think we do need to nail this down and  
2 understand what the hearing is going to cover, what  
3 your concerns are, what NEC's concerns are so we can  
4 focus on that.

5 So I will ask Mr. Shadis or direct you to  
6 respond. We have two options, I guess. Let me see.  
7 Let me think about this. I'm going to go offline for  
8 a minute here. Mr. Rubenstein, if you would just hold  
9 for a minute? I don't think we're going to call you,  
10 but let me break here.

11 JUDGE RUBENSTEIN: Okay.

12 MR. TURK: Before you go off, may I  
13 express some thoughts? This is Sherwin Turk.

14 JUDGE KARLIN: Yes, Mr. Turk?

15 MR. TURK: I'm new to this proceeding. So  
16 I am not familiar intimately with the transcript of  
17 previous oral arguments that were held before I  
18 stepped into the case last summer.

19 JUDGE KARLIN: Yes.

20 MR. TURK: But I'm looking at your  
21 decision of November 22, 2004, in which you ruled on  
22 the admissibility of this contention. And you were  
23 very clear in pointing out that the contention is  
24 premised upon the lack of two transient tests, which  
25 Entergy had sought an exception from having to

**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 perform. And those were the main steam line isolation  
2 valve closure, a rejection, generator rejection, of  
3 loads. There were two tests only. Your decision  
4 specifically said that is the basis for the  
5 contention.

6 In today's telephone conference call, I  
7 hear Mr. Shadis saying he's now contemplating or he  
8 has to decide whether the scope of his original  
9 contention included station blackout testing. Well,  
10 it's too late for him to tell you now that "Oh, I  
11 meant to include something else" or "I thought I was  
12 including something else" when the contention was  
13 clearly written and it was premised only on the  
14 Entergy request for an exception to having to perform  
15 those two tests.

16 That was the basis for the contention.  
17 That was the basis for the hearing. And that's why  
18 we're going forward on this contention. Although it's  
19 interesting for the parties to submit briefs, the  
20 issue was decided long ago.

21 And I don't understand why we would not  
22 only have to brief the issue but why we would even put  
23 more time into the schedule and delay hearings to  
24 allow a new issue to be raised as part of a contention  
25 that was filed and was required to be specific back

1 when it was filed.

2 MR. ROYCEMAN: Mr. Chairman, this is Mr.  
3 Royceman. I was under the impression you just said we  
4 weren't going to have oral argument.

5 JUDGE KARLIN: Yes.

6 MR. ROYCEMAN: And the call has already  
7 gone an hour and 15 minutes. If possible, I would  
8 like us not to have to argue these issues if the Board  
9 is telling us that we're not supposed to argument  
10 them.

11 JUDGE KARLIN: Right. I appreciate  
12 comments. I think it was worth reminding us but not  
13 arguing on the issue. And the fact that two tests  
14 were the original basis for the contention and the  
15 primary focus of it -- and that is true -- I'm not  
16 sure is entirely dispositive here.

17 We're going to go offline for a moment.  
18 Mr. Rubenstein, we probably won't call you at the  
19 moment but just hold on.

20 JUDGE RUBENSTEIN: I can pick it up on my  
21 cell if it's important.

22 JUDGE KARLIN: Okay. Hold on, please.

23 (Whereupon, the foregoing matter went off  
24 the record at 12:13 p.m. and went back on the record  
25 at 12:15 p.m.)

1 JUDGE KARLIN: We're back on the record  
2 here. This is Judge Karlin. I think what we want to  
3 do is to take a brief recess if you all will stay on  
4 the line I think maybe ten minutes maximum, where we  
5 would call Judge Rubenstein on a separate line if  
6 that's okay with Judge Rubenstein.

7 JUDGE RUBENSTEIN: Fine.

8 JUDGE KARLIN: Okay.

9 JUDGE RUBENSTEIN: Do you have my cell  
10 number?

11 JUDGE KARLIN: Yes. Yes, we do. And I  
12 think we will just have to call you on that separate  
13 line. Court reporter, we'll go off the record at the  
14 moment. We will reconvene. It should be now 12:12.  
15 We'll reconvene around 12:22 or something like that  
16 and try to give a ruling on this or how we want to  
17 approach it. All right?

18 Thank you. We are currently off the  
19 record and temporarily adjourned.

20 (Whereupon, the foregoing matter went off  
21 the record at 12:22 p.m. and went back on the record  
22 at 12:27 p.m.)

23 JUDGE KARLIN: We are now reconvening the  
24 pre-hearing conference call about 12:27 on March 10th.  
25 And we think we can focus on two issues. One, let's

1 talk about the NEC contention 3 that was just being  
2 discussed.

3 We think it's an important issue. We  
4 expect you to focus on that. There has been a letter  
5 received from Mr. Silberg on the record or it was  
6 filed to Mr. Shadis on this point, but we think it's  
7 of enough relevance and importance for us to ask the  
8 parties to address this in briefs, short briefs, ten  
9 pages each.

10 But, Mr. Shadis, we're going to give you  
11 ten days from today's date to file a brief on the  
12 issue of the scope of contention C-3. And we'll give  
13 the staff and Entergy seven days within which to  
14 respond to that. And we want to focus on

15 JUDGE BARATTA: This is Judge Baratta. In  
16 light of Mr. Silberg's letter, I think we want to  
17 focus on why or why not the two transients, namely the  
18 MSIV closure and the load-rejected transients, do not  
19 bound the safety concerns, particularly with respect  
20 to those points that Mr. Gunderson pointed out, which  
21 dealt with the rapid shutdown capability.

22 JUDGE KARLIN: Yes. And if there is some  
23 other transient test that you have a concern about or  
24 think needs to be raised, we need to hear it then.  
25 And so that will be ten days and seven days thereafter

1 with a total page limit of ten pages. So hopefully  
2 that will help us understand what issue you have there  
3 and make sure it's properly -- I won't say briefed,  
4 but the testimony is submitted that is on point and  
5 relevant to your concerns, Mr. Shadis.

6 Next, with regard to a matter that we  
7 talked about earlier, the NEC contention number 4, we  
8 appreciate the fact that the parties have volunteered,  
9 Mr. Shadis has volunteered, to brief this issue, the  
10 legal issue, as we have characterized it, but we think  
11 and we discussed that in order to do that, you  
12 probably need to know or get our ruling or a feel for  
13 our ruling on what we have been calling the factual  
14 issues so that you can scope and understand your legal  
15 issue questions.

16 And we have talked, and we will put this  
17 in writing, But you may not see the written order  
18 before next Friday, Mr. Shadis. And your brief is due  
19 next Friday, but our ruling will be that the  
20 contention C-4, any C contention C-4, does indeed  
21 focus on and is limited to issues about the adequacy  
22 or inadequacy of the ABS report, the cooling tower,  
23 the associated two safety cells, and limited to those  
24 specific issues that were raised by -- was it Dr.  
25 Lanzman?

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

(202) 234-4433

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

1 And so that is our ruling on the scope,  
2 the factual scope, we'll call it, of that issue. And,  
3 therefore, you can brief the legal, relevant legal,  
4 standards on that basis. Okay.

5 MR. SHADIS: Your Honor, I really need  
6 some clarification and some direction. Your  
7 description just now leaves me at a loss, frankly, --  
8 this is Ray Shadis again speaking -- because Dr.  
9 Lanzman referred to a lack or an omission in the ABS  
10 report on structural supports and all the rest of it.

11 And yes, I am honestly at a loss as to  
12 where we draw the line on what provides support for  
13 the dedicated cooling tower cell.

14 JUDGE RUBENSTEIN: This is Judge  
15 Rubenstein. Of course, we'll provide more detail in  
16 our written order, but we're talking now to the  
17 seismic analysis for the alternate cooling system  
18 cooling tower, the safety-related cells.

19 And, in particular, Dr. Lanzman pointed  
20 out five, I think it is, deficiencies in the ABS  
21 report regarding aging mechanisms, moisture, chemicals  
22 on the ACIS, these types of things. And this is what  
23 we believe the scope to be limited to.

24 MR. SHADIS: Yes, Your Honor. And please  
25 understand I am not trying to be argumentative here,

1 but, in fact, contentions are admitted, in part,  
2 supported by experts and also, in part, supported by  
3 the factual assertions or material assertions of the  
4 intervenor. And I for the life of me cannot  
5 understand why when these issues were raised in the  
6 contention and the contention was accepted by the  
7 Board we are now being limited only to that aspect of  
8 the contention which is supported by an expert.

9 JUDGE RUBENSTEIN: We record you needing  
10 our order.

11 JUDGE KARLIN: Yes. We've had the issue  
12 briefed. That was by the parties. And we are going  
13 to rule as best as we just described. And we thought  
14 that you needed to know that for purposes of your  
15 briefing of the legal issues.

16 I believe the issue raised in the briefs  
17 was whether the contention is limited to the tower and  
18 the associated safety cells. And I think what you're  
19 hearing is the answer is we're ruling yes. It does  
20 appear that we are ruling that that is what it is  
21 limited to.

22 MR. SHADIS: Thank you, Your Honor.  
23 Objection and reservation. Thank you.

24 JUDGE KARLIN: All right. Now we  
25 hopefully can proceed to some other items. I guess we

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

1 are now in a position to move to dates and conduct of  
2 the hearings.

3 MR. TURK: Your Honor, this is Sherwin  
4 Turk. I need to give you some additional information.

5 JUDGE KARLIN: All right.

6 MR. TURK: After hearing that Mr. Shadis  
7 had not received the documents until recently, the  
8 SER, I asked for my secretary to go down and not only  
9 get a copy of the certification, which is actually a  
10 tracking and confirmation document issued by the post  
11 office. And it shows that the SER was not delivered  
12 to Edgecomb, Maine until March 6th. And notice was  
13 left for Mr. Shadis on March 6th. That would be  
14 Monday, rather than the Friday, when I had expected it  
15 would have been delivered.

16 So, although we did also provide notice to  
17 him that it would be available on ADAMS, I understand  
18 that he and Mr. Ennis spoke about that and he  
19 indicated that he would be able to download it through  
20 his wife's office when it arrived on March 3rd or when  
21 it was available on March 3rd, the actual document was  
22 not delivered to the post office box, which Mr. Shadis  
23 had given us as his address, until March 6th.

