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

(11:11 a.m.)

1  
2  
3 ADMIN. JUDGE KARLIN: Good morning. This  
4 is Alex Karlin, Chairman of this ASLBP Panel. It is  
5 in the Matter of Entergy Nuclear Vermont Yankee L.L.C.  
6 regarding an up-rate license application for an up-  
7 rate at the Vermont Yankee facility. It is our Docket  
8 No. 50-271-OLA, I believe.

9 And we are here for our regular pre-  
10 hearing conference call. Before we proceed, I would  
11 like to introduce those people who are here today in  
12 Rockville, Maryland in the NRC Offices. I'm here  
13 together with Karen Valloch, our administrative  
14 assistant, and Marcia Carpentier and Jonathan Rund who  
15 are our lawyers and law clerks supporting the Board  
16 here.

17 Judge Baratta and Judge Rubinstein will  
18 introduce themselves if you would please.

19 ADMIN. JUDGE RUBINSTEIN: This is Judge  
20 Rubinstein.

21 ADMIN. JUDGE BARATTA: Okay, this is Judge  
22 Baratta.

23 ADMIN. JUDGE KARLIN: Thank you. Thank  
24 you. Both of them are calling in from remote  
25 locations this morning.

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1 And for the record, we would then need to  
2 go around the table. And Mr. -- for NEC, Mr Shadis?

3 MR. SHADIS: Yes, Raymond Shadis for NEC.  
4 Good morning.

5 ADMIN. JUDGE KARLIN: Good morning.

6 And for Entergy, Mr. Silberg?

7 MR. SILBERG: Yes, Jay Silberg. And  
8 Matias Travieso-Diaz from Pillsbury Winthrop Shaw  
9 Pittman. And also from the plant, Craig Nichols, our  
10 Project Manager for the whole up-rate.

11 ADMIN. JUDGE KARLIN: Good morning. Thank  
12 you for joining us.

13 Mr. Turk please?

14 MR. TURK: Good morning, Your Honor. For  
15 the staff, Sherwin Turk and Steven Hamrick. Joining  
16 us today are Rick Ennis, the Project Manager for the  
17 staff and Brooke Poole, who is currently with NRR  
18 management, and she is joining us for the conference  
19 call today.

20 ADMIN. JUDGE KARLIN: Welcome. Welcome,  
21 Ms. Poole, making a special appearance I see here.  
22 Didn't you start this thing several years ago?

23 MS. POOLE: Yes, Your Honor, I did. I  
24 couldn't stay away forever.

25 ADMIN. JUDGE KARLIN: I can imagine you

1       couldn't, yes, I know it.

2                   And do we have anyone else on the call?

3                   (No response.)

4                   ADMIN. JUDGE KARLIN: All right. Fine.  
5       We all, I think, know the ground rules here. And,  
6       again, if we -- and I'm probably the worst offender  
7       but if we could all try to state our name before we  
8       begin talking, it would help the court reporter.

9                   The main purpose of this call is for our  
10       monthly status report really. Our last pre-hearing --  
11       this is our last pre-hearing conference call before  
12       the evidentiary hearing begins in September of '06.  
13       So we probably have several topics that need to be  
14       covered. I can think of three.

15                   And then if you all have any other  
16       suggestions for the agenda that are urgent or  
17       important, please I'll ask for that. The three that  
18       I think we want to talk about briefly are first NEC's  
19       withdrawal of its Contention No. 4, just a brief note  
20       on that.

21                   Second is the schedule and the site visit.  
22       That will need to be adjusted given the fact of NEC's  
23       withdrawal of Contention 4.

24                   And third is some more specific and  
25       practical, I guess, suggestions or instructions

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1 regarding the evidentiary hearing logistics and  
2 protocol.

3 Those are the three that I had in mind.  
4 I'm not sure whether Judges Baratta or Rubinstein have  
5 any other -- do you have anything else you want to  
6 talk about?

7 ADMIN. JUDGE BARATTA: This is Judge  
8 Baratta. No, I don't.

9 ADMIN. JUDGE RUBINSTEIN: Judge  
10 Rubinstein, no, I'm fine.

11 ADMIN. JUDGE KARLIN: Great. Okay. And  
12 the parties? Anything else -- a burning issue that  
13 needs to be confronted here?

14 MR. SILBERG: We have several issues but  
15 I think they fall within the scope of the ones that  
16 you mentioned.

17 COURT REPORTER: Please identify yourself.

18 MR. SILBERG: Oh, I'm sorry. This is Jay  
19 Silberg.

20 ADMIN. JUDGE KARLIN: Great, thank you,  
21 Mr. Silberg. I think it probably will. And if at the  
22 end of the call we haven't covered them, perhaps you  
23 can speak up at that point and we will see if there is  
24 something else that needs to be addressed.

25 MR. SHADIS: This is Raymond Shadis, Your

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1 Honor. We need some direction or we would like some  
2 direction with respect to how to deal with updates to  
3 the hearing file, in particular, the most recent  
4 update which has documents dating back to 1981 to  
5 1984. We simply don't know how we are to handle them  
6 or react to them. So perhaps at the end we can  
7 explain a little more and get some direction from the  
8 Board.

9 ADMIN. JUDGE KARLIN: And when you say  
10 updates to the hearing file, you mean the staff's  
11 regular updates to the hearing file?

