

Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

Title: Vermont Yankee Nuclear Power Station
(Pre-Hearing Conference)

Docket Number: 50-271

DOCKETED
USNRC

November 14, 2006 (1:29pm)

Location: (telephone conference)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Date: Wednesday, November 1, 2006

Work Order No.: NRC-1297

Pages 453-538

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

* * * * *

ATOMIC SAFETY AND LICENSING BOARD PANEL

PRE-HEARING CONFERENCE CALL

* * * * *

IN THE MATTER OF:

ENTERGY NUCLEAR VERMONT

YANKEE, LLC, and Docket No.

ENTERGY NUCLEAR OPERATIONS, INC 50-271

(Vermont Yankee Nuclear

Power Station)

Wednesday, November 1, 2006

Teleconference

The above-entitled matter came on for
hearing, pursuant to notice, at 10:00 a.m.

BEFORE:

ALEX S. KARLIN Chair

RICHARD E. WARDWELL Administrative Judge

THOMAS S. ELLEMAN Administrative Judge

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 APPEARANCES:

2 On Behalf of the Licensee:

3 DAVID LEWIS, ESQ

4 MATIAS TRAVIESO-DIAZ, ESQ

5 Of: Pillsbury Winthrop Shaw Pittman LLP

6 2300 N Street, NW

7 Washington, DC 20037

8

9 On Behalf of the Intervenor, the State of

10 Vermont:

11 SARAH HOFMANN, ESQ.

12 ANTHONY ROISMAN, ESQ.

13 of: Vermont Department of Public Service

14 112 State Street, Drawer 20

15 Montpelier, VT 05620

16

17 On Behalf of the State of New Hampshire:

18 JENNIFER PATTERSON, ESQ

19 Of: New Hampshire Department of Justice

20 Environmental Protection Bureau

21 33 Capitol Street

22 Concord, NH 03301

23

24

25

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

(202) 234-4433

www.nealrgross.com

1 APPEARANCES: (CONT.)

2 On Behalf of the New England Coalition:

3 RONALD A. SHEMS, ESQ

4 KAREN TYLER, ESQ

5 Of: Shems Dunkiel Kassel & Saunders PLLC

6 91 College Street

7 Burlington, VT 05401

8

9 On Behalf of the Nuclear Regulatory Commission:

10 MITZI YOUNG, ESQ.

11 STEVEN C. HAMRICK, ESQ.

12 of: Office of the General Counsel

13 Mail Stop - 0-15 D21

14 U.S. Nuclear Regulatory Commission

15 Washington, D.C. 20555-0001

16 (301) 415-1533

17 (301) 415-3725

18

19 OTHER BOARD PERSONNEL PRESENT:

20 MARCIA CARPENTIER

21

22

23

24

25

NEAL R. GROSS

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

1 APPEARANCES: (CONT.)

2

3 OTHER NRC STAFF PRESENT:

4 JONATHAN ROWLEY

5 RICHARD EMCH

6 JESSIE MUIR

7 SAM HERNANDEZ

8 DEVENDER REDDY

9

10 OTHER ENTERGY STAFF PRESENT:

11 MICHAEL MATTEL

12 DAVID LACH

13

14 OTHER VERMONT STAFF PRESENT:

15 WILLIAM SHERMAN

16

17 OTHER NEC MEMBERS PRESENT:

18 RAYMOND SHADIS

19

20

21

22

23

24

25

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

(202) 234-4433

www.nealrgross.com

P R O C E E D I N G S

(10:04:48 a.m.)

1
2
3 JUDGE KARLIN: Good morning. This is Alex
4 Karlin, a judge with the ASLBP. We are convening a
5 conference call in the matter of Entergy Nuclear
6 Vermont Yankee LLC, and Entergy Nuclear Operations,
7 Inc. This is the license renewal proceeding which
8 goes by the docket number 50-271LR, that's for license
9 renewal.

10 In a moment, we'll go around the table and
11 ask everyone to introduce themselves for the record.
12 This pre-hearing conference call is being held today,
13 November 1st, 2006 pursuant to the order that this
14 Board issued on October 11th, and pursuant to the Regs
15 10 CFR .329.

16 At this point, what I'd like to do is ask
17 each of the parties to introduce themselves and any of
18 their clients who may be on the line for purposes of
19 the record. Before I do that, however, I will
20 introduce the Board itself. Myself, I'm here in
21 Rockville, Maryland at the NRC in ASLBP Headquarters,
22 accompanied Dr. Wardwell. Dr. Wardwell, anything you
23 want to say at this point?

24 JUDGE WARDWELL: Not at this time.

25 JUDGE KARLIN: Okay. Chaverne Coy, who is

NEAL R. GROSS

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

1 our Administrative Assistant, and I believe Dr.
2 Elleman and Marcia Carpentier, our law clerk, are
3 participating remotely. Dr. Elleman, anything you
4 need to say or want to say at this point?

5 JUDGE ELLEMAN: Nothing at this point.
6 Thank you.

7 JUDGE KARLIN: Okay. And Ms. Carpentier
8 is also calling in. She is our lawyer and law clerk
9 who assists this Board.

10 MS. CARPENTIER: Hello.

11 JUDGE KARLIN: Hello. Good. Glad to hear
12 you're there. All right. Let us start. I would
13 suggest that we go with the State of Vermont. Ms.
14 Hofmann.

15 MS. HOFMANN: Yes, thank you, Judge
16 Karlin. This is Sarah Hofmann, and also on the phone
17 is Mr. Roisman. Mr. Roisman will be providing the
18 input for the State of Vermont.

19 JUDGE KARLIN: All right. Thank you.

20 MS. HOFMANN: Also with me today is
21 engineer, William Sherman.

22 JUDGE KARLIN: Mr. Sherman. Okay.
23 Welcome. Let us go with keeping with States, for what
24 it's worth, the State of New Hampshire.

25 MS. PATTERSON: Yes. Thank you very much,

NEAL R. GROSS

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

1 Your Honor. My name is Jennifer Patterson from the
2 New Hampshire Attorney General's Office, and we, as
3 you know, just filed a Notice of Intent to Participate
4 as an interested state.

5 JUDGE KARLIN: Right. And we're going to
6 get to that. You're not a formal participant yet, but
7 we'll get to that later in the call.

8 MS. PATTERSON: Thank you very much.

9 JUDGE KARLIN: All right. New England
10 Coalition, please. Mr. Shems.

11 MR. SHEMS: Yes, hi. This is Ron Shems.
12 Karen Tyler is with me. Karen Tyler will be taking
13 the lead on the call.

14 JUDGE KARLIN: All right. And Mr. Shadis
15 is listening in as a member of NEC. Right?

16 MR. SHEMS: That's correct.

17 JUDGE KARLIN: Great. Entergy, Mr.
18 Travieso-Diaz.

19 MR. TRAVIESO-DIAZ: Good morning. Mr.
20 Lewis.

21 MR. LEWIS: Yes. This is Mr. Lewis, and
22 Mr. Travieso-Diaz representing Entergy. Mr. Michael
23 Mattel is listening in for Entergy, as is, I believe,
24 Mr. David Lach, L-A-C-H.

25 JUDGE KARLIN: Great. Anyone else from

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 Entergy on the line? Okay. Fine. And the NRC Staff,
2 Ms. Young.

3 MS. YOUNG: Good morning, Judge Karlin,
4 and everyone else. This is Mitzi Young for the NRC
5 Staff. Also representing the Staff this morning is
6 Steven Hamrick from my office. We have with us in the
7 room a number of members from the technical staff.
8 Their names are Jonathan Rowley, Richard Emch, Jessie
9 Muir, Sam Hernández, and Devender Reddy.

10 JUDGE KARLIN: Okay. Thank you. Let's
11 see. Is there anyone I've missed? Is anyone else on
12 the line? Any member of the public or that sort of
13 thing on the line? All right. Fine.

14 Welcome, everyone. Thank you for
15 participating and joining us today. Thank you, Mr.
16 Coy. The basic ground rules for today, as you, I
17 think, know - the public is welcome to listen, but not
18 participate, only the participants, the parties to
19 this proceeding are to participate here, just as if we
20 were in a courtroom. The court reporter will
21 transcribe this, and each of the parties, hopefully,
22 could speak. When you speak, please identify yourself
23 to assist the court reporter. And I confess, I'm the
24 worst violator of that rule, so I hope the court
25 reporter will bear with us.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 The purpose of this call is to assist the
2 Board in developing a scheduling order. The regs
3 require, the NRC regs require that we develop a
4 scheduling order, and to do so within a certain time
5 frame, 55 days, at least by the model milestones,
6 after the date we admitted contentions, which was
7 September 22. Thus, by my calculation, we should try
8 to get our scheduling order, initial scheduling order
9 out by the middle of this month, by the 17th, I think.

10 With that in mind, we want to confer with
11 you, and hear you out on some of the scheduling-
12 related issues we think would help us in drafting this
13 order. And most of the items that we figure we're
14 going to talk about today, the agenda is pretty much
15 defined by the 17 or 18 items we have listed in the
16 October 11th pre-hearing - well, the order setting
17 this conference call. We have, since then, identified
18 several other items that we'll probably add.

19 We only have two hours or so for this
20 call, so I think it will take pretty much of that time
21 frame, but I want to move quickly and efficiently as
22 we can. And we have already noted the State of New
23 Hampshire has issued -- had a Notice of Intent to
24 Participate filed two days ago, October 30th. This
25 call will not include the three Motions for

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 Reconsideration. We're not here to hear oral argument
2 on those, or any other pending motions, and I'm not
3 sure if there are any others. I don't think there
4 are. Nor, obviously, will we consider the two
5 interlocutory appeals to the Commission, which are not
6 before us. With that said, we're going to turn first
7 to the State of New Hampshire's Notice of Intent, but
8 before that, are there any other suggestions or urgent
9 items that the parties would like to put on the
10 agenda? No. Okay, hearing none, we'll proceed.