24 JUDGE KARLIN: All right. Thank you.  
25 That's helpful. I think what that translates to per

**NEAL R. GROSS**

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

(202) 234-4433

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

1 our prior discussion is that what we have been calling  
2 the trigger date for everything in the initial  
3 scheduling order is now March 6th, as opposed to March  
4 3rd, assuming that delivery to Mr. Shadis' post office  
5 was the latest of them and that presumably the state  
6 got it on the 6th or earlier.

7 MR. SHADIS: May I interject again? This  
8 is Ray Shadis.

9 JUDGE KARLIN: Yes.

10 MR. SHADIS: Please understand that post  
11 office box delivery is a matter of the post office  
12 leaving a note in the post office box. So that if one  
13 picks up one's mail on the date that it is delivered  
14 to the post office before they put the note in the  
15 box, it is the next day, not that day.

16 JUDGE KARLIN: All right. Okay. All  
17 right. Moving to the date and conduct of the  
18 hearings, we are now going to first talk about limited  
19 appearance statements. This is a point Judge  
20 Rubenstein mentioned earlier, and finally we're  
21 getting to it here. Thank you.

22 We think, this Board thinks, that it would  
23 be valuable, such a limited appearance statement.  
24 Oral presentations by interested persons could be  
25 valuable in informing the Board and helping us think

**NEAL R. GROSS**

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

1 through and prepare for the evidentiary hearing.

2 As we all know, this is going to be the  
3 first subpart L evidentiary hearing or at least  
4 currently unless it's delayed beyond all expectation.  
5 And the Board is going to formulate most, if not all,  
6 of the questions that have to be asked.

7 And perhaps the noted appearance statement  
8 session should precede our actual evidentiary hearing,  
9 by some weeks at least, so that we can have time to  
10 think about it and digest and see if there are any  
11 good questions we can glean or develop from that. On  
12 that basis, we were looking at a limited appearance  
13 statement session in the Brattleboro area sometime  
14 perhaps in June or even May.

15 So what I would like to do is ask the  
16 parties to tell us your availability. And we're  
17 talking essentially one day during the workday and one  
18 evening, perhaps from 7:00 until whenever, when people  
19 can make their oral limited appearance statements, so  
20 a day and a half, two-day type of time frame total.

21 And we sort of addressed I guess blackout  
22 dates. Week of June 12th. Let me just ask. Well,  
23 let's just go June 12th, the 19th, and June 26th, each  
24 of those.

25 JUDGE RUBENSTEIN: I would hope you would

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

1 start in May, Alex. This is Judge Rubenstein.

2 JUDGE KARLIN: Okay. Well, we'll get to  
3 that, too, but let's -- well, we'll start with May.  
4 Week of May 22nd. Week of June 12th, 19th, and 26th.  
5 We're going to go around the table. And we would like  
6 to ask each of you to tell us what your blackout dates  
7 are when you would not be available.

8 MR. SILBERG: Could you give us those  
9 dates again, Your Honor?

10 JUDGE KARLIN: Weeks of May 22nd.

11 MR. SILBERG: Twenty-second.

12 JUDGE KARLIN: June 12th.

13 MR. SILBERG: Right.

14 JUDGE KARLIN: June 19th and June 26th,  
15 looking for blackout. Remember, you presumably may  
16 not be making any limited appearance statements at  
17 that point. You're not obliged to. You certainly  
18 will have your right to do all of your evidentiary  
19 hearings' presentations at the appropriate time.

20 MR. SILBERG: Now, we just need to make  
21 sure that appropriate representatives of the applicant  
22 and certainly the staff on their part are available.

23 JUDGE KARLIN: Right. So why don't we  
24 start with you? Mr. Silberg, perhaps you could help  
25 us first with this.

1 MR. SILBERG: I would also ask Mr. Nichols  
2 to chime in if he is still there with his calendar.

3 JUDGE KARLIN: That would be great, yes.

4 MR. SILBERG: We need someone from the  
5 project. The week of May 22nd looks to be fine. The  
6 week of June 12th looks to be fine, although starting  
7 first thing -- well, we probably wouldn't start first  
8 thing Monday morning. So that would be okay. The  
9 week of the 19th appears to be fine. Let me just  
10 check. Yes, 19th. And the week of the 26th, I think  
11 we can support that as well.

12 Craig?

13 MR. NICHOLS: I see no conflict with those  
14 dates.

15 MR. SILBERG: Okay.

16 JUDGE KARLIN: Okay. Great. State.  
17 Perhaps we turn to Mr. Royceman.

18 MR. ROYCEMAN: All right. And we will  
19 have to do this in two parts because I would like to  
20 have Ms. Hofmann and Mr. Sherman also chime in. But  
21 I want to know whether this is the appropriate moment  
22 or not to raise the question of whether or not it's  
23 appropriate to have the limited appearances before the  
24 evidence. I don't mean before the live hearing. I  
25 mean before the prefiled evidence.

1 JUDGE KARLIN: I don't see a necessary  
2 relationship there. So we're not assuming that that  
3 is required.

4 MR. ROYCEMAN: No, I wasn't going to  
5 suggest that, but I believe from the perspective of  
6 the State of Vermont, as you know from prior  
7 experience, there is an enormous amount of interest  
8 and knowledge among our residents.

9 It will limit their ability to provide  
10 intelligent input to the Board if they do not have the  
11 benefit of the evidence that the parties are  
12 submitting on these contentions to inform them when  
13 they make their limited appearances.

14 And if the intent is that after any  
15 limited appearance comment is made -- and I confess I  
16 haven't done this in several decades, so procedures  
17 may be different today -- is to have either the staff  
18 or the applicant make any kind of comment.

19 To the extent that those comments will be  
20 based upon information that the public would not have  
21 previously seen, I candidly don't think that would be  
22 well-received. And I think it will be much more  
23 fruitful if the Board wants to have the benefit of I  
24 think a number of well-informed and highly educated  
25 Vermonters suggesting things for the Board to consider

**NEAL R. GROSS**

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

(202) 234-4433

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

1 that the prefiled testimony, both direct and rebuttal,  
2 will be essential for them to do that effectively.  
3 And it may in many cases allay concerns. And it could  
4 raise concerns that wouldn't otherwise be able to be  
5 mentioned.

6 JUDGE KARLIN: All right. Well, we'll  
7 take that into consideration. Certainly we don't want  
8 the limited appearance statements to be simply a  
9 vehicle for repeating what has already been presented  
10 by the state or that is yet to be presented by the  
11 state. We're hoping there will be some valuable  
12 additional input that comes from this.

13 And, as it currently is set, all of the  
14 dates we're talking about are after the submission of  
15 the testimony.

16 MR. ROYCEMAN: Of prefiled direct you  
17 mean?

18 JUDGE KARLIN: Direct. And the 23rd of  
19 May for the rebuttal.

20 MR. ROYCEMAN: Right. That said, with  
21 regard to the weeks that you have identified, I  
22 believe that I have no conflict with any of those  
23 weeks. But I have a second calendar not currently  
24 available to me, which is any kind of engagements that  
25 my wife and I have made independent of work.

**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                   And while you go through the others, I can  
2 walk to where that calendar is. And if I have to make  
3 an amendment, I will let you know that before you  
4 finish with everyone if that is okay.

5                   JUDGE KARLIN: I have been watching some  
6 recent overt versions of "Rumpold of the Bailey." So  
7 I have some appreciation of the fact that --

8                   MR. ROYCEMAN: She is the one who must be  
9 obeyed, yes.

10                  JUDGE KARLIN: Okay.

11                  MR. ROYCEMAN: Thank you for that  
12 consideration.

13                  JUDGE KARLIN: Ms. Hofmann and Mr.  
14 Sherman?

15                  MS. HOFMANN: Thank you very much. Sarah  
16 Hofmann, Director of Public Advocacy in the State of  
17 Vermont. We would just iterate Mr. Royceman's  
18 comments about the public's need to see the testimony  
19 first.

20                  In terms of the scheduling itself, the  
21 week of May 22nd, we're not available May 23rd. And  
22 for the week of June 12th, we're not available the  
23 12th, 13th, or 14th. And the other dates are fine  
24 that week, as they are for June 19th and June 26th.

25                  JUDGE KARLIN: And what is the nature of

1 your conflict on June 12th, 13th, and 14th?

2 MS. HOFMANN: That would be the NASUCA  
3 conference, which is the National Association of State  
4 Utility Consumer Advocates. I could forego it if  
5 necessary.

6 JUDGE KARLIN: All right. Thank you.

7 MR. ROYCEMAN: And this is Mr. Royceman  
8 again. All of those dates are okay except June the  
9 16th.

10 JUDGE KARLIN: Okay. Sixteenth. We will  
11 go to Mr. Turk, I guess.

12 MR. TURK: Thank you, Your Honor. Looking  
13 at our calendars, I would ask that we not have to  
14 travel on the 22nd or 23rd because we will have been  
15 busy with the testimony that we will be filing. And  
16 on the 26th, I will be out of town. I will be out on  
17 the West Coast on the 26th of May.

18 JUDGE KARLIN: Okay.

19 MR. TURK: Mr. Ennis is a person who it  
20 would be important to have with us. He will be out  
21 the entire week of June 19th. But he is a project  
22 manager. And I think if anyone from the staff would  
23 have something to contribute to the staff's presence  
24 that week, it would be Mr. Ennis. So I would ask that  
25 we not do it the week of June 19th. He has a

**NEAL R. GROSS**

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

(202) 234-4433

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

1 previously scheduled trip coming up.

2 JUDGE KARLIN: Well, is Mr. Ennis going to  
3 be making some limited appearance statement?

4 MR. TURK: Your Honor, if anyone is there  
5 who can understand what the comments are that are  
6 raised and who can help the staff assess them, it  
7 would be Mr. Ennis. If there is one person whom the  
8 staff would want there, it would be him.

9 JUDGE KARLIN: I know. I appreciate he's  
10 an important project manager here. I contemplate we  
11 would have this transcribed. He could have access to  
12 the transcription. And I assume he's not going to be  
13 making a limited appearance statement. Okay. But I  
14 appreciate that information.

15 MR. TURK: The way these things work,  
16 based on my experience, is members of the public want  
17 to address somebody in the staff, not just the  
18 Licensing Board, but they want to talk to somebody.  
19 So I imagine they want to talk to Mr. Ennis, if  
20 anyone, because he is the only person who really could  
21 respond to them.

22 We're at your disposal, Your Honor. If  
23 you decide to hold the limited appearances that week,  
24 we'll do without Mr. Ennis.

25 JUDGE RUBENSTEIN: This is Judge

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

1 Rubenstein.

2 JUDGE KARLIN: Sure.

3 JUDGE RUBENSTEIN: The project manager  
4 historically has been very important to the success of  
5 limited appearances.

