

Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

Title: Entergy Nuclear Operation, Inc.
Pre-Hearing Conference

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

Location: (telephone conference)

Date: Tuesday, May 23, 2006

DOCKETED
USNRC

May 31, 2006 (11:15am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Work Order No.: NRC-1058

Pages 959-990

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 || ASLBP No. 04-832-02-OLA
YANKEE L.L.C., ENTERGY ||
NUCLEAR OPERATIONS, INC. || Docket No. 50-271-OLA
Applicant. ||

Tuesday,
May 23, 2006

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

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

1 APPEARANCES:2 On Behalf of the Applicant:

3 JAY SILBERG, ESQ.

4 MATIAS F. TRAVIESO-DIAZ, ESQ.

5 TIM WALSH, ESQ.

6 DAVE McELWAY, ESQ.

7 of: Pillsbury Winthrop Shaw Pittman

8 2300 N Street, N.W.

9 Washington, D.C. 20037

10 (202) 663-8063

11

12 On Behalf of the Intervenor, State of Vermont:

13 ANTHONY ROYCEMAN, ESQ.

14 SARAH HOFMANN, ESQ.

15 BILL SHERMAN

16 Department of Public Service

17 112 State Street, Drawer 20

18 Montpelier, Vermont 05260-2601

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

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

On Behalf of the Intervenor, New England

Coalition:

RAYMOND SHADIS
New England Coalition
P.O. Box 545
Brattleboro, Vermont 05302

On Behalf of the Nuclear Regulatory Commission:

SHERWIN E. TURK, ESQ.
STEVEN C. HAMRICK, ESQ.
U.S. Nuclear Regulatory Commission
Mail Stop O-15D21
Washington, D.C. 20555
(301) 415-1533

NRC STAFF PRESENT:

RICK B. ENNIS
NEIL A. SHEEHAN

ALSO PRESENT:

JONATHAN M. RUND, ESQ., ASLBP Law Clerk
KAREN S. VALLOCH, ASLBP Administrative
Assistant
CRAIG NICHOLS, Project Manager, Uprate
Project

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

(11:02 a.m.)

JUDGE KARLIN: This is a pre-hearing conference call, ASLBP Docket Number 50-271-OLA, and our number 04-832-02-OLA.

I presume everyone being on the line. We will proceed in the normal course by taking -- identifying everyone who is on the line for the record and for the Court Reporter, and then we'll proceed.

I will start with the ASLBP here in Rockville, Maryland. In the Conference Room with me are Judge Baratta; Jonathan Rund, our lawyer and law clerk; Karen Valloch, our Administrative Assistant; and myself, of course, Alex Karlin.

Judge Rubenstein, you can identify yourself, if you would, please.

JUDGE RUBENSTEIN: This is Judge Rubenstein. I'm calling in from Tucson.

JUDGE KARLIN: Thank you. Staff? Why don't we just start with you, Mr. Turk?

MR. TURK: Thank you, Your Honor. Sherwin Turk. With me is Steven Hamrick and the NRC Project Manager, Richard Ennis.

JUDGE KARLIN: Thank you. Entergy perhaps.

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 MR. SILBERG: Jay Silberg with Matias
2 Travieso-Diaz, Scott Vance, and Tim Walsh.

3 JUDGE KARLIN: Thank you.

4 MR. NICHOLS: For Entergy, Craig Nichols.

5 JUDGE KARLIN: I'm sorry. Could you
6 repeat that, please?

7 MR. NICHOLS: For Entergy, Craig Nichols.

8 JUDGE KARLIN: Okay, Mr. Nichols.

9 MR. NICHOLS: Baltimore.

10 MR. McELWAY: And also from Entergy, Dave
11 McElway.

12 JUDGE KARLIN: And Mr. McElway. Mr. Turk?

13 MR. TURK: Yes, sir.

14 JUDGE KARLIN: I'm sorry. I'm sorry.
15 We've already gone through -- Mr. Shadis?

16 MR. SHADIS: Yes, Your Honor. This is
17 Raymond Shadis with New England Coalition.

18 JUDGE KARLIN: Okay. You don't have Dr.
19 Landsman or anyone with you at the moment?

20 MR. SHADIS: No, sir.

21 JUDGE KARLIN: Okay. That's fine. And
22 the State, please.

23 MS. HOFMANN: For the State of Vermont,
24 Sarah Hofmann, from the Department of Public Service.
25 Also on the line is Tony Royceman, our consultant who

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 represents us as well.