11 We will note that New Hampshire has filed
12 a Notice of Intent to Participate as an interested
13 governmental entity under 2.315(c), and also Atomic
14 Energy Act 274(L). That was filed two days ago. No
15 one has responded or had a chance to respond, as yet,
16 but I would like to ask, for purposes of this call,
17 whether anyone has any objections to New Hampshire's
18 participating as an interested state.

19 MR. LEWIS: This is David Lewis for
20 Entergy. We don't object.

21 JUDGE KARLIN: Thank you, Mr. Lewis. With
22 that, and hearing -- any other further issues? Okay.
23 Hearing none, then we will --

24 MS. YOUNG: Judge Karlin.

25 JUDGE KARLIN: Yes.

NEAL R. GROSS

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

1 MS. YOUNG: Just a question from the
2 Staff. The Staff was trying to get a better
3 understanding of the reason for the delay in New
4 Hampshire identifying their intent to participate?
5 Given that this is a public proceeding, they mentioned
6 they didn't receive the order until recently.

7 JUDGE KARLIN: Yes. Ms. Patterson, do you
8 want to address that?

9 MS. PATTERSON: Yes, Your Honor. We were
10 considering filing contentions back in March when the
11 notice was first issued. We decided that we would
12 not, and have been following it pretty much only in
13 the press. And we saw that from the website
14 unsuccessfully, and then finally I was able to get a
15 copy from one of the parties to the proceeding, so
16 that's why we didn't have a copy. I thought that
17 we're on the mailing list for some of the Vermont
18 Yankee mailings, so I thought we might get a copy in
19 the mail, but I don't think our office got a copy in
20 the mail.

21 JUDGE KARLIN: Okay. Well, it is -- under
22 our order we did prescribe a 20-day time frame for any
23 interested governmental entity. This was more for our
24 assistance than anything else, and primarily upon the
25 State of Massachusetts, which has chosen to appeal

NEAL R. GROSS

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

1 instead, I guess, and the Town of Marlboro, which has
2 not entered or asked to participate as an interested
3 governmental entity, despite the fact that they
4 indicated so in their oral argument. I'm not sure
5 what's going on with them. But if there's no --
6 hearing no objections, and I think that's a
7 reasonable explanation, we'll accept the Notice of
8 Intent, and we'll proceed with you participating, the
9 State of New Hampshire participating as an interested
10 state.

11 MS. PATTERSON: Thank you, Your Honor.

12 JUDGE KARLIN: You're welcome. We're
13 going to try to do this in two hours, and we hope that
14 we can proceed efficiently. I'd like to then turn to
15 our agenda, I guess, and first thank the Staff and Ms.
16 Young for your October 25th projected schedule. I
17 think that's quite helpful in telling us where we're
18 going to be going, and what our schedule looks like.

19 And then ask the parties if you could
20 report on the results of what we asked you to do,
21 which is a joint discussion or conference on positions
22 or proposals dealing with the 18 items in our October
23 11th order. Did you all have such a -- did you get
24 together and discuss this? Maybe I can ask Mr. Lewis.

25 MR. LEWIS: Yes, Judge Karlin. We

NEAL R. GROSS

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

1 exchanged numerous proposals, and I want to thank Mr.
2 Roisman and Ms. Hofmann, they made a heroic effort to
3 try to get us in alignment and herd cats. We made
4 some progress, and there are some items that are still
5 open.

6 JUDGE KARLIN: Okay. Mr. Roisman,
7 anything to add on that?

8 MR. ROISMAN: No, no. It was fruitful,
9 but not a complete success. One minor item - one
10 person on the phone seems to be extremely close to a
11 speaker which is causing sort of background noise that
12 is interfering with me hearing. I don't know whether
13 people are on headphones or something, but maybe
14 someone could back away just a tiny bit.

15 JUDGE KARLIN: Yes, we're hearing the same
16 thing, and would ask whoever - somebody is breathing
17 into their microphone pretty closely, and it's
18 disrupting the call a bit, so please try to address
19 that.

20 Ms. Young, did you have any thoughts on
21 the joint discussions or proposals?

22 MS. YOUNG: Well, I think the parties have
23 accurately represented the state of affairs. There
24 are a number of proposals we do have agreement on.
25 There are still some proposals that the parties

NEAL R. GROSS

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

1 weren't able to reach an agreement on.

2 JUDGE KARLIN: Okay. I mean, I'd be very
3 surprised if you could reach agreement on all of the
4 items, so agreement on some is certainly a good sign.
5 And, Mr. Shems, I guess there's nothing to report from
6 your end, same report, actually.

7 MS. TYLER: No, we agree that there's
8 agreement on some issues, and not on others. This is
9 Karen Tyler.

10 JUDGE KARLIN: Oh, yes, Ms. Tyler. Okay.
11 Thank you. Okay. With that, I would turn to the
12 items in the October 11th order. First item, whether
13 hearings on safety contentions should be commenced
14 before publication of the Staff's SER. As you know,
15 the regulations prescribe that this is possible where
16 it will expedite the proceeding. And I just wanted to
17 know what you all -- let me ask - let's start with
18 Entergy on this one.

19 MR. LEWIS: Judge Karlin, I believe all
20 the parties agreed that we shouldn't try and start the
21 evidentiary hearing before the August '07 SER.
22 Entergy's position is that the trigger dates for
23 starting to file testimony should start running from
24 the issuance of the August '07 SER, and the Department
25 of Public Service has suggested that perhaps we should

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 wait for the ACRS letter. There isn't currently a
2 schedule for that.

3 The ACRS meeting is scheduled to occur in
4 September '07, not a specific date. We were close,
5 but Entergy thinks that we should not wait for the
6 ACRS letter, that it will probably come out in due
7 course. The SER should be the trigger, and that's
8 consistent with the model milestone. And we have some
9 proposals later on when witness lists and pre-filed
10 testimony would be submitted.

11 JUDGE KARLIN: Okay. Any other comments?
12 That sounds like a consensus sort of report on what
13 you all thought on that issue.

14 MS. TYLER: Well, Judge, this is Karen
15 Tyler for NEC.

16 JUDGE KARLIN: Yes.

17 MS. TYLER: NEC's position is that the
18 parties and the Board should definitely have the
19 benefit of the ACRS letter, certainly before the
20 hearing. And it's NEC's position that it should be
21 the ACRS letter and not the SER that should trigger
22 the filing of testimony, if it comes out second.

23 JUDGE KARLIN: All right. I hear you.
24 Now, Ms. Young, perhaps you could help us. The SER
25 date you have, August 1st, '07 in your report, in your

NEAL R. GROSS

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

1 submission of October 25th, what event was that?
2 Would that be the date when it was made public to -
3 made available to all the parties in this case?

4 MS. YOUNG: That's correct. That's the
5 issuance date for the SER. And that SER normally
6 would include the ACRS Subcommittee letter.

7 JUDGE KARLIN: So that would usually
8 precede the August 1st date. Is that what you're
9 saying?

10 MS. YOUNG: Well, I think NEC is concerned
11 about the Full Committee letter.

12 JUDGE KARLIN: Yes, okay.

13 MS. YOUNG: But in terms of an ACRS
14 determination regarding the staff's review, that is
15 available when the staff issues its safety evaluation
16 report.

17 JUDGE KARLIN: All right.

18 MR. LEWIS: Judge, this is Mr. Lewis. On
19 the fuller schedule on the website, the ACRS
20 Subcommittee meeting is scheduled for May '07, so I
21 would expect that the results of that subcommittee
22 meeting would be available before that final SER is
23 issued. And as I said, the final Full Committee ACRS
24 meeting is currently put down for some time in
25 September '07.

NEAL R. GROSS

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

1 JUDGE KARLIN: Okay. And we have to
2 grapple with these model milestones, and they are not
3 binding, but they are to be used, as appropriate. And
4 they generally tee off of, as I see it, Staff's
5 issuance of the relevant reports. But okay, we will
6 take that into consideration. Appreciate your input
7 on that.

8 MR. ROISMAN: Mr. Chairman, this is Mr.
9 Roisman. I wonder if I might address this issue?

10 JUDGE KARLIN: Yes, certainly.

11 MR. ROISMAN: Okay, two points. Number
12 one, as at least the Board Chairman is aware, and most
13 of the other parties on the line are aware, in the
14 update proceeding, the ACRS letter turned out to be an
15 extremely important document. It had a lot of
16 influence on the position of the State of Vermont, and
17 the ACRS ended up reviewing in quite a bit of detail
18 issues that were also relevant to the contentions that
19 were pending in the proceeding.

20 It seems to me that in this case, there
21 are a number of issues which may similarly attract the
22 ACRS interest that have not been given extensive
23 analysis in previous matters where the ACRS has a
24 well-established position. And that waiting for the
25 ACRS' final letter, which, as you remember from the

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 uprate, differed from the subcommittee letter, would
2 be beneficial to all the parties. It may resolve an
3 issue, as it did with regard to the position of the
4 State of Vermont, and allowed us to reach a resolution
5 of our concerns in that case. It may supplement some
6 party's position on an issue, and I don't see any real
7 loss if - assuming that all the schedules, and as we
8 know, they're just projected schedules, we're talking
9 about, at most, another 30 days to get the ACRS letter
10 in place.

11 And I think that if that turns out to get
12 delayed, it'll probably be delayed because the ACRS,
13 as it did in the uprate proceeding, finds something of
14 great concern. That's my first point.

15 Second point is that I don't believe the
16 model guidelines apply to this case. In Appendix B of
17 Part II, the model guidelines are preceded by this
18 statement, that they are to be used, and the
19 assumptions upon which they're developed is that the
20 final safety evaluation report, and the final
21 environmental document will be issued simultaneously.