6 JUDGE KARLIN: All right. Well, we  
7 appreciate Mr. Ennis is not available for that week.  
8 Thank you for the information. And it's the week of  
9 the 26th of June?

10 MR. TURK: We're clear on the 26th.

11 JUDGE KARLIN: Okay.

12 MR. TURK: One other date that I have a  
13 problem with is June 16th, Friday.

14 JUDGE KARLIN: Okay. That looks like a  
15 couple of people have some problem with that one. I'm  
16 not sure why. All right. But the week of the 26th is  
17 okay. Is that the staff's sort of reaction? Anyone  
18 else on the staff need to speak up at this point, Mr.  
19 Turk?

20 MR. TURK: No, Your Honor.

21 JUDGE KARLIN: Okay. Mr. Shadis? What is  
22 your availability for these weeks or what is your  
23 non-availability? Any dates you're not available?

24 MR. SHADIS: Thank you, Your Honor. I am  
25 very uncertain about the last two weeks of June

1 because that may be the beginning of our scheduled  
2 travel. I don't have the documentation in front of me  
3 now.

4 The month of May, as far as I know,  
5 following our filings is open, but I want to ask some  
6 point of information here or clarification from the  
7 Board. I have only attended two sessions where there  
8 was an opportunity for limited oral appearance at  
9 Millstone and at Yankee Rowe. And in both instances,  
10 it appeared that the Board was there to take comment  
11 from the public. And in both instances, there was no  
12 role for NRC staff to play.

13 And I am wondering if this meeting is  
14 going to be a free-for-all or if it is going to be  
15 structured as a formal opportunity for the Board to  
16 take comment from the public.

17 That is my first question. The second is  
18 whether the comment from the public is going to be  
19 limited to the accepted contentions or if the Board is  
20 going to be willing to hear additional comment and/or  
21 evidence from the public that might stimulate the  
22 Board to sua sponte introduce new issues into the  
23 proceeding.

24 JUDGE KARLIN: All right. First, the take  
25 comments from the public is indeed the purpose of

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

1 this. The Board is receiving these comments, these  
2 statements. We will not be responding to them, but we  
3 will be listening and taking note of the concerns.

4 This is not a place for the staff to  
5 provide responses. The staff can make comments if  
6 they want. They can provide a limited appearance  
7 statement if they choose, nor do the parties. Neither  
8 the parties or the staff are obliged to make limited  
9 appearance statements. You are already parties here.  
10 You are already going to present evidence on the  
11 limited contentions.

12 So this is for the public to give comments  
13 to us. And my impression is that they are not limited  
14 to the scope of the contentions.

15 JUDGE BARATTA: This is Judge Baratta.  
16 Just one thing that has nothing to do with the  
17 hearing, with limited appearances, but at least at one  
18 case after the limited appearance session was over,  
19 one of the questions that was raised by one of the  
20 people in the public was discussed offline. I don't  
21 even know what the resolution was.

22 So there is a valid reason for the staff  
23 to be there. They may be able to address someone's  
24 concern offline independent of this proceeding.

25 MR. SHERMAN: Mr. Chairman, if I may, both

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

1 Mr. Royceman and I have sat through many, many of  
2 these sessions over decades. And I think the comment  
3 is correct. These are the opportunities for people to  
4 address their concerns to the Board. They're not  
5 limited to contentions.

6 But there does tend to be a fair amount of  
7 interaction outside in the hallways, if you will,  
8 where people can ask questions of the staff and get  
9 those questions answered. I think it would be a  
10 disservice to the process if the project manager  
11 weren't there, although, as you say, it's not the  
12 applicant or the staff's role to make limited  
13 appearance statements. And, in fact, under the rules,  
14 no party can make a limited appearance statement.  
15 It's really specifically intended for non-parties.

16 JUDGE KARLIN: Yes. I think that's all  
17 helpful. Let me say that, you know, if the staff and  
18 the public can have productive interactions in the  
19 hallway or in association with the limited appearance  
20 statement hearings, that's great, but that's not what  
21 we're having this for. And that's not our purpose.

22 Our purpose is for us to hear from the  
23 public. And the staff and the public can make  
24 whatever other arrangements they want. Further, with  
25 regard to Mr. Shadis' question about the scope, it's

1 not limited to the contentions. And it is really  
2 relatively open, and we want to hear. But if people  
3 start talking about renewal or something that is  
4 entirely unrelated to the uprate, that might be out of  
5 bounds and inappropriate in this thing.

6 We're really dealing with anything to with  
7 the uprate. That's the focus of this Board and what  
8 our concerns are. There are many other things in the  
9 world we can't do anything about. It's not our  
10 jurisdiction or scope at this point.

11 Okay. I think that gives us a pretty good  
12 handle. Mr. Shadis, let me ask you. You say the last  
13 two weeks of June are problematic. "Uncertain" I think  
14 was your word because of what?

15 MR. SHADIS: Because I'm not sure when our  
16 foreign travel has been scheduled.

17 JUDGE KARLIN: What foreign travel?

18 MR. SHADIS: Pardon me?

19 JUDGE KARLIN: You say "our foreign  
20 travel."

21 MR. SHADIS: My wife and I are scheduled  
22 to join our family in Italy at some point through a  
23 good portion of July. And I'm not sure if that  
24 doesn't fall back into the first week or ten days of  
25 June.

1 JUDGE KARLIN: Well, we are going to ask  
2 you to submit, if you would, in writing a date of your  
3 unavailability for July through October, which we  
4 haven't received yet. And let's just cover June on  
5 that as well. If you've got specific travel plans,  
6 you know, let us know.

7 MR. SHADIS: Thank you. I appreciate  
8 that. And, at the least, you will see my e-mail from  
9 this morning. It was copied to the parties and the  
10 Board.

11 JUDGE KARLIN: I checked my e-mail ten  
12 minutes before this hearing began. We received no  
13 such e-mail.

14 MR. SILBERG: We did, Your Honor. This is  
15 Jay Silberg.

16 JUDGE KARLIN: But I think you had better  
17 send it again because it was not received in my e-mail  
18 box or --

19 JUDGE RUBENSTEIN: This is Judge  
20 Rubenstein.

21 JUDGE KARLIN: You got it?

22 JUDGE RUBENSTEIN: I received it and  
23 forwarded it to you during the hearing.

24 JUDGE KARLIN: Right. I understand. You  
25 got it. Judge Baratta did not get it. I didn't get

1 it. Jonathan Rund didn't get it. So please send it  
2 again.

3 MR. SHADIS: Thank you. I will. And I  
4 will flesh it out and see if I cannot be more specific  
5 on --

6 JUDGE KARLIN: Because it looks like given  
7 the concerns raised in terms of timing and others,  
8 that the last two weeks of June might be with some  
9 exceptions, like the 16th, an opportunity to do this.  
10 And you're the only one who would create a problem.  
11 So it's important if you've got a clear exclusion or  
12 reservation on an airplane or something to Italy, then  
13 please let us know.

14 MR. SHADIS: Your Honor, Ray Shadis again.  
15 Let me say that with respect to the limited oral  
16 appearances, if it is a matter that I cannot be there,  
17 I don't think it will prejudice our case again, and I  
18 wouldn't claim that.

19 So I think that if it happens that I  
20 cannot be there, some other representative of the New  
21 England Coalition would be. And I think, please, from  
22 our point of view feel free to schedule in late June  
23 if that is the case.

24 JUDGE KARLIN: Okay. I appreciate that.  
25 And that's a good point. That is to say, there is no

1 requirement that any of you be there. So that is  
2 quite a good point. And there are multiple  
3 representatives of some of the parties.

4 Okay. I think what we would like to do is  
5 to tell you at the moment to block out the week of the  
6 19th and 26th, just hold for a little bit until we get  
7 back to you. The 26th is the week just prior to the  
8 Fourth of July weekend. Perhaps we could hold  
9 something at the early part of that week. So please  
10 block that week out at least, June 26th week.

11 MR. SILBERG: I'm sorry? Both weeks or  
12 just the week of the 26th?

13 JUDGE KARLIN: Just the 26th.

14 MR. SILBERG: Okay. Thank you.

15 JUDGE KARLIN: Okay. Moving on, now we're  
16 talking about the evidentiary hearings that I would  
17 like to address or ask you to help us think through  
18 the locational issues associated with that.

19 Location breaks down into two components.  
20 One is within the State of Vermont, we have asked you  
21 for specific ideas about particular venues. And you  
22 have answered that and given us some information:  
23 Quality Inn; the Latches Theatre, I think it's called;  
24 and some other places. That's helpful.

25 But the other issue that we have on

1 location issues is whether or not the contention  
2 involves substantially or entirely proprietary  
3 information us such that the proceeding would have to  
4 be closed to the public anyway.

5 Have you all thought about that issue?  
6 Mr. Silberg, perhaps you could help us with this.

7 MR. SILBERG: I'll let Mr. Diaz address  
8 that.

9 JUDGE KARLIN: Okay.

10 MR. DIAZ: I believe that DPS 2 may  
11 involve proprietary information. I'm not sure about  
12 DPS 1, but DPS 2 may because it would involve  
13 information developed by General Electric Company.  
14 NEC 3 for the very same reason may involve proprietary  
15 information, both of General Electric and some other  
16 parties. I'm not sure with NEC 4. But at least those  
17 two contentions and possibly three may involve  
18 proprietary information.

19 JUDGE BARATTA: This is Judge Baratta.  
20 Could I ask you why you don't think NEC 1 would?  
21 Because it seems to me NEC 1 and then NEC 2 -- I'm  
22 sorry. I apologize. DPS 1 and DPS 2 were very  
23 closely related to the topic. And I don't quite  
24 understand why one would and one wouldn't or --

25 MR. DIAZ: Well, as we understand the

1 contentions, DPS 1 -- and Mr. Royceman I'm sure will  
2 correct me if I am wrong -- deals with an issue as  
3 under the regulations whether it is permissible to  
4 take credit for containment overpressure. That's, if  
5 you will, a legal question.

6 DPS 2 deals with an issue of fact, whether  
7 even if you assume you can take credit for containment  
8 overpressure, it is achievable on the state of the  
9 equipment that it's on.

