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NUCLEAR REGULATORY COMMISSION

Title: Vermont Yankee Nuclear Power Station

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

Location: (telephone conference)

Date: Tuesday, July 18, 2006

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UNITED STATES OF AMERICA

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NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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PRE-HEARING CONFERENCE CALL

 In the Matter of: ||
 ENTERGY NUCLEAR VERMONT ||
 YANKEE L.L.C. and ||
 NUCLEAR OPERATIONS INC., ||
 (Vermont Yankee Nuclear ||
 Power Station) ||

Docket No. 50-271-OLA
ASLBP No. 04-832-02-OLA

Tuesday, July 18, 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 Judge
- LESTER S. RUBENSTEIN, Administrative Judge

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ALSO PRESENT:

MARCIA CARPENTIER, ESQ., ASLBP Staff

RICK ENNIS, Project Manager, NRC

CRAIG NICHOLS, Project Manager, Entergy

JONATHAN RUND, ESQ., ASLBP Staff

KAREN VALLOCH, ASLBP Staff

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

2 (11:03 a.m.)

3 JUDGE KARLIN: This is Judge Karlin. We
4 are now commencing a pre-hearing conference call on
5 July 18th in the matter of Entergy Nuclear Vermont
6 Yankee, LLC. Our docket number ASLBP docket number
7 04-832-02-OLA and docket number 50-271. This
8 conference call is being held pursuant to our revised
9 scheduling order issued on April 13th of 2006.

10 Before we start, I would like to ask
11 everyone to go around the table and introduce
12 themselves. For the Board I will say that here in
13 Rockville, Maryland participating are myself, Alex
14 Karlin; Judge Tony Baratta; Jonathan Rund and Marcia
15 Carpentier, who are our law clerks and lawyers who
16 support the Board; and Karen Valloch, who is our
17 administrative assistant.

18 And next we also have Judge Rubenstein
19 participating from the West Coast. Judge Rubenstein,
20 anything you want to say?

21 JUDGE RUBENSTEIN: No. I'm here.

22 JUDGE KARLIN: Very good. Very good.

23 For NEC, Mr. Shadis?

24 MR. SHADIS: Yes. Raymond Shadis here.

25 JUDGE KARLIN: Okay. Thank you. Good

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1 morning.

2 MR. SHADIS: Good morning.

3 JUDGE KARLIN: For Entergy, Mr.
4 Travieso-Diaz?

5 MR. TRAVIESO-DIAZ: That is correct. I'm
6 here.

7 JUDGE KARLIN: And Mr. Nichols?

8 MR. NICHOLS: That is correct. Good
9 morning.

10 JUDGE KARLIN: Good morning.

11 And for the staff, Mr. Turk, please
12 introduce your people for the record.

13 MR. TURK: Thank you. Good morning, Your
14 Honor. I'm Sherwin Turk, counsel for NRC staff. With
15 me is Steven Hamrick, co-counsel; and Rick Ennis,
16 project manager for the NRC staff.

17 JUDGE KARLIN: Okay. Thank you. Good
18 morning, everyone. And thank you for participating.

19 I won't go through the ground rules -- I
20 think everyone knows them -- except simply to just
21 add, if you would, if we would all try to say our name
22 as we begin speaking so that the court reporter can
23 more accurately transcribe this conversation or this
24 conference call.

25 The main purpose of the call, really, is

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1 our monthly status report to prepare for the
2 evidentiary hearing scheduled for September. I will
3 suggest some topics that we might cover here today and
4 then ask if there's anything else that urgently needs
5 to be added to this brief agenda.

6 First, we will talk about the motion in
7 limine filed by NEC and give a ruling on that.

8 Second, we want to talk briefly about the
9 Board wants to conduct a site visit of the Vermont
10 Yankee facility in conjunction with the evidentiary
11 hearing or prior to the evidentiary hearing, really.

12 And, third, we'll talk about the
13 evidentiary hearing itself, the logistics, the
14 schedule, the protocol. And this will include, I
15 think, the two items that Mr. Turk mentioned in his
16 e-mail about the length of time we currently estimate
17 each contention will take and the sequence we want we
18 would like to have them presented.