22 That's a pre-assumption built into the
23 model guidelines. The staff's reported schedule to us
24 does not call for that, so I don't think that reliance
25 on the model guidelines is particularly authoritative

NEAL R. GROSS

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

1 for purposes of deciding these questions. And I think
2 in this case, there's plenty of good reason not to
3 follow the model guideline concept with regard to this
4 question of when we start the clock running.

5 JUDGE KARLIN: All right.

6 MR. LEWIS: Judge Karlin, may I respond
7 briefly? This is David Lewis. In this case, the ACRS
8 Full Committee meeting is sometime in September '07,
9 so it could, in fact, be about a two month delay. If
10 there is something new and unexpected in the ACRS
11 letter, then I think that possibility should be
12 accommodated by a motion at that time, but this could
13 be up to a two month delay, and I don't think that
14 delay should automatically be built into the
15 procedure, just based on the possibility that there
16 might be something different in the ACRS final letter.

17 JUDGE KARLIN: Okay.

18 MR. LEWIS: I would point out that the
19 final EIS and final SER are scheduled to be issued
20 almost simultaneously, both in August, both in the
21 first week of August.

22 JUDGE KARLIN: Right. We've got that.

23 JUDGE WARDWELL: Mr. Roisman, this is
24 Judge Wardwell. Would you elaborate a little bit more
25 on the differences between the committee letter, and

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 the full letter in regards to the uprate case, just to
2 give me a flavor for how much it did change, as an
3 example?

4 MR. ROISMAN: Yes. In the uprate case,
5 the State of Vermont had raised a concern regarding
6 the use of the excess pressure that is generated in
7 the event of an accident to compensate for the
8 possible loss of head in the various recirculation
9 pumps in the event of an ECCS-type accident. And the
10 subcommittee had expressed concerns about whether or
11 not there had been a sufficient amount of study done
12 to have confidence that this over-pressure could be
13 used as a credit, or whether it should be left in the
14 category of creating defense-in-depth, but not being
15 allowed to be counted.

16 The final committee's report, when it came
17 out, concluded that because of the probabilities that
18 the events that would cause either the need for over-
19 pressure, or the failure of the over-pressure to
20 actually exist were so low, that they didn't believe
21 that it -- and some further analyses were done, both
22 at the request of the ACRS by the Staff and the
23 Applicant, that they believed that this was an issue
24 that didn't fall into the probable enough category to
25 warrant consideration, so there were some important

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 changes that were going on between the subcommittee
2 and the final letter.

3 I apologize for not having all the
4 technical details of that.

5 JUDGE WARDWELL: No, that was more
6 technical than I needed. I didn't need it quite in
7 that depth.

8 MR. ROISMAN: Oh, okay.

9 JUDGE WARDWELL: So just the opposite.
10 But situations like that, what is wrong with filing
11 motions at that time if, in fact, in the case where
12 the letters do differ significantly, that isn't that
13 the best time to then look at the difference, and then
14 file a motion, and set a time that's appropriate for
15 the changes that have occurred, rather than try to
16 guess what is the best time to do it at this point?
17 I mean, you may want even more time based on the
18 changes in that letter.

19 MR. ROISMAN: And I would agree with that,
20 if we were working on a level playing field. But the
21 truth is, and I say this with great deference to the
22 regulations - the regulations are written in a way,
23 such that making changes to schedules, or moving the
24 dates on which you're supposed to do things, subjects
25 you to extremely, extremely difficult standards to

NEAL R. GROSS

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

1 meet. And that once these dates are set, they are
2 much harder to change, than to get them set with a
3 reasonable amount of leeway in them.

4 The first issue, the one that we're
5 discussing, whether hearings on safety contentions
6 should be commenced before publication of the SER --

7 JUDGE KARLIN: Mr. Roisman, this is Judge
8 Karlin.

9 MR. ROISMAN: Yes.

10 JUDGE KARLIN: We're okay. I think we've
11 heard enough on this issue, and we're aware of how the
12 regs - I mean, we will take this under consideration.
13 I think that's the best we can say. We want to move
14 on.

15 MS. YOUNG: Judge Karlin, can the Staff be
16 heard just briefly on this?

17 JUDGE KARLIN: Yes, briefly, Ms. Young.
18 Certainly.

19 MS. YOUNG: In terms of Mr. Roisman's
20 representation that the ACRS letter would come out
21 within the next month, it's not clear to the Staff
22 that that is the schedule. It might not be until
23 October '07. And the Staff would agree with Mr.
24 Lewis' comments, that the issuance of the supplemental
25 EIS and the SER is practically simultaneous in this

NEAL R. GROSS

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

1 case, since it's October. And so, to that extent, the
2 model time lines would apply.

3 JUDGE KARLIN: All right. Thank you.

4 MS. YOUNG: But I think the judges should
5 also be aware that the Staff would probably not take
6 a position on environmental issues until issuance of
7 the supplemental environmental document, so you may
8 want to consider whether the timing of the EIS affects
9 when certain issues will be heard in this proceeding.
10 So it's not the position of the ACRS that's
11 controlling, in the Staff's opinion, it's the position
12 of the parties who are participants in this
13 proceeding. And the party in this proceeding is the
14 NCR Staff, and the Staff's position with respect to
15 issues is represented in its final documents, either
16 the SER or the EIS.

17 JUDGE KARLIN: All right. Thank you.
18 Thank you. Let's move to the next item on the agenda.
19 Let me just say beforehand, we recognize that final
20 EIS, and the final SER are two days apart. We're not
21 going to throw the model milestones overboard just for
22 that, but we do recognize the model milestones are
23 just guidance, and we intend to use them, as
24 appropriate here.

25 Item Two - suggestions for modifying the

NEAL R. GROSS

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

1 time limits regarding summary dispositions, i.e., the
2 last moments when motions for summary disposition may
3 be filed. Any consensus or thought? I guess we'll
4 start with the State of Vermont. Ms. Tyler, do you
5 have anything on that?

6 PARTICIPANT: Ms. Tyler is with NEC.

7 JUDGE KARLIN: Oh, I'm sorry. I'm sorry.
8 I'm sorry. State of Vermont, Ms. Hofmann.

9 MS. HOFMANN: Mr. Roisman will be speaking
10 on our behalf. Thank you.

11 JUDGE KARLIN: Oh, I'm sorry.

12 MR. ROISMAN: Okay. We had a view here
13 that the summary disposition motions and the operation
14 of Section 2.710(c), which is applicable to summary
15 disposition motions even in Subpart L proceedings,
16 require that you be able to respond to a summary
17 disposition motion by - that there is not a full
18 motion in your hand sufficient to allow you to answer
19 the summary disposition motion. If this were a
20 Subpart G proceeding, we would have had summary
21 disposition motions able to be filed following the end
22 of discovery.

23 Until the parties have actually filed
24 their pre-filed testimony, it's not possible to know
25 exactly what their positions are, or how they intend

NEAL R. GROSS

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

1 to support them, because the nature of discovery under
2 2.336(a) and (b) is such that all you're getting are
3 documents. And, of course, you don't get drafts of
4 any documents, so you don't really know a position.
5 So our view is that the trigger for summary
6 disposition motions has to be after the end of the
7 filing of the pre-filed direct testimony.

8 JUDGE KARLIN: At that point, aren't they
9 moot, because we're going to a Subpart L proceeding
10 where there will be nothing except paper presented to
11 us, unless we ask questions. This is an L proceeding.
12 I'm not sure I agree with you, but we hear you. Okay.
13 Anyone else have a position on that?

14 MS. TYLER: This is Karen Tyler for NEC,
15 and NEC supports the DPS position.

16 JUDGE KARLIN: Okay. I have a concern; we
17 do not want this Board in the weeks immediately
18 preceding the evidentiary hearing in the L proceeding
19 to be involved in motions for summary disposition, as
20 well. In an L proceeding, the burden is upon the
21 Board to, obviously, read all the materials and
22 formulate all of the questions that are going to be
23 asked, except for motions for cross examination.
24 That's a significant burden. It's significantly
25 different than a G proceeding, and we take that burden

NEAL R. GROSS

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

1 seriously.

2 Therefore, we're going to be busy in the
3 30 days immediately preceding the evidentiary hearing,
4 and we do not want to be ruling on motions for summary
5 disposition at that point.

6 We're going to move as we planned, we are
7 contemplating, I have to consult with my colleagues,
8 to move the deadlines further up in the process.

9 MR. LEWIS: Judge Karlin, this is David
10 Lewis. May I be heard?

11 JUDGE KARLIN: Yes, please.

12 MR. LEWIS: This is one, unfortunately, we
13 weren't able to reach an agreement. The position you
14 heard was the position of the State and the New
15 England Coalition. Entergy and the NRC Staff propose
16 that summary disposition motions should be filed no
17 later than June 15th, 2007, approximately 45 days
18 before those final SER and final EIS were issued.
19 That's basically following the model milestone, but a
20 little sooner, rather than making the trigger the
21 testimony. It's 45 days before those final documents.
22 We were interested, Entergy, in having these mid-June
23 dates, because there are developments that may be
24 useful to factor into summary disposition motions, in
25 particular, on the environmental issue.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 The hearing before the Vermont
2 Environmental court on the aquatic issue may occur in
3 March, or perhaps early April, so we were interested
4 in a schedule that would, perhaps, allow motions for
5 summary disposition sometime after that Vermont
6 proceeding, so it could be factored into that motion.

7 We believe that the State and the NEC
8 position actually isn't addressing Board's question,
9 and rather than try to make sure that summary
10 disposition doesn't interfere with the hearing, in
11 fact, it would do exactly the opposite.

12 JUDGE KARLIN: Well, let me ask one
13 question on that, Mr. Lewis. You propose 45 days
14 before the final EIS, and final SER, obviously, but
15 the model milestones call for the motions for summary
16 dispositions to be due - let's see if I've got this
17 right - 115 days after issuance of the SER, and the
18 NEPA documents.