10 So we see the two contentions, one being  
11 more legal, if you will, regulatory, DPS 1 and DPS 2  
12 being fact-based. And the facts to discuss that may  
13 involve requiring looking at GE calculations and all  
14 the materials that --

15 JUDGE BARATTA: Okay. That is helpful.  
16 And when you say DPS and I guess what I like to refer  
17 to as the state --

18 MR. DIAZ: State, yes.

19 JUDGE BARATTA: State's contention number  
20 2. It may involve proprietary information.

21 MR. DIAZ: Yes. For example, one of the  
22 issues that is raised in state contention 2 has to do  
23 with the performance of the pumps. And there may be  
24 proprietary information with a pump vendor. I cannot  
25 tell you right now whether there will be or not, but

1 the potential is there.

2 JUDGE BARATTA: Right. And I guess with  
3 regard to NEC contention number 3, again, it may  
4 involve proprietary.

5 PARTICIPANT: Could you be specific as to  
6 what material you are concerned about in NEC 3 that  
7 might be proprietary?

8 MR. DIAZ: Yes. Well, for example, the  
9 four months of reactors that have undergone testing  
10 similar to the one that is causing the NEC 3, the  
11 reports that contain that information are General  
12 Electric reports, which are proprietary. So there  
13 will be some aspects of the evidence that we've  
14 presented that will be proprietary.

15 JUDGE RUBENSTEIN: This is Judge  
16 Rubenstein. Could you give us a sense of the  
17 predominance of the amount of proprietary --

18 MR. DIAZ: Well, with respect to --

19 JUDGE RUBENSTEIN: In other words, is it  
20 to the point of being in Washington or in Vermont?

21 JUDGE BARATTA: Well, I don't think we're  
22 talking about safeguards information, in which case we  
23 might well have to talk about having the hearing in  
24 Washington. I think since it's proprietary  
25 information as long as there are provisions for

1 closing the room and excluding others, we don't need  
2 to go to the levels of isolation that the safeguards  
3 hearings require.

4 JUDGE RUBENSTEIN: That wasn't my thought.  
5 My thought was that if the predominance was going to  
6 be a closed hearing on an issue --

7 JUDGE BARATTA: I see.

8 JUDGE RUBENSTEIN: -- it might be more  
9 efficacious to have it in Washington.

10 JUDGE BARATTA: Yes. I understand.

11 MR. DIAZ: Well, as to NEC 3, the  
12 predominance would be non-proprietary information. I  
13 suspect that as to state 2, it would be hard to tell.

14 MR. SHADIS: I'm sorry. This is Ray  
15 Shadis. I didn't understand that last representation  
16 with respect to NEC 3.

17 MR. DIAZ: I'll say it again.

18 MR. SHADIS: Yes, sir.

19 MR. DIAZ: Our understanding standing here  
20 today is that for NEC 3, most of the information that  
21 would be presented is already available in the public  
22 and would not be proprietary. There would be some  
23 aspects that would be. As I said, for example,  
24 information of one of the actors would probably be  
25 proprietary.

1 JUDGE BARATTA: I would also note in that  
2 connection that we may require an order from the Board  
3 establishing a protective order. We had offered to  
4 Mr. Shadis or perhaps to Mr. Block before him a  
5 proprietary agreement so that they could have access  
6 to commercial proprietary information. And they have  
7 never accepted that offer.

8 So if, in fact, we have proprietary  
9 information in one of the issues that is covered that  
10 is one of the coalition's contentions, we will  
11 probably need the Board to issue an order unless Mr.  
12 Shadis decides to execute a proprietary agreement.

13 JUDGE KARLIN: Well, we do have a  
14 protective order issued on March 1st of '05. Doesn't  
15 that address at least some of the concerns or is  
16 something wrong with that one, Mr. Silberg?

17 MR. DIAZ: Well, it's not the order. The  
18 order has an attachment, which is an agreement that  
19 has to be signed by the people who want to have access  
20 to the information.

21 JUDGE KARLIN: Yes.

22 MR. DIAZ: The state, for example, signed  
23 that agreement way back shortly after the order was  
24 issued. They have been reviewing and receiving  
25 proprietary information on their contentions.

1 JUDGE KARLIN: Right.

2 MR. DIAZ: NEC has not signed an  
3 agreement. And, therefore, even though the  
4 opportunity for them to receive information is there,  
5 they have not signed the agreement that would enable  
6 them to receive it.

7 JUDGE KARLIN: Well, okay. Thank you. I  
8 mean, that clarifies it. I mean, if NEC does not want  
9 to sign it, then they don't get the proprietary  
10 information.

11 JUDGE BARATTA: That's been the case so  
12 far.

13 JUDGE KARLIN: That's been the end of the  
14 contention to the extent it involves proprietary  
15 information. So, Mr. Shadis, I suggest you either  
16 sign it or submit some sort of a motion why you won't  
17 sign it and you need some other relief. Otherwise  
18 your contention will necessarily fail.

19 MR. SHADIS: Your Honor, the only specific  
20 question that Entergy raised here is on the question  
21 of the experience of foreign reactors, specifically  
22 Swiss reactors.

23 New England Coalition is quite willing to  
24 stipulate that these reactors had a wonderful  
25 experience with respect to avoiding full transient

**NEAL R. GROSS**

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

(202) 234-4433

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

1 testing or that they had full transient testing by  
2 inadvertence, however it goes. We do not need to see  
3 their calculations.

4 And I guess the deal is that, you know, we  
5 would be willing to take a look at Entergy's brief and  
6 see if there is anything indicated there that we feel  
7 we would need to defend.

8 JUDGE KARLIN: Okay. Well, I think that  
9 that is helpful. If you don't intend on depending on  
10 any proprietary information, that's fine. Note,  
11 however, that if NEC's brief refers to proprietary  
12 information, then I think we're going to need you  
13 under some obligation to honor the proprietariness of  
14 that information in order to see the brief.

15 JUDGE BARATTA: This is Judge Baratta  
16 here. With respect to other material I thought that  
17 Entergy might consider proprietary, I thought the  
18 original issue relative to or one of the original  
19 issues relative to NEC 3 dealt with the adequacy of  
20 the analysis that was performed by Entergy and in  
21 addition to the relevance of the foreign reactor  
22 experience.

23 Are you certain, then, that the  
24 information, for example, on the ODIN code, the models  
25 used, validation for that code, its applicability to

1 this type of analyses, et cetera, is non-proprietary?

2 MR. SILBERG: Yes. I've just been  
3 informed in a side conversation from Mr. Nichols that,  
4 in fact, there is other information that could be  
5 relevant in litigating that contention that involves  
6 domestic reactors, for instance and the transient  
7 analyses?

8 MR. DIAZ: I was referring to the foreign  
9 reactor by example. There may be topical reports that  
10 are proprietary and that have not been given  
11 distribution to the public. And those will be covered  
12 as well.

13 JUDGE BARATTA: And I guess the other  
14 point I want to make -- I'm not a lawyer. So the  
15 lawyer types will have to help me on this, but --

16 PARTICIPANT: Stop bragging, Judge.

17 JUDGE BARATTA: -- I thought the burden of  
18 proof was on the applicant at this point. And,  
19 therefore, if you felt it necessary in your testimony  
20 to put forth information that was of a proprietary  
21 nature to the Board, who is judge, jury, and I guess  
22 excuse me but executioner, that was your prerogative.

23 Generally because this is at this point  
24 all stipulated and an L proceeding is what we're  
25 having, if the Board felt it needed to ask questions

**NEAL R. GROSS**

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

(202) 234-4433

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

1 which would require divulging or referring to  
2 proprietary information, that that, too, was  
3 appropriate and that in those cases, anybody who has  
4 not signed the proprietary agreement, then they would  
5 be excluded, even though they were apart from the  
6 testimony at that point.

7 MR. DIAZ: That is correct. And, in fact,  
8 it may come up also in the testimony, where in order  
9 to respond to some of the issues raised by the direct  
10 testimony of other parties, you need to bring in  
11 information that you perhaps were not thinking of  
12 using but that may be proprietary.

13 JUDGE KARLIN: Right. Okay. I think  
14 that's well-said. And one of our non-lawyer judges  
15 has brought us all back to reality and to legality.  
16 So this is helpful.

17 MR. ROYCEMAN: Mr. Chairman, this is Mr.  
18 Royceman. The state is concerned about this issue,  
19 partly because, wherever possible, we think these  
20 issues should be heard in the public. And we are  
21 concerned that it is certainly possible that this  
22 proprietary information issue is going to  
23 substantially interfere with that occurring.

24 Now, as the Board knows, under the  
25 protective order entered by the Board, parties are

**NEAL R. GROSS**

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

1 able to challenge an alleged proprietary status of any  
2 document. At this point, there is no reason and there  
3 would be no reason why the state would raise any of  
4 those because so far what we have seen that is  
5 proprietary/not proprietary, nothing is happening with  
6 it.

7 But we're going to start putting this in  
8 as testimony. And the testimony is going to be either  
9 based on proprietary or not based on proprietary. And  
10 there there is ample basis, although not currently in  
11 the schedule ample room, to raise the question of  
12 whether or not documentation that is alleged to be  
13 proprietary should be treated that way.

14 It seems to me that since we feel that the  
15 issue should be as narrow as possible, that it is  
16 difficult at this stage to know how this is going to  
17 play out until we see what the testimony is that the  
18 parties submit and what the rebuttal testimony is and  
19 what they are going to rely upon.

20 Obviously we cannot control in any  
21 possible way that the Board would ask a question that  
22 would then cause a witness to have to make a reference  
23 to proprietary information or believe that that  
24 witness had to.

25 We think it would be helpful if the Board

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

1 made clear at the outset that it was not encouraging  
2 witnesses to have to talk about proprietary  
3 information in order to answer questions because hat  
4 would force, say, a party that hasn't signed the  
5 proprietary agreement and the entire audience to have  
6 to leave the room every time a question got asked that  
7 the witness felt he had to talk about proprietary  
8 information.

9 All of that goes to say that I think this  
10 is a mare's nest. And I don't know that we have in  
11 place a procedure that is going to make it feasible.  
12 But I would suggest that maybe we should revisit this  
13 issue after the parties file their prefiled direct  
14 testimony and see at that point whether it appears  
15 that there is going to be a substantial amount of  
16 proprietary information in play that will either  
17 provoke someone asking that it not be considered for  
18 proprietary or, conversely, that will require the  
19 Board to set aside days, days in the hearing when all  
20 the proprietary information will be discussed and then  
21 other days when it will be open.

22 JUDGE KARLIN: Okay. Well, thank you. We  
23 don't really need to have a long oral argument on  
24 this. We agree that these hearings should be held in  
25 public to the maximum extent possible. And that is

**NEAL R. GROSS**

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

1 our approach, and we try to do it that way.