2 JUDGE KARLIN: Very good. Thank you. Is
3 there anyone else on the line?

4 MR. SHEEHAN: Neil Sheehan, NRC Public
5 Affairs.

6 JUDGE KARLIN: Okay. Thank you, Mr.
7 Sheehan.

8 All right. We won't go through the ground
9 rules, except to again remind and ask everyone to try
10 to identify themselves as they begin speaking, so that
11 the Court Reporter can more easily transcribe this in
12 an accurate way.

13 The purpose of this call is essentially
14 our monthly, at this point, status conference. We
15 don't have a set agenda, although I am going to
16 mention several items that I think we probably want to
17 talk about today briefly. I might remind everyone
18 that per our revised scheduling order of April 13th we
19 are having these meetings on a basically monthly
20 basis. Dates have been set out in that order.

21 What I would recommend and request is that
22 you contact Ms. Valloch a day ahead of time at least
23 to get the call-in number and the code number. The
24 code number changes for each of these calls, and you
25 do need to do that. And we henceforth are not going

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 to be in the business of calling people and trying to
2 remind them to do what I just said.

3 So next time we have our call, which I
4 think the next one is June 20th, if you don't call in,
5 we're just going to go ahead without you and dispose
6 of any active matters, you know, with or without your
7 presence.

8 So please try to remember and mark those
9 down, and hopefully you can participate. If you
10 choose not to participate, we're going to rule anyway.

11 MR. SILBERG: Judge Karlin, this is Jay
12 Silberg. Would it be possible just for Ms. Valloch to
13 send out an e-mail to the parties a day in advance
14 with the call-in information? It might save her
15 receiving five or six separate phone calls.

16 JUDGE KARLIN: That's a reasonable --
17 well, that's reasonable, and I'll ask her to do that.
18 Is that -- that's fine. But it will serve a bit of a
19 reminder. One of the things we like to do is to sort
20 of understand and manage who is going to be on the
21 call. So what we want you to do is to tell us who is
22 going to be on the call. So her reminder to you
23 should remind you to contact her and give her that
24 info.

25 JUDGE BARATTA: This is Judge Baratta. We

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 really need to know the approximate number of people,
2 so we can make sure that we have enough lines, because
3 unfortunately we have run into problems in the past
4 where we don't have enough lines and somebody can't
5 get in. So it really is important that we hear from
6 you.

7 JUDGE KARLIN: Okay. With that said, I've
8 talked with my colleagues on the Board, and I think we
9 see several topics that we would like to briefly cover
10 today. One is the June limited appearance statement,
11 just a reiteration of issues on that. Second item is
12 evidentiary hearing, a bit of discussion about how we
13 expect to handle that and a protocol for that.

14 Third is a note we want to make regarding
15 proprietary documents. Fourth, we will deal with the
16 Notice of Withdrawal that the State has filed with an
17 MOU with Entergy. And, fifth, we will deal with -- I
18 guess we could call it "a request" from NEC regarding
19 extension of time for additional direct testimony.

20 Those are the five items we would plan to
21 talk about briefly here. I mean, we're talking about
22 an hour total for the call I guess, hopefully. We do
23 not intend to deal with the ruling or discussion or
24 oral argument on the NEC motions for new contentions,
25 those four contentions, two separate motions. So we

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 don't plan to cover that, but we will cover briefly
2 those five items I mentioned.

3 Are there any other urgent items or
4 suggestions for the agenda?

5 MR. SILBERG: This is Mr. Silberg. I
6 assume in the context of the discussion of the Notice
7 of Withdrawal that we would discuss the request by New
8 England Coalition in their response that the Board
9 take up the contention sua sponte.

10 JUDGE KARLIN: Yes.

11 MR. SILBERG: Okay.

12 JUDGE KARLIN: Okay. Any other
13 suggestions or ideas for the agenda?

14 (No response.)

15 Hearing none, we'll proceed on that basis.

16 The first one is the June limited
17 appearance statements, June 26th and 27th. We are
18 looking forward to that and expect and hope to hear
19 from the community. We would just simply want to
20 remind each of the parties here to perhaps remind
21 their constituents and inform the community, to the
22 extent you have relations with the community, as to
23 the nature and scope of what a limited appearance
24 statement proceeding is.

