

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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PETITION REVIEW BOARD (PRB)

CONFERENCE CALL

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THURSDAY

OCTOBER 12, 2006

+ + + + +

The conference call was held, James Clifford, Acting Deputy Director of Policy and Rulemaking, Office of Nuclear Reactor Regulation, Nuclear Regulatory Commission and Chair of the Petition Review Board (PRB) presiding.

NRC HEADQUARTERS STAFF:

JAMES CLIFFORD, Acting Deputy Director of Policy and Rulemaking, Office of Nuclear Reactor Regulation

PATRICK MILANO, Petition Manager

NICK HILTON

JON B. HOPKINS

RICHARD LAUFER

GIOVANNA "JENNY" LONGO, Senior Attorney, Office of General Counsel

NADIYAH MORGAN

DAVID VITO

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NRC REGION I STAFF:

CHRISTOPHER HOTT

RICHARD URBAN, Senior Allegation Coordinator

MATT SAUL

LICENSEE:

CHARLENE FAISSON, Entergy Nuclear Operations, Inc.

WILLIAM DENNIS, Entergy Nuclear Operations, Inc.

PETITIONERS:

TIM JUDSON, Board Member, Citizens Awareness Network,

presenting Petitioners

CLAIRE CHANG, Assistant to the Executive Director,

Judd Katt, CAN

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

2 (time not provided)

3 HQ OPER. OFFICER.: This is the  
4 headquarters Operations Officer.

5 CHAIR CLIFFORD: Yes.

6 HQ OPER. OFFICER: I have two petitioners  
7 and a licensee on the other bridge. I'm not sure if  
8 you are expecting additional people.

9 MR. MILANO: Mr. Judson, are you on the  
10 bridge?

11 HQ OPER. OFFICER: No, no, I put the two  
12 petitioners and the licensee on another bridge.

13 MR. MILANO: Oh, okay.

14 HQ OPER. OFFICER: I was requested to keep  
15 the two bridges separate.

16 MR. MILANO: Yes, yes. Why don't you go  
17 ahead and tie us together?

18 HQ OPER. OFFICER: Okay, I'm tying you  
19 together at this time.

20 MR. MILANO: Thank you. Do we have the  
21 Citizens Awareness Network on the call right now?

22 PARTICIPANT: I'm not sure if Chris is  
23 going to be able to make it on since he's just coming  
24 in from out of town.

25 HQ OPER. OFFICER: Okay, this is the

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1 Headquarters Operations Officer. I have the two  
2 bridges connected.

3 MR. MILANO: Okay, and, Operations  
4 Officer, do we press star-zero if we need to get a  
5 hold of you?

6 HQ OPER. OFFICER: That is correct. And  
7 as soon as you do, I will try to answer whatever you  
8 need.

9 MR. MILANO: Okay, thank you very much.

10 HQ OPER. OFFICER: All right. MR. JUDSON:  
11 Is this Pat?

12 MR. MILANO: Yes it is. Is this Mr.  
13 Judson?

14 MR. JUDSON: Yes. And Claire Chang is  
15 also with us.

16 MR. MILANO: Okay.

17 MS. CHANG: Yes, I'm here.

18 MS. FAISSON: And this is Charlene Faisson  
19 of Entergy.

20 MR. MILANO: Okay, we've got -- we're  
21 going to go through a presentation. And right after -  
22 - during that, then we will go ahead and reannounce  
23 who is on the call, okay?

24 CHAIR CLIFFORD: We'll just do that as  
25 part of the discussion here.

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1 Good afternoon. My name is Jim Clifford.  
2 I am the Acting Deputy Director, Division and Policy  
3 and Rulemaking in the Office of Nuclear Reactor  
4 Regulation with the Nuclear Regulatory Commission.

5 I'm speaking today in my capacity as the  
6 chairperson for this Petition Review Board meeting.  
7 And for the sake of brevity from this point forward,  
8 I'll refer to the Petition Review Board as the PRB.

9 I'd like to open the meeting by providing  
10 just some background information on this petition and  
11 briefly discuss the petition process before turning  
12 the meeting over to the petitioners.

13 We did receive a petition dated September  
14 13th, 2006 from the Citizens Awareness Network  
15 requesting that the NRC take enforcement action  
16 pursuant to 10 CFR 2.206.