2 And we want to hold them also in the  
3 location where the facility of concern is being  
4 licensed or seeking an application or amendment.  
5 That's the Commission's approach. We are following  
6 that.

7 Yet, if there is proprietary information,  
8 we need to deal with that and we need to manage that.  
9 We also have a situation where we are going to be  
10 asking the questions. And if we want to get into an  
11 area or investigate in order to make a ruling here,  
12 we're going to ask some questions. And if it involves  
13 proprietary information, it involves proprietary  
14 information. We're not out to maximize that  
15 proprietary information, but we're out to get the  
16 answers to what we need.

17 Finally, I would note that in the initial  
18 March 1, '05 protective order governing this amount of  
19 material, we did set deadlines for people to raise  
20 issues with regard to disputes about whether something  
21 is really proprietary or not.

22 I would suggest everyone dust that off  
23 because article II, section 3 says that people have no  
24 later than 60 days after the issuance of the final SER  
25 within which to raise certain issues except for good

**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 cause if there is some good cause of why you haven't  
2 raised it before.

3 So everybody had better take a look at  
4 that as we are concerned. We want to resolve issues.  
5 If you think there is something that is claimed to be  
6 proprietary that isn't, I guess we'll have to sort it  
7 out, but we don't want people waiting until the last  
8 minute to raise this issue. We want to sort it out as  
9 early as possible.

10 MR. SHADIS: Your Honor, excuse me. This  
11 is Ray Shadis again. How will we know --

12 JUDGE KARLIN: Well, if you've waived your  
13 right or refused to participate, then I think you've  
14 got a problem.

15 MR. SHADIS: No, I didn't waive our right  
16 to participate. I declined to give a blanket  
17 exemption --

18 JUDGE KARLIN: Right.

19 MR. SHADIS: -- for anything that Entergy  
20 would designate as proprietary. If there is anything  
21 proprietary that we would want to look at, it would  
22 only be those things that are relevant to our  
23 contentions. As it stands --

24 JUDGE KARLIN: All right. Well, let me  
25 answer that question. Then we'll move on. The answer

1 I think -- I haven't consulted my colleagues -- is as  
2 follows. If Entergy put a certain document forward  
3 and said it was proprietary -- let's say they did that  
4 on June 1st of '05 -- and any party who had filed  
5 under the protective order the agreement in question  
6 could see it promptly and you consciously declined to  
7 sign that agreement until June of '06, we don't think  
8 that your refusal to sign the agreement should give  
9 you a year's extension in terms of the duty to raise  
10 an objection.

11 MR. SHADIS: I understand that, Your  
12 Honor. And please excuse me. I'm not trying to beat  
13 this horse any more than necessary, but we have no way  
14 of knowing what documents Entergy intends to rely on  
15 in filing its brief. So how can we choose whether or  
16 not to sign a proprietary agreement or object until we  
17 see what it is they are going to include in their  
18 briefs?

19 MR. DIAZ: Mr. Chairman, if I may add to  
20 that because I have been partly responsible --

21 JUDGE KARLIN: No. Wait a second. I  
22 think that is enough on that issue at this point. Our  
23 issue is not here to discuss how we work the  
24 proprietary issues. Everyone should consult the March  
25 1st, '05 protective order. If you have some problem

**NEAL R. GROSS**

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

(202) 234-4433

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

1 with it or think there's an adjustment or modification  
2 needed, you can file a motion to that effect or  
3 request some adjustment or relief.

4 Other than that, all we want to know today  
5 is whether some of these contentions involving  
6 proprietary --

7 PARTICIPANT: Put it "could."

8 JUDGE KARLIN: -- could involve  
9 proprietary information so that we can think about the  
10 location of how we're going to manage the hearing, the  
11 time, the location, that sort of thing, because it  
12 sometimes takes a longer amount of time to manage a  
13 contention if we've got to ask people to step out of  
14 the room and then reconvene.

15 So there's both a locational aspect to it  
16 and a length of evidentiary hearing aspect to the  
17 additional burdens involved in proprietary  
18 information. So that's all we need to know on that  
19 one, I think.

20 Well, let me just ask the staff. Do you  
21 have any perspective, staff, and I suspect or anything  
22 to add vis-a-vis whether or not these contentions  
23 involve from your perspective, necessarily or  
24 probably, proprietary information?

25 MR. TURK: We really have nothing to add,

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

1 Your Honor. The information is possessed by the  
2 applicant or its supplier. And they really would have  
3 to make the call on the proprietary, the need for that  
4 information to continue to be protected as  
5 proprietary.

6 JUDGE KARLIN: Okay. With that, let's  
7 move on to the next part of the dates and conduct for  
8 the evidentiary hearings. The length of the  
9 evidentiary hearings we're going to focus on for a  
10 moment. I'm not sure how much we can say.

11 And then we're going to turn to the  
12 calendar and dates through when, what the availability  
13 is. But the length of the evidentiary hearing, we've  
14 got four contentions.

15 We understand that there is no direct  
16 evidence presented by the parties during the oral  
17 hearing. There is no cross-examination presented by  
18 the parties during the oral hearing except to the  
19 extent that we, the Board, rules it's needed and  
20 appropriate under the proper standards under CAN under  
21 the regulations.

22 So the bulk of the hearing, if not the  
23 entirety of the hearing, essentially consists of the  
24 Board asking questions of the witnesses as we see fit.  
25 We'll probably also have opening statements from the

**NEAL R. GROSS**

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

1 parties and possibly some closing statements, but  
2 that's not evidence.

3 All that said, the length of the hearing  
4 is essentially determined by the number of questions  
5 the Board may ask. And that's up to us, not to you.

6 But that said, perhaps we could solicit  
7 the thoughts and wisdom, short statement. If you have  
8 any suggestion as to what you think of the length of  
9 the hearing and that approach.

10 We also say that I think we're going to  
11 have another chance in another pre-hearing conference  
12 to talk a little bit more specifically about how the  
13 oral hearing will go and what it will entail, but as  
14 a preliminary matter, Mr. Silberg, any thoughts on the  
15 length of the hearing?

16 MR. SILBERG: I'll ask Mr. Diaz to address  
17 that.

18 MR. DIAZ: Well, it is very hard at this  
19 point to give you a forecast. But, comparatively  
20 speaking, issues such as the state wanted to have less  
21 of a factual underpinning should be able to be  
22 disposed of or have the testimony given and the  
23 questions asked faster than, say, on state contention  
24 2, which is fact-based.

25 As to the two contentions propounded by

1 NEC, both of them, particularly the NEC 4, have a rich  
2 factual underpinning that the Board will have to  
3 probe.

4 I don't know if this is helpful, but I  
5 would suspect that, at least to all of the NEC  
6 contentions, one of the DPS, one of the state  
7 contentions is the hearing would take more time than  
8 if it was just an interpretation.

9 JUDGE KARLIN: That's a useful way to  
10 think about it, I guess, whether it's more factual or  
11 more legal. Mr. Royceman, your thoughts on this  
12 subject, length of hearing?

13 MR. ROYCEMAN: Candidly, I think it's  
14 impossible because, as you aptly pointed out, the  
15 control of that is in the hands of you and the two  
16 other judges. I think that we will be submitting a  
17 substantial number of questions that we believe the  
18 Board should ask, but we have no way of knowing how  
19 many of those the Board will consider wanting to ask  
20 and how many that we don't think of the Board will  
21 itself decide to ask.

22 And, of course, this all assumes -- and  
23 that is what I am assuming -- that the Board does not  
24 grant permission for any party to do their own  
25 cross-examination. That's far down the road before

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

1 we'll know the answer to that.

2 So I think it's very hard to answer. I  
3 think both Mr. Silberg and I could give you some  
4 numbers that would stun you if we told you how long  
5 this would have lasted if we were under subpart G.  
6 But that's not useful.

7 So I don't know. I certainly think that  
8 the state contentions -- I can't imagine that they  
9 could be addressed in less than two days, but who  
10 knows. I'm sorry. I wish I could be more helpful.

11 JUDGE KARLIN: All right. No. It's  
12 difficult to analyze. I mean, it essentially is in  
13 our court, as it were, to assess how long the hearing  
14 will be, how many questions we think need to be asked.  
15 And we are not really in a good position to make that  
16 determination or think that through until we have  
17 received from you the direct testimony, the rebuttal  
18 testimony, and the proposed questions that you think  
19 would be appropriate. Once we have seen that, we can  
20 roll up our sleeves and we can figure it out. We'll  
21 have a much better idea.

22 At this point, we think we will only be  
23 able to in a very rough way rough out some time and  
24 hopefully adjust from there. We also want to note and  
25 remind you that with regard to the four contentions,

**NEAL R. GROSS**

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

(202) 234-4433

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

1 our concurring interpretation and assessment is if we  
2 find on a given contention that we are happy with the  
3 documents that have been filed, the testimony, we may  
4 not ask any questions. And there may be nothing. No  
5 witnesses will even need to show up.

6 MR. ROYCEMAN: No. I understood that. I  
7 just wanted to add one other thing. I don't think we  
8 agree with Mr. Diaz's distinction between the two  
9 contentions.

10 Our view of contention 1 is that it is at  
11 least as factual as contention 2. And, moreover, I  
12 don't think we will necessarily present our testimony  
13 neatly divided into contentions as much as we'll  
14 present it divided into technical issues.

15 JUDGE KARLIN: That may be problematic.  
16 I don't know that we can address it right now. But I  
17 think our contemplation would be it would be by  
18 contentions.

19 MR. ROYCEMAN: Well, if that's what the  
20 Board prefers, we could do that. But, as you know,  
21 these issues have had a huge amount of information  
22 applied to them since the time that contentions were  
23 originally filed and not that anything was filed other  
24 than what we have already done that would suggest that  
25 we thought we needed to make amendments or additions

**NEAL R. GROSS**

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

(202) 234-4433

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

1 to the contentions. The amount of meat that is there  
2 is much greater now that we have seen a larger body of  
3 data.

4 And I think our thought was that we would  
5 try to let this be driven more by our experts than by  
6 our lawyers, which means let the experts talk about  
7 this as experts would talk about it, not in the  
8 contention cubbyholes that the Commission's  
9 regulations require that you talk about in order to  
10 get a matter considered, but if the Board wants us to  
11 present by contention, we'll do that.