25 I think it has been very good in the past

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 when we're up there that people understood what our
2 oral argument proceeding was about, and this is a bit
3 different. And so if you can spread the word, that
4 might very much help it go smoothly and for us to get
5 a maximum amount of information in the time we have.

6 We expect that to be a sufficient amount
7 of time. We've got basically one evening and one full
8 day. So hopefully that will be enough. So that's all
9 we need to say about that. It will be in the Latches
10 theater, as everyone knows, and I have -- we have not
11 been there, but I understand it's a relatively large
12 venue, and hopefully it will work reasonably well for
13 this purpose, because we're going to be in the
14 listening mode I guess more than anything else, and
15 wanting to hear from the community.

16 Next item -- evidentiary hearing.
17 Protocol I guess I would call it for lack of any -- a
18 better -- our evidentiary hearing dates have been set.
19 As I think I mentioned before, we plan to hold this in
20 a courtroom setting in Newfane, the Superior Court.
21 They have been nice enough to make their facilities
22 available, and a couple of points.

23 This is, as currently scheduled, an oral
24 hearing under 2.1207. But keep in mind, as we've said
25 before, that if the written filings are dispositive

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 sufficient, we may not have any questions for the
2 experts and witnesses who have filed their written
3 testimony and rebuttal testimony. And if we don't
4 have any questions for them, then we may not require
5 live cross examination of them.

6 So, you know, just keep that in mind, and,
7 you know, obviously we're going to be looking at the
8 written testimony and studying it carefully. And the
9 main reason for the hearing would be for us to ask
10 questions of those individuals. And if we have none,
11 well, we're not going to bother them with bringing
12 them in here just for the fun of it.

13 The sort of alternate or flip side of that
14 is remember, also, that if you submit written
15 testimony for a witness, as we've said in our
16 scheduling orders that individual must be available
17 and must -- to testify at those hearings at those
18 dates. We'll get down to more specific days I guess
19 later. But when you give us the written testimony
20 from somebody, the up shot is if we've got some cross
21 examination or direct examination questions for that
22 individual, we will need to have that person be at the
23 hearing.

24 And the third point would be, as we've
25 said before, the hearings will be open to the public,

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 unless we find that we're going to have to delve into
2 proprietary information, in which case we will -- may
3 have to and probably will have to close portions of
4 the hearing. But we won't know that until we've
5 studied it -- the submissions, the direct, and the
6 rebuttal -- and decide what kind of questions, if any,
7 we may have to ask in the hearing.

8 Third item for the agenda -- proprietary
9 documents. Judge Baratta may want to pipe up here as
10 well, but we note preliminarily -- certainly we have
11 not studied thoroughly the initial testimony submitted
12 by the parties on May 17th. But we do note that it
13 seems that there has been some references to
14 proprietary documents, and particularly I think by
15 Entergy.

16 And if you're going to rely on or
17 reference a proprietary document, we're going to need
18 to see it. And that's going to need to be produced.
19 And so just keep that in mind, and, you know, I think
20 -- Judge Baratta, do you have anything you want to add
21 to that?

22 JUDGE BARATTA: Yes, I'd like to -- the
23 specific reference I'm looking at is on the May 17th
24 filing by Entergy, on page 12, question 30, where it
25 says, "As well as the U.S. NRC safety evaluation

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 report found at NEDO 24154-A of August 1986."

2 And then, also, there is illusion to but
3 less specific references to a test result from a
4 variety of plans, in particular the -- later on on
5 page 15 where it references comparisons. And then,
6 further on, page 20 and 21, where it talks about
7 comparisons of KKL reactions.

8 I assume that some of those meet their
9 proprietary --

10 MR. SILBERG: They're references to
11 documents?

12 JUDGE BARATTA: On those last couple, no,
13 there's no references -- specific references other
14 than to the result.

15 MR. SILBERG: Judge Baratta, do you want
16 copies of the -- of only the documents that are
17 referenced in this -- in the testimony? Or where we
18 talk about results, do you want us to go back and dig
19 up the references which we haven't cited?