19 So motion in limine, site visit, and
20 evidentiary hearing issues. Are there any other
21 urgent items that need to be added to the agenda?

22 MR. TRAVIESO-DIAZ: Mr. Chairman, this is
23 Mr. Travieso-Diaz.

24 If I may suggest, if it is convenient,
25 that we talk briefly, get more guidance from the

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1 Board, if any is needed, on the proposed questions for
2 the Board that will be filed on August 4.

3 JUDGE KARLIN: All right. Well, I think
4 that is fine. I had contemplated having a very brief
5 statement on that to cover it.

6 MR. TRAVIESO-DIAZ: Okay.

7 JUDGE KARLIN: Anything else?

8 (No response.)

9 JUDGE KARLIN: Okay. We will add,
10 incorporate, I think, a guidance regarding the
11 questions due on August 4th in this discussion. And
12 now we'll just proceed.

13 On the motion in limine filed by New
14 England Coalition, it covered three areas, three
15 components. The first was to exclude the testimony or
16 portions of the testimony of Mr. Craig Nichols that
17 had been submitted, as I understand it, to exclude all
18 areas, essentially, except in the arena of electrical
19 engineering, which I understand is his degree from his
20 curriculum vitae, and also in the management of
21 nuclear plant technical personnel, power plant
22 personnel.

23 On that, we have consulted prior
24 Commission case law in the area of admission of
25 testimony and, in particular, what we would call

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1 expert testimony. We have certainly looked at the
2 Federal rules of Evidence 702, which is guidance for
3 us in these matters. And on that basis, we have
4 concluded that we will deny this motion.

5 We believe that Mr. Nichols' testimony can
6 be accepted. And we can weigh its value and its
7 worth. And we understand its strengths and its
8 possible weaknesses. And so we feel we will admit it
9 for what it is worth. The motion is denied.

10 Second part of the motion is proprietary
11 information. And it was, as I understand it, a
12 request to require prior to the evidentiary hearing
13 redaction of all documents, in fact, that Entergy has
14 presented.

15 We have looked at the schedule and the
16 history of this issue here and are concerned that this
17 issue arose, you know, more than a year ago, in March
18 1st of '05, when we issued the protective order and
19 opportunity for parties to sign the nondisclosure
20 agreement to have access to any of the proprietary
21 information.

22 We again visited this issue back in the
23 spring, in what, April or May, at which point we
24 thought there was going to be a signing by Mr. Shadis
25 and his experts.

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1 They apparently balked, Mr. Shadis
2 reported. They balked at signing it for reasons I
3 don't fully understand, but, in any event, they didn't
4 sign it and nor did he.

5 This also arose in the context of our
6 request for supplemental documents, essentially, as I
7 understand it and as Entergy presents. They did not
8 initially intend for these to be exhibits or pieces of
9 evidence in their case.

10 We, the Board, in order to examine and
11 cross-examine, as it were, the witnesses asked for
12 these documents. And they were delivered. And we may
13 end up using them for examining or questioning the
14 witnesses, but they were not initially proffered as
15 exhibits by Entergy.

16 For all these reasons, we deny this motion
17 as well. We find that they have provided a summary,
18 that a redaction would probably not produce anything
19 that would be of greater, significantly greater,
20 assistance. And at the late date that this is
21 presented, it would end up a significant delay in the
22 proceeding if we were to try to accommodate this. So,
23 for all those reasons, that is denied.

24 And we further deny the request to extend
25 the schedule. This has come up to allow for the

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1 submission of additional information. This has come
2 up several times. And, you know, at this point, if we
3 granted that, again, it would end up with a cascading
4 effect that would require rebuttal and then require
5 additional time for submission of questions and
6 motions for cross-examination and would simply just be
7 significant delay. So that is denied.

8 Now we turn to the next item, which is a
9 site visit. The Board has consulted internally about
10 this, and we would like to conduct a site visit, visit
11 the facility on the first day, Monday, September 11th.

12 In lieu of starting our evidentiary
13 hearing on that day up in Newfane, we would like to
14 have a brief, probably three hours or so, half-day,
15 three-hour session to visit the site and have a brief
16 site visit.