12 JUDGE KARLIN: Okay. Well, our initial  
13 thinking was it will be by contention. That's the way  
14 we are going to have to rule, by contention. It would  
15 be helpful to us I think to receive information in  
16 testimony in that way.

17 Let me move on to Mr. Turk. And then I'll  
18 ask Mr. Shadis in terms of length of the evidentiary  
19 hearing. Anything to add? Anything you can help us  
20 scope this out, Mr. Turk?

21 MR. TURK: Yes. I'm willing to put my  
22 canoe in the water today, Your Honor.

23 JUDGE KARLIN: Okay.

24 MR. TURK: I look at the NEC contention 4  
25 on seismic issues to raise more separate issues than

1 the other contentions. So I look at that one as  
2 taking more hearing time because more factual issues  
3 are raised than either the large transient testing or  
4 the containment overpressure issue.

5 I would hazard a guess -- and I guess  
6 these are relative numbers. I'm willing to state that  
7 I very well could be wrong. But my rough guess would  
8 be on containment pressure credit, roughly two days;  
9 large transient testing, two days, maybe a little bit  
10 less; and seismic, approximately four days. And  
11 that's just hazarding a guess now. We really would  
12 have to wait to see the test when it comes in before  
13 you can firm that up.

14 JUDGE KARLIN: Large transient testing,  
15 two; seismic, four. And what's the other?

16 MR. TURK: The two state contentions on  
17 containment pressure.

18 JUDGE KARLIN: Oh, both of the state  
19 containment pressure in two?

20 MR. TURK: In two.

21 JUDGE KARLIN: All right. Well, that's  
22 for whatever. Mr. Shadis, anything you might add here  
23 on the length of the evidentiary hearing, not  
24 necessarily dates or --

25 MR. SHADIS: Yes, quite. I understand,

1 Your Honor. Thank you.

2 I think I would tend to agree with Mr.  
3 Turk's assessment. And that would be very likely the  
4 outside. That is to say two days and four days would  
5 be the most extreme on that.

6 We really must understand we are really  
7 reaching here. We don't have the information in front  
8 of us to make any kind of accurate prediction.

9 JUDGE KARLIN: Okay.

10 MR. SILBERG: Mr. Chairman, there's  
11 another way you might get some data which could help  
12 you, and that is to have the parties, if they know,  
13 state how many individual witnesses they would plan to  
14 put forward on each contention because sometimes just  
15 the number of witnesses generates enough questions so  
16 that you could make some estimate as to the time it  
17 might take. It's certainly not the only relevant  
18 criterion, but it might be one of interest.

19 JUDGE KARLIN: All right. Well, without  
20 wanting to prolong this call any further, how about,  
21 Mr. Silberg, what is your answer to that question?

22 MR. SILBERG: Numbers of witnesses?

23 JUDGE KARLIN: Yes.

24 MR. DIAZ: Well, this is based on memory,  
25 but I would say that for DPS, for the state contention

1 1, we could have two witnesses. For state contention  
2 2, we have four. For NEC contention 3, we have two.  
3 And for NEC contention 4, we have four.

4 JUDGE KARLIN: All right. Mr. Royceman,  
5 what are your numbers?

6 MR. ROYCEMAN: You know how lawyers are,  
7 Your Honor. We always wait as long as we can. Well,  
8 we have identified two witnesses. And it is possible  
9 that by the deadline, we will have three. But I don't  
10 think that there will be more than that.

11 JUDGE KARLIN: Then they would both speak  
12 to both issues?

13 MS. HOFMANN: Yes.

14 MR. ROYCEMAN: All right.

15 JUDGE KARLIN: Okay.

16 MS. HOFMANN: Sarah Hofmann from the  
17 Department of Public Services.

18 JUDGE KARLIN: Thank you, Ms. Hofmann.  
19 Yes.

20 MR. ROYCEMAN: Ms. Hofmann has our expert  
21 witness with her.

22 JUDGE KARLIN: Good. Mr. Shadis, your  
23 thoughts in terms of witnesses for your two  
24 contentions, number of witnesses for each?

25 MR. SHADIS: We don't know at this point,

**NEAL R. GROSS**

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

1 Your Honor. It looks like two witnesses for each  
2 contention, but we are not certain.

3 JUDGE KARLIN: All right. And Mr. Turk?

4 MR. TURK: We have a panel of witnesses  
5 who previously provided an affidavit on the  
6 containment pressure issue. And we probably would  
7 present those same four people as witnesses on those  
8 issues. Those are the DPS 1 and 2. For large  
9 transient testing -- I'm sorry. That was on large  
10 transient testing, which is NEC 3.

11 JUDGE KARLIN: Okay.

12 MR. TURK: So that's four for NEC 3.

13 JUDGE KARLIN: All right. And the others?

14 MR. TURK: Containment pressure, two; and  
15 the seismic issue, two.

16 JUDGE KARLIN: Okay. Two, two, four, two.  
17 Okay. Thank you. That may be somewhat helpful in  
18 terms of scoping this thing out.

19 All right. I guess now we turn to the  
20 actual dates for the hearing. I appreciate the fact  
21 at least that we have received three of the parties to  
22 give us a schedule, a calendar, availability.

23 But before we turn to that, let's just  
24 turn to Mr. Shadis and ask. We want you to file  
25 something in writing, Mr. Shadis, if you haven't

**NEAL R. GROSS**

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

(202) 234-4433

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

1 already. But, in the meantime, tell us, if you could,  
2 what your availability is through the months of July  
3 through October, what your blackout dates really are.  
4 When are you not available?

5 MR. SHADIS: Yes, sir. Thank you very  
6 much. There are no blackout dates at this point in  
7 September or October. The New England Coalition the  
8 best we can tell would be ready to go the beginning of  
9 September without any problems whatsoever.

10 Our calendar for July and August was so  
11 shot through and variegated that I could not pick any  
12 dates that were open in July or August.

13 JUDGE KARLIN: I think we need to be a  
14 little bit more specific than that, Mr. Shadis. You  
15 have got every day in July and August totally  
16 unavailable? You have to explain that a little  
17 better.

18 MR. SHADIS: Well, the only thing I can  
19 say is that there are a few days in July or August,  
20 but they are single days that I have picked out that  
21 are available. Friday, the --

22 JUDGE KARLIN: Let me just stop you right  
23 there. Let's go to the week of July 30th, July 30th.  
24 Why are you not available that week? What is your  
25 conflict?

1 MR. SHADIS: I am sorry I don't have that  
2 calendar in front of me. My --

3 JUDGE KARLIN: That's what we have this  
4 call for. You have failed to submit anything in  
5 advance of the call. So I was at least expecting you  
6 would be able to tell us during the call what your  
7 availability is and why you're not available. And  
8 you're telling me you don't have that available?

9 MR. SHADIS: That's right.

10 JUDGE KARLIN: What's your availability  
11 the week of August 6th? What's your problem with that  
12 week? Do you have vacation? Are you in Europe, in  
13 Italy?

14 MR. SHADIS: Sorry, Your Honor. I  
15 understand your question.

16 JUDGE KARLIN: Do you have a witness who  
17 is not available that week so we can't have that  
18 contention but we could have another contention?

19 MR. SHADIS: The week of August the 6th is  
20 Sunday, August the 6th. We are scheduled for a family  
21 reunion in West Virginia. We would be leaving on  
22 August the 4th, Friday, August the 4th. We would be  
23 returning on August the 8th. So the remainder of that  
24 week could be available except that I was taking into  
25 account a kind of jet lag so that August the 9th was

**NEAL R. GROSS**

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

(202) 234-4433

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

1 out. August the 10th and the 11th would be doable.

2 JUDGE KARLIN: All right. Now, what's the  
3 problem with the week of August 13th-14th?

4 MR. SHADIS: I didn't assume that any of  
5 those dates that were blacked in where the NRC staff  
6 was not available were even under consideration. So  
7 I did not go there. In other words, we, New England  
8 Coalition, might be available ton the week of the 13th  
9 through the 19th except that we did note that the NRC  
10 staff was not available. And we presumed there would  
11 be no hearings unless they were available.

12 JUDGE KARLIN: Well, we intend to ask, our  
13 plan was to ask the NRC staff why they aren't  
14 available that week.

15 MR. SHADIS: I see.

16 JUDGE KARLIN: And, you see, if we all  
17 just agree that some one person has got a problem,  
18 then we all have a problem. Our approach is to try to  
19 have this hearing as expeditiously as possible within  
20 the time and the frame available and making sure it's  
21 fair and everyone gets their fair shot.

22 I further understood that I thought the  
23 NEC and the state were anxious to have this hearing as  
24 promptly as possible. I think they are. I think we  
25 all are. But we want it to be fair.

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

1 Now, with that in mind, we're trying to  
2 probe why people can't have this hearing at some  
3 earlier date.

4 MR. SHADIS: Yes. Thank you, Your Honor.

5 JUDGE KARLIN: So you are available the  
6 week of the 13th of August?

7 MR. SHADIS: Yes.

8 JUDGE KARLIN: The week of the 21st of  
9 August, what is your availability?

10 MR. SHADIS: The 20th of August, likewise,  
11 we would be available. We presumed that there would  
12 be no hearings because the staff would not be  
13 available.

14 JUDGE KARLIN: Okay. Good. The week of  
15 the 28th of August?

16 MR. SHADIS: The 28th of August I have  
17 marked in that we are traveling August the 30th,  
18 extending over the Labor Day weekend, to -- wait a  
19 minute -- August 30th, yes -- extending over the Labor  
20 Day weekend through the 5th of September.

21 JUDGE KARLIN: Okay. So you're available  
22 the 28th and 29th?

23 MR. SHADIS: That's correct.

24 JUDGE KARLIN: And now we turn to  
25 September and October, which you say you're totally

1 available?

2 MR. SHADIS: Well, I need to correct that.  
3 September, available after September 7th. It would be  
4 returning from West Virginia on the 5th. So I just  
5 was trying to cut one day of slack there. But we  
6 would be available from September 7th forward. And I  
7 have nothing else scheduled in September.

8 JUDGE KARLIN: Okay. September and  
9 October. All right. Let us turn to the applicant,  
10 Mr. Silberg. Let's go through the same drill. What  
11 is your problem with the week of July 31st?

12 MR. SILBERG: I think that's a witness  
13 availability for that particular contention.

14 JUDGE KARLIN: How many witnesses do you  
15 have on that one?

16 MR. DIAZ: We have two witnesses. And I  
17 don't recall whether just one or both were not  
18 available that week, but at least one is not.