20 JUDGE BARATTA: It would probably be
21 advisable for you to do that.

22 MR. SILBERG: Which one? Both?

23 JUDGE BARATTA: Both.

24 MR. SILBERG: Oh, okay.

25 JUDGE BARATTA: The latter one I guess

1 involves the former one, too, so --

2 MR. SILBERG: Okay. Because one thing I
3 would suggest, obviously we discuss a lot of
4 information in those reports, which are, you know,
5 summarized by our expert witnesses. If you could
6 identify specific areas where you think that there may
7 be documents that you want to see, that would be very
8 helpful.

9 Otherwise, we may well be shooting in the
10 dark trying to anticipate what documents you might
11 like to see which are documents that we haven't
12 referenced, and perhaps there aren't such documents.
13 So if we could know that in advance, that could be
14 very helpful.

15 JUDGE BARATTA: I think that the documents
16 that substantiate the statements that the results were
17 in agreement with the Oden calculations are the
18 documents that would be of importance to me.

19 MR. SILBERG: Okay. Well, we will carry
20 that message back. If there are issues in our trying
21 to understand precisely what documents there are or
22 are not, we may be back to you or, you know, perhaps
23 at the next conference call or perhaps before then.

24 JUDGE BARATTA: Right. I think it would
25 be good to get back to us as promptly as possible, Mr.

1 Silberg, if you could. I have not looked at this. I
2 would not -- I'm going to hasten to mention I don't
3 know that what Judge Baratta has listed or identified
4 here is an exhaustive list. I don't think it is.

5 But, you know, I mean, I guess if there's
6 something that you or your experts are relying upon to
7 substantiate your position or their position or their
8 statements, you know, we probably need to see that
9 document.

10 JUDGE BARATTA: Well, that may be a little
11 broad, because clearly people are relying on a whole
12 lifetime of experience.

13 MR. SILBERG: Oh, yes, yes.

14 JUDGE BARATTA: And so I think the more
15 specific you can be in pointing us to potential
16 documents or areas where you think there may be
17 documents that would certainly make our job easier,
18 other than, you know, we're just trying to second-
19 guess what you might want to see.

20 JUDGE RUBENSTEIN: This is Judge
21 Rubenstein. One of the areas I would be particularly
22 interested in is the methodology you use to integrate
23 the separate test to justify that the large transient
24 tests -- is that necessary, and how you took the
25 components of the individual test, like an MSIV test

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 other things and integrated these into a decision
2 process which said, "This is acceptable. We don't
3 have to do the large test, because we have these
4 components, and experience has shown that other
5 reactors that get codes when using the information
6 from these components have defined the experience
7 perhaps in a transient plant." Is that clear?

8 MR. SILBERG: Mr. Diaz is shaking his head
9 affirmatively.

10 JUDGE RUBENSTEIN: Okay.

11 MR. TURK: Your Honor, this is Sherwin
12 Turk. We referred to the various documents in our
13 testimony as well, which we have not produced. Some
14 of that may be proprietary, but I'm not sure that you
15 need anything from us. It might be helpful if after
16 you've read the testimony make a list of the documents
17 that you want to see from us, and possibly from other
18 parties.

19 And if you simply issue an order saying
20 that we should produce those documents for in camera
21 review or proprietary review, we'll be happy to do
22 that, as long as we know exactly what it is that you
23 need to see.

24 JUDGE BARATTA: That's rather difficult,
25 because unfortunately the only specific document

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 that's referenced was that -- the other -- there's no
2 reference to documents. There's references to
3 agreements that they, in fact, made to -- it could be
4 in the form of summary reports. It could be in the
5 form of detailed analyses reports. I can't be much
6 more specific than that.

7 And I assumed that Entergy, since they
8 have the burden of proof at this point, should take
9 the lead on getting those documents, because I think
10 the documents probably are the same ones that are
11 referenced in past filings. At least it would appear,
12 based on the discussion, they're the same.

13 JUDGE KARLIN: Yes. Let us think about
14 this a little bit. I mean, we -- Entergy has the
15 burden of showing its case and establishing its case.
16 We are not here to tell you how to do that, but we
17 don't want to be cagey and not ask for -- if we have
18 some question we want to -- we'll ask for a document.
19 But we -- the basic approach is, look, if you're
20 relying upon some documents or some studies that are
21 documented, and those seem to be important to you, I
22 think you're well advised to produce them.