17 That would not be part of the formal
18 record of the proceeding or the evidence of the
19 proceeding, but it would allow us to look at the
20 facility and would essentially cover, as I understand
21 it, -- and my colleagues can correct me or amplify on
22 this -- the cooling towers and structures, associated
23 structures, and sort of the balance of the plant and
24 a brief overview of the balance of the plant.

25 Is that basically what we're covering?

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1 JUDGE RUBENSTEIN: This is Judge
2 Rubenstein.

3 That is correct.

4 JUDGE KARLIN: Okay.

5 JUDGE RUBENSTEIN: To the degree that the
6 plant is operating, we would look at the balance of
7 the plant. If it is not operating, we would see a
8 little more in the balance. But the primary focus is
9 on the cooling towers.

10 JUDGE KARLIN: Right. And in preparation
11 for today, yesterday Ms. Carpentier contacted counsel
12 for Entergy to see if the facility would be available.
13 And apparently it is.

14 Mr. Travieso-Diaz, perhaps you can report
15 on that.

16 MR. TRAVIESO-DIAZ: Yes. As I explained
17 to Ms. Carpentier -- and Mr. Nichols was on the line
18 and might elaborate on this if he has any additional
19 information -- the way in which such a visit could be
20 arranged is by working with Region I and talking
21 directly through Region I with a resident inspector
22 from Vermont Yankee. And she may be able to work with
23 you on the logistics of the site access.

24 We welcome, of course, the Board to the
25 site.

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1 JUDGE KARLIN: Okay. Fine.

2 MR. TRAVIESO-DIAZ: And if there are any
3 questions, Ms. Carpentier can contact me. And I'll
4 try to resolve it.

5 JUDGE KARLIN: Does anyone else have any
6 questions or concerns or suggestions vis-a-vis site
7 visit?

8 MR. SHADIS: This is Ray Shadis with a
9 question, Your Honor.

10 JUDGE KARLIN: Yes?

11 MR. SHADIS: Would this site visit be open
12 to the other parties?

13 JUDGE KARLIN: Absolutely.

14 MR. SHADIS: Thank you.

15 JUDGE KARLIN: Yes. It would not be open
16 to the public, but certainly representatives from each
17 of the parties, well, from NEC and from the staff. We
18 want you to be present.

19 MR. TRAVIESO-DIAZ: Excuse me. This is
20 Mr. Travieso-Diaz.

21 I think we would need to know in advance
22 who will be coming for each of the parties so proper
23 security access and arrangements can be made, but
24 that's just a question of getting information.

25 JUDGE KARLIN: Yes, yes. We will. What

1 I would plan is we would issue a brief order that
2 would lay out, among other things, our site visit plan
3 and would ask and instruct people to designate who,
4 you know, Mr. Shadis, you know, who you want to
5 attend.

6 I suspect -- I don't know how many spaces
7 would be available for this visit but perhaps two from
8 NEC, two or three from the staff, two or three from
9 Entergy itself, representatives would accompany the
10 Board and the law clerks of the Board if that wouldn't
11 be too large of a group.

12 We will issue an order in any event, and
13 we would instruct people to submit appropriate
14 information to your office, Mr. Travieso-Diaz.

15 MR. TRAVIESO-DIAZ: Thank you.

16 MR. TURK: This is Sherwin Turk for the
17 staff.

18 JUDGE KARLIN: Yes?

19 MR. TURK: I wasn't sure I understood what
20 Mr. Travieso-Diaz was suggesting in terms of the role
21 of NRC Region I inspectors at the plant. Is the
22 suggestion that the staff regional inspector arrange
23 for the site visit or what exactly is the task that
24 the staff is being asked to perform?

25 MR. TRAVIESO-DIAZ: Well, as I understand

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1 it, -- again, Mr. Nichols can elaborate -- in previous
2 site visits, the resident inspector has been helpful
3 in making some of the arrangements as to people who
4 might be able to escort from the NRC staff, who might
5 be able to escort on the site and site access and
6 other issues. I'm sure that Entergy can help as well,
7 but --

8 MR. TURK: As we see it, we will be
9 working mostly directly with Entergy and not with the
10 staff's regional or site inspector, but if he wants to
11 come along and the staff so designates, that's fine
12 with us. If the staff feels that he should be one of
13 their designated participants for the site visit,
14 great.

