

RAS 11865

# Official Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

June 23, 2006 (2:21pm)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Title: Entergy Nuclear Vermont Yankee  
Pre-Hearing Conference

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

Location: (telephone conference)

Date: Tuesday, June 20, 2006

Work Order No.: NRC-1095

Pages 991-1019

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

TEMPLATE = SECY-032

SECY-02

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,  
June 20, 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

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

1        APPEARANCES:2                On Behalf of the Applicant:

3                                JAY SILBERG, ESQ.

4                                MATIAS F. TRAVIESO-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 Intervenor, New England11        Coalition:

12                                RAYMOND SHADIS

13                                New England Coalition

14                                P.O. Box 545

15                                Brattleboro, Vermont 05302

16

17                On Behalf of the Nuclear Regulatory Commission:

18                                SHERWIN E. TURK, ESQ.

19                                STEVEN C. HAMRICK, ESQ.

20                                U.S. Nuclear Regulatory Commission

21                                Mail Stop O-15D21

22                                Washington, D.C. 20555

23                                (301) 415-1533

24

25

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1        ALSO PRESENT:

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

3                    MARSHA CARPENTIER, ESQ., ASLBP Law Clerk

4                    KAREN S. VALLOCH, ASLBP Administrative

5                    Assistant .

6                    CRAIG NICHOLS, Project Manager, Uprate

7                    Project

8

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 AVENUE, N.W.  
WASHINGTON, D.C. 20005

P R O C E E D I N G S

1  
2 JUDGE KARLIN: [in progress] here, with me  
3 in Rockville, and I'll let Judge Rubenstein introduce  
4 himself, and then ask the parties to go around the  
5 table to introduce themselves. But just before I do,  
6 I need to reflect that this is Docket No. 50-271-OLA,  
7 ASLBP No. 04-832-02-OLA, and we're convening on this  
8 June 20th, 2006, pursuant to the revised scheduling  
9 order issued in this case.

10 With that, here, in the room in Rockville,  
11 at NRC headquarters, we have Judge Baratta, Jonathan  
12 Rund and Marsha Carpentier, our law clerks and  
13 lawyers. Karen Valloch is with us but she just  
14 stepped out of the room, our administrative assistant.

15 Dr. Rubenstein, Judge Rubenstein, you're  
16 out there in Tucson, I suspect, today.

17 JUDGE RUBENSTEIN: No. I'm in Las Vegas.

18 JUDGE KARLIN: Oh, that's right; that's  
19 right.

20 JUDGE RUBENSTEIN: But this afternoon in  
21 Tucson.

22 JUDGE KARLIN: Very good. All right.

23 And then with that, if we could do the  
24 regular thing. Perhaps ENTERGY could introduce itself  
25 first on the record.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVENUE, N.W.  
WASHINGTON, D.C. 20005

1 MR. SILBERG: Good morning. It's Jay  
2 Silberg from Pillsbury Winthrop Shaw Pittman, and Matt  
3 Diaz representing ENTERGY. Also on the phone, from  
4 the Vermont Yankee nuclear plant, is the project  
5 manager for power uprate, Craig Nichols.

6 JUDGE KARLIN: Good morning; good morning.  
7 Let's see. NEC. Nuclear Energy Coalition. Mr.  
8 Shadis.

9 MR. SHADIS: And it's New England  
10 Coalition, Your Honor. This is Raymond Shadis, pro se  
11 representative.

12 JUDGE KARLIN: All right. Sorry for the--  
13 all right. Very good, Mr. Shadis. And Mr. Turk,  
14 you're representing the staff, I guess.

15 MR. TURK: Good morning, Your Honor.  
16 Sherwin Turk for NRC staff. Steven Hamrick may be  
17 joining us later, but he's not in the room at present.