17 And our understanding of the request is  
18 that the petitioner wanted the NRC to first of all  
19 reopen an investigation into the alleged  
20 discrimination against Carl R. Patrickson;

21 Second, conduct an investigation into a  
22 potential chilled work atmosphere at the Fitzpatrick  
23 Plant;

24 Third, to suspend the operating license  
25 for Fitzpatrick until the investigation into the

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1 chilled work atmosphere was complete; and

2 Fourth, to suspend the NRC's review of  
3 Entergy's application for a 20-year extension of the  
4 operating license for Fitzpatrick until the  
5 investigation into the chilled work atmosphere is  
6 complete.

7 And by electronic mail today, we received  
8 a supplement from the petitioners that was dated  
9 October 11th, 2006 which has additional requests for  
10 enforcement action along with supporting bases.

11 And as we understand it, these additional  
12 actions include requests that first of all, Entergy  
13 reinstate Mr. Patrickson to his position at  
14 Fitzpatrick;

15 Second, that NRC conduct an investigation  
16 to determine whether three Entergy managers proffered  
17 false testimony in the case of Mr. Patrickson. And if  
18 so, the NRC suspend their current privileges; and

19 Third, that the NRC conduct an  
20 investigation to determine whether Entergy officials  
21 were involved in or were aware of possible proffering  
22 of false testimony in the case for discrimination  
23 against Mr. Patrickson.

24 The NRC staff has contacted the petitioner  
25 last week to set a date for the meeting. And due to

1 scheduling constraints and the Commission's desire to  
2 not have an undue delay in our petition review  
3 process, we really have little flexibility in holding  
4 our meeting today.

5 And I just want to express my personal  
6 appreciation and the Agency's appreciation to the  
7 petitioners for being able to accommodate our schedule  
8 today.

9 As you are aware the petition process  
10 permits any person to file a written request for the  
11 NRC to take an enforcement action against a licensee.  
12 The written request must sufficient grounds for taking  
13 the enforcement action.

14 And the NRC assigns the request to an  
15 appropriate office which forms the Petition Review  
16 Board. And the PRB determines whether or not the  
17 petition meets the criteria for review under Title 10  
18 of the Code of Federal Regulations Section 2.206.

19 And I'd like to make clear the purpose of  
20 today's meeting is to provide the petitioners with an  
21 opportunity to present any additional information or  
22 clarification to the PRB that is relevant to your  
23 position or your petition.

24 Today's meeting participants are the  
25 petitioners, the licensee, Entergy Nuclear Operations,

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1 and the NRC staff. And we always invite members of  
2 the public to listen in as observers.

3 So at this time, I'd like to go through  
4 and introduce the NRC staff who are here following  
5 which I will ask the petitioners and then the licensee  
6 participants to introduce themselves.

7 So here in headquarters, we have myself,  
8 Jim Clifford. We have Pat Milano who will serve as  
9 the Petition Manager, Jenny Longo, Dave Vito, Nadiyah  
10 Morgan, Nick Hilton, and Rick Laufer are additional  
11 participants from here in headquarters.

12 And I'd like to ask the NRC staff in  
13 Region I to introduce themselves.

14 MR. URBAN: This is Rick Urban. I'm the  
15 Senior Allegation Coordinator in Region I.

16 MR. HOTT: Hello, this is Chris Hott. I'm  
17 a Project Engineer in GRP, Region I.

18 MR. SAUL: Matt Saul, Region I.

19 CHAIR CLIFFORD: Okay, thank you Rick.

20 MR. LAUFER: Jon Hopkins is also on the  
21 line.

22 CHAIR CLIFFORD: Okay, Jon, thank you.

23 Any other NRC staff?

24 (No response.)

25 CHAIR CLIFFORD: Okay. And now I would

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1 like the petitioners to introduce themselves and  
2 identify who will represent them today.

3 MR. JUDSON: My name is Tim Judson and I  
4 am one of the petitioners. I'm a Board Member of  
5 Citizens Awareness Network and I'll be representing  
6 the petitioners.

7 CHAIR CLIFFORD: Okay. Thank you. And  
8 anyone else with you?

9 MS. CHANG: Yes.

10 CHAIR CLIFFORD: Yes?

11 MS. CHANG: My name is Claire Chang and  
12 I'm the Assistant to the Executive Director, Judd  
13 Katt, who will be calling in at some point.

14 CHAIR CLIFFORD: Okay. Thank you.

15 MR. JUDSON: We also may be joined by  
16 Chris Williams who is also a Board Member of CAN.  
17 He's just getting in from out of town so I'm not sure  
18 if it is going work out.

19 CHAIR CLIFFORD: Okay. Well hopefully  
20 they will be able to join us so I appreciate you  
21 letting us know that they will be joining us today.