15 JUDGE BARATTA: This is Judge Baratta.

16 I think what might be the issue with the
17 security concerns, you're limited to what, Mr. Diaz?
18 An escort for every five people? Is that correct?

19 MR. TRAVIESO-DIAZ: On that I think I need
20 to ask Mr. Nichols. Is that right?

21 MR. NICHOLS: That depends on the areas we
22 go to, what we do there. And, if I can elaborate on
23 that, what has happened in the past is, if the Judges
24 remember, they sent someone up from their staff to
25 look at the cooling towers previously.

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1 JUDGE BARATTA: Right. David Jeng.

2 MR. NICHOLS: Right. And his visit was
3 handled via the resident, who dealt with all the NRC
4 rules and stuff like that. Entergy would certainly
5 offer to do the logistics..

6 We only offered that since it is the
7 independent ASLB coming that if they preferred, they
8 could do it through the resident staff to make their
9 logistics. We could do it either way.

10 JUDGE KARLIN: Okay. I think our
11 contemplation was, first off, this Board never sent
12 anyone up to the facility. So I am not familiar, but
13 certainly over the years, I'm sure there are people
14 who have visited from the various boards that might
15 have dealt with various issue.

16 Our approach, I think, is to deal with
17 Entergy and not work through the staff.

18 MR. TRAVIESO-DIAZ: We would be happy to
19 provide what logistic support you need.

20 JUDGE KARLIN: Right. Great. That might
21 be a minivan or a bus or a couple of vehicles
22 depending on what you would allow us to bring on site
23 or what you would provide to just go to whatever
24 location.

25 Maybe we can just walk everything. That

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1 would be fine, too.

2 MR. TURK: Thank you for the
3 clarification. This is Sherwin Turk.

4 Now I understand that Entergy was
5 referring to the visit by one of the staff's witnesses
6 earlier this year. And that was just a single NRC
7 staff member, and he did work with the NRC staff
8 resident inspector in order to get access to the
9 facility.

10 I agree with the Board. I think it is
11 more appropriate that Entergy be contacted to arrange
12 for the tour of the parties and the Board.

13 JUDGE BARATTA: This is Judge Baratta.

14 In regards to that, Mr. Diaz, is it okay
15 if Ms. Carpentier contacts you and gets the specifics
16 of what information you need?

17 MR. TRAVIESO-DIAZ: I'm sorry. Is that
18 directed to me?

19 JUDGE BARATTA: Yes.

20 MR. TRAVIESO-DIAZ: I'm sorry. Yes. I
21 think that that is probably the most expeditious way
22 to proceed. We will be happy to accommodate.

23 JUDGE BARATTA: And you can also confirm
24 the number that you can accommodate so that -- it is
25 probably beyond Judge Karlin's --

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1 MR. TRAVIESO-DIAZ: This is Mr.
2 Travieso-Diaz.

3 Am I correct in understanding that the
4 Board is not interested in visiting any of the
5 safety-related areas of the plant, such as the reactor
6 or so?

7 JUDGE BARATTA: I was assuming that the
8 reactor itself would be in operation so that we at
9 this time -- you wouldn't be out for your outage,
10 right, I mean, at this time?

11 MR. NICHOLS: That's correct. This is Mr.
12 Nichols.

13 We expect that the plant will be fully
14 operating at that period.

15 JUDGE RUBENSTEIN: This is Judge
16 Rubenstein.

17 That gives a certain very limited
18 opportunity to look at the balance of the plant and
19 the cooling tower complex.

20 JUDGE KARLIN: But that is what we -- that
21 would be fine. That is what we are talking about.

22 JUDGE RUBENSTEIN: Yes.

23 JUDGE KARLIN: Yes. We understand we are
24 not going to be able to get into the reactor facility
25 itself. We understand that.

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1 So yes. We will ask Marcia Carpentier to
2 talk with Entergy and Mr. Travieso-Diaz just on the
3 logistics of this. And then we'll issue an order that
4 will lay it out for everyone.