18 JUDGE KARLIN: Okay; great. And Mr.  
19 Nichols, I guess we've introduced for ENTERGY, is on  
20 the line somewhere.

21 Then let us proceed. Well, I'll ask, Is  
22 anyone else on the line?

23 MR. McINTIRE: Yes. David McIntire from  
24 NRP Public Affairs.

25 JUDGE KARLIN: Anyone else?

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

1 All right. Fine.

2 As we've said before, the basic ground  
3 rules are such that the litigants and parties may  
4 participate. The public and press, media, are welcome  
5 to listen in as if this was in a courtroom but not to  
6 speak or participate. We have a court reporter that  
7 will transcribe the session, and if the parties could  
8 all try to identify themselves when they begin  
9 speaking, it would be helpful for the court reporter  
10 purposes.

11 I think this will be hopefully a  
12 relatively short call. The purpose is simply to have  
13 sort of a monthly status report as we approach the  
14 evidentiary hearing, and do those things that are  
15 needed to prepare for it. The evidentiary hearing is  
16 now set for the week of September 11th.

17 As usual, I have a couple of topics I  
18 think we ought to cover, briefly, and then I'll ask if  
19 there's anything else that's urgently needed to be  
20 discussed, the topics being, one, the June 26th  
21 limited appearance statement sessions that are coming  
22 up next week. Two, the question of whether or not  
23 supplemental rebuttal is going to be requested or  
24 needed by anyone, given that there was some  
25 supplemental direct recently filed yesterday.

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

1                   And third is just to talk very briefly  
2                   about motions in limine which will be the subject of  
3                   some filings between now and the next conference call  
4                   we have on July 18th.

5                   We're not going to discuss the NEC  
6                   contention that's still pending, the new or amended  
7                   contention that they've filed. We're not going to,  
8                   you know, discuss that. But a ruling will be coming  
9                   on that in the near term.

10                  Given that, is there anything else that's  
11                  urgently needed to add to the agenda?

12                  MR. SILBERG: One question that I--I have  
13                  two questions that I wanted to ask, and this is  
14                  Silberg. We did not receive any documents or  
15                  identification of documents from the Coalition. We  
16                  did from the NRC staff and of course we filed  
17                  yesterday.

18                  And I just wanted to confirm that the  
19                  Coalition was not filing any identification of  
20                  documents.

21                  JUDGE KARLIN: Okay. We can get to that  
22                  in the supplemental rebuttal discussion but that's--

23                  MR. SILBERG: Okay, and the other is  
24                  whether we could talk about the hearing itself. We  
25                  have two scheduled, one on September 1 and October,

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

1 and I don't know if the board is in a position to  
2 focus in on how we plan to handle that in light of the  
3 fact that we're now dealing with [inaudible].

4 JUDGE KARLIN: Okay. It seems like we  
5 could talk briefly about that at the end.

6 All right. Anything else?

7 MR. SHADIS: Yes, Your Honor. This is Ray  
8 Shadis. We've received several inquiries from  
9 citizenry in the Vermont Yankee area with respect to  
10 the limited oral appearances, and the questions  
11 generally focus on the scope of those comments, as to  
12 what would be permitted in terms of general scope of  
13 comment.

14 JUDGE KARLIN: Okay. Well, I think that's  
15 a good point and we'll talk about that, and when we  
16 talk about the limited appearance statements.

17 MR. SHADIS: Thank you.

18 JUDGE KARLIN: Okay. All right. With  
19 that, let's proceed with discussing the June 26th,  
20 27th limited appearance statements. We've covered  
21 this ground before and we urge you, to the extent you  
22 have any contact or influence with other stakeholders,  
23 to, you know, to remind them, and your constituents of  
24 the nature and scope of what the limited appearance  
25 session is all about.

1           We tried to articulate that pretty  
2 carefully in the April 10th notice that appeared in  
3 the Federal Register, I believe on April 14th, and I  
4 would urge you to take a look at that and perhaps to  
5 the extent anyone has questions, they remind you.  
6 Specifically, Mr. Shadis, we tried to, in that notice,  
7 say, look, as everyone knows, as everyone at the table  
8 here today realizes, the scope of what this board is  
9 charged with doing, and our authority and  
10 responsibility, is dealing with the contentions  
11 presented to us, properly, in this matter, and those  
12 now are the two contentions presented by NEC.