19 MR. LEWIS: We were proposing that motions
20 for summary disposition might be appropriate to go
21 forward based on the initial SER, and after the draft
22 Environmental Impact Statement. Quite frankly, I
23 think if we're at the stage where the final EIS, and
24 final SER are issued, it's probably easier to just go
25 right to hearing.

NEAL R. GROSS

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

1 JUDGE KARLIN: Right. We think that --
2 I'm concerned that the model milestone of 115 days
3 with the briefing that would follow any such motion,
4 and then our duty to read that material and try to
5 rule on it, would create a problem.

6 All right. Does anyone else need to be
7 heard on this item two?

8 MR. ROISMAN: Mr. Chairman, this is Mr.
9 Roisman. If I may?

10 JUDGE KARLIN: Mr. Roisman, let's go
11 around the table before you reiterate.

12 MR. ROISMAN: Okay. All right. I wasn't
13 going to reiterate, I was going to rebut.

14 JUDGE KARLIN: Okay. Well, rebut. This
15 is not an oral argument. We're just trying to hear
16 from people. We've heard from Mr. Roisman, Ms. Tyler,
17 Mr. Lewis. Ms. Young?

18 MS. YOUNG: Yes, thank you, Judge Karlin.

19 JUDGE KARLIN: All right. There you go.

20 MS. YOUNG: On this issue, the Staff had
21 agreed with Entergy's proposal to do summary
22 disposition around the June 15th date. The Staff had
23 also suggested that another opportunity to file a
24 motion should be given within 20 days of issuance of
25 the final SER, or EIS.

NEAL R. GROSS

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

1 JUDGE KARLIN: All right.

2 MS. YOUNG: And with respect to Mr.
3 Roisman's representation that somehow there's not
4 sufficient discovery in this proceeding, I'd just like
5 to remind Mr. Roisman, and I'm sure the Judge is
6 aware, that in promulgating the Subpart L regulations,
7 the Commission specifically addressed whether there
8 was sufficient discovery vehicles, via mandatory
9 disclosures in the hearing files for a Subpart L
10 proceeding. And that issue has already been resolved
11 by the submission, so the Staff would dispute Mr.
12 Roisman's representation that there's no understanding
13 of the respective positions of the parties, but for
14 the filing of testimony in a Subpart L proceeding.

15 JUDGE KARLIN: Okay. Very good. Now, we
16 don't want to go around the table a second time unless
17 there's something urgently needs to be said. All
18 we're looking at this point is not to have an oral
19 argument. We have some preliminary ideas of what we
20 think needs to be done, but we do want to hear from
21 you, and I think we have. Mr. Roisman, is there
22 anything you need to say at this point?

23 MR. ROISMAN: Yes, two things, Mr.
24 Chairman, and I will say them very briefly.

25 JUDGE KARLIN: All right.

NEAL R. GROSS

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

1 MR. ROISMAN: All right. Number one, the
2 Board does not have to be in this bind if the Board
3 handles this issue by moving the hearing date back.
4 We are talking about a plant that is not going to have
5 to be relicensed until 2012, so we're not working on
6 the kind of emergency got to save 10 days here, two
7 days there, one month there, that you might have if
8 this were a pending amendment for the plant to do
9 something that it's not now allowed to do. This plant
10 will keep running for at least another six years from
11 now, so I think the Board should consider the option
12 to deal with a very understandable concern that you
13 have with the way the regulations are written by
14 moving the hearing date, rather than moving the
15 summary disposition date.

16 Number two, the suggestion that Staff and
17 Entergy are proposing, which is that a motion for
18 summary disposition - I don't care when it's filed,
19 because you know who's going to file them, it's going
20 to be the Staff and Entergy, it's not likely to be any
21 of the intervenors - so it's going to be our problem
22 of trying to respond to these before a final SER is
23 out, a final EIS is out, before we know what the final
24 position of the parties are on the contentions. That
25 seems, to me, to be grossly unfair and border on

NEAL R. GROSS

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

1 violating our due process right. Subpart L is not a
2 substitute for due process. It's supposed to have due
3 process in it, and that's why we felt that you needed
4 to, at least, allow responses to summary dispositions
5 motions to be postponed until after the final SER,
6 SEIS, and testimony has been filed by the parties.
7 Thank you.

8 JUDGE KARLIN: All right. Item three -
9 time limits for timely motions for leave to file new
10 or amended contentions under 2.309(f)2-3. Have you
11 all thought about that? Let me start with Ms. Young,
12 at this point. We're going to change it each time.

13 MS. YOUNG: Well, I think the parties are
14 - both parties are in agreement that a 10-day time
15 frame for filing of motions would be appropriate, but
16 I believe NEC had a different position on that.

17 JUDGE KARLIN: All right. So you're
18 thinking that it - all right. Everyone is generally
19 agreed, except for NEC on this issue, 10 days. NEC,
20 let's hear from you, Mr. Roisman.

21 MR. ROISMAN: That's the old Mr. Roisman.
22 I used to represent NEC.

23 JUDGE KARLIN: I'm sorry. Ms. Tyler.

24 MS. TYLER: Karen Tyler.

25 JUDGE KARLIN: Too many people here, I'm

NEAL R. GROSS

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

1 sorry.

2 MS. TYLER: It's NEC's position that 10
3 days would not be remotely enough time for NEC to
4 evaluate new information, potentially retain a new
5 expert to give NEC advice on that new information, and
6 prepare a new contention, so setting that 10-day
7 period for timeliness would really, essentially,
8 defeat NEC's real opportunity to participate in
9 presenting any new or amended contentions.

10 In the Pilgrim relicensure proceeding,
11 it's come to NEC's attention that the Board gave the
12 parties 30 days to evaluate new information, prepare
13 new or amended contentions, and would propose that the
14 Board allow 30 days in this proceeding, as well.

15 JUDGE KARLIN: All right. I would observe
16 that I think 30 days is more normal and common in
17 these proceedings, but does anyone else need to speak
18 on this issue?

19 MR. ROISMAN: I just wanted to be clear,
20 Mr. Chairman, that - this is Mr. Roisman - that with
21 regard to Ms. Young's statement about agreement on
22 numbers 3 and 4, we did have a proposal, not everyone
23 agreed to it - even now, I'm not sure that we and the
24 Staff have fully agreed to it - but that was a
25 proposal. Our position, at this point, is that given

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 that we could not reach a compromise that we thought
2 had some other benefits for us, is that the position
3 DEPS takes - I'm sorry - that NEC takes is a
4 reasonable position, and we would support it.

5 JUDGE KARLIN: All right.

6 MR. LEWIS: Judge Karlin, this is David
7 Lewis for Entergy.

8 JUDGE KARLIN: Yes, Mr. Lewis.

9 MR. LEWIS: The 10-day period originally
10 proposed was consistent with 10 CFR 2.323. I don't
11 want to make it so short that parties can't possibly
12 meet their obligations, and would suggest a
13 compromise. Entergy's greatest concern is with
14 motions to add new contentions after the final SER,
15 and final EIS are out in August of '07, because that
16 injects great delay at that point of time, but there
17 is much more ability to accommodate filing schedules
18 after the initial SER, and after the draft EIS. And
19 my suggestion is that a compromise position would be
20 that late filed contentions, or contentions based on
21 new information on the draft EIS, or the initial SER
22 would be considered timely if they are filed within 20
23 or 30 days, as the Board sees fit, from those
24 documents. But at the back-end of the schedule, when
25 those final documents are out, there should only be

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 fairly modest additions and a 10-day time frame would
2 be appropriate at that point, recognizing that most of
3 the issues will have already been addressed by the
4 earlier documents, and the potential for delay is much
5 greater at the back-end of the process.

6 JUDGE KARLIN: All right. Well, we don't
7 know whether most of the issues will be addressed.
8 And if there's anything, obviously, these motions for
9 leave to file new or amended contentions are founded
10 upon a difference or something new that would be
11 presented in those final EISs, that is going to be a
12 busy time, the time after the final EIS, and final SER
13 are issued, because we will also, probably, trigger
14 the initial testimony dates off of the final EIS, and
15 final SER. Everyone is going to be pretty busy with
16 preparing for that. Hopefully, you'll do as much as
17 you can beforehand, but in any event, all right.
18 We'll take that into consideration.

19 MS. YOUNG: Judge Karlin, this is Ms.
20 Young.

21 JUDGE KARLIN: Yes.

22 MS. YOUNG: Just for the Board's
23 information, the Staff on this issue initially
24 proposed a 20-day period based on its experience in
25 the Oyster Creek proceeding.

NEAL R. GROSS

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

1 JUDGE KARLIN: All right.

2 MS. YOUNG: But the parties, Entergy and
3 Vermont, were arguing strenuously for the 10 days, so
4 the Staff would also be amenable to a 20-day period.

5 JUDGE KARLIN: All right. That's helpful.
6 This will turn us, I think logically, to item 4, which
7 is the pleading rules for motions for leave to file
8 new or amended contentions. Here is the problem, and
9 perhaps you already see it, but I want to articulate
10 it. The problem that I see in the way these rules
11 work is that - well, let me back up for a minute. Let
12 me back up for a minute. On item 3, I think the
13 parties should be aware that, at least from my
14 perspective, there is a dichotomy between a motion for
15 a new or amended contention, which must be timely, and
16 if it is not timely, then it becomes a motion for an
17 untimely contention under 2.309(c). You might look at
18 the other Vermont Yankee case for some of my approach
19 and thoughts to it. I do not speak for all the
20 members of this Board on that, but I think you ought
21 to be aware that alternate 30 days would be - or 20
22 days, or whatever number of days it would be - it's
23 going to be timely. It's a 309(f)2. If it's
24 untimely, it's a 309(c).