5 And we would plan to do it on the 11th.
6 I would contemplate sometime in the morning,
7 reasonable time in the morning, 9:00 o'clock, that
8 sort of thing, 9:30, if that would work. And maybe
9 that takes three hours or so.

10 JUDGE RUBENSTEIN: This is Judge
11 Rubenstein.

12 If in your training facility you have like
13 a mock-up of an isolation valve which is germane to
14 NEC 3, one or two things like that, we would spend a
15 limited amount of time just looking at that for the
16 general information of everyone.

17 JUDGE KARLIN: Okay. Great. So we'll
18 move on. I think that covers the site visit. I
19 appreciate that the facility will be available on that
20 and might be helpful to us to see.

21 Third, then, we'll turn to the evidentiary
22 hearing: schedule, logistics, protocol, all those
23 sorts of things. Schedule. We would plan to take the
24 remainder of the week of September 11th, the first day
25 being the site visit. Although we might be completed

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1 with that by noon or midday, it seems unfeasible,
2 really, for us to commence a formal hearing that
3 afternoon.

4 We'll all be wearing casual clothes,
5 obviously, to see the site. And then the hearing
6 itself will start the next morning, on the morning of
7 the 12th.

8 We would like to have the hearing be
9 extended to the 15th. So we will go for the full week
10 until Friday afternoon or evening as necessary. And
11 we think we can get the entire hearing done and the
12 two remaining contentions in that time frame.

13 However, certainly obviously we haven't
14 seen the questions that the parties are going to
15 submit on August 4th, either what we would call the
16 directions or the motions for cross-examination that
17 you might file. And those are going to be
18 significant, we think.

19 And we will inform our thoughts in terms
20 of how much time we're going to have to take. So
21 everything is a bit tentative at this point, but we do
22 think we can get it done in the week of September 11th
23 through the 15th inclusive.

24 Thus, turning to the week of October 16th,
25 what we would like to do is say, at most, right now we

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1 think it would only take two days additional. And,
2 therefore, we would reserve the October 17th and 18th,
3 Tuesday and Wednesday, for any further completion of
4 the hearings that we need to have.

5 So the other days we are releasing at this
6 point, I guess. And if you have other things you can
7 profitably be doing during that time frame, you know,
8 go right ahead. Hopefully that is of some help.

9 Our current plan is that we would like to
10 hear contention 4 first. I think that will take a
11 shorter amount of time. We think it will be a maximum
12 of one day and hopefully even less than that for
13 contention 4.

14 For contention 3 -- I'm sorry?

15 JUDGE BARATTA: Judge Baratta.

16 In the event that --

17 JUDGE KARLIN: Oh, yes. I was going to
18 say that.

19 JUDGE BARATTA: Okay.

20 JUDGE KARLIN: Good point. Go ahead, I
21 mean.

22 JUDGE BARATTA: In the event that -- you
23 should actually be prepared, though, with contention
24 4 to continue on Wednesday just in case --

25 THE REPORTER: Excuse me. Judge Baratta?

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1 JUDGE BARATTA: Yes?

2 THE REPORTER: I'm having a little trouble
3 hearing you.

4 JUDGE BARATTA: This is Judge Baratta
5 here. Is that better?

6 PARTICIPANT: Yes, it is.

7 JUDGE BARATTA: Okay. With respect to the
8 contention 4, I would suggest that you plan on
9 continuing on Wednesday just in case we run over and
10 not just simply plan on having it on Tuesday, right?

11 JUDGE KARLIN: Right. So that we
12 contemplate that it will get done on Tuesday, but
13 don't send all the witnesses home from contention 4 on
14 Tuesday evening, the 12th unless we tell you at the
15 end of the day that we're done. And we will say at
16 the end of the day. If we're done, we will tell you
17 we're done. Otherwise, put some flexibility in there
18 and ask all those witnesses to be available on the
19 13th as well.

20 As we contemplate, we will want to have
21 all of the witnesses who have been proffered in the
22 testimony that has been presented to be there.