12 MR. SHADIS: That's correct. That's  
13 correct.

14 ADMIN. JUDGE KARLIN: And the recent  
15 update has included some 1981 to '84 documents?

16 MR. SHADIS: That is correct.

17 ADMIN. JUDGE KARLIN: All right. Well,  
18 let's not get into it. But let's add that to the  
19 agenda.

20 MR. SHADIS: Thank you very much.

21 ADMIN. JUDGE KARLIN: Okay. Very good.  
22 Okay. Anything else? Mr. Turk, anything that you  
23 have there?

24 MR. TURK: No, I think that covers  
25 everything we would like to raise as well, Your Honor.

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1 ADMIN. JUDGE KARLIN: Okay. All right.  
2 Good.

3 Then we will turn to the withdrawal of  
4 Contention 4 by NEC. Just -- we just want to note  
5 that obviously it appears to be a unilateral  
6 withdrawal. There is no quid pro quo or settlement  
7 agreement associated with it. So as far as we are  
8 concerned, that is a fait accompli.

9 And just for everyone's assurance, the  
10 witnesses associated with Contention 4 then no longer  
11 need to be delayed or need to be brought to the  
12 hearing. That contention has been withdrawn. And we  
13 see that as the end of that matter.

14 Next, regarding the schedule and the site  
15 visit, because of the withdrawal of C4, which was  
16 previously scheduled for the first day of the hearing,  
17 which was the 12th of September, we now sort of have  
18 a gap in our program. The site visit was on the 11th  
19 and we were going to begin on the 12th on NEC 4. And  
20 then NEC 3 was going to be the 13th, 14th, and, if  
21 necessary, 15th.

22 In light of that gap, we have contacted --  
23 Marcia Carpentier has contacted counsel for Entergy  
24 and they have indicated they are amenable to moving  
25 the site visit back a day. The facility can

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1 accommodate postponing it from the 11th to the 12th.  
2 And so that is what we have decided to do which would  
3 be have the site visit on the 12th and commence the  
4 evidentiary hearing on Wednesday, the 13th, focusing,  
5 of course, on the only remaining contention at this  
6 point, NEC 3. And we have thus three days for NEC 3  
7 plus a couple in reserve in October if necessary.

8 We really don't think that will be needed  
9 but -- so that is our plan. And we will be issuing an  
10 order shortly, probably tomorrow, which will reflect  
11 this point, among others, i.e., moving the site visit  
12 back a day and proceeding in that manner.

13 Are there any questions on that from  
14 anyone?

15 (No response.)

16 ADMIN. JUDGE KARLIN: Okay. Great. I  
17 think that will work and I feel pretty confident, and  
18 we have thought about it, that we should be able to  
19 get through in the three days or if not shorter, the  
20 remains for NEC Contention 3.

21 Let's see. With regard to the site visit  
22 itself, as I think we have indicated, it will -- and  
23 we're not going to change this -- I'm not trying to  
24 change this -- the date changes but the time is still  
25 9:00 a.m. I think I have that right.

1 I was going to ask Mr. Travieso-Diaz or  
2 Silberg or perhaps Mr. Nichols if there is a place we  
3 should meet at 9:00 a.m. -- a visitors' center or a  
4 guard shack or something like that?

5 MR. TRAVIESO-DIAZ: Craig, can you address  
6 that?

7 MR. NICHOLS: Yes, Judge Karlin, this is  
8 Craig Nichols from Entergy. At the entrance to the  
9 site at the first guardhouse, immediately to the left  
10 of that is a large white building referred to as the  
11 Governor Hunt House. And that is where we have a  
12 small meeting place where we can gather, inform people  
13 about the tour rules, and provide safety equipment.

14 ADMIN. JUDGE KARLIN: Okay. So that is  
15 where we will presumably need to meet at 9:00. If  
16 everyone could be there crisply at 9:00, that would be  
17 helpful.

18 ADMIN. JUDGE BARATTA: This is Judge  
19 Baratta. Is it obvious as to parking and that sort of  
20 thing?

21 MR. NICHOLS: There is parking right in  
22 front of that building. Not for an excessive number  
23 of cars but certainly enough, I think, for the folks  
24 that are coming on this tour. And we will have that  
25 designated for ASLBP parties for that day.

1           And then if needed, we will either walk or  
2 if the weather is inclement, we will find a way to  
3 shuttle people down closer to the entrance to the  
4 facility.

5           ADMIN. JUDGE KARLIN: Okay. So we are  
6 planning on walking generally unless the weather is  
7 inclement. And obviously we will have casual attire  
8 as appropriate. Is there any particular -- I mean  
9 hard-toed shoes, this sort of thing?

10          MR. NICHOLS: We don't have a requirement  
11 for tours for what are referred to as safety or steel-  
12 toed shoes but do require, you know, a sturdy shoe, a  
13 leather sneaker, or, you know, a leather shoe. No  
14 open toes for shoes, no sandals, things like that.

15           What you would do, you know, in an  
16 industrial environment. If there are ladies coming  
17 with us, I would not recommend dresses -- pants, et  
18 cetera, because we will be climbing stairways and  
19 going around.

20           And that is one thing we do -- we would  
21 like to find out is what exactly the Board et al would  
22 like for the tour.