23 We're not -- let us look at this now, take
24 it under advisement, and see if we can give you more
25 specific instruction. It may not be listing

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 individual documents, but perhaps we can articulate
2 general, you know, areas where you need to document,
3 or if there are documents associated with it you need
4 to produce that.

5 MR. SILBERG: If you could be -- my
6 concern is, depending on how far down one drills --
7 if, for instance, we're talking about the MSIV tests,
8 every document that determines how, you know, an MSIV
9 is constructed and how it operates under various
10 transients and how it fits together with all the other
11 pieces of the plant, I mean, that could be, you know,
12 an extraordinarily large number of documents.

13 JUDGE RUBENSTEIN: This is Judge
14 Rubenstein. I don't think we want the genesis of the
15 MSIV testing sequence, but what we do want is how you
16 used it and the documents which justified their use in
17 a decision process which is the basis for your
18 position that we -- you don't need the large transient
19 test.

20 So you can focus on those aspects. In
21 other words, if you make certain conclusions from
22 individual MSIV tests and those which may have
23 occurred inadvertently at other BWR reactors, and you
24 draw this data and there is a report specific to that
25 kind of information, I think we might want to see it.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 MR. SILBERG: Okay. We will do our best
2 to meet the Board's requirements.

3 JUDGE RUBENSTEIN: Why don't we just try
4 to drill down to the second level or the first one and
5 a half levels. And if we need more, we'll come back
6 at it.

7 MR. SILBERG: Okay.

8 MR. TURK: While we're talking about
9 proprietary documents, I'd -- this is Sherwin Turk --
10 I'd like to ask a question also.

11 JUDGE KARLIN: All right.

12 MR. TURK: In our testimony we refer to
13 the final safety evaluation. As you know, there is
14 both a proprietary version and a non-proprietary
15 version. NEC does not receive proprietary
16 information. So although we would like to make the
17 proprietary version a part of the record, Your Honors
18 would be the only ones to see it, Your Honors and
19 Entergy.

20 So I think what I am contemplating doing
21 is filing as exhibits both the proprietary and non-
22 proprietary, but make sure that we designate the
23 proprietary one for special handling.

24 MR. SHADIS: Your Honor, this is Ray
25 Shadis. New England Coalition is prepared to sign

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 proprietary protection agreements for these --
2 anything coming under these two contentions, the two
3 admitted NEC contentions. And maybe that will help
4 solve that problem.

5 MR. TURK: The SER, of course, addresses
6 many issues other than what's in these two
7 contentions, but we propose putting the entire SER
8 into evidence. So I assume that Mr. Shadis would
9 agree to treat the entire SER as proprietary and to
10 abide by the non-disclosure requirements.

11 MR. SHADIS: This is Ray Shadis again.
12 That would be one approach, but I fail to understand
13 the need to file irrelevant material, which would --
14 which is what I would call the rest of the SER.

15 JUDGE KARLIN: Well, Mr. Shadis, there is
16 -- we have an agreement form I guess that has been
17 attached to the protective order we developed, you
18 know, about a year ago. And I would suggest to you
19 drop that off, and if you're willing to sign that then
20 sign it and get it filed promptly. This will solve I
21 think much of the problem.

22 I'm really not -- I'm not enthusiastic
23 about suggesting that we somehow redact or otherwise
24 carve up the SER so that it could only deal with some
25 -- in some way the two contentions and that's all.

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

1 The SER -- we have a final -- we are going to need to
2 see the final SER, the proprietary version of that.

3 If you want to see it, Mr. Shadis, I think
4 you need to sign that agreement.

5 MR. SHADIS: Thank you.

6 JUDGE KARLIN: If you don't want to see
7 it, then you don't have to see it. We'll arrange some
8 procedure for being -- for receiving it in camera if
9 we need to.

10 MR. SHADIS: Thank you, Your Honor.

11 JUDGE KARLIN: Okay. So I would suggest
12 that if you're going to sign that, you sign it --
13 we'll give you 10 days to send in the signed agreement
14 that is part of the protective order. It's right
15 there. All you need to do is sign it and send it to
16 I guess the staff, and I'm not even sure whether you
17 need to file it with us. Just go back to the
18 protective order and follow that procedure. I think
19 it probably does need to be filed with us.