23 All three parties have presented witnesses
24 or one witness in the case of NEC. And we need all of
25 them to be there on the 12th and possibly the 13th for

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1 --

2 JUDGE RUBENSTEIN: This is Judge
3 Rubenstein.

4 Is it my understanding that Entergy will
5 operate with a panel on both contentions?

6 MR. TRAVIESO-DIAZ: That is correct.

7 JUDGE RUBENSTEIN: So, then, all your
8 parties to the panel would be there pretty much
9 throughout the hearing?

10 MR. TRAVIESO-DIAZ: That is our plan.

11 JUDGE RUBENSTEIN: Thank you.

12 MR. TRAVIESO-DIAZ: May I ask a question
13 of the Board?

14 JUDGE KARLIN: Yes.

15 MR. TRAVIESO-DIAZ: Have you reached a
16 decision as to the order of witness presentation; in
17 other words, which party will go first and so on?

18 JUDGE KARLIN: No, I don't know we have.
19 We haven't done that, but we have reached a conclusion
20 that we want all of the witnesses by each of the
21 parties to be there for both of the contentions.

22 And we won't get to the contention 3
23 panels until the second day of the evidentiary
24 hearing, which is now going to be Wednesday, I guess,
25 the 13th. So they don't need to come in. They don't

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1 need to sit there all day on the first day if you
2 don't want them to. We will not get to them.

3 If we are finished with contention 4 at
4 3:00 p.m. on Tuesday, we will adjourn, rather than
5 bringing witnesses on at that point if that is of any
6 help.

7 MR. TRAVIESO-DIAZ: Yes.

8 JUDGE KARLIN: We don't have it figured
9 out yet. And we are going to have another conference
10 call, obviously, on the 22nd of August. So we will
11 hopefully have more specifics at that point.

12 So okay. Contention 4 is on the first day
13 of the hearings, Tuesday. Contention 3 is on the
14 second and third days of the hearings. And we may be
15 done at that point. If we aren't, we will go until
16 Friday with contention 3.

17 And we will reserve the October 17th and
18 18th for continuation of the presentation or
19 questioning of those witnesses if it's necessary. And
20 we really don't think it will be necessary.

21 Let's talk a little bit about some
22 protocol questions. First, we would urge everyone to
23 consult once again the regulations, particularly
24 2.12-04(b) and 12-06(b). Those are our guidances in
25 terms of conducting these oral hearings motions.

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1 Obviously the 12-04(b) deals with filing
2 of motions for cross-examination, requests for
3 cross-examination. The 12-06 has provisions for
4 filing of direct, proposed direct, questions that we
5 would ask.

6 We would note that the regs allow and
7 probably we would encourage that any such motions or
8 questions, which are to be filed on August 4th, are in
9 a sense ex parte.

10 You do not need to send copies of those to
11 the other parties. You just send them to the Board.
12 And they will ultimately be put on the record at the
13 end of the proceeding, but at this point it will be
14 submitted only to the Board unless you affirmatively
15 choose otherwise and want to share it with the other
16 party.

17 MR. SHADIS: For clarification, Your
18 Honor, -- this is Ray Shadis -- is that both proposed
19 cross-examination questions and proposed direct
20 questions?

21 JUDGE KARLIN: Yes, sir. That's, I
22 believe, what the regs say in both cases.

23 MR. SHADIS: Thank you. We'll consult the
24 regs.

25 JUDGE KARLIN: Take a look at the regs and

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1 be aware of that because it may make a difference in
2 how you pose your questions. The questions are for us
3 to consider and perhaps ask within our discretion. We
4 don't have to ask them if we don't want to if we don't
5 think they're pertinent or we don't think they'll help
6 us resolve issues.

7 Look at the oral hearing procedures in
8 12-07(b), oral hearing procedures. We will try to
9 follow those as closely as possible. Note in
10 12-07(b)(6) that participants and witnesses will be
11 questioned orally or in writing only by the presiding
12 officer or the presiding officer's designee.

13 So the general proposition, we're the only
14 ones who are going to be asking questions of any of
15 the witnesses unless we grant motions for
16 cross-examination. So you may want to submit those if
17 you have any desire to ask any questions here.

18 Let's see here. With regard to motions
19 for cross-examination, we are going to deal with them
20 as we stated in our December 16th, '04 decision, the
21 early portion of this case.