22 And finally I'd like to ask the licensee  
23 to introduce their participants.

24 MS. FAISSON: Charlene Faisson, Entergy  
25 Nuclear Operations, Inc.

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1 CHAIR CLIFFORD: Okay. And anyone else  
2 with you?

3 MS. FAISSON: No.

4 CHAIR CLIFFORD: Okay.

5 MR. DENNIS: Yes, William Dennis, Entergy  
6 Nuclear Operations as well.

7 CHAIR CLIFFORD: Okay. Good.

8 Okay, at this time I'd like to ask if  
9 there are any members of the public who are  
10 participating in the call.

11 (No response.)

12 CHAIR CLIFFORD: Okay. Sounds good.

13 As I stated earlier, the NRC staff today  
14 will be listening to any additional information the  
15 petitioners have to present to us. This means the  
16 purpose of this meeting is not to debate the merits of  
17 the issues identified in the petition. And the only  
18 thing we will do from our side is to ask any questions  
19 we may have for clarification for any of the  
20 additional or supplemental information you provide  
21 today.

22 We also provide the licensee to ask  
23 clarifying questions if they desire.

24 And to ensure the information is  
25 accurately received, the meeting is being recorded and

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1 a written transcript will be prepared and included as  
2 a supplement to the petition. Because the meeting is  
3 being transcribed, it would help if anyone making a  
4 statement would first state their name clearly.

5 The transcript will be made publicly  
6 available and the petitioners will be given copies.

7 Following this meeting, the PRB will  
8 convene here in headquarters and with the region to  
9 consider whether the requested action items in your  
10 petition meet the criteria for review under the 2.206  
11 process. And we will consider any additional  
12 information presented today.

13 You will be notified following the meeting  
14 both verbally and by follow-up letter whether or not  
15 your petition has been determined to satisfy the  
16 criteria for review under 10 CFR 2.206 as described in  
17 NRC's Management Directive 8.11.

18 Should your petition be accepted under 10  
19 CFR 2.206, the staff will evaluate your petition,  
20 including information provided in any public meetings,  
21 including this one, and develop a director's decision  
22 which will either grant, partially grant, or deny your  
23 requested actions.

24 You will be kept informed of the review  
25 status by the petition manager for this petition, Mr.

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1 Pat Milano. Up-to-date status of pending petitions  
2 are also available on the internet at the NRC home  
3 page.

4 So at this point does anyone have any  
5 questions about the background or the petition  
6 process?

7 (No response.)

8 CHAIR CLIFFORD: Mr. Judson, do you have  
9 any?

10 MR. JUDSON: No, I believe I understand  
11 the process well.

12 CHAIR CLIFFORD: Okay. And licensee  
13 Entergy?

14 MS. FAISSON: We understand the process.

15 CHAIR CLIFFORD: Okay. Thank you.

16 And, Mr. Judson, I would like to ask at  
17 the beginning if we have accurately stated the facts  
18 of your petition?

19 MR. JUDSON: Yes, you summarized the  
20 requested actions quite well, thank you.

21 CHAIR CLIFFORD: Okay. Thank you.

22 All right, at this point, I'd like to ask  
23 you, Mr. Judson, if you have any supplemental  
24 information to begin your presentation to the PRB.

25 MR. JUDSON: Well, I guess I'm not sure if

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1 the Board has had a chance to review the filing that  
2 we submitted today, the supplement to our petition.

3 CHAIR CLIFFORD: Yes, we have.

4 MR. JUDSON: Okay. So in that case, I  
5 think, you know, what we would like to focus on is  
6 sort of tying this all together because, you know, it  
7 has a tendency to seem like it is sort of sprawling  
8 out there into issues that may or may not be directly  
9 related to the original issue in our petition.

10 So, you know, to start with, you know,  
11 we'd like to thank the Board for, you know, giving us  
12 the opportunity to meet. And we appreciate the  
13 difficulty of scheduling although we are having to  
14 miss a meeting about the license extension application  
15 at Fitzpatrick this afternoon in order to schedule  
16 this call. And we hope that this kind of scheduling  
17 doesn't happen in the future.

18 CHAIR CLIFFORD: Well, we will certainly  
19 do our best to try to make that not happen. We will  
20 try to accommodate schedules as best we can. We  
21 always try to do that.

22 MR. JUDSON: Okay. So to start with, you  
23 know, the central issue in our petition is the  
24 question of whether there is a chilled work atmosphere  
25 at the Fitzpatrick Plant and the possible relation of,

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1 you know, Carl Patrickson's case to that potential  
2 chilled work atmosphere.