23          ADMIN. JUDGE KARLIN: Okay. Well, this is  
24 helpful. One of the things we also wanted to adjust  
25 is we have asked you in the order -- in the site

1 visit, the order previously issued, that you give us  
2 an initial briefing as to essentially what we are  
3 going to see and the basic layout. And accompany that  
4 with a map of what we are going to see.

5 We would also like to have a basic  
6 schematic of the flow or of the -- to go with the map  
7 so we have both a physical locator and a, you know,  
8 flow schematic locator as we go. If you could provide  
9 that, we would appreciate it.

10 MR. NICHOLS: I assume provide that at the  
11 time versus in advance?

12 ADMIN. JUDGE KARLIN: Yes, yes, at the  
13 time.

14 MR. NICHOLS: Certainly, we can do that.

15 MR. SILBERG: When you say -- this is Jay  
16 Silberg -- a physical locator, you mean the order in  
17 which you are going to be at various places?

18 ADMIN. JUDGE KARLIN: Yes, here is a map  
19 of the site. Here is where we are going to go, one,  
20 two, three, four, and, you know, maybe have it marked  
21 on the map. And then the schematic I don't think  
22 needs to be marked in that way. But it would just  
23 show basically the schematic.

24 Maybe Judges Baratta or Rubinstein have  
25 more guidance on that?

1           ADMIN. JUDGE BARATTA: Yes, this is Judge  
2 Baratta. Basically we are looking for the overall  
3 system schematic. Not the real detailed type of thing  
4 but that shows us the basic flow and where, when we go  
5 in the plant, okay, this is the part of the system  
6 that is going to be accessible to us at this point,  
7 you know.

8           Because we realize that if a plant is in  
9 operation, there will be areas that won't be  
10 accessible. Just so that we are oriented as to both  
11 the physical location of what we are looking at as  
12 well as the location in the system itself as to what  
13 we are looking at.

14          ADMIN. JUDGE RUBINSTEIN: Yes, we are  
15 looking for the schematics that show the functional  
16 overview of the system.

17          MR. NICHOLS: When you say the system, you  
18 mean plant systems like --

19          ADMIN. JUDGE RUBINSTEIN: The systems  
20 relevant to the NEC 3 that we're going to see -- that  
21 are available to be seen.

22          MR. NICHOLS: Okay.

23          ADMIN. JUDGE KARLIN: Okay. Craig, do you  
24 understand that?

25          ADMIN. JUDGE RUBINSTEIN: We will

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1 articulate it in the order a little better.

2 ADMIN. JUDGE KARLIN: Okay.

3 MR. NICHOLS: And I believe I understand  
4 the request and I believe, obviously, we are used to  
5 doing tours. And I think we will only do a slight  
6 variation of what we call the standard tour to focus,  
7 as I think Judge Rubinstein said, those areas related  
8 to NEC 3.

9 ADMIN. JUDGE RUBINSTEIN: Yes, you know,  
10 please provide a schematic showing the overview of the  
11 systems of interest.

12 MR. NICHOLS: We have that, certainly.

13 ADMIN. JUDGE RUBINSTEIN: I'm sure, yes.

14 ADMIN. JUDGE KARLIN: Great. Okay.  
15 Anything else we need on that point Judges Baratta or  
16 Rubinstein?

17 (No response.)

18 ADMIN. JUDGE KARLIN: Okay. So we will  
19 have the schematic. We will look forward to the tour.  
20 I think -- I don't know whether you have the names and  
21 the information that you need for the participants but  
22 I guess the original site visit order lays out that  
23 and what needs to be provided. So good, it sounds  
24 like we are good to go on that. And appreciate your  
25 ability to move that from the 11th to the 12th.

1 MR. TRAVIESO-DIAZ: Judge Karlin, this is  
2 Matias Travieso-Diaz. As far as I know, we have not  
3 received that information from the parties who are  
4 going to take part in the visit. So this is just a  
5 reminder that we need to obtain that information prior  
6 to the tour.

7 ADMIN. JUDGE KARLIN: Right. Exactly.  
8 And I think we laid out in the order, you know, the  
9 time frame within which you need to get that -- you  
10 need to be provided that information. So please, if  
11 everyone can cooperate and get that information to  
12 Entergy so they can have that.

13 MR. TURK: Your Honor, this is Sherwin  
14 Turk.

15 ADMIN. JUDGE KARLIN: Yes?

16 MR. TURK: Could I ask -- while we are  
17 talking today, to ask Entergy to tell us exactly what  
18 information they need for each person that will be on  
19 the tour?

20 MR. NICHOLS: I had -- this is Craig  
21 Nichols from Entergy -- I had provided a list, name,  
22 social security number, date of birth. We can ask our  
23 attorneys to resend that list to everyone.

24 MR. TURK: Thank you. That would be very  
25 helpful.

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MR. NICHOLS: Okay. We will do that.

ADMIN. JUDGE KARLIN: Good, good, please do that. That is great.

Okay, I think that is all we need to discuss in terms of the adjustment in the schedule and the site visit.

ADMIN. JUDGE BARATTA: This is Judge Baratta, one last thing, make sure everybody brings a photo ID.

ADMIN. JUDGE KARLIN: Brings a photo ID, right.

ADMIN. JUDGE BARATTA: A government-issued photo ID.

ADMIN. JUDGE KARLIN: Right, right.