22 There were questions raised with regard to
23 how a CAN decision came down in the First Circuit.
24 And we issued a ruling, which is 60 NRC 686. And you
25 might want to look at that because that is the basis

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1 for looking at cross-examination, motions for
2 cross-examination.

3 With regard to the hearing protocol, there
4 may be some -- we see no proprietary information with
5 regard to contention 4. So that should not be an
6 issue.

7 With contention 3, there was some
8 proprietary information, at least with regard to some
9 of our questions we may need to be asking. And,
10 therefore, if that comes up, we will have to exclude
11 the public and all NEC representatives who have not
12 signed a nondisclosure agreement. That would include
13 you, Mr. Shadis.

14 MR. SHADIS: Yes, sir.

15 JUDGE KARLIN: There would be no NEC
16 representative there. But we would probe the question
17 as we saw fit based upon those proprietary documents.
18 And it would be in the proprietary portion of the
19 record. And we would be able to make a decision based
20 upon that one way or the other.

21 JUDGE BARATTA: Mr. Shadis, this is Judge
22 Baratta.

23 I want to emphasize that based upon my
24 review of the testimony, it is extremely likely. In
25 fact, I would say it's almost definite that we will be

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1 dealing with proprietary issues.

2 JUDGE KARLIN: Yes. And we need to do
3 that. And we will try to segment the contention 3
4 proceeding so that you can participate or be there for
5 as much of it as you can be there for, but there will
6 be times when we are going to have to get into
7 proprietary. So we'll break and then clear the
8 courtroom and then proceed with the proprietary
9 section.

10 MR. SHADIS: Thank you, Your Honors.

11 JUDGE KARLIN: Okay. Anything else?

12 JUDGE BARATTA: No. That's all.

13 JUDGE KARLIN: Okay. I think that's all
14 we have. Mr. Travieso-Diaz, did we give you the
15 guidance you were looking for with regard to the
16 August 4th submissions?

17 MR. TRAVIESO-DIAZ: Yes, you did. Thank
18 you.

19 JUDGE KARLIN: Okay. All right. Fine.

20 I guess, finally, the courtroom we're
21 going to be using in Newfane is small, beautiful,
22 simple, and somewhat spartan. It's not got a large
23 area for members of the public. We wish it were
24 bigger, but I think it will accommodate about 70, 60
25 to 70, people on some hard benches back there.

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1 I think it is the best we can do, and it
2 is actually a very beautiful little courtroom we were
3 able to visit when we were up there before for the
4 limited appearance statement.

5 So I look forward to the hearing. We look
6 forward to your submissions on August 4th. And unless
7 anyone has anything else, is there anything else to be
8 covered at this point?

9 MR. SHADIS: Your Honor, this is Ray
10 Shadis again.

11 I do have a question.

12 JUDGE KARLIN: Okay.

13 MR. SHADIS: I am not sure how to handle
14 information that is recently produced or now coming
15 forward in terms of submitting it as evidence, whether
16 that possibility is still open or not.

17 What I am referring to here now is that
18 there is a proceeding opened in the State of Vermont.
19 The state nuclear engineer, who was a witness to
20 ascension power testing and to component, individual
21 component, testing, is now providing information. And
22 it is particularly relevant to contention 3.

23 I'm just at a loss as to how to handle
24 that or whether or not we can introduce that
25 information.

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1 JUDGE KARLIN: Okay. Does counsel for
2 Entergy want to address that at all?

3 MR. TRAVIESO-DIAZ: Well, I would question
4 first the relevance of the information. The
5 contention 3 is very narrow in its scope. It is
6 whether the defined large transient testing needs to
7 be conducted or not.

8 And, therefore, I think that information
9 that may be produced thirdhand or secondhand in a
10 different proceeding having to do with different
11 issues by somebody is not going to be testifying I
12 think is not going to be either relevant or truly
13 probative. So I would think that on the basis of
14 that, it should not be considered.

15 In addition, I think that we had
16 opportunities, all the parties, to submit direct and
17 rebuttal testimony that presented our viewpoints and
18 our positions on the issues. I don't think
19 supplementing the record at this late stage,
20 particularly since the other parties would not be in
21 a position to address it, is either going to be
22 feasible or it is going to be fair.