19 JUDGE KARLIN: And what is the basis of  
20 their non-availability?

21 MR. DIAZ: They have a prior commitment to  
22 appear someplace else.

23 JUDGE KARLIN: Okay. But you are  
24 available for other things that week. Week of August  
25 7th?

1 MR. DIAZ: It's the same situation.

2 JUDGE KARLIN: The same individual?

3 MR. DIAZ: The same individual or  
4 individuals. There are two of them. I don't recall  
5 which is particularly one week or the other.

6 JUDGE KARLIN: And you are available on  
7 the week of the 14th?

8 MR. DIAZ: Yes.

9 JUDGE KARLIN: And the week of the 21st?

10 MR. DIAZ: Yes.

11 JUDGE KARLIN: Week of the 23rd you're  
12 also available?

13 MR. DIAZ: Yes.

14 JUDGE KARLIN: All right. That's good.

15 MR. SILBERG: By the week of the 28th?

16 JUDGE KARLIN: I'm sorry. The 28th? Yes,  
17 the 28th. And we like your color-coded charts, very,  
18 very colorful, I guess.

19 MR. SILBERG: I think that is the staff's  
20 doing.

21 JUDGE KARLIN: The staff? Well, Mr. Turk  
22 is to be commended. That is good.

23 September you seem to be available the  
24 first week, the second week. The third week, the  
25 18th, you have a problem.

1 MR. SILBERG: I have a trial in Court of  
2 Federal Claims.

3 JUDGE KARLIN: Okay. That's the week of  
4 September 18th?

5 MR. SILBERG: Yes.

6 JUDGE KARLIN: A trial. I can appreciate  
7 that. Week of the 25th, you have one day of problem.

8 MR. SILBERG: That's Rosh Hashanah.

9 JUDGE KARLIN: Oh, yes. That's right.  
10 Okay. The week of the 10th of October, Yom Kippur.

11 MR. SILBERG: That's the week of the 2nd  
12 is Yom Kippur.

13 JUDGE KARLIN: Yes. I'm sorry. I thought  
14 I said that, October 2nd, but available later in the  
15 week, the 10th of October. Okay. And you have some  
16 problems at the end of October. Is that right?

17 MR. SILBERG: That's another trial in the  
18 Court of Federal Claims here in D.C.

19 JUDGE KARLIN: Okay. So those are two  
20 trial dates that have previously been set?

21 MR. SILBERG: Yes.

22 JUDGE KARLIN: Okay. Let's see. Where  
23 are we? State. Why don't we turn to the state, Mr.  
24 Royceman, Ms. Hofmann, you seem to have a lot of  
25 availability problems. What seems to be the problem

1 here? Let's start with July 30th. Let's see. Not  
2 available.

3 MR. ROYCEMAN: I think you need Ms.  
4 Hofmann and Mr. Sherman to speak to that.

5 JUDGE KARLIN: Yes.

6 MS. HOFMANN: Okay. Thank you. Sarah  
7 Hofmann for the Department of Public Service. I will  
8 be returning from my vacation on the 30th. The 31st  
9 I suppose we're available, but then we're going to an  
10 NRC meeting on the 1st and 2nd. Is that NRC, Bill?

11 MR. SHERMAN: Yes.

12 MS. HOFMANN: It's a state liaison meeting  
13 that we're going to be gone August 1st and 2nd. We  
14 will be back on the 3rd. I suppose, once again, the  
15 3rd we could be available. We can get back on the  
16 night of the 2nd.

17 JUDGE KARLIN: And what is this NRC  
18 meeting you are going to?

19 MR. SHERMAN: The NRC holds once every  
20 three years a meeting for state liaison officers in  
21 states. And I am intimately involved in that.

22 JUDGE KARLIN: We have Mr. Royceman and  
23 Ms. Hofmann who might be able to carry the ball.

24 MS. HOFMANN: I will be attending the  
25 meeting as well for the state as the Director for

**NEAL R. GROSS**

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

1 Public Advocacy.

2 JUDGE KARLIN: Then we have Mr. Royceman  
3 who might be able to carry the ball.

4 MS. HOFMANN: We don't let Mr. Royceman go  
5 anywhere without us. No. Possibly.

6 MR. ROYCEMAN: Mr. Chairman, let me say  
7 that although the Board has already indicated that  
8 assuming that our request to do examination is not  
9 allowed, that the Board will be asking the questions.  
10 My understanding of the procedure that would be used  
11 in such a case is that parties in the room will be  
12 permitted to submit to the Board proposed questions  
13 based upon answers that were given to the Board to  
14 their questions.

15 Assuming that that process is allowed, Mr.  
16 Sherman being there would be essential. My presence  
17 there, I really would be a potted plant.

18 JUDGE KARLIN: Okay. I am not sure that  
19 assumption is correct. I think we are going to be  
20 talking about that at a later pre-hearing conference  
21 call. But don't assume that you can add questions  
22 impromptu as we go along.

23 JUDGE BARATTA: Mr. Royceman, just for my  
24 edification as a non-lawyer, what was that assumption  
25 based on? Can you give it to me in ten words or less?

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

1 MR. ROYCEMAN: That the procedure that is  
2 set out by the Commission doesn't prohibit it.

3 JUDGE BARATTA: Thank you.

4 JUDGE KARLIN: Yes. The procedure does  
5 require written motions for cross-examination ahead of  
6 time, although I guess that's not a cross-examination.  
7 So now let's see. So the state is available August  
8 the 3rd and 4th. Is that right?

9 MS. HOFMANN: Yes. We could come back the  
10 night of the 2nd from our NRC meeting and be available  
11 the 3rd and the 4th and --

12 JUDGE KARLIN: How about the week of  
13 August 7th? I guess you are available that week.

14 MS. HOFMANN: We are available that week.

15 JUDGE KARLIN: August 14th, what is your  
16 problem that week?

17 MS. HOFMANN: August 14th, Mr. Sherman is  
18 actually on vacation that week.

19 JUDGE KARLIN: Okay. August 21st, you are  
20 available?

21 MS. HOFMANN: That's correct.

22 JUDGE KARLIN: August 28th, you are  
23 available? September, first week, not available.

24 MS. HOFMANN: And that is a witness  
25 availability. Mr. Lochbaum is our other witness. He

1 is not available that week.

2 JUDGE KARLIN: All right. The 11th we're  
3 off. The 18th you have no problem. The 25th, you're  
4 not available all that week. Why?

5 MS. HOFMANN: That's, I believe, Mr.  
6 Royceman.

7 MR. ROYCEMAN: I'm looking at my calendar.

8 JUDGE KARLIN: I have Rosh Hashanah on  
9 Monday, but the rest of the week?

10 MR. ROYCEMAN: We're looking now at  
11 September?

12 JUDGE KARLIN: Twenty-fifth, yes.

13 MR. ROYCEMAN: In looking here at my  
14 calendar, I don't see anything that would indicate why  
15 that week other than Monday would create a problem,  
16 Mr. Chairman. So if that is on our schedule and I am  
17 the one who put it there, I apologize.

18 JUDGE KARLIN: Okay. Great. I appreciate  
19 that clarification.

20 The week of October 9th, again, you have  
21 a problem that whole week?

22 MS. HOFMANN: That week of October 9th is  
23 another week that Mr. Lochbaum is not available.

24 JUDGE KARLIN: What is Mr. Lochbaum's  
25 problem?

1 MS. HOFMANN: I actually do not know if he  
2 has another engagement or has a vacation.

3 JUDGE KARLIN: Okay. Is he speaking to  
4 both contentions?

5 MS. HOFMANN: Yes, he is.

6 JUDGE KARLIN: Okay. All right. That's  
7 about as far as we need to go with that. I guess  
8 we're left with Mr. Turk, your  
9 availability/non-availability. And then we'll be  
10 pretty much close to the end.

11 This call will be ending about 2:00  
12 o'clock or so. So we've got about 10 minutes, 15  
13 minutes max.

14 August. Mr. Turk, could you turn to July  
15 30th? Let's see. That week you're okay. August 6th,  
16 you're okay. Right?

17 MR. TURK: Correct.

18 JUDGE KARLIN: August 13th, staff has got  
19 a problem.

20 MR. TURK: The two-week period from August  
21 13th to the 25th, --

22 JUDGE KARLIN: Yes.

23 MR. TURK: -- I've blocked it out for a  
24 vacation time. I have a son who is studying medicine  
25 abroad. He comes in the prior week. My other son

1 starts his second year of high school August 28th. So  
2 we have a two-week period available for family  
3 vacation. So I have blocked that off as my summer  
4 vacation time.

5 JUDGE KARLIN: Okay. Let's see. The week  
6 of the 28th, staff is not available for containment  
7 pressure credit, but otherwise you are available?

8 MR. TURK: Correct. And that is a witness  
9 scheduling problem. As you can imagine, it's summer.  
10 And we have a few witnesses who are planning vacation  
11 as well. And that's the time period for either one or  
12 two witnesses to be taking vacation.

13 JUDGE KARLIN: August in Washington is a  
14 prime time to get things done. Nobody is here.

15 MR. TURK: Sorry.

16 JUDGE KARLIN: September. It looks like  
17 you're pretty much available. Staff is not available,  
18 I guess, the week of October 9th. And that's your  
19 first non-availability, I guess, other than Rosh  
20 Hashanah and Yom Kippur?

21 MR. TURK: That's correct. And that is  
22 tentative at this point. Again, that's a problem in  
23 my scheduling. That same son who is coming in from  
24 overseas is going back overseas that week. So I was  
25 blocking that week off to be with him, but it's

1 tentative today.

2 JUDGE KARLIN: Okay. Well, I guess  
3 everyone had better -- Mr. Shadis, we want you to file  
4 something, you know, in writing as to your  
5 availability and non-availability, more particularly,  
6 on all of these dates.

7 MR. SHADIS: Thank you, Your Honor. Would  
8 Monday be soon enough?

9 JUDGE KARLIN: Yes. That would be great.  
10 And I doubt if we are in a position to establish any  
11 particular date right now, but it does appear clearly  
12 that the week of September 11th is a primo date and  
13 everybody had better block that out. I would also  
14 block out October 16th, week of October 16th.

15 Hold those dates until we get back to you.  
16 And we'll try to get back in some short order. We  
17 might even try to see if there is an opportunity to  
18 break this into pieces and have some of the  
19 contentions heard earlier, maybe in August possibly.  
20 Maybe it doesn't look like that will work. But we'll  
21 see what we can do. We want to get this done in a  
22 proper way.