Turning to the evidentiary hearing protocol, we are focusing -- I'm focusing a little bit now on the testimony and the exhibits for the practical, concrete things that we are looking for in this Subpart L type of proceeding, it will be similar in many respects, we think, to the way the L proceedings and even to some extent the G proceedings went with regard to introduction of witnesses.

All right. NEC 3, scheduled for the 13th to the 15th. I think you need to pretty much have all

1 your witnesses available most of that time frame. We  
2 may very well get to all three panels on the first  
3 day. That would be moving very quickly but it is  
4 possible. So please have them available with some  
5 flexibility.

6 We would contemplate, and this will be  
7 laid out in an order, as I say, we are going to issue  
8 tomorrow or hopefully tomorrow or maybe within the  
9 next few days, but please listen carefully because the  
10 time is, you know, a couple weeks, three weeks away,  
11 opening statement.

12 We thought it would be useful if everyone  
13 could give us an opening statement of about ten  
14 minutes. If you want to do it, that is an opportunity  
15 for you to talk about your presentation in your case.

16 Then we would contemplate the testimony.  
17 Each panel would be sworn in and the sponsoring party  
18 -- we want you to bring an original and two copies of  
19 the testimony. We know that it has been pre-filed.  
20 And the original and two that you bring in should be  
21 identical to the pre-filed testimony except for  
22 corrections.

23 We don't want to discourage corrections  
24 but we don't want to leave the door open for a lot of  
25 modifications or changes except as corrections are

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1 necessary. So the sponsoring party brings an original  
2 and two copies of testimony. The sponsoring party  
3 asks basic questions of the witnesses for the  
4 foundation for the admission of their written  
5 testimony as if it was read into the record.

6 This will be a 1a 10 CFR Section 2.11B, as  
7 in boy, typically the way it is done in the NRC  
8 proceedings. Nothing surprising or different there.

9 We will then presumably admit into the  
10 written testimony as if read. This will allow it to  
11 be put into the transcript and more easily referred  
12 to. And then we will turn to the exhibits. And you  
13 would -- each party would, in their turn, present  
14 their exhibits.

15 The sponsoring party will bring -- we're  
16 asking them to bring an original and two hard copy of  
17 each exhibit. And each exhibit is you have pre-filed  
18 exhibits, direct, rebuttal, and supplemental. And we  
19 would want you to bring an original and two hard copy  
20 of each.

21 We would like you to have them pre-marked  
22 with certain information on them. We were going to  
23 send you a stamp out -- we are going to send it out  
24 today -- that we ask you to use to pre-mark certain  
25 information on the front page of each of the original

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1 and two.

2 The sponsoring party will then briefly  
3 describe each document and move for its admission.  
4 And then we will rule on their admission or not.

5 Exhibits should be identical to the pre-  
6 filed exhibits. You don't need to bring extra copies  
7 for anyone else either for the judges or for the other  
8 parties so long as they are identical to what was pre-  
9 filed and which we already have.

10 The original and two are for the SECY and  
11 for other, you know, record purposes that need to  
12 have.

13 And we would also like you to give us an  
14 electronic pre-filed list. We would call it -- it is  
15 a little bit of chart which we will use for keeping  
16 track of things. And we are going to ask you to email  
17 that to Marcia Carpentier. That will probably be like  
18 on September 5th or 6th, about a week before we get  
19 started.

20 Once the testimony and exhibits are  
21 brought into evidence, then the Board will ask  
22 questions of the witnesses. And we will, of course --  
23 if there are proprietary questions or issues that we  
24 have to ask questions about, we will take a break or  
25 somehow adjourn and ask the members of the public and

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1 anyone who hasn't signed the non-disclosure agreement  
2 to be excluded. And then we will reconvene and ask  
3 the questions we need to ask.

4 So any questions?

5 ADMIN. JUDGE BARATTA: This is Judge  
6 Baratta. May I interject?

7 ADMIN. JUDGE KARLIN: Yes, yes, please do,  
8 please do.

9 ADMIN. JUDGE BARATTA: The exhibits and  
10 the pre-filed testimony, if there are any corrections  
11 to those, there will be a point at which we will ask  
12 you, for the record, to identify those so that even  
13 though you have corrected copies, we will need to  
14 enter into the record what those corrections were.

15 Also, we didn't mention anything about an  
16 electronic version of the testimony if there are  
17 corrections. And I haven't talked to my colleagues  
18 about this.

19 But I really would prefer to get an  
20 electronic copy if that does not pose too much of a  
21 problem as it will aid me in writing the decision.  
22 And I'm certain it would also aid my colleagues in  
23 doing that if that's acceptable to my colleagues.

24 ADMIN. JUDGE RUBINSTEIN: That would be  
25 very helpful. And in addition, please identify it as

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1 corrected copy of such and such a date, which you  
2 would do anyway.

3 ADMIN. JUDGE KARLIN: Right. I think that  
4 would probably be good. I mean that could be brought  
5 in -- it doesn't have to be brought in in advance of  
6 the hearing. But at the hearing or soon thereafter it  
7 seems to me.

8 MR. TURK: Your Honor, could I ask --  
9 again, Sherwin Turk --

10 ADMIN. JUDGE KARLIN: Yes?

11 MR. TURK: -- if there are any corrections  
12 to testimony, could I ask that they be put in with red  
13 line strikeout marking so that we can see how the  
14 revised testimony differs from the original?