3 And what started this process for us was  
4 a letter that NRC sent to Entergy in May 2005  
5 following the Department of Labor's ruling in the  
6 Patrickson's case in which Patrickson -- the ruling  
7 was that Patrickson has been retaliated against  
8 illegally.

9 And we received a copy of the original  
10 letter from NRC when it was sent but never any of the  
11 subsequent correspondence between Entergy or NRC. And  
12 we became confused about that and submitted a FOIA  
13 request to obtain that information. And when we had  
14 obtained the information, we were really dismayed to  
15 see exactly what had transpired in that exchange.

16 And essentially -- and Entergy had sent a  
17 letter to NRC -- I'm getting a lot of feedback on my  
18 phone. It's hard for me to keep track of what I'm  
19 saying.

20 CHAIR CLIFFORD: Okay. We're not getting  
21 any feedback here.

22 MR. JUDSON: What we will do is -- if  
23 everybody else on the line can go on to mute, I'd  
24 appreciate it. And we will put -- only when you need  
25 to talk, then take yourself off of mute.

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1 CHAIR CLIFFORD: And Mr. Judson, if you'd  
2 let us know if that helps.

3 MR. JUDSON: Sure.

4 CHAIR CLIFFORD: Okay. Thanks.

5 MR. JUDSON: Yes. Okay. So it's a little  
6 bit better. At least so far.

7 So -- but the letter that Entergy  
8 submitted in response to NRC we found was dismayingly,  
9 you know, insubstantial in terms of the central issue  
10 that is concerned here which is the Department of  
11 Labor's ruling that despite all of Entergy's claims  
12 that it has policies to encourage workers to report  
13 safety problems, that it doesn't retaliate against  
14 workers for reporting safety problems, that the issue  
15 was Mr. Patrickson's performance problems in terms of  
16 why he was fired, and that the ruling just basically  
17 dismisses all of those claims.

18 And all Entergy submits in response is a  
19 recitation of the policies and programs and meetings  
20 they have held among managers and don't articulate  
21 that anything has actually been communicated to  
22 workers to dispel the impressions that might naturally  
23 follow from what transpired in the Patrickson case.

24 And that the Office of Enforcement from  
25 NRC which initiated this correspondence essentially

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1       seemed to accept what Entergy had to say at face  
2       value. And we found that really dismaying because all  
3       of the evidence on the record contradicts, you know,  
4       the notion that Entergy's recitation of its programs  
5       and policies would be an adequate way of dealing with  
6       the potential chilled work atmosphere in this case.

7               So that was the essential issue that  
8       prompted us to submit the petition. Since then, we  
9       have obtained further information in the form of  
10       transcripts from NRC interviews conducted under an  
11       investigation in Patrickson's allegation to NRC that  
12       he was being discriminated against. These transcripts  
13       were not publicly available prior to our obtaining  
14       them. And have not been part of the public record in  
15       this case.

16               Sorry, the dog is barking.

17               And what emerged from these transcripts is  
18       factual discrepancies in statements made by Entergy  
19       managers between the investigation that NRC conducted  
20       in November 2003 and the testimony of some of the same  
21       Entergy management in a court proceeding under the  
22       Department of Labor six months later.

23               And the central issue here in both of  
24       these investigations is what Entergy knew and when it  
25       knew it as related to the firing of Mr. Patrickson.

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1 And specifically whether Entergy was aware that he had  
2 reported a nuclear safety problem before it decided to  
3 terminate him. And it is that issue in which these  
4 transcripts conflict with one another. And the  
5 statements made by each of these three individuals  
6 conflict with one another.

7 And so the reason that we felt that this  
8 was really significant in terms of the petition is it  
9 goes directly to the issue of whether Entergy's  
10 statements can be trusted and its self assessments can  
11 be trusted in terms of the issue that has been raised  
12 about a chilled work atmosphere.

13 And so we feel that, you know, the NRC  
14 really needs to conduct an investigation to get to the  
15 bottom of a number of issues. First is whether, in  
16 fact, these individuals knowingly proffered false  
17 testimony.

18 And then flowing from that if, in fact,  
19 that is the case, there are a number of other issues  
20 involving both the promotions that these individuals  
21 received subsequent to the Patrickson case and the  
22 potential need to reinstate Mr. Patrickson as a  
23 statement of good faith to employees that management  
24 who are found guilty of retaliating against employees  
25 are not simply going to be rewarded while the workers

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1 themselves who have been declared innocent in the  
2 matter still have been shown to suffer.