23 I think at this point in time we have a
24 record going into a hearing in which all the evidence
25 that we said is relevant is before the Board. We are

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1 going to be addressing the types of questions to the
2 witnesses based on that evidence. And anything else
3 that is afterwards I don't think should be admissible.

4 JUDGE KARLIN: All right. Thank you. We
5 don't need a full argument, but I get the gist of it.

6 Mr. Turk, do you have any thoughts on
7 this? I'm not trying to provide or have oral argument
8 on this at this moment, just a preliminary brief
9 reaction.

10 MR. TURK: Your Honor, Sherwin Turk.

11 I would address it simply procedurally.
12 The Board has previously established a schedule for
13 submission of testimony and evidence. If Mr. Shadis
14 wishes to introduce anything that he has not filed in
15 accordance with the existing schedule, I think his
16 remedy is to file a motion for leave to do, attach the
17 information that he wishes to file.

18 If he does file, of course, it could
19 affect the hearing schedule. Other parties should be
20 able to respond to his motion. And the Board could
21 rule on it.

22 I'm not sure, by the way, what evidence
23 he's referring to. We did see some of Mr. Sherman's
24 testimony filed in connection with another motion Mr.
25 Shadis had filed.

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1 I don't know if it the same evidence that
2 he wishes now to submit again but make it relevant to
3 this contention, rather than to the proposed steam
4 dryer contention, which the Board has rejected. But,
5 in any event, if he wishes to introduce it here, I
6 think his recourse is to file a motion.

7 JUDGE KARLIN: Okay. Thank you. I think
8 to try to respond to your question, Mr. Shadis, you
9 know, we have set up a schedule here for submission of
10 direct and rebuttal testimony. We need to adhere to
11 that.

12 If subsequent to those dates and that
13 schedule something startling and new arises and you
14 think it needs to be presented in reference to a
15 particular one of the existing contentions, you can
16 file a motion. And the parties will have the
17 opportunity to respond.

18 Some of that same information and issues
19 came up in, I believe it was, the supplement with
20 regard to contention 8, proposed new contention 8,
21 where you had attached some material for Mr. Sherman,
22 I think it was.

23 And so, I mean, you can file a motion if
24 you want, but it would have to be a pretty
25 extraordinary situation. And it certainly has to be

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1 something that developed later and is really critical
2 because it would necessitate -- and we're loathe to do
3 that -- delaying, it would seem, the evidentiary
4 hearing because if you file something, then there has
5 to be a rebuttal and then there have to be some more
6 opportunities for people to propound questions. And
7 their cascading effect would be significant. So
8 that's our response.

9 JUDGE RUBENSTEIN: This is Judge
10 Rubenstein.

11 I am going to crack the door about an inch
12 open in the respect that if new information is
13 specific and within the confines of the way we have
14 defined the scope of the two contentions and it's new
15 information which bears directly, for example, in NEC
16 4 under seven issues, subissues, before the Board,
17 which comprise contention 4 and the information is
18 specific in that sense, then you could probably pose
19 questions for the Board's examination. And the Board
20 at our discretion would look at these questions and if
21 they were to remain would consider looking for answers
22 but only in that very narrow and specific sense, which
23 we have defined the contentions as they stand.

24 JUDGE KARLIN: Okay.

25 MR. SHADIS: Thank you, Your Honor.

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1 JUDGE KARLIN: Okay. All right. With
2 that, I appreciate everyone's participation and
3 patience. We look forward to your submissions on
4 August 4th. And we'll have another conference call on
5 August 22nd. I hope you enjoy some of your summer
6 here, ladies and gentlemen. And we'll talk to you on
7 the 22nd of August.

8 JUDGE RUBENSTEIN: This is Judge
9 Rubenstein.

10 Off the record for the court reporter.

11 (Whereupon, the foregoing matter was
12 concluded at 11:43 a.m.)

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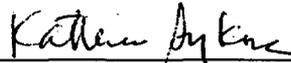
Name of Proceeding: Entergy Nuclear Vermont
Yankee, LLC and Entergy
Nuclear Operations, Inc.

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.



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