13           So strictly speaking, that is the scope  
14 and limit of our authority. I know that might  
15 frustrate some people who feel that perhaps the  
16 holistic approach should be taken but we are a board  
17 with a specific charge and authority and  
18 responsibility.

19           So we've asked and urged people to limit  
20 their comments to those issues, the two contentions,  
21 and how we might address them, and if there's  
22 something they think is important. And we said that  
23 in the April 14th Federal Register, although at that  
24 point there were four contentions. I'll try to give  
25 an introductory presentation when we begin next week,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVENUE, N.W.  
WASHINGTON, D.C. 20005

1 on next Monday evening, but if and when someone  
2 wanders off a little bit beyond the two contentions,  
3 and question, Are we going to get a hook and pull them  
4 off from a microphone? I suspect not. We probably  
5 will have to tolerate, and some leeway given, that a  
6 lot of people just simply won't understand the  
7 narrowness, and if they stay within their five  
8 minutes, you know, we'll probably not have a huge  
9 problem with that.

10 I would like them, and will ask them to  
11 keep on the topic of the contentions in question.

12 Does that help you, Mr. Shadis?

13 MR. SHADIS: Thank you, Your Honor, it  
14 does, and this is not to be at all argumentive, but I  
15 do wish to point out that other than filing as  
16 interveners, petitions for relief to intervene, the  
17 affected citizenry have not had no opportunity to  
18 address the board on uprate issues generally, and I'm  
19 speaking with respect to those issues that might  
20 affect public health and safety, that could be  
21 categorized as uprate-related issues.

22 And so, you know, I guess I'm asking if  
23 the board would consider hearing those kinds of  
24 issues.

25 JUDGE KARLIN: Well, I think I'll try to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 answer the question, which is don't have authority or  
2 ability to address anything other than the contentions  
3 that have been properly before us or probably before  
4 us. So I mean that's what we've got. If someone  
5 comes and starts talking about Yucca Mountain or  
6 something like that, global warming, or, you know, it  
7 might be better said somewhere else, and perhaps other  
8 people who have got something to say that's on point  
9 should have a higher priority.

10 But, again, are we going to get the guards  
11 to take someone out of the room? Probably not. If  
12 we've got enough time, you know, and someone starts to  
13 wander a little bit, we're not going to be too  
14 concerned about that. You know, as long as people are  
15 within their five minute limit.

16 And we're going to try to take people in  
17 the order that they sign up, and we have a number of  
18 written limited appearance statements that have been  
19 filed, and ever since October of 04, when we invited  
20 limited appearance statements to be filed in writing.

21 So we're really not going to be enthused  
22 about someone going totally off topic, or something  
23 else. We also recognize and we will acknowledge that  
24 there is a separate board, as you of course know,  
25 that's dealing with the renewal, and I think that will

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVENUE, N.W.  
WASHINGTON, D.C. 20005

1 be a source of frustration to people, perhaps, that  
2 there's two separate boards, two different matters.

3 If they talk about renewal, are we going  
4 to get a hook and pull people off the mike? Probably  
5 not. But it's not on topic, not particularly, not  
6 relevant at all to what this board is going to have to  
7 do.

8 MR. SHADIS: Thank you, Your Honor. This  
9 is Ray Shadis again and I'd asked the board to  
10 consider giving some instruction at the beginning of  
11 these sessions, as you have in the past, but I believe  
12 it's particularly important, given the experience of  
13 the license renewal team, and panel in taking  
14 statements. What we had were a series of proceeding  
15 and anti-nuclear speeches, which, you know, really  
16 didn't lend anything to the record, and so I'd ask the  
17 board to consider advising people, in advance, that,  
18 you know, that--I don't want to put words in your  
19 mouth--but, in essence, this is not a debate about  
20 nuclear power, pro or con.