25 Turning now to 4 - there is a problem in

NEAL R. GROSS

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

1 the way these rules seem to work, and that is, first
2 you file a motion for leave to file a new or amended
3 contention. Then you file an answer to a motion for
4 leave to file a new or amended contention. Then the
5 Board rules and grants, let us say, the motion for
6 leave to file a new or amended contention. Then you
7 file a new or amended contention, then 25 days later
8 you file an answer to the amended contention, and
9 seven days later you file a reply. We're not going to
10 work it that way. That's not the way most people work
11 it, but it's usually a confused state of affairs, as
12 evidenced by the way the motion for leave to file the
13 amended contention in this case has already occurred.
14 Therefore, there needs to be some integration of those
15 two. Suggestions? Let me turn to Mr. Lewis this
16 time.

17 MR. LEWIS: Judge Karlin, I believe that
18 all the parties were in agreement on the basic
19 approach around the time frames that a motion to
20 submit a late, or a new contention, or a late filed
21 contention would include both the motion and the
22 contention with its bases, and any answers would
23 address both the timeliness issue and factors, if that
24 was an issue, and whether the contention otherwise met
25 the standards for a contention in 2.309(f)1.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 JUDGE KARLIN: Yes, good. Good. So
2 there's general agreement on sort of consolidating
3 those two into one process. Fine. I think that
4 that's probably the way -- any other comments? Is
5 that approach -- sounds like a consensus there. I
6 think that's the way we probably will address it.
7 I'll have to discuss it with my colleagues, but as a
8 motion for leave to file amended or new contention, or
9 file a late or untimely contention - and although
10 they're called requests in the rules, I treat them
11 really - I think they're really motions. The motion
12 and the contention, itself, need to be filed
13 simultaneously. The answer would address both the
14 timeliness, and whether or not it meets the 2.309(f)2
15 factors, or the 2.309(c) factors. And then you also
16 address whether the contention on the merits meet the
17 2.309(f)1 factors. We will also contemplate that
18 there will be a reply, so it's going to be a motion
19 with contention, an answer, and a reply.

20 MR. ROISMAN: Mr. Chairman, this is Mr.
21 Roisman. Just one question of clarification that was
22 sort of an issue among the parties on this; and that
23 is, whether or not, if, whatever date the Board sets
24 under number 3 for the time within which a new or
25 amended contention must be filed to be timely, if that

NEAL R. GROSS

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

1 deadline is met, is it your understanding then that
2 this filing under 4 will not have to address timely -
3 the only issue -- there will be an argument about
4 whether it was new information, perhaps, and then all
5 the arguments about whether it's a valid contention.
6 But, otherwise, there would not have to be a
7 discussion of timeliness in the initial motion. Am I
8 understanding that correctly?

9 JUDGE KARLIN: Without consulting with my
10 colleagues, that's my thought, yes.

11 MR. ROISMAN: Okay. All right. Thank
12 you. I just wanted to be clear on that.

13 JUDGE KARLIN: You would have to address
14 whether it's material or new, new information, and
15 whether it's material --

16 MR. ROISMAN: Yes.

17 JUDGE KARLIN: And all that sort of thing.

18 MR. ROISMAN: Right.

19 JUDGE KARLIN: And the mere fact that a
20 report - amendment number X - amendment number 7,
21 let's say, recites the fact does not spring it to
22 life, if that fact has already been in the record in
23 amendment 6, in amendment 5, in amendment 4.

24 MR. ROISMAN: Correct.

25 JUDGE KARLIN: Wait until amendment 7, and

NEAL R. GROSS

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

1 then say oh, it's a new fact. Okay. Moving on.

2 MS. YOUNG: Judge Karlin.

3 JUDGE KARLIN: Yes.

4 MS. YOUNG: Just so you know, the Staff
5 had not agreed to that interpretation, necessarily.
6 The Staff believes that the parties would be free to
7 argue timeliness grounds, in terms of whether the
8 information was new, and the contention was raised
9 within so many days after the information that was
10 believed to be new.

11 JUDGE KARLIN: Okay. Okay. I appreciate
12 that. Item 5 - establishment of time limits for
13 adoption of newly admitted contentions. Well, let's
14 say someone files a new contention that's admitted -
15 we need to set X amount of time within which somebody
16 files notice for adoption.

17 MR. ROISMAN: Mr. Chairman, this is Mr.
18 Roisman.

19 JUDGE KARLIN: Yes.

20 MR. ROISMAN: You won the prize. That's
21 the first one on which we all agreed. And we agreed
22 that it would be 10 days, if the Board is agreeable,
23 for a party to ask to adopt a contention, 10 days from
24 the date on which the Board rules that the contention
25 is admitted.

1 JUDGE KARLIN: All right. Good, check
2 that one off. We're moving right ahead. Number 6.

3 JUDGE ELLEMAN: You're assuming the Board
4 --

5 JUDGE KARLIN: Oh, yes, that's true. My
6 colleagues --

7 (Simultaneous speech.)

8 JUDGE KARLIN: Please, I did not mean to
9 presume. Geez, we've got our own problems here.

10 (Laughter.)

11 JUDGE KARLIN: Number 6 - I don't want to
12 get ahead with irrational exuberance here, you know.

13 JUDGE ELLEMAN: Carried away with all the
14 cooperativeness.

15 JUDGE KARLIN: Carried away. All right.
16 Age of Aquarius here, we're all in agreement. Item 6
17 - establishment of time limits for updating mandatory
18 disclosures. Surely, you have an agreement on this
19 one.

20 MS. YOUNG: Judge Karlin, we almost had an
21 agreement. There was initial agreement by most of the
22 participants to a 30-day filing disclosure update
23 period.

24 JUDGE KARLIN: Yes.

25 MS. YOUNG: But then there was a question

NEAL R. GROSS

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

1 as to whether that was appropriate. I think that was
2 raised by NEC, and then there was a dispute as to how
3 long the obligation should continue throughout the
4 proceeding.

5 JUDGE KARLIN: Which is a different
6 matter, I suspect.

7 MS. YOUNG: Yes.

8 JUDGE KARLIN: NEC, do you have -- what is
9 your concern on this?

10 MS. TYLER: It was NEC's position, 30-day
11 updates are fine, but NEC does not believe that the
12 obligation to update disclosure should be suspended at
13 any point in time before the end of the hearing, which
14 is consistent with standard litigation practice. It's
15 never the case that the record is closed before the
16 end of the hearing, and that there's no longer an
17 obligation to update.

18 NEC would also add that in the 30 days
19 before the hearing, NEC would ask that parties
20 disclose any new information immediately, so 30-day
21 disclosure period in the 30 days right before the
22 hearing, immediate disclosure of anything new.

23 JUDGE KARLIN: All right. We'll take that
24 into consideration. We do note that the model
25 milestones for Subpart L say that within 14 days after

NEAL R. GROSS

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

1 the presiding officer decides on any amended or late
2 filed contentions, that is the end of all mandatory
3 disclosures, or at least that's what the proposed
4 milestone would be. I'm not sure whether we buy that,
5 but all right. We heard you, appreciate your input on
6 that.

7 MR. ROISMAN: And, Mr. Chairman, this is
8 Mr. Roisman. If I might just point out that in
9 Subpart G, for example, 2.705(e) imposes the usual
10 requirement of timely supplementation of all
11 disclosures. And 2.336(d) of the regulations
12 specifies that the disclosures be made under (a) and
13 (b) are to be continuous. I would suggest that in
14 this respect, the model is in violation of the
15 regulation, and that the Board should give more
16 deference to the regulatory requirements, which are
17 that these obligations to disclose information are to
18 be continuous.

19 JUDGE KARLIN: Yes, okay. And I believe
20 2.336 also calls for updates within 14 days, which I
21 think is sort of a default approach, but that's kind
22 of a quick turn-around. Okay.

23 MR. LEWIS: Judge Karlin, this is David
24 Lewis. Again, I think all parties agreed for a 30-day
25 update schedule. Entergy's position is that we were

NEAL R. GROSS

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

1 willing to continue doing the updates through the
2 filing of rebuttal testimony, the final piece of
3 testimony. And after that point, that there wasn't
4 much purpose in continuing the update. And I think
5 that's particularly true for the Staff, who has not
6 only a disclosure obligation related to contentions,
7 but, in fact, has to maintain a hearing file on
8 everything, so I can particularly understand the NRC
9 Staff's concern with continuing this unnecessarily,
10 when it's not serving much purpose.

11 MS. YOUNG: Judge Karlin, this is Ms.
12 Young, also on Mr. Roisman's point. The model
13 milestone for Subpart G and L, anticipate a period
14 where discovery comes to an end. And then both of
15 those dates are in advance of the proceeding. And as
16 the Staff mentioned before, our positions in this
17 proceeding are clear at the time we issue our
18 documents, the EIS, and the SER, so to the extent that
19 there's any significant change in information after
20 that date, we don't anticipate there would be any, and
21 we think it would reasonable to have a reasonable
22 period of time after the issuance of both documents
23 for discovery and update responsibilities to come to
24 an end.

25 JUDGE KARLIN: That seems to make some

NEAL R. GROSS

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

1 sense. I just note, wasn't it in the Vermont Yankee
2 uprate situation where the Staff had a disclosure that
3 came within 30 days of the beginning of the
4 evidentiary hearing, that became somewhat
5 controversial, and you discovered some documents, and
6 wanted to introduce them, and this is long after the
7 time for the rebuttal testimony to be filed; and, yet,
8 you were still disclosing appropriately, because we
9 didn't set a rule in that case, and it ended up being
10 a document you wanted to introduce. Not you, Ms.
11 Young, I don't think you were --

12 MR. HAMRICK: Judge Karlin, this is Mr.
13 Hamrick. I can address that for you. That was the
14 case where I believe we had some discussion about the
15 Staff's obligation to update its hearing file, but
16 continuing just, frankly, by inertia.