15 ADMIN. JUDGE KARLIN: Yes, that is a good  
16 suggestion. And we would like to have that  
17 highlighted. Strike out and redlined and that sort of  
18 thing for corrections or changes so we all know where  
19 they are.

20 And presumably if there is a correction to  
21 testimony, we will -- the sponsoring party when they  
22 sponsor that witness, if there is anything different  
23 from the pre-filed testimony, we want to hear about  
24 each chapter and page and verse of that up front,  
25 right then and there I think as well as having it

1 highlighted on the physical copy.

2 Now I would also say this that if there  
3 are changes, then you need to bring enough copies to  
4 give everyone in the room -- the other parties --  
5 copies of the corrected versions. If they are the  
6 same, no such problem. We will rely on the pre-filed  
7 as being identical to the ones being submitted.

8 ADMIN. JUDGE BARATTA: This is Judge  
9 Baratta again. One other point, if you, perchance,  
10 get the stamp before the order comes out for marking  
11 the exhibits, hold off until the order comes out  
12 because there will be specific instructions as to  
13 placement of the stamp and the type of information  
14 that we expect you to put on the exhibits.

15 ADMIN. JUDGE KARLIN: Right, right. Good  
16 point. This, I think, will help move it along and  
17 make sure we get everything into the record properly  
18 for purposes of ruling on this.

19 So -- and if you have questions, I mean I  
20 would generally consult, you know, 2.1207 -- 11 has  
21 certain rules about evidence. I mean I can't recite  
22 all the regs here but we are just going to try to  
23 follow them as much as possible.

24 The one thing different here is that in  
25 2.1207, it talks about the testimony being admitted as

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1 exhibits -- separate exhibits. Here we want to have  
2 the testimony admitted as if read into the record so  
3 that it will be part of the transcript. So that is a  
4 little bit different than what you would see in the  
5 straight reading of the reg there.

6 ADMIN. JUDGE BARATTA: And typically in  
7 these hearings when we move for admission, we just  
8 say, you know, move the testimony identified be  
9 admitted as evidence incorporated in the transcript at  
10 this point as if read. And the Board would typically  
11 say, you know, done.

12 ADMIN. JUDGE KARLIN: Absolutely. That's  
13 the way we would proceed. We also note that we have  
14 already gone through motions in limine on all of this  
15 material.

16 So, you know, unless there is some motion  
17 dealing with one of the -- some correction that is a  
18 problem, we don't expect -- you have already had your  
19 opportunity to file your motion. There has already  
20 been a ruling on it. And that is in the record. So  
21 you don't need to restate it to get it into the  
22 record.

23 But there we go. So with that, I think --  
24 first, before we get to Mr. Shadis' question about the  
25 hearing updates, I believe Mr. Silberg said that there

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1 were some issue or questions he had on the hearing  
2 issues. Has this answered your question, sir?

3 MR. SILBERG: Not entirely but let me note  
4 the points that I thought would be important to cover.

5 First, the order of presentation,  
6 typically the applicant goes first. The intervenors  
7 go second. And the staff goes last. Is that the  
8 order that the Board would like to follow in this  
9 case?

10 ADMIN. JUDGE KARLIN: Well, the applicant  
11 will go first. I think we will address that. And I  
12 am not sure whether that is the way we will do it or  
13 not. But yes, the applicant will go first. And we  
14 may have the intervenor go last.

15 MR. SILBERG: Okay. The second point, do  
16 you want each party to put in its testimony followed  
17 by questions from the Board or do you want all parties  
18 to put in their testimony up front and then  
19 sequentially have questions from the Board?

20 ADMIN. JUDGE KARLIN: Well, we will deal  
21 with that later. We'll deal with that later.

22 MR. SILBERG: Okay. You talked about the  
23 segmentation of proprietary and non-proprietary. One  
24 question is the potential admission into evidence of  
25 documents that we provided to the Board, at the

1 Board's request, on June 19. Do you want all those  
2 documents introduced into evidence?

3 ADMIN. JUDGE KARLIN: Yes, we want you to  
4 bring the original and two of each of those documents.  
5 We probably -- but we can decide that at that time.

6 ADMIN. JUDGE BARATTA: This is Judge  
7 Baratta. We probably -- and I haven't talked with my  
8 colleagues about that but if those documents are  
9 proprietary, we will probably have to have you mark  
10 them slightly differently. So there may be some  
11 additional clarification on that point.

12 MR. SILBERG: Okay. So the legend that  
13 you are going to send us would indicate whether it is  
14 proprietary or non-proprietary?

15 ADMIN. JUDGE BARATTA: Well, we haven't  
16 discussed that point yet but I will discuss that with  
17 my colleagues before the order goes out and we will  
18 come up with a statement on that.

19 ADMIN. JUDGE KARLIN: Yes, we definitely  
20 would want -- I agree with Judge Baratta -- we would  
21 want the document to say on its face to be marked as  
22 proprietary. Whether or not the stamp itself covers  
23 that or whether it is just marked that way, yes,  
24 obviously that marking is important.

25 MR. SILBERG: Yes, the documents typically

1 would be marked as proprietary. But I just didn't  
2 know whether you wanted the stamp to somehow reflect  
3 that or not.

4 ADMIN. JUDGE KARLIN: I don't know whether  
5 or stamp accommodates that variable but we will  
6 certainly keep it in a separate manner, you know, and  
7 recognize the proprietary nature of the document and  
8 handle it accordingly.