21 JUDGE KARLIN: Okay. We will do that, and  
22 further we'll point out that this is a time for the  
23 board to listen, not for, to answer questions and that  
24 sort of thing. So we'll try to give some instructions  
25 at the outset, next week, and I appreciate your help

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVENUE, N.W.  
WASHINGTON, D.C. 20005

1 and concern, and if you can, if possible, inform any  
2 stakeholders or constituents who might talk with you,  
3 that, you know, we are really focusing on the  
4 contentions, and people now are like that, but that is  
5 really what we have to do here.

6 Now if they could respect that, that would  
7 be great, but we're going to try to be somewhat  
8 tolerant, you know, on the matter.

9 Okay. Next.

10 Are there any other questions on the  
11 limited appearance statement?

12 Does anyone else want to say anything?  
13 Judge Baratta, or Rubenstein?

14 JUDGE: No comment.

15 JUDGE KARLIN: Okay. Then I think we can  
16 go to what I would call the rebuttal, supplemental  
17 rebuttal question. We've had the direct testimony and  
18 positions filed. We've had the rebuttal testimony and  
19 positions filed. Meanwhile, on June 5th, this board  
20 indicated to the parties, all parties, really, that we  
21 want to see any documents that are being relied upon  
22 by them, or by their witnesses, and we asked people,  
23 instructed people to submit what we call supplemental  
24 direct on June 19th, yesterday.

25 As far as I can tell, we've got something

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVENUE, N.W.  
WASHINGTON, D.C. 20005

1 from the staff and something from ENTERGY,  
2 supplemental direct. Mr. Shadis, did you file  
3 anything?

4 MR. SHADIS: No, sir.

5 JUDGE KARLIN: Okay. So I think that  
6 answers Mr. Silberg's question. That you just chose  
7 not to file anything then.

8 The next question that I really have, and  
9 I think we've posed it in the order of June 5th, was  
10 in light of this supplemental direct, do the parties  
11 need an opportunity or seek an opportunity to file  
12 supplemental rebuttal, i.e., to rebut or respond? If  
13 you think so, to whatever was submitted as  
14 supplemental direct yesterday?

15 Mr. Turk, do you have any near concern for  
16 that?

17 MR. TURK: No, Your Honor, we do not.

18 JUDGE KARLIN: All right.

19 Mr. Shadis, what's your disposition?

20 MR. SHADIS: We have no supplemental  
21 rebuttal to file. However, we do have a concern for  
22 the reliance on proprietary information and my intent  
23 is to ask the board, in a letter, to review those  
24 documents that have been submitted as proprietary, to  
25 determine whether or not that can be some redacted

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVENUE, N.W.  
WASHINGTON, D.C. 20005

1 version of them provided.

2 JUDGE KARLIN: Well, as we indicated in  
3 our order, if they're proprietary, then redacted  
4 versions of the proprietary need to be made available.

5 MR. SHADIS: Thank you.

6 JUDGE KARLIN: I think we already covered  
7 that in--

8 MR. SHADIS: Okay.

9 JUDGE KARLIN: --the order of June 5th.  
10 I think that's empirically true. Well, asterisks on  
11 that. If you and your witnesses had signed the, you  
12 know, confidentiality agreement, non-disclosure  
13 agreement, it'd probably be moot, but since it's not  
14 possible to do so, I think anything that is being  
15 submitted as direct or rebuttal, that is proprietary,  
16 the submitter needs also to provide a redacted  
17 version, as I think we laid out in the June 5th order,  
18 so that you can participate to the greatest extent  
19 possible on that.