17 JUDGE KARLIN: Yes, that's right.

18 MR. HAMRICK: Frankly, we did discover
19 documents, and we wanted to, at that point, move to
20 admit them, and so we decided that to be basically on
21 the safe side, to include them in the hearing file at
22 that time. Of course, those documents were not
23 admitted, and so it really became a moot point for the
24 purpose of the hearing file. But yes, you are
25 correct, your recollections in that case.

NEAL R. GROSS

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

1 JUDGE KARLIN: All right. Thank you. All
2 right. Let's move, if we may, to item 7, and it sort
3 of goes along with 8, but I'm sure we have a consensus
4 on this point. Mr. Lewis?

5 MR. LEWIS: Well, I think the parties
6 agreed that final witness lists would be submitted 20
7 days after whatever the trigger date was, and
8 testimony and position statements will be filed 60
9 days after the trigger date. It was only what that
10 trigger date was, as we discussed earlier, Entergy and
11 NRC Staff suggested it should be that August SER and
12 EIS, as applicable, and the position of the DPS and
13 NEC was it should run from the final Full Committee
14 ACRS letter.

15 JUDGE KARLIN: All right. Any other
16 comments on that point? All right. Number 8. Let's
17 see. Mr. Roisman, would you like to address that?

18 MR. ROISMAN: I'm sorry, Mr. Chairman. I
19 had an interruption here in my office.

20 JUDGE KARLIN: Oh, okay.

21 MR. ROISMAN: And I failed to hear the
22 immediately preceding sentence.

23 JUDGE KARLIN: All right. Well, let me
24 just ask someone else to address that, then. Mr.
25 Lewis, please, item 8.

1 MR. LEWIS: Hello.

2 MR. LEWIS: Yes, sir. I'm sorry, I had
3 the mute button pushed.

4 JUDGE KARLIN: I'm sorry.

5 MR. LEWIS: Entergy's position was that
6 motions for use of Subpart G procedures, if they're
7 appropriate, should be filed in accordance with
8 2.323(a). In other words, within 10 days of the
9 circumstance or occurrence that gives rise to the
10 motion. I do understand, Judge Karlin, your position,
11 and I expect that it'll probably be the case in this,
12 that there is such an opportunity. I think Entergy
13 believes always that when a Subpart G procedure should
14 apply to the matter that gets determined at the outset
15 of the proceeding, and not later, but I understand
16 your position. I won't belabor it. If you do grant
17 that opportunity, we would simply urge, because of the
18 great potential for delay that might occur if you
19 switch procedures on the eve of hearing, that such
20 motions should be filed within 10 days of occurrence
21 to minimize this impact. It could cause months of
22 delay if right before the hearing we go to Subpart G,
23 and at that point start interrogatories and document
24 requests, and depositions. Entergy is willing, for
25 example, to try, if there is a wish by the parties to

NEAL R. GROSS

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

1 informally agree to allow depositions of opposing
2 witnesses. I mean, we would be willing to discuss
3 that.

4 Also, we don't oppose a 20-day time frame
5 for motions that simply seek cross examination,
6 because that doesn't have the impact on the schedule,
7 but a motion that after the final documents seeks to
8 just to begin Subpart G discovery at that point in
9 time is one that really has an extreme impact on the
10 schedule; and, therefore, we would ask that such
11 motions be filed within 10 days of the occurrence.

12 JUDGE KARLIN: Okay. I do note that you
13 have filed on October 23rd, as appropriate, your list
14 of initial disclosures, including a list of witnesses.
15 And, therefore, the credibility of any of those newly
16 identified, initially identified witnesses is an
17 issue, somebody has to bring it up pretty soon, and
18 obviously doesn't wait. We are focusing on any newly
19 disclosed eyewitnesses, that if you would add to the
20 list at some later point of witnesses, then that might
21 trigger a 10-day rule, or some other rule, as you're
22 laying out. So, obviously, one way to address that is
23 for everyone to get their witness list out as early as
24 possible in the proceeding, and I'm sure you've tried
25 to do that.

NEAL R. GROSS

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

1 Let's see. Let me ask the State - NEC,
2 Ms. Tyler, do you have any suggestions or thoughts on
3 this one?

4 MS. TYLER: Yes, this is Karen Tyler. NEC
5 needs a reasonable amount of time from the disclosure
6 of a witness to do the type of background research
7 that would be necessary to assess that person's
8 credibility, and determine whether a 2.310(c) motion
9 is appropriate. And we would request 30 days from the
10 date of the disclosure of the witness. And I would
11 agree, Judge Karlin, with what you just said, that
12 Entergy can avoid any potential problems with delay of
13 the schedule by disclosing its witnesses as soon as
14 possible.

15 JUDGE KARLIN: To the extent it can do so,
16 I'm sure it will try to do so. Yes, okay. Anyone
17 else want to speak to this?

18 MR. ROISMAN: Mr. Chairman, it's Mr.
19 Roisman. I don't have any particular problem with the
20 idea that the time limit for cross examining, or for
21 asking for Subpart G will not start to run forever
22 until the last witness is disclosed. But what I am
23 troubled by, and candidly, I don't know what the
24 answer is - with regard to cross examining a witness,
25 2.1204 gives the parties the authority, without going

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 through the requirements to get a Subpart G hearing,
2 of asking the Board for permission to cross examine a
3 particular witness. And it seems to me that that
4 provides an even easier route, if you have a witness
5 you want to cross examine, and if you thought it was
6 a truthfulness issue, or you thought it was a
7 technical issue, you'd have to make your case in your
8 cross examination plan to the Board. And the Board
9 would have to decide that they thought that it would
10 be preferable to have you ask those questions, rather
11 than the Board ask the questions.

12 The more troublesome question is the point
13 that Mr. Lewis raises, which is what do you do about
14 discovery? There's nothing in the regulations, and
15 there was nothing in your ruling, because it wasn't
16 raised by any party, in the uprate proceeding, as to
17 how one establishes a right to the portion of Subpart
18 G proceedings that relates to discovery. Is it a lack
19 of candor in the disclosures that becomes the
20 functional equivalent of a fact witness that isn't
21 going to tell the truth? Because that piece of
22 Subpart G is the critical path, it's the one that can
23 get in the way, and it's not clear how somebody would
24 make that argument, or whether the Board would
25 entertain motions that ask for pieces of Subpart G

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 procedures, without asking for all of Subpart G
2 procedures.

3 Now I don't have an answer to this, but I
4 think it might be beneficial, if the Board considers
5 it to be of any moment, to allow the parties an
6 opportunity to submit something to the Board in
7 writing following this call, as to how to deal with
8 these different issues. The State's not worried about
9 the cross examination rights under Subpart G, or
10 feeling that it will be likely, or want to make a
11 motion that you open up the Subpart G proceeding,
12 because we think some witness is not going to be
13 truthful. There's a better way to deal with that
14 under the regulations, that I think we would use. But
15 discovery is a different matter.

16 JUDGE KARLIN: Well, let me respond
17 briefly. First, the opportunity, such as it is, for
18 cross examination under 2.1204 in the L proceeding is
19 there, the can decision is there, and such as it is,
20 there is an opportunity for cross examination. That's
21 not what we're talking about in item 8.

22 Next, the selection of the appropriate
23 hearing procedures is a separate issue, and that is
24 what we are talking about in 8, which is, if the
25 criteria for someone wants to claim that this would be

NEAL R. GROSS

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

1 a G proceeding instead of an L, because a newly
2 disclosed witness is suddenly put on the table, and
3 there's a serious credibility, and that meets the
4 criteria of 2.310(d), then fine, that's what we'll -
5 this 8 is about.

6 Next, if someone is not complying with the
7 duty to disclose under 2.336, or under Subpart L,
8 there are remedies that the Board can impose, if we
9 find that there's not been good faith disclosure. I
10 don't have the reg cite on my fingertips, but there is
11 a reg to that effect. And that could include granting
12 of depositions, if I'm remembering correctly, or some
13 other form of discovery, so I think that's where we
14 are. And right now, I just want to focus - I think
15 we've heard enough from everyone on number 8, unless
16 someone else needs to speak. Great, okay.

17 Number 9 - whether the parties want to
18 consent to the handling of a contention under "N",
19 which is the "expedited" or "two-day", I guess,
20 procedure. And if you're not willing to agree at this
21 point, is there a time frame when we should set such
22 a deadline?

23 MR. LEWIS: This is Mr. Lewis, Judge
24 Karlin. The parties weren't in agreement, and since
25 this has to be unanimous, it looks like it's not a

NEAL R. GROSS

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

1 possibility.

2 JUDGE KARLIN: Okay. We're not in
3 agreement now on any contention under "N". What we're
4 going to probably do is set some date which we would -
5 and it probably is not an early one - where you would
6 tell us if you think you can have unanimous consent to
7 an "N" proceeding in the future. So keep it in mind,
8 and I might add at this point, it's somewhat anomalous
9 because the key to a Subpart N proceeding, as I
10 recollect, is that it's supposed to be a contention
11 that can be heard in two days or less. Well, under L,
12 the length of time that's required for a contention to
13 be heard is really a function of the number of
14 questions that the Board has, and so the Board - the
15 questions determines the length of the hearing, so
16 it's somewhat anomalous. In any event, we will try to
17 set some date, and ask you all to think about that,
18 because this is a contention-by-contention rule, and
19 it may be with the five contentions that are admitted,
20 do you really think that one of them is going to take
21 more than two days? If one of them is clearly a
22 shorter one, we might be able to put that down for an
23 N proceeding.

24 Okay. Number 10 - 10, 11, and 12 are kind
25 of taken from the regulatory language, itself. They

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 rarely come from the Federal Rules of Civil Procedure,
2 but any consensus or ideas about opportunities for
3 clarification, simplification, et cetera, of the
4 issues? Let me ask Ms. Young, perhaps you could
5 address this.