20 And that -- that sounds like a good way to
21 deal with it, and I appreciate your suggestion on
22 that, Mr. --

23 MR. SHADIS: Thank you, Your Honor. With
24 respect to the -- to the 10-day limit on that, some
25 part of that is a little bit problematic, because Dr.

1 Hoppenfeld, our expert, who would also I believe need
2 to sign this thing, is on the road to deliver some
3 papers, some technical paper to a -- some sort of
4 petroleum conference.

5 He has said he will likely not be back
6 home until the 7th, so -- and we may be able to catch
7 him on the road, and, you know, fax him a copy and get
8 it back, but it is going to be a little bit
9 problematic.

10 JUDGE KARLIN: Well, I think in this era
11 of fax machines and e-mails and that sort of thing it
12 really should not be a problem to contact someone even
13 though they're on the road. So I think 10 days -- we
14 can make it 12 days, if you'd feel better about that
15 -- I'm not particular about it. But, I mean, that
16 should be sufficient, so --

17 MR. SHADIS: Thank you, Your Honor.

18 JUDGE KARLIN: -- that's 10 days from
19 today -- well, make it 12, because we have Memorial
20 Day weekend, and that may create some problems -- 12
21 days to get it in. If it's a problem for anybody to
22 get it faxed and to sign it -- it's been out there
23 since March 1 of '05.

24 MR. SHADIS: Thank you, Your Honor.

25 JUDGE KARLIN: Thank you.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 MR. SILBERG: And if I could just request
2 that a copy of that -- the signed agreements be sent
3 to Entergy as well.

4 JUDGE KARLIN: Okay. Well, I think that's
5 right. I mean, I don't have the first '05 order in
6 front of us, but I think that that ought to be sent to
7 all the parties.

8 MR. SHADIS: Thank you. This is Ray
9 Shadis again. It was our intention to sign it,
10 extending those protections to Entergy and its
11 contractors as well. So of course we would be sending
12 it to Entergy and the parties.

13 JUDGE KARLIN: And my impression is that
14 the -- it will apply to the entire FSER. We're not
15 going to redact the FSER or try to, you know, limit it
16 in some way.

17 MR. SHADIS: This is Ray Shadis again.
18 Yes, Your Honor, that's my understanding also.

19 JUDGE KARLIN: Okay.

20 MR. SHADIS: Thank you.

21 JUDGE KARLIN: All right, great. All
22 right. That's what we wanted to talk about briefly,
23 the proprietary -- I'll focus on, you know, what
24 specific proprietary documents are referred to. And,
25 Mr. Silberg and Mr. Turk, hopefully you can think

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 about that, and anything that supports your case. If
2 we identify -- if we can identify anything more
3 specifically that is a general category, Judge Baratta
4 and Judge Rubenstein have both sort of told you
5 generally what -- some of the areas of their concern.
6 Hopefully, that will inform you.

7 And we may end up articulating more
8 specific, you know, general areas that we want you to
9 provide documents on. We may not. Let's just let
10 that ride for a while. But we are concerned about
11 that issue.

12 Now we will move to the Notice of
13 Withdrawal by the State, the Amended Notice of
14 Withdrawal. We've studied that, and I guess what I
15 have -- we have just one question we'd like to ask,
16 which is not -- which is from the staff's perspective
17 more than anything else, Mr. Turk.

18 We see that the MOU, which is attached --
19 that is attached to the Notice of Withdrawal, are --
20 identifies some action items for Entergy. Entergy
21 will take certain -- do certain monitoring and do
22 certain readings of nitrogen usage and provide
23 information. This is all fine and good, sounds
24 reasonable.

25 Obviously, we are not amending -- or you

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 are not amending I guess the license in any way to --
2 or include these provisions. This is separate from
3 the license.

4 MR. TURK: That's correct, Your Honor.

5 JUDGE KARLIN: Okay. And so the staff is
6 fine with -- this is not impinging upon its authority,
7 the NRC's authority as the regulator?

8 MR. TURK: That's correct. We see these
9 commitments by Entergy as information-sharing
10 commitments, much of the testing, if at all, that
11 would have been done anyway, and it's really a matter
12 of making sure that the State gets the information
13 from Entergy as they have requested. And that's
14 between them. Entergy has committed to do it, and
15 they have that understanding with the State.