20 MR. SILBERG: Mr. Chairman, if I might,  
21 this is Jay Silberg.

22 JUDGE KARLIN: Yes, Mr. Silberg.

23 MR. SILBERG: As you'll see from our  
24 filing that was provided yesterday, we have provided  
25 proprietary and non-proprietary versions to the extent

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

1 that they were readily available. In the case where  
2 documents were not readily available in non-  
3 proprietary form, we prepared non-proprietary  
4 summaries of the proprietary documents. There are  
5 some documents, and we will identify them in our  
6 filings, for which non-proprietary versions do not  
7 currently exist. They were never required and they  
8 have never been prepared.

9 We have asked--and these are primarily  
10 General Electric documents--we have asked General  
11 Electric whether they could be prepared, and, if so,  
12 how difficult a job that would be.

13 We were given the answer that it would  
14 take 15 man-weeks of efforts to prepare non-  
15 proprietary or redacted versions of the documents for  
16 which non-proprietary versions are not already  
17 available.

18 And in light of that, and the fact that  
19 there is a readily available method that the Coalition  
20 has opted not to avail itself of, we don't believe  
21 that it is appropriate or proper to require us to  
22 spend that significant effort to generate new  
23 documents, where these are documents that were not  
24 directly relied on in our testimony.

25 And therefore, while we have gone out of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVENUE, N.W.  
WASHINGTON, D.C. 20005

1 our way to provide existing redacted versions, and in  
2 fact prepare non-proprietary summaries of documents  
3 that were not in redacted form, it would be a  
4 significant imposition, financial and resource, to  
5 require us at this point to generate new documents for  
6 the ones where non-proprietary ones do not now exist.

7 JUDGE KARLIN: Okay.

8 MR. SHADIS: May I reply, Your Honor.  
9 This is Raymond Shadis.

10 JUDGE KARLIN: Yes, Mr. Shadis. Go ahead.

11 MR. SHADIS: Thank you, sir.

12 The window for which there was any  
13 question at all about New England Coalition opting to  
14 sign a protective agreement was very short. The  
15 proprietary agreement, the form was provided--an order  
16 was provided very early on in this proceeding, and so  
17 for better than a year, at the least, ENTERGY has been  
18 able to understand, I think, that we would not be  
19 signing proprietary agreements, and I recognize the  
20 burden, but it is not a new burden.

21 We had, in a brief spate of a few weeks,  
22 in which I consulted with our witnesses, and the  
23 decision was made that we would not.

24 JUDGE KARLIN: Okay. I really don't think  
25 we want to sort of--we have motions in limine coming

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVENUE, N.W.  
WASHINGTON, D.C. 20005

1 up, you know, where any side can file a motion  
2 objecting to particular issues related to the  
3 evidence, or, you know, proprietary, or, you know,  
4 this sort of thing, and so I think that's probably the  
5 best vehicle for each of you to assert your positions,  
6 and it may be possible for you, Mr. Shadis, to read  
7 the non-proprietary material that's been submitted and  
8 see if you find that satisfactory or not.

9 If you do not, then you can file a motion  
10 in limine, and, you know, explain as you are  
11 explaining now, what you think is the history, or your  
12 assessment of the situation, and then we can have it  
13 briefed and then we can deal with it in a proper way.

14 So I think that's the way we're going to  
15 handle this. I do think, however, that the motions in  
16 limine are due on the 26th. They are due on the  
17 initial and rebuttal testimony that has been filed.  
18 The rebuttal testimony being filed on the 14th.

19 This supplemental direct was just filed  
20 yesterday. Therefore, we may need to grant anyone who  
21 has got an objection to the supplemental direct a  
22 little bit of additional time within which to file  
23 those motions in limine.

24 So maybe we should set a date more--let me  
25 pull a calendar out--but five additional days, let's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 see what that does to us. The 26th. Well, that's  
2 Friday, the 30th. We're going to be up there. I  
3 would say, Mr. Shadis, and anyone else--let's see.