23 We also recognize the point Mr. Royceman  
24 has made, which is to say that he thinks there may be  
25 some additional time needed. Especially since we

1 pushed off a little bit here, we might be able to  
2 relax some of the intermediate deadlines in the  
3 initial scheduling order so that everyone can get  
4 their filings in.

5 We want to have enough time, however, to  
6 get the filings, to get all motions in limine filed,  
7 answers to the motions from us.

8 Is everyone still there?

9 MR. SILBERG: The applicants are still  
10 here.

11 MR. TURK: Staff is here.

12 JUDGE KARLIN: We're getting a little buzz  
13 here, I guess telling us how much time we've got.  
14 Okay. So we'll have to rule on that later.

15 MR. SILBERG: Mr. Chairman, one point on  
16 the schedule request of Mr. Shadis. I think it's  
17 important that he provide information on his  
18 witnesses' schedules because even though he may be  
19 available, if his witnesses are not, that could pose  
20 a problem.

21 JUDGE KARLIN: Absolutely. That was  
22 expressed before in our earlier direction to the  
23 parties. When you're telling us you're available,  
24 you're telling us you're available and your witnesses  
25 are available or not available. And if they're not

1 available, please tell us why or you'd better have a  
2 good reason why, you know.

3 Okay. We're kind of at the end here. I  
4 think, members of the Board, we have talked briefly  
5 beforehand. And we think that there will be a need  
6 for another pre-hearing conference call sometime  
7 before the filing of the initial written testimony,  
8 which is now set for early May.

9 We will probably have a new pre-hearing  
10 conference call. And I guess we will have Jonathan  
11 Rund contact you. Well, let's just ask right now.  
12 What are people's availability for the week of -- and  
13 I haven't checked with my Board members either --  
14 April 10th?

15 MR. ROYCEMAN: Mr. Chairman, this is Mr.  
16 Royceman. The 10th and 11th I am in trial. I have  
17 client meetings on the 12th. I am available on the  
18 13th. And I am not available on the 14th.

19 JUDGE KARLIN: Well, that pretty much  
20 shoots that week. We're focusing on the week of the  
21 17th, 10th, week of the 10th, week of the 17th. How  
22 about the week of the 17th?

23 MR. ROYCEMAN: This is Mr. Royceman again.  
24 That same trial which seems to take up Mondays and  
25 Tuesdays is also taking place on the 17th and the

1 18th. I can't be confident that we will still be in  
2 trial then, but it involves the Millstone Nuclear  
3 Power Plant and a lot of property taxes. So it looks  
4 like it will go on.

5 But the rest of that week, the 19th, the  
6 20th, and the 21st, I am okay.

7 JUDGE KARLIN: All right. Mr. Turk, what  
8 do you look like on the 19th, 20th, and the 21st of  
9 April?

10 MR. TURK: At this time I think it's all  
11 right with me, Your Honor.

12 MR. SILBERG: Mr. Chairman?

13 JUDGE KARLIN: Great. Yes?

14 MR. SILBERG: Mr. Chairman, this is Mr.  
15 Silberg. I will be out of the country those days, but  
16 Mr. Diaz will be available. That is the latter two  
17 days of Passover. And I don't know whether anyone  
18 would be unavailable for those reasons.

19 JUDGE KARLIN: Right. Okay. Thanks for  
20 reminding us of that. If anyone does have a problem  
21 with that, please pipe up. But you're saying that Mr.  
22 Diaz could proceed on the --

23 MR. SILBERG: Mr. Diaz tells me --

24 MR. DIAZ: I wasn't aware of those dates.  
25 I probably would not be available at that time either.

1 JUDGE KARLIN: You're not available the  
2 19th, 20th, and 21st?

3 MR. DIAZ: Oh, no, no, no, no. The 21st  
4 I will not be available. Earlier in the week I will  
5 be.

6 JUDGE KARLIN: Okay. The 19th and 20th  
7 are okay with you?

8 MR. DIAZ: Yes.

9 JUDGE KARLIN: All right. Let's see. Mr.  
10 Shadis?

11 MR. SHADIS: Yes.

12 JUDGE KARLIN: Nineteenth and 20th, April?

13 MR. SHADIS: Nineteenth and 20th, there  
14 are no problems, sir.

15 JUDGE KARLIN: Okay. All right. Let's  
16 see here. Is there anyone we haven't checked with?

17 MR. ROYCEMAN: Yes. Ms. Hofmann is going  
18 to be on the call.

19 MS. HOFMANN: Yes. We will be on the  
20 call, and we have no problem with those dates.

21 JUDGE KARLIN: Okay. Well, now I'd better  
22 ask my colleagues who are on the Board. Judge  
23 Rubenstein, what do you think of these two dates?  
24 Will they work, any of them work, for you?

25 JUDGE RUBENSTEIN: I don't have my

1 calendar in front of me. I'm in the other room. But  
2 tentatively the week of the 17th works.

3 JUDGE KARLIN: And the 19th or 20th?

4 JUDGE RUBENSTEIN: The week of the 17th.

5 JUDGE KARLIN: Okay. Any time during  
6 that. So that's good.

7 JUDGE BARATTA: This is Judge Baratta. I  
8 think the 19th or the 20th would work.

9 JUDGE KARLIN: Okay. Well, then let's  
10 pick one of those. Let's do the 20th. We'll  
11 schedule. And we'll issue an order out on those for  
12 a conference call on the 20th of April at what, 11:00  
13 a.m. We have to recognize that Judge Rubenstein  
14 participates from Tucson, Arizona. So 11:00 a.m. is  
15 about as early as we want to do this.

16 JUDGE BARATTA: We could go out there.

17 JUDGE KARLIN: Yes. That sounds good to  
18 me.

19 JUDGE BARATTA: I like that.

20 JUDGE KARLIN: Okay. We've got to wrap --

21 JUDGE RUBENSTEIN: Hold it. Hold it. On  
22 the 19th, I have a doctor's appointment.

23 JUDGE KARLIN: We're talking the 20th.

24 JUDGE RUBENSTEIN: The 20th is good.

25 JUDGE KARLIN: Twentieth at 11:00 a.m.,

**NEAL R. GROSS**

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

1 the next pre-hearing conference call. In the  
2 meantime, we will be issuing some orders that reflect  
3 this. But what we did hear, we may be able to issue  
4 initial scheduling order or revised scheduling order  
5 before that date, taking into account all of the  
6 information you have given us here today.

7 I appreciate everyone's time and patience.  
8 Is there anything else anyone thinks is a burning  
9 issue that needs to be mentioned at this point?

10 PARTICIPANT: Mr. Chairman, I just want to  
11 be clear that in light of what has transpired with  
12 regard to when the final SER was issued, that we will  
13 have until March the 17th to file our request to  
14 modify the schedule, not that we'll take that long,  
15 but I just want to make sure that we all calculated  
16 things correctly. And if not, I would appreciate  
17 knowing that.

18 JUDGE KARLIN: I think that's correct.  
19 The trigger date is the 6th of March. So ten days  
20 from that date, whatever that is, is the deadline for  
21 submitting --

22 PARTICIPANT: The 16th, Your Honor.

23 PARTICIPANT: That's a Sunday. So it  
24 carries over to Monday, the 17th.

25 JUDGE KARLIN: Okay. Yes, if it carries

**NEAL R. GROSS**

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

(202) 234-4433

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

1 over. I don't have that part of the calendar in front  
2 of me.

3 PARTICIPANT: Actually, no. The delivery  
4 date was Monday, the 6th.

5 JUDGE KARLIN: Yes?

6 MR. SILBERG: So the ten days from there  
7 becomes Thursday, the 16th. Are you looking at a  
8 ten-day filing date or the --

9 JUDGE KARLIN: Ten days. Ten days.

10 PARTICIPANT: Thursday, the 16th would be  
11 correct on that.

12 JUDGE KARLIN: The trigger date is March  
13 6th. Ten days from that is the 16th, it appears to  
14 me. That is the date for filing of motions, for  
15 adjusting the schedule. Obviously three days after  
16 the 6th of March is the date for filing new  
17 contentions based on the final SER. And everything  
18 else flows from there.

19 We may be adjusting that schedule based on  
20 what we have heard here today. But that's the  
21 schedule for now.

22 MR. SHADIS: I'm sorry, Your Honor. This  
23 is Ray Shadis. Could you please repeat that last  
24 sentence? I was unable to hear that on the --

25 JUDGE KARLIN: Well, I'm not sure --

1 MR. SHADIS: With respect to the last date  
2 in terms of filing contentions on the SER.

3 JUDGE KARLIN: Well, I think you should go  
4 look at the initial scheduling order that we issued a  
5 year ago. There are dates. All trigger from the  
6 final SER. The final SER trigger date is March 6th.  
7 So every deadline in the initial scheduling order or  
8 most of them will trigger from March 6.

9 MR. SHADIS: Thank you, sir.

10 JUDGE KARLIN: Take a look at that. You  
11 then have the obligation, Mr. Shadis, of giving us  
12 something on the 10th with regard to the scope of the  
13 legal scope of contention 4.

14 There will be an answer on the 17th.  
15 There will be a reply for you on the 24th. You also  
16 have the opportunity to submit something in ten days  
17 from today with regard to the scope of contention --  
18 no. I'm sorry. The 17th, yes. The 17th is when your  
19 brief is due, Mr. Shadis, one week from today, St.  
20 Patrick's Day, on the scope of contention C-4.

21 And you also have ten days from this date,  
22 today's date, to submit something with regard to  
23 contention C-3.

24 MR. SHADIS: Thank you.

25 JUDGE KARLIN: There will be a transcript

1 of this available.

2 I think we're over. We've got one minute  
3 left on this call. Therefore, I appreciate everyone's  
4 effort. We're going to adjourn this call and go off  
5 the record at this time. Thank you, everyone, for  
6 your patience and for your help.

7 (Whereupon, the foregoing matter was  
8 concluded at 2:03 p.m.)

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

(202) 234-4433

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

CERTIFICATE

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

Name of Proceeding: Entergy Nuclear Vermont

Yankee, LLC and Entergy

Nuclear Operations, Inc.

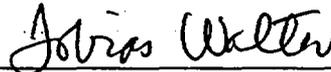
Pre-hearing Conference

Docket Number: 50-271-OLA and

ASLBP No.04-832-02-OLA

Location: via 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.



Tobias Walter  
Official Reporter  
Neal R. Gross & Co., Inc.

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

(202) 234-4433

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