6 MS. YOUNG: Well, basically, for items 10-
7 13, the parties tried discussing these matters, and
8 came to the realization that it may be premature to
9 indicate a preference for selection of a settlement
10 judge, or refinement of issues at this point. We're
11 basically still getting to know each other. We just
12 had the State of New Hampshire join us, and we think
13 it's premature at this point to reach any resolution
14 on those items. But we remain open to the opportunity
15 to discuss settlement, should those discussions
16 progress.

17 JUDGE KARLIN: All right. That's good.
18 Anyone else want to speak on that?

19 MR. LEWIS: Judge Karlin, this is Mr.
20 Lewis. We are interested in discussing issues
21 informally, Entergy, as with the other parties, to see
22 if we can reach a resolution. We just haven't done it
23 yet. We initially focused on the initial disclosures,
24 we will be initiating discussions, hopefully, pretty
25 soon.

NEAL R. GROSS

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

1 JUDGE KARLIN: Okay. Ms. Tyler.

2 MS. TYLER: I don't think I have anything
3 further to add. NEC is certainly interested in any
4 proposals other parties wish to make, but we agree
5 that it's premature basically to appoint a settlement
6 judge at this time.

7 JUDGE KARLIN: And Mr. Roisman.

8 MR. ROISMAN: No, nothing. Thank you.

9 JUDGE KARLIN: Okay. Thank you. We might
10 remind everyone that the opportunities for settlement
11 of issues, contentions; obviously, the reg now calls
12 for the appointment of, or allows for the appointment
13 of a settlement judge when the parties request it.
14 Obviously, you can pursue ARD and other forms, as you
15 see fit, and the Commission, I believe, encourages
16 settlement of issues, where possible. But keep in
17 mind, we also have the new regulation which lays out
18 some form and content requirements for settlement in
19 the Vermont Yankee uprate case. That Board addressed
20 some of those, and that's just FYI. This Board may
21 feel the same way, or may look at it differently, but
22 read that reg. We hope you can get some settlement
23 out of some of these things, and if you just - just a
24 little bit of fill out the form in the right way, and
25 it'll work great.

NEAL R. GROSS

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

1 All right. Fourteen - this is the
2 privilege log. We do have already parties asserting
3 privileges, but this contemplates setting up a
4 proposal, or asking for proposals for possibly a
5 protective order, and non-disclosure agreements.
6 Perhaps, Mr. Lewis, could you speak to this, please?

7 MR. LEWIS: Yes. Judge Karlin, as you
8 know, we've already agreed to an agreement on the
9 content and privilege log. With respect to
10 proprietary documents, we recognize in the discussions
11 between the parties that we need to agree on the form
12 of a protective order, and there's been proposals that
13 the parties in the next - I don't remember if we had
14 agreed 10 days or two weeks - but that we talk
15 internally to try and reach an agreement on a proposed
16 protective order. Entergy's position is that the
17 terms and conditions that were in the March 10th, 2005
18 order in the uprate proceeding look pretty good to us,
19 and would suggest that.

20 JUDGE KARLIN: Okay. Great. Yes, I would
21 suggest you take a look at that, for what it's worth.
22 It's actually March 1st, I believe, of '05.

23 MR. LEWIS: Sorry, my dyslexia. I'm
24 jotting it down in my notes.

25 JUDGE KARLIN: Right. Right.

1 MS. YOUNG: Judge Karlin, the Staff didn't
2 get that far in terms of the details of discussions on
3 this matter, but have recommended a two to three week
4 period for the parties to confer, and either submit a
5 joint proposal to the Board for protective order or
6 non-disclosure agreements, and then if there could not
7 be a joint proposal within that time period, for the
8 parties to proffer individual proposals.

9 JUDGE KARLIN: Yes. Okay. Then, Ms.
10 Tyler, anything that you had to add?

11 MS. TYLER: Nothing to add. I'm agreed
12 with what was just said.

13 JUDGE KARLIN: Mr. Roisman?

14 MR. ROISMAN: Nothing to add.

15 JUDGE KARLIN: Okay, fine. In this - now
16 that's excellent. I mean, I think that's what we'll
17 probably do, is set forth in the scheduling order a
18 time frame within which we would like you to confer so
19 you begin conferring now, if you would, and see if you
20 could come up with a joint proposal. And failing a
21 joint proposal, some different positions you want to
22 present. Perhaps the March 1st protective order will
23 be of some value.

24 One thing that it does in there, I will
25 say, two things about that, is one, contrary to some

NEAL R. GROSS

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

1 protective orders I see, it is rather than simply
2 imposing obligations upon the recipients of the
3 documents claimed to be privileged, it also imposes an
4 affirmative obligation upon the party claiming the
5 privilege to disclose the documents. That's sometimes
6 inadvertently missing. It's implicit, obviously, but
7 it's missing, and that is in that order. And, also,
8 that most of the meat of the conditions in the
9 protective order itself, not in the non-disclosure
10 agreement, that is one way we approached it before.
11 I submit it for your consideration.

12 We also have a problem or a concern that
13 we'll talk about a little bit later in the call.
14 Well, maybe we can talk about it now; which is, we see
15 that the parties have duly submitted privilege logs.
16 Entergy has submitted very length privilege logs,
17 perhaps thousands of documents on multiple privilege
18 logs that appear to derive from or derive from other
19 litigation you've had. I think people should be aware
20 of the ruling we issued in the Vermont Yankee case,
21 which, again, for what it's worth, dealt with - there
22 is a requirement in the rules, 2.323(a), that if
23 you've got a problem with something, you've got 10
24 days to raise a challenge. And the privilege log
25 would otherwise indicate that you would have 10 days

NEAL R. GROSS

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

1 to - if you've got a problem with any one of those,
2 let's say three thousand documents on the privilege
3 log, you've got 10 days to raise it. We don't think
4 that's quite appropriate here, and would be interested
5 in hearing from the parties as to setting up some
6 other time frame, at least for the initial privilege
7 log, which is quite massive. I suspect the updates
8 will be more manageable. Mr. Lewis?

9 MR. LEWIS: Judge Karlin, the privilege
10 log was massive mainly because of the aquatic
11 contention, and the fact that there's been ongoing
12 State proceedings addressing that issue for quite some
13 time, and comments, and litigation, and hearings, and
14 what have you, so that was just the circumstance.

15 JUDGE KARLIN: Okay.

16 MR. LEWIS: I would say, however, that the
17 privilege log that we produced, most of them were
18 privilege logs that had been produced in the prior
19 proceeding, was identified at the top of the privilege
20 log; and, thus, had been seen by the other parties
21 previously, so I would suggest that there isn't a good
22 basis for extending their time in which to object. In
23 fact, it's nothing new.

24 JUDGE KARLIN: I see. That's an
25 interesting point, okay. Mr. Roisman, any thoughts

NEAL R. GROSS

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

1 here?

2 MR. ROISMAN: Well, I think that the
3 subject of this initial privilege log, it seems to me
4 that a 30-day period from its creation, or its
5 disclosure, would not be unreasonable. And then the
6 10-day schedule that is now normally called for with
7 regard to the supplements should be okay. And we
8 would support that as a way to make sure that there is
9 adequate time to go through this first big group;
10 although, I don't think there are any of these
11 documents that were claimed as privilege, that bear on
12 the contention that we have in the case.

13 JUDGE KARLIN: Okay. Ms. Tyler, anything
14 to add?

15 MR. SHEMS: Could Mr. Lewis please repeat
16 what he said before? I'm not sure we heard all of it.

17 JUDGE KARLIN: Who was that just speaking?

18 MR. SHEMS: This is Ron Shems.

19 JUDGE KARLIN: Oh, okay, Mr. Shems.

20 MS. YOUNG: Well, before Mr. Lewis does
21 that, can the Staff be heard on this?

22 JUDGE KARLIN: Yes, please, Ms. Young.

23 MS. YOUNG: The Staff believes that 10
24 days is sufficient to challenge the initial
25 disclosures, given Mr. Lewis' representation that this

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 information has been available before. It was
2 recently disclosed to the parties.

3 JUDGE KARLIN: Okay. All right. Mr.
4 Shems, do you want Mr. Lewis to repeat himself?

5 MR. SHEMS: We missed part of what he
6 said. There was a glitch with the phone.

7 MR. LEWIS: This Mr. Lewis. I was just
8 indicating that the privilege logs on the aquatic
9 contentions consist of a number of documents, most of
10 those are identified as having been produced in a
11 prior State proceeding. And my point was simply that,
12 therefore, they weren't new, and shouldn't justify a
13 lengthier period for objections.

14 JUDGE KARLIN: Question - was NEC a party
15 to that proceeding, and was Mr. Shems a party to that
16 proceeding representing NEC?

17 MR. SHEMS: No.

18 JUDGE KARLIN: All right. That undercuts
19 that argument a little bit, I think. The State, I
20 presume, was a party to that proceeding?

21 MR. LEWIS: I believe it was PSB
22 proceeding. I don't believe that Mr. Shems was a
23 party, but I thought that NEC was a party, and now I'm
24 not sure by Mr. Shems statement. I wasn't sure if he
25 was saying no, that NEC wasn't a party, or no, that he

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 wasn't involved in it.

2 MR. SHEMS: I'm not involved in any way --

3

4 MR. LEWIS: I know, but NEC, I believe
5 was, but I'm not sure now.

6 JUDGE KARLIN: Okay. Well, I think that's
7 worth a factor. Anyway, Mr. Shems, or Ms. Tyler, do
8 you have anything you want to say on this before we
9 proceed?

10 MR. SHEMS: I understood Mr. Lewis to just
11 say that they were produced as part of a State
12 proceeding, and if they were, why are they on the
13 privilege log?