16 JUDGE KARLIN: Right.

17 MR. TURK: But we looked at the terms of
18 the MOU. We saw nothing in there that would adversely
19 affect public health and safety, nothing that intruded
20 upon our jurisdiction, and we have no objection to the
21 terms of their agreement.

22 JUDGE KARLIN: Okay. Thank you for that
23 clarification.

24 With that, having talked with colleagues
25 earlier on this matter, we -- and obviously we saw 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

1 draft -- the original Notice of Withdrawal and MOU,
2 and then it was filed again and amended. We've read
3 the materials submitted by Entergy, by NEC, and by the
4 staff, and we grant the withdrawal and approve the
5 settlement, largely along the lines laid out in the
6 staff's brief on the subject or submission on this
7 subject.

8 If the policy of the NRC and the ASLBP is
9 to encourage settlements, this seems to be a
10 settlement. We see no reason why it's not in the
11 public interest, and so we grant the withdrawal and
12 approve the settlement. We decline to raise this
13 matter sua sponte, and we deny NEC's request to "take
14 up" the issues raised in the State's contentions.

15 So a written ruling will be following
16 soon, but we just wanted to let everyone know that we
17 agree with the withdrawal and bid a fond adieu to
18 Sarah Hofmann and Tony Royceman and the State on this
19 matter. I find you have contributed to this matter,
20 and I think we all appreciate your professionalism in
21 being involved in this. And so, you know, I guess you
22 will no longer need to participate in these matters.

23 MS. HOFMANN: Yes. And from the State's
24 perspective, Judge Karlin and the other Judges, thank
25 you so very much for the time and attention you've

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 paid to this issue, and we really appreciate your
2 granting our withdrawal and approving the settlement.
3 So from the State of Vermont, much appreciation for
4 the work that has gone into this case.

5 JUDGE RUBENSTEIN: This is Judge
6 Rubenstein. I would also like to add my thanks for
7 your raising the issue, and the professionalism in
8 which you've conducted it throughout the approximately
9 18 months of the hearing, and I wish you well.

10 MS. HOFMANN: Thank you very, very much.
11 And as we said, the State really appreciates the time
12 that everyone, including the staff, the Advisory
13 Committee on Reactor Safeguards, have put into our
14 issue.

15 With that I believe that there is probably
16 no reason for Mr. Royceman and I to remain on the
17 phone. So I guess with leave of the Judges we'll
18 depart.

19 JUDGE KARLIN: That's fine. We're almost
20 done anyway, I think, but if you want to adjourn or
21 leave, that's great. Appreciate your participation,
22 and, you know, thank you for filing the Amended Notice
23 of Withdrawal. That was helpful in terms of getting
24 the -- what we seem to -- our regs seem to require,
25 and so thank you.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 MS. HOFMANN: Thank you very much.

2 JUDGE KARLIN: . And we will be following
3 this with a written ruling on it. And thank you very
4 much, and have a nice summer.

5 MS. HOFMANN: Thank you.

6 JUDGE RUBENSTEIN: Thank you very much.

7 JUDGE KARLIN: Okay. Next, we turn to
8 what we'll call the NEC request for additional time
9 for direct testimony. We have received, of course,
10 the initial testimony by -- or submission by NEC on
11 May 17th, and found therein, you know, some references
12 to requesting our indulgence for some additional time
13 to submit some additional apparently direct testimony.

14 We also noted, of course, that Entergy has
15 filed yesterday a response to this request, an
16 opposition to this request. We've talked among
17 ourselves about these matters, and we've talked about
18 it in the past in this forum.

19 On March 23rd we issued an order setting
20 out the terms for requests for extension of time. As
21 far as we're concerned at this point, no such request
22 for extension of time or motion has been filed with
23 us. Whatever NEC filed, it certainly didn't meet the
24 terms set. The deadline for filing direct testimony
25 was May 17th. That deadline has passed. People did

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 their filings, and that's great, you know.

2 Absent a motion or request that meets the
3 terms of that order of March 23rd, we're not going to
4 entertain a submission of additional direct testimony
5 on May 31st or at any other point. If NEC wants to
6 file such a request or motion, and meeting the terms
7 with the affidavits required, it may do so, and then
8 we'll have to deal with it.