9 MR. SILBERG: Okay. And I assume for some  
10 of the exhibit documents, which obviously many of them  
11 have not been prepared by the witnesses that we would  
12 have that our sponsoring witnesses could describe the  
13 source of those documents and authenticate it that  
14 way, we would not need to bring in original sponsors,  
15 if you will, for the exhibits.

16 ADMIN. JUDGE KARLIN: Well, if you are  
17 talking about authentication, that sort of thing, I  
18 mean we don't have any -- no motions or objections  
19 were filed.

20 So I don't contemplate anything of that  
21 nature. So, you know, I think you just identify -- we  
22 would like want you to go through each document, you  
23 know, Exhibits 1 through 22, for example, and give us  
24 a brief statement of what that exhibit is.

25 And then it would be marked for

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1 identification purposes. You would already have pre-  
2 marked certain information on it. And then the Clerk  
3 of the Court -- we will be using Marcia Carpentier for  
4 this -- will then mark it for identification.

5 And then, we presume, you would move for  
6 its admission.

7 MR. SILBERG: Right.

8 ADMIN. JUDGE KARLIN: And then we would,  
9 you know, absent any startling new objection on  
10 something that has changed, it would be admitted.

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

12 MR. TURK: May I ask one question on the  
13 documents? This is Sherwin Turk.

14 ADMIN. JUDGE KARLIN: Yes?

15 MR. TURK: Back when we were filing  
16 documents with the Board, I noticed, as I'm sure the  
17 Board did, that many of the documents identified by  
18 the applicant were also identified by the staff. For  
19 instance the GE topical report.

20 ADMIN. JUDGE KARLIN: Right.

21 MR. TURK: I don't see any reason for us  
22 to introduce duplicate hard copies of exhibits. And  
23 I'm wondering if we can establish a procedure where  
24 perhaps the staff, with Mr. Silberg, can identify  
25 those exhibits which we would simply leave as

1 applicant exhibits or mark as joint exhibits.

2 ADMIN. JUDGE KARLIN: All right. We will  
3 -- I think that is a good point. And we will address  
4 that to avoid unnecessary duplication of documents.

5 And since at this point, as far as I can  
6 tell, you know, I would just encourage the staff and  
7 the applicant to coordinate on that. And the  
8 applicant will go first. I presume the applicant's  
9 number would be the relevant one. The staff wouldn't  
10 need to introduce it again.

11 And as far as I can tell from what has  
12 been filed, and the NEC did not file any exhibits  
13 other than, of course, having an opportunity to refer  
14 to the exhibits of the other parties, they don't have  
15 any exhibits of theirs so they don't need to worry  
16 about that duplication issue.

17 MR. SILBERG: We're happy either to file  
18 these as joint exhibits or probably easiest would be  
19 just to have whichever documents are common, you know,  
20 have an applicant's exhibit number and the staff can  
21 rely on that numbering system.

22 MR. SILBERG: I think --

23 COURT REPORTER: Please identify yourself.

24 MR. SILBERG: I'm sorry, Jay Silberg.

25 ADMIN. JUDGE KARLIN: Yes? Okay. We will

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1 address that in the order and basically we will ask  
2 you to consult and avoid duplication where possible.  
3 That is a good point, Mr. Turk.

4 Anything else?

5 (No response.)

6 ADMIN. JUDGE KARLIN: Mr. Silberg, have we  
7 covered your questions then?

8 MR. SILBERG: I think we have at this  
9 point.

10 ADMIN. JUDGE KARLIN: Okay. Now we will  
11 turn to Mr. Shadis' issue or question. Please Mr.  
12 Shadis, what is the issue here.

13 MR. SHADIS: Thank you. Much of it, I  
14 think, has been answered in the discussion that we  
15 just had. But being unfamiliar with the rules, we  
16 were left just a little perplexed -- that both NRC and  
17 Entergy have continued to provide disclosures in the  
18 hearing file index after having filed their statements  
19 of position, rebuttal, and supplementary filing.

20 And I guess what I was looking for was to  
21 figure out whether or not the documents identified in  
22 the hearing file index would be admissible or  
23 presented as exhibits in the hearing. And what I  
24 derived from our conversation, and please correct if  
25 I am wrong, if they have not already been introduced

1 as exhibits, they would not be admissible in the  
2 hearing.

3 ADMIN. JUDGE KARLIN: Okay. Good  
4 question. I think perhaps out of a function of being  
5 careful or inertia, the staff and Entergy and even NEC  
6 might have continued to update regularly their  
7 documents in the file -- and the hearing file in the  
8 case of the staff.

9 But I think it is correct to say that only  
10 the exhibits that have been pre-filed as being  
11 critical to this case are the ones that will be  
12 exhibits -- that are pre-filed as exhibits and will be  
13 admitted, you know, or submitted for admission as  
14 exhibits.

15 So the answer to your question is yes.  
16 Only those that have been attached as exhibits are  
17 going to be brought into this evidentiary hearing in  
18 September.

19 MR. TURK: Your Honor, Sherwin Turk.

20 ADMIN. JUDGE KARLIN: Yes?

21 MR. TURK: I think what Mr. Shadis is  
22 referring to is, in particular, and he can correct me  
23 if I am wrong, the most recent staff update of the  
24 hearing file --

25 ADMIN. JUDGE KARLIN: Yes?

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1 MR. TURK: -- in which the staff  
2 identified two early generic letters in which ODYN was  
3 approved for use for things such as the issues  
4 involved in this proceeding. These are documents that  
5 have been available in ADAMS. In fact what happened  
6 here was the Project Manager, Mr. Ennis, was doing an  
7 ADAMS search and he came across them.