3           There is an additional question in this  
4 which relates to the involvement of the company's  
5 attorney, Mr. Douglas Levanway and who was present  
6 both during the NRC interviews and was the company's  
7 attorney in the Department of Labor case. And whether  
8 he was aware of his witnesses proffering contradictory  
9 testimonies. And, in fact, whether he knew that they  
10 might have been proffering false testimonies.

11           And specifically there is an issue -- an  
12 instance described in the petition which leads one to  
13 suspect that he may have actually led his witnesses  
14 into making false statements. And at that level, it  
15 becomes a question of whether there was involvement by  
16 higher up executives within Entergy in this possible  
17 proffering of false testimony.

18           And what I want to say in regard to this  
19 is that yes, we are well aware that an investigation  
20 needs to take place before any of these things can be  
21 ascertained as fact but that, in fact, the record  
22 weighted a number of anomalies and leads one to  
23 suspect that there is an investigation that needs to  
24 take place.

25           So with that, I think we can sort of open

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1 up the questions.

2 MR. MILANO: All right. Let me summarize  
3 what I have heard. And I think a number of these  
4 issues are, in fact, in your supplement. And I  
5 understand the background and when that was stated in  
6 the original petition and the new questions that I  
7 hear are -- or the questions that I hear that you are  
8 concerned about are what did Entergy know and when did  
9 they know it.

10 And for numerous reasons, can Entergy's  
11 statements be relied upon? And an additional question  
12 about the possibility of Entergy's lawyers leading  
13 potentially contradictory false testimonies.

14 Those are the additional things that I  
15 heard. Anybody have anything else that they heard?  
16 Is that an accurate summary of --

17 MR. JUDSON: Yes. That captures most of  
18 it, yes.

19 MR. MILANO: Okay, good.

20 MR. JUDSON: I mean the other issue in  
21 here is our concerns about the ways in which the  
22 Office of Enforcement and the Office of Investigations  
23 have conducted their work in regard to this case.  
24 And, you know, we believe that an investigation by the  
25 Inspector General's Office would be appropriate here

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1 because of what appear to be significant lapses in  
2 responsibility in terms of who is actually  
3 ascertaining the facts.

4 MR. MILANO: Okay. All right. And I  
5 think we understand that point clearly. All right.  
6 Any questions at this point for Mr. Judson here?

7 (No response.)

8 MR. MILANO: Okay. Rick Urban in the  
9 region, do you all have any questions?

10 MR. URBAN: I don't have any questions.

11 MR. MILANO: Okay. I'd like to offer  
12 Entergy an opportunity to ask any questions they may  
13 have.

14 MS. FAISSON: As stated at the beginning  
15 of the meeting, since the purpose is to understand any  
16 new information, I'm here today to hear any new  
17 information. So at this time, though, I don't have  
18 any comment but I would like to say I appreciate the  
19 opportunity to hear the information directly.

20 MR. MILANO: Okay. Thank you.

21 Okay, at this point, Mr. Judson, I'd like  
22 to thank you for the time you have taken today in  
23 helping us out with our scheduling conflicts. And I  
24 apologize for the conflict that we are creating, I  
25 guess, for another NRC activity that is going on. But

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1 we do appreciate the time you've taken with us and the  
2 information you have provided.

3 Any thoughts that you'd like to provide  
4 before we close?

5 MR. JUDSON: Well, I guess there is a  
6 question here in terms of, you know, how the standard  
7 for new information might be applied. I mean, again,  
8 we're talking about -- I mean some of what is being  
9 discussed here involves, you know, inquiries that have  
10 been already undertaken by the Office of  
11 Investigations and the Office of Enforcement.

12 MR. MILANO: Right.

13 MR. JUDSON: And there is clearly a  
14 question in regard to the adequacy of those  
15 investigations or those inquiries that took place.  
16 And how does the Board view the standard for new  
17 information as applied there?

18 MR. MILANO: Well, the purpose of this  
19 phone call and the meeting with the Board today is to  
20 gather any information that you can provide to allow  
21 us to decide whether or not to accept your petition as  
22 a valid petition under 2.206. So that is how we apply  
23 any information you provide to us.

24 MR. JUDSON: I see.

25 MR. MILANO: Is that clear?

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1 MR. JUDSON: Sort of.

2 MR. MILANO: All right. Okay, any further  
3 questions?

4 MR. JUDSON: Not on our side.

5 MR. MILANO: Okay. Thank you very much.  
6 I appreciate your time.

7 MR. JUDSON: Thank you.

8 MR. MILANO: Okay. Goodbye.