4 MR. : [inaudible]. 5th of July.

5 JUDGE KARLIN: 5th of July. I think the  
6 5th of July, we're saying motions in limine with  
7 regard to the supplemental direct. We have now heard  
8 that no one plans to file any supplemental rebuttal  
9 but if there are motions objecting to any part of the  
10 supplemental direct, we will need to see them and have  
11 them filed by July 5th, and then answers to those  
12 should be filed by, let's say, July 12th. This will  
13 therefore have information filed by our next pre-  
14 hearing conference call on July 18th.

15 MR. SILBERG: And our--this is Mr.  
16 Silberg. Our position on that is that we would--if  
17 Mr. Shadis, on behalf of the Coalition, files a motion  
18 with respect to the proprietary information, we would  
19 respond.

20 JUDGE KARLIN: Yes; yes. We would expect  
21 you to file an answer to the motions in limine, and  
22 responding, accordingly.

23 MR. SILBERG: As opposed to our filing  
24 something--

25 JUDGE KARLIN: From ab inicio. You have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVENUE, N.W.  
WASHINGTON, D.C. 20005

1 nothing to file on that point, I would suspect.

2 MR. SILBERG: Correct. I just want to  
3 make sure that was understood by everybody.

4 JUDGE KARLIN: Right. Now I think that  
5 covers--oh, on the motions in limine, more generally,  
6 if we could talk about that.

7 I would say that obviously the strict  
8 rules of evidence don't apply to these kinds of  
9 proceedings. New point 319.D [inaudible]. I would  
10 commend you to [inaudible] in the statement of  
11 consideration in the 2004 regs. You know, we don't use  
12 the Federal Rules of Evidence, strictly apply,  
13 although they are guidance, and given the nature of  
14 this proceeding and the nature of this expert board,  
15 I would just urge you to exercise constraint, if you  
16 would, with regard to filing motions in limine.

17 We will probably take what we receive for  
18 what it's worth and we are competent, I think, to be  
19 able to do that. So please, you don't need--you know,  
20 you can object to whatever you want, file a motion in  
21 limine to whatever you want, but we would urge some  
22 restraint in that, if you could consider it.

23 MR. SILBERG: Well, again, I don't  
24 remember if we put that on the record, but we don't  
25 intend to file any motions in limine at this point.

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

1 JUDGE KARLIN: Okay. Well, that's great.  
2 I think that would be useful and whatever.

3 MR. SHADIS: This is Ray Shadis again.  
4 Excuse me, Your Honor. Was that Mr. Silberg?

5 MR. SILBERG: Yes. I'm sorry.

6 MR. SHADIS: Thank you.

7 JUDGE KARLIN: Thank you. Okay. On  
8 motions in limine, obviously between now and the next  
9 conference call we will have them filed, and we'll  
10 want to look at them, if there's any. There may not  
11 be any.

12 Note also, what I need to grapple with,  
13 and I'm not sure, I haven't studied this carefully,  
14 that the submissions by the parties will need to be,  
15 you know, sworn statements or affidavits by the  
16 witnesses. If we don't already have that, we need  
17 that because that will be--you know, that's their  
18 testimony and we're not going to, may not have them  
19 come in and hold their hand up and swear to the truth  
20 of the material.

21 So if you haven't already done so, I think  
22 you need to think about putting together an affidavit  
23 or a sworn statement to support the testimony, and the  
24 exhibits but presented here as part of the record.

25 MR. TURK: Chairman, this is Sherwin Turk,

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

1 may I ask you a question about the documents that we  
2 just filed yesterday. The board had asked for us to  
3 produce documents that were either referred to and  
4 material to the testimony, or relied upon in the  
5 testimony.

6 JUDGE KARLIN: Yes.

7 MR. TURK: It wasn't our intention to  
8 [inaudible] all these exhibits. We were really  
9 providing information that the board was interested in  
10 seeing.

11 JUDGE KARLIN: Yes.

12 MR. TURK: But the way I understand your  
13 comments today, I understand that you want all of  
14 these to become exhibits in the proceedings?