8 These are documents that are 25 years old  
9 now. They go back to the time when ODYN was first  
10 approved. We were not aware of these documents in  
11 particular when we forwarded documents to the Board  
12 previously.

13 But they are definitely relevant and the  
14 staff -- we are on the verge of reaching a decision  
15 whether or not we want to use them as exhibits. I  
16 think they would be very helpful to have in the  
17 record.

18 ADMIN. JUDGE BARATTA: Yes, this is Judge  
19 Baratta here. Judge Karlin and Judge Rubinstein,  
20 could we maybe discuss this and provide a ruling in  
21 our order?

22 MR. TURK: In fact, Your Honor, I might  
23 suggest that we make copies rather than simply leave  
24 these in the hearing file, that I send them out by  
25 letter so that everyone has a physical copy in hand.

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1           And if the staff decides they want to  
2 introduce them as an exhibit, we will move at that  
3 time and the Board can rule at that time. But all  
4 parties and the Board will have had the documents and  
5 will be well aware of what they are before you are  
6 asked to rule.

7           MR. SHADIS: This is Ray Shadis, Your  
8 Honor. This is out of time. It is essentially a  
9 pleading without testimony and out of time. And so I  
10 am hoping that you will not permit these to now be  
11 introduced as evidence.

12           And that goes equally for the documents  
13 that Entergy has provided following the last date for  
14 filing of testimony.

15           ADMIN. JUDGE RUBINSTEIN: This is Judge  
16 Rubinstein. Before we respond to that, let me ask a  
17 question. My memory may be hazy but as I remember  
18 reading the staff's testimony, you included the  
19 staff's 1981 report approving ODYN.

20           MR. TURK: That is correct.

21           ADMIN. JUDGE RUBINSTEIN: And I think that  
22 incorporated a cover letter or two.

23           MR. TURK: That is correct.

24           ADMIN. JUDGE RUBINSTEIN: Is this of the  
25 same sense? Or does it go beyond that?

1 MR. TURK: These are of the same time  
2 frame. One document is November 4th of 1980. The  
3 other is January 29 of 1981. These were generic  
4 letters informing all holders of construction permits  
5 and operating licenses for BWRs that they may use  
6 ODYN.

7 The SE was the formal document that  
8 approved the use of ODYN and these were the  
9 notifications that went out to licensees informing  
10 them of the approval.

11 ADMIN. JUDGE RUBINSTEIN: In essence,  
12 these are meaningless documents.

13 MR. TURK: The SE is actually the staff  
14 assessment and approval. And then these are the  
15 notices to --

16 ADMIN. JUDGE RUBINSTEIN: Saying that it  
17 has been approved.

18 MR. TURK: Yes.

19 ADMIN. JUDGE RUBINSTEIN: But these are  
20 essentially, for our case, meaningless documents.

21 ADMIN. JUDGE KARLIN: Well, yes. I think  
22 -- I'm certainly not here to disagree with that, Judge  
23 Rubinstein, at all.

24 I think we probably ought to take this  
25 offline but I have a concern, Mr. Turk, because these

1 documents are 25 years old. They were apparently  
2 pointed out to you by the applicant.

3 There is nothing new about them. Mr.  
4 Shadis and the NEC have three times attempted to  
5 supplement the record and asked for our indulgence in  
6 expanding and supplementing the record. And we have  
7 denied that three times because of the cascading  
8 effect we think that would have.

9 If you now want to file some sort of a  
10 motion to supplement the record a la the way Mr.  
11 Shadis has tried to do three times before and been  
12 denied, we would think you could do that. But it is  
13 very late in the day.

14 And if it is something crucial, startling,  
15 you know, important, that is one thing. But I can't  
16 speak for my colleagues but I think it is problematic  
17 to be coming in at this late date with new exhibits,  
18 new evidence, especially ancient material.

19 MR. TURK: I understand your position,  
20 Your Honor. Incidentally, these were not pointed out  
21 to us by the applicant. This was Mr. Ennis, the  
22 staff's Project Manager, who conducted the ADAMS  
23 search and located them.

24 But I understand, Your Honor. I have not  
25 moved their admission at this point. And I know from

1 the tenor of this conversation that if I decide that  
2 I want to move them, I had better anticipate the  
3 ruling. I had better have a very persuasive case to  
4 make if I hope to get the documents in.

5 ADMIN. JUDGE KARLIN: Yes, well, I -- no,  
6 no, my colleagues and I have not discussed this so I  
7 don't know what our ruling would be. But our approach  
8 has been that each party had their opportunity to  
9 submit their direct testimony and exhibits, their  
10 rebuttal testimony and exhibits, their supplemental.  
11 And that is to be the evidence upon which we have to  
12 decide this case.

13 But, again, if you want to -- I'm not sure  
14 whether you want to make a motion, whether you are  
15 making a motion, you know, or what we have here, if we  
16 have anything at all to rule upon.

17 But I think we have probably -- my take  
18 would be we would need a motion of some kind for  
19 supplementing the record if you wanted to add those  
20 documents. And there would have to be an opportunity  
21 to respond.