9 So that's our reaction. We remind the
10 parties that rebuttal positions and testimony are due
11 on June 14th, and that the submissions at that time
12 are limited to rebuttal. They will not be new direct
13 testimony -- rebuttal of the other parties' positions
14 and testimony.

15 With that, we propose to adjourn the
16 meeting. Are there any other items that need to be
17 raised?

18 MR. SILBERG: We have none for Entergy,
19 sir.

20 JUDGE KARLIN: Okay.

21 MR. SHADIS: This is Ray Shadis with New
22 England Coalition. I do have a question, Your Honor,
23 with respect to the applicability, if you will, of the
24 declaration that Dr. Landsman filed in support of this
25 revisited or renewed contention on the cooling towers,

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 whether we would be permitted to -- I don't know
2 exactly how to say this -- to invoke that declaration
3 as testimony to proceed forward with that or not.

4 JUDGE KARLIN: Are you referring to -- I
5 mean, you mentioned this in your filing of the 17th.
6 If I'm correct, you're referring to the Landsman
7 declaration of September 19th of '05?

8 MR. SHADIS: That's correct, Your Honor.

9 JUDGE KARLIN: It seems to me, without
10 consulting my colleagues, that you have submitted that
11 as -- you are resubmitting that, and that is your
12 direct testimony on this issue. I mean, we're I guess
13 accepting that. My reaction is you've submitted that
14 document, you propose that as your direct testimony.

15 JUDGE BARATTA: This is Judge Baratta.
16 That's the way I read it, that that was being
17 submitted in essence as part of your testimony, even
18 though it referenced the document that was from
19 September.

20 MR. SHADIS: Yes, Your Honors. And that
21 was our intent. And I guess the question then is:
22 does this now need to be supported with an affidavit,
23 or will it stand as prefiled testimony?

24 JUDGE BARATTA: Did you -- this is Judge
25 Baratta again. Did you provide an affidavit back in

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 September?

2 MR. SHADIS: The prefiled -- excuse me,
3 the declaration itself has the statement at the end
4 that "under penalty of perjury," and so on, "this is
5 true and correct," and it is signed by Dr. Landsman.
6 But I don't know if that can stand in for a separate
7 affidavit or not.

8 JUDGE KARLIN: I think -- my initial
9 reaction is that's sufficient for purposes of oral
10 hearing. But we'll look at that and direct you if
11 something additional needs to be filed on that. But
12 I think that's sufficient.

13 And remember, Dr. Landsman will need you
14 -- by submitting that, you have committed that Dr.
15 Landsman is available in the two weeks that we've set
16 aside for hearings.

17 MR. SHADIS: Yes. Since we filed that on
18 the 17th, I have been able to contact Dr. Landsman and
19 speak with him and get his assurance that he would be
20 available.

21 JUDGE KARLIN: Great. All right. So with
22 that, appreciate everyone's participation. Let's see,
23 remember, we have a conference call set for June 20th.
24 No one is going to call you and remind you, but Karen
25 Valloch will, at Mr. Shadis' request, send an e-mail

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 out the day before. Please let her know, let us know,
2 who -- how many people you expect to be on the line.

3 Then, the following week, quickly of
4 course, we will be up in -- up in Brattleboro for the
5 limited appearance statement.

6 Thank you for your participation.

7 MR. SHADIS: Thank you, Your Honor. Ray
8 Shadis again. One point of correction. That was Mr.
9 Silberg's request for the e-mail. But thank you.

10 JUDGE KARLIN: Was it Mr. Silberg?

11 MR. SILBERG: It was, sir. But I'm
12 perfectly willing to give credit to Mr. Shadis.

13 (Laughter.)

14 JUDGE KARLIN: All right. Well, wonderful
15 idea. Okay, great. Thank you, everyone. We now are
16 adjourned.

17 (Whereupon, at 11:41 a.m., the
18 proceedings in the foregoing matter were
19 adjourned.)

20

21

22

23

24

25

CERTIFICATE

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

Name of Proceeding: Entergy Nuclear Vermont
Yankee, LLC and Entergy
Nuclear Operations, Inc.

Pre-hearing Conference

Docket Number: 50-271-OLA and

ASLBP No.04-832-02-OLA

Location: teleconference

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.



Alex Patton
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