15 JUDGE KARLIN: No; no. I think probably  
16 not. I think you put in what you think you want as  
17 exhibits in the proceeding. We wanted to have access  
18 to the documents relied upon, in part, because if we  
19 want to conduct cross examination, or based upon some  
20 of that material, or understand what someone is  
21 testifying to, and ask them--it's not cross, I guess  
22 it's direct examination by the board--we want to have  
23 access to those.

24 MR. TURK: That's good, because some of  
25 the documents that we list are actually documents that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVENUE, N.W.  
WASHINGTON, D.C. 20005

1 the Applicant had already provided in support of its  
2 previous motion for summary disposition, such as the  
3 Vermont discharge permit. So that's a document that  
4 we rely upon, and it sets out what is the ph, or the  
5 water chemistry restriction. It's not our document,  
6 and we wouldn't put out an affidavit saying that, you  
7 know, we vouch for the accuracy of it. But it's a  
8 document that we do accept.

9 JUDGE KARLIN: Okay. I understand that.  
10 I guess what I would say is your direct testimony and  
11 your rebuttal testimony are documents I expect you  
12 intend to be in the record. This supplemental  
13 material is, unless you want to say so, would not be  
14 exhibits in the record, unless we choose to start  
15 asking questions about it and then see if it should be  
16 in the record.

17 MR. TURK: All right. I guess what we'll  
18 do then is we'll go through the list and provide you  
19 with a list of the evidence that we do intend to  
20 proffer, and it would come from the list of documents  
21 that we provided you yesterday.

22 JUDGE KARLIN: Yes. I think that would be  
23 a good idea. I appreciate that suggestion and I would  
24 ask ENTERGY to do the same thing, if you would, Mr.  
25 Silberg.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVENUE, N.W.  
WASHINGTON, D.C. 20005

1 MR. SILBERG: Certainly. We have, in our  
2 original testimony, and rebuttal testimony, which was  
3 accompanied by affidavits, identified, and, in fact,  
4 attached the documents that we were planning to rely  
5 on. Having provided additional documents, we will  
6 take a look and see whether, in light of the board's  
7 interest, you know, we want to make some of those  
8 other documents exhibits as well.

9 JUDGE KARLIN: Okay. That would be good.  
10 Thank you for that.

11 Let's see. Moving on, I think we've  
12 covered the subjects for the agenda. We passed out  
13 two. One with regard to the you need to be thinking  
14 about submitting proposed direct examination  
15 questions, and if you choose to ask for, or file a  
16 motion for cross examination, that's also coming up in  
17 the next month or so.

18 I just would remind you that, as it says,  
19 the direct quote clearly says, you don't need to file  
20 those questions with the opposing parties. You can,  
21 but normally, you would just file it with the board  
22 and we would keep it confidential until the proceeding  
23 was essentially completed, and then it would be made  
24 public.

25 MR. SILBERG: I believe that date was

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVENUE, N.W.  
WASHINGTON, D.C. 20005

1 either August 4th or 14th.

2 JUDGE KARLIN: Yes. August 4th is the  
3 date for the questions and motions for cross  
4 examination.

5 MR. SILBERG: Fine; fine.

6 JUDGE KARLIN: So that's coming up in  
7 about a month and a half, I guess.

8 Finally, if we could, well, before  
9 closing, I would like to ask a question, if my  
10 colleagues on this board will bear with me, that deals  
11 with the parallel hearing on Yankee renewal, just a  
12 factual question regarding the caption. And maybe Mr.  
13 Silberg could help me with this.

14 In this case, the Applicant is known as  
15 Nuclear Vermont Yankee L.L.C., and ENTERGY Nuclear  
16 Operations, Inc.

17 In the other matter, the renewal, the  
18 initial caption at least showed only one entity as the  
19 Applicant. But upon looking at the application, it  
20 appears to us that there really are two parties that  
21 are named in the applications.