22 ADMIN. JUDGE BARATTA: Yes, this is Judge  
23 Baratta. I would second that opinion, too.

24 Judge Rubinstein, do you have any  
25 comments?

1 ADMIN. JUDGE RUBINSTEIN: No, I agree. I  
2 think we could probably dispose of this in about two  
3 minutes in a private conversation.

4 ADMIN. JUDGE KARLIN: Okay. So does that  
5 answer your question, Mr. Turk? If you want to file  
6 a motion, you can file a motion. I would suggest you  
7 do so very quickly because time is a-wasting.

8 MR. SILBERG: This is Mr. Silberg. One  
9 final point, Mr. Shadis, I guess, pointed out that we  
10 may have identified some additional documents as well.  
11 We have no intention of moving those documents into  
12 evidence at this point in time. We are just trying to  
13 be complete.

14 ADMIN. JUDGE KARLIN: Yes, yes. I  
15 understand. Sort of inertia sets in and there is an  
16 obligation to update the files every X days or weeks.  
17 And people keep doing it even though, you know, of  
18 course, the pre-file testimony has already been, you  
19 know, submitted.

20 MR. TURK: Yes, I don't know that I would  
21 characterize it as inertia. We believed that we had  
22 a continuing obligation.

23 ADMIN. JUDGE KARLIN: No, I understand.

24 MR. TURK: If the Board wants to have that  
25 obligation stop as of this minutes, we will be more

1 than happy to.

2 ADMIN. JUDGE KARLIN: We might. That is  
3 worth considering actually. We probably should have  
4 thought about that earlier.

5 MR. TURK: It would probably save us some  
6 administrative time and we would -- not having thought  
7 of that before, would welcome that opportunity.

8 ADMIN. JUDGE KARLIN: All right. Well, I  
9 think we will think about putting that into this order  
10 we hope to get out in the next day or two or three or  
11 whatever.

12 Okay. Let me put it this way, because of  
13 the shortness of time, maybe we could say that if you  
14 have something supplementary on this issue that you  
15 want to file or a motion in this regard, Mr. Turk,  
16 please file it within -- well, can you file it by the  
17 end of this week? This is a Tuesday, let's say next  
18 Monday. Mr. Turk, are you there?

19 MR. TURK: Yes, thank you, Your Honor. We  
20 will do that. If we are going to file at all, we will  
21 do that.

22 ADMIN. JUDGE KARLIN: Okay. File it by  
23 next Monday. Oh, gosh, this brings us right up  
24 against Labor Day, doesn't it?

25 MR. TURK: I'll do it this week, Your

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1 Honor. Maybe if -- I'll talk to the staff and if they  
2 decide they want -- if they feel it is really  
3 important to put this in, we will file the motion  
4 today or tomorrow.

5 ADMIN. JUDGE KARLIN: I would appreciate  
6 it. That would be great. Okay, get it in this week.

7 And we will then proscribe until, you  
8 know, seven days or next Friday, whichever comes  
9 earlier, for Mr. Shadis for you to respond if you  
10 would to that. Okay?

11 MR. SHADIS: And just to be clear, Your  
12 Honor, this is Ray Shadis, just to be clear, what we  
13 are talking about is the filing of proposed additional  
14 exhibits. Is that correct?

15 ADMIN. JUDGE KARLIN: These two exhibits  
16 you have pointed out -- the ones that have been  
17 discussed, the 1981 reports. Those are the ones we  
18 are talking about.

19 MR. SHADIS: I see.

20 ADMIN. JUDGE KARLIN: 1980 and '81. No  
21 other. This is not opening the gate for everybody to  
22 file motions to supplement at this point. We're just  
23 talking about the two documents that you pointed out,  
24 I think.

25 MR. SHADIS: And Entergy has represented

1 they have no intention of attempting to file any of  
2 the documents they have provided recently. And I'm  
3 looking for clarification here.

4 I am wondering if it is possible to draw  
5 the line at the due date for the supplemental filings  
6 that the Board asked for on the direct -- if what we  
7 are talking about is anything that was produced after  
8 that date.

9 MR. TURK: Well, the documents that we  
10 intend to seek to introduce as exhibits are those that  
11 we have already circulated. We don't have any  
12 intention of adding any more documents no matter when  
13 they were disclosed.

14 ADMIN. JUDGE KARLIN: Right. The only  
15 subject of this particular motion that the staff has  
16 an opportunity to make is the two 1980 and 1981  
17 documents, 11/4/80 and 1/9/81, if I got it right. If  
18 they want to move to have those admitted, please do so  
19 by the end of this week.

20 And, Mr. Shadis, you will have an  
21 opportunity, as I guess Entergy will as well, to  
22 respond.

23 And you must do so by the end of next week  
24 to that. And, therefore, we will have the pleadings  
25 on that all ready to go over the Labor Day weekend.

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1 And, you know, we will rule promptly on that.

2 With that, is there anything that we have  
3 missed here?

4 (No response.)

5 ADMIN. JUDGE KARLIN: Okay. I appreciate  
6 your patience and indulgence. I look forward to our  
7 get together up in Brattleboro and then Newfane.

8 And with that, we will close the call.  
9 This call is adjourned. Thank you very much.

10 (Whereupon, the above-entitled pre-hearing  
11 teleconference was concluded at 11:57 a.m.)

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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: Telephone Conference

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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