22 Is that correct, Mr. Silberg?

23 MR. SILBERG: Well, Vermont Yankee has two  
24 licensees. One is licensed to operate the plant. The  
25 other is licensed to own a plant. The initial

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVENUE, N.W.  
WASHINGTON, D.C. 20005

1 caption, I guess I haven't seen, or I haven't paid  
2 attention--the initial caption of the filings that we  
3 made in the license renewal proceeding, to whether we  
4 noted that both companies are Applicants. I suspect  
5 we did. And it may well be that when the notice of  
6 opportunity for hearing was published by the NRC, they  
7 may have used a short form and only identified one of  
8 the Applicants. Perhaps they used an "et al." I just  
9 don't know.

10 But, technically, both companies are in  
11 the caption because both are on the license.

12 JUDGE KARLIN: Right; right. Okay. I  
13 think that's just a piece of information. You know,  
14 we are going to--Mr. Shadis is on the line. I know  
15 not everyone together, matter is on the line, and this  
16 is not part of that proceeding, but in the future,  
17 we're probably going to, you know, have both names on  
18 the renewal as well because that is the most accurate  
19 reflection of the status of the application.

20 MR. SILBERG: Okay, we will check, and if  
21 there is some difference, we'll send a letter, and I  
22 guess to the license renewal board, and inform them of  
23 that. I don't have any of those pleadings.

24 JUDGE KARLIN: All right. That will be  
25 good, and if you all could inform other counsel, and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVENUE, N.W.  
WASHINGTON, D.C. 20005

1 Mr. Shadis, your counsel, Mr. Shems, and I believe  
2 Mitzi Young, Ms. Young on the staff, Mr. Turk, if you  
3 could inform her. There'll be something coming out in  
4 that other matter.

5 So, in any event, I just wanted to try to  
6 find some information out and I appreciate the  
7 patience of everyone else here, for that other matter.

8 With that, I think we're done.

9 MR. SILBERG: Oh, we have the one item  
10 that I identified, and that's if we could talk about  
11 which of the hearing weeks, how the board wants to  
12 proceed with the two potential hearing weeks.

13 JUDGE KARLIN: Well, okay. I don't know  
14 that we're prepared to talk much about that, Mr.  
15 Silberg. We still have both weeks held, and I think  
16 we need to keep both weeks in for the time-being.

17 I think by our next meeting, we will have  
18 something weeded out, and maybe we can conclude that  
19 we'll only need one of those weeks.

20 MR. SILBERG: My own perception, and this  
21 is just mine, I really haven't vetted it fully with  
22 everyone on our side, would be not to give up the  
23 first week but to take the first week and hopefully  
24 finish the hearing that first week. That should be  
25 doable, with two issues.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVENUE, N.W.  
WASHINGTON, D.C. 20005

1 JUDGE KARLIN: Well, I think that's a  
2 worthy suggestion, and, you know, we all want to move  
3 this thing promptly forward, and that seems to be a  
4 week that's available to everyone, and obviously is,  
5 and so it may very well be that we don't need both  
6 weeks. But I need to talk to my colleagues and we  
7 need to figure that out a little bit.

8 But we are thinking about that and it's a  
9 good point. So let's work on that next conference  
10 call, which I guess will be July 18th.

11 With that, is there anything else that  
12 urgently needed to be covered?

13 Okay. Thank you all for participating.  
14 I think this was efficient and helpful to me, and, oh,  
15 let me just conclude with saying I'm not sure we will  
16 issue a supplemental order, we might, but we might  
17 not. So everyone should take note that July 5th is  
18 the date for filing motions in limine with regard to  
19 the supplemental direct testimony that was filed on  
20 June 19th and July 12th is the date for filing answers  
21 to those motions in limine.

22 I think that's the only change we've had  
23 to reflect here today.

24 With that, thank you for your  
25 participation and we look forward to talking to you on

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

1 our next conference call.

2 [Whereupon at 11:40 a.m., the pre-hearing  
3 conference call was concluded]

4

5

6

7

8

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 AVENUE, N.W.  
WASHINGTON, D.C. 20005

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