14 MR. LEWIS: No, I'm saying the privilege
15 logs were produced, not the documents.

16 MR. SHEMS: Okay.

17 JUDGE KARLIN: These are privilege logs
18 that appear to come from a separate proceeding. I
19 have not studied them, but I mean, I have two comments
20 I think we ought to point out. One, we don't - well,
21 unless the parties raise something to us, you all have
22 your own privilege logs, and so be it, but the
23 privilege logs need to provide sufficient information
24 so that the other party can understand and evaluate
25 the privilege. I would commend that you read the

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 decision, 62 NRC 8-28, for some of the logic that that
2 Board, and that I probably would approach it with, not
3 speaking for fully this Board. We haven't voted on
4 that. Privilege logs needs to be useful.

5 The second point is the dump truck theory
6 of discovery, which is, I don't think we should be in
7 a situation where a tactic is used to simply load a
8 dump truck up and deliver it to the other party so
9 they can inundated with material. I don't know
10 whether everything in that other proceeding is
11 relevant to the contentions in this proceeding or not.
12 You've submitted it; therefore, I assume that they
13 are, but a massive number of documents are claimed to
14 be privileged, so I suspect even a larger number are
15 being disclosed. And please, the disclosure is
16 supposed to be a function of the, I believe, related
17 to relevance to the contentions. You need to look at
18 2.336, and it's not just relevance to the contentions,
19 but that's, I think, a primary criterion. And don't
20 put in a whole lot of other stuff that doesn't apply.
21 And that just applies to everybody.

22 MS. YOUNG: Judge Karlin.

23 JUDGE KARLIN: Yes.

24 MS. YOUNG: This is Ms. Young for the NRC
25 Staff. I'm not sure whether Mr. Shems was involved in

NEAL R. GROSS

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

1 the Public Service Board proceeding, but it could be
2 that other NRC members are, for example, Mr. Shadis,
3 but the Staff doesn't have any direct knowledge of
4 that.

5 JUDGE KARLIN: Right. Okay. I appreciate
6 that, and I think we've got a long way to go, or some
7 way to go on this proceeding. And I'm not sure
8 whether there's any necessity for a short deadline on
9 the initial privilege logs. We don't want to
10 encourage disputes, but we don't want to make it crazy
11 short deadline, unnecessarily.

12 Number 15 - the site visits.

13 MR. SHEMS: Judge Karlin.

14 JUDGE KARLIN: Yes.

15 MR. SHEMS: This is Ron Shems. I have one
16 other question regarding the privilege log.

17 JUDGE KARLIN: Yes?

18 MR. SHEMS: Would any of the documents -
19 and I guess this is more directed to Mr. Lewis - would
20 any of the documents that are listed on the privilege
21 log be disclosed pursuant to a non-disclosure
22 agreement?

23 JUDGE KARLIN: Well, I think what he said
24 is if they're qualified - if it's an absolute
25 privilege, the answer would be no. If it's a

NEAL R. GROSS

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

1 qualified privilege, such as a claim of proprietary
2 document, the answer is probably, maybe, you know,
3 it's a matter for you all to discuss. But I would
4 assume that you would not be disclosing anything
5 that's an absolute privilege, such an attorney/client
6 communication under a protective order and a non-
7 disclosure agreement.

8 MR. LEWIS: That's correct, Judge Karlin.
9 Our willingness to provide documents that are on the
10 privilege log is limited to those where we're seeking
11 protection, because they're proprietary. We certainly
12 don't intend to produce under a non-disclosure
13 agreement attorney/client communications or work
14 product.

15 MR. SHEMS: I guess we're all on the same
16 page on that. I guess, in that case, I would suggest
17 30 days after the production we file motions regarding
18 the withheld documents.

19 JUDGE KARLIN: All right. Well, we'll
20 address that in our order. I think for the time being,
21 I think it is sufficient for us, and the Board
22 discussed this before the call, is that right now,
23 there will not be a 10-day rule applicable to - we're
24 going to hold in abeyance what we see as the normal
25 10-day rule applicable here to challenges to documents

NEAL R. GROSS

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

1 claimed to be privileged. Hold your fire until we
2 issue our order, and we'll set a time frame for you to
3 raise challenges, if you must, to any document that's
4 on the privilege log already filed.

5 MR. SHEMS: Thank you.

6 JUDGE KARLIN: Item 15 - site visit.
7 We're not sure, but we think it might be a useful
8 thing for this Board. Mr. Lewis, your thoughts?

9 MR. LEWIS: Judge Karlin, if the Board
10 would like to visit the site, it's very welcome, and
11 we would make the appropriate arrangements. I think it
12 will depend on what contentions survive settlement
13 discussions and summary disposition, on whether a site
14 visit would be useful.

15 JUDGE KARLIN: Yes, all right. Anyone
16 else want to speak to that?

17 MS. YOUNG: Judge Karlin, this is Ms.
18 Young. The only dispute I recall in this matter, and
19 the parties were generally in agreement, that a site
20 visit was appropriate, was the scope of that visit;
21 would it include things off-site, and what things off-
22 site would it include?

23 JUDGE KARLIN: Well, explain that to me a
24 little bit more. I mean, I would think it would have
25 focused on the contentions, and so things off-site -

NEAL R. GROSS

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

1 explain, please.

2 MS. TYLER: This is Karen Tyler for NEC.
3 And, basically, NEC would request the opportunity at
4 an appropriate time to propose a specific agenda for
5 the site visit. And if Contention One is still on the
6 table, for example, NEC would request that the Board
7 tour the intake and discharge point to the Connecticut
8 River. And NEC may have additional proposals
9 regarding the agenda, but again would ask for the
10 opportunity to put something in writing for the
11 Board's consideration.

12 JUDGE KARLIN: All right, fine. That's
13 useful.

14 MR. ROISMAN: Mr. Chairman, this is Mr.
15 Roisman on behalf of the State of Vermont. First of
16 all, we also believe that a site visit could be
17 useful, and we would strongly urge the Board to
18 consider October 2007. The middle of that month might
19 be a particularly pleasant time to visit and see the
20 plant in all of its glory.

21 JUDGE KARLIN: Yes, yes, yes. We don't
22 want to be - okay, very good, very good.

23 All right. Item 16 - let's see, what is
24 that? Do you understand that question and that issue?
25 Mr. Roisman?

NEAL R. GROSS

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

1 MR. ROISMAN: Yes. And this was one on
2 which we had an agreement, at least to propose to the
3 Board. The parties agree that everyone would file
4 direct testimony simultaneously, and then everyone
5 would file rebuttal testimony simultaneously.

6 JUDGE KARLIN: And this is an agreement
7 item, eh?

8 MR. ROISMAN: Yes.

9 JUDGE KARLIN: All right.

10 MS. YOUNG: Well, Judge Karlin, this is
11 Ms. Young. The Staff didn't start off that way, just
12 so you know.

13 JUDGE KARLIN: (Laugh.) All right. Well,
14 we have some - I have some concerns that the
15 simultaneous fuselage from both sides of the direct
16 testimony ends up making some of the testimony
17 superfluous. It doesn't focus it as well as it might
18 if, for example, the Petitioner were to do its
19 testimony first, and then the Applicant in the
20 Respond. This would allow the Applicant to respond in
21 a more focused way, rather than trying to anticipate
22 all of the possible issues that the Petitioner might
23 raise.

24 MS. YOUNG: Judge Karlin, this is Ms.
25 Young. That was the Staff's first position on this

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 issue, but the parties rejected that.

2 MR. ROISMAN: Mr. Chairman, this is Mr.
3 Roisman. I think the problem with staggering it has
4 to do with whether the Staff is going to show its
5 colors. If the Staff will line up with the party who
6 it agrees with and file at the same time as that
7 party, that's fine. But if the Staff wants to get a
8 second bite at the apple, or if the party who files
9 second also gets to file rebuttal testimony, then that
10 seems, to us, to be an unfair advantage. If the
11 Petitioners are to be treated as the ones with the
12 burden of proof, and I'm not sure we agree with that -
13 an Applicant has the burden of proof - they must
14 prove that they're entitled to this license extension.
15 But if we're treated as the party with the burden of
16 proof, we go first and last, the other parties have
17 one shot. But when we got into discussing all of
18 those, no one seemed to be able to agree, one, where
19 the Staff fit on the scale of things. And two,
20 whether there would be only one shot for the parties
21 that were replying to the Petitioner. If those are
22 resolved, if we go first, and we go last, and the
23 Staff is no different position than a party with whom
24 it is aligned on the issue, then we don't have a
25 problem with doing it the way you're implying, which

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 is that it allows the party who is opposing the
2 Petitioner to more focus their testimony.

3 MR. LEWIS: Judge Karlin, this is Mr.
4 Lewis. Just on the burden, to set that straight; the
5 case law is pretty clear that the Intervenor has the
6 burden of going forward, and the Applicant has the
7 ultimate burden of proof. If there is staggered
8 filings, I think that would lead to the Intervenors
9 being required to file their testimony first, and the
10 Applicant ultimately having the last word as the party
11 with the burden of proof, but it got very complicated
12 in discussions.

13 JUDGE KARLIN: Yes. I think my take is
14 that that's right, that the Petitioner has the burden
15 of going forward, and the Applicant has the ultimate
16 burden of persuasion or proof, and we have
17 contentions, and we, obviously need to understand. We
18 don't have discovery, we don't have a lot of other
19 mechanisms in these L proceedings for these
20 contentions to be focused, and to be responded to
21 appropriately, so I don't see that it's -- it may be
22 possible to structure something whereby the Petitioner
23 goes forward first with the evidence supporting its
24 contention, and then there is a response, initial
25 testimony responding, and then there is a rebuttal

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 testimony allowed to both. The Applicant has the
2 ultimate burden of proof on safety and environmental
3 issues.

4 All right. Well, that's I think somewhat
5 helpful discussion, but is there anything else anyone
6 needs to say?

7 MR. ROISMAN: Mr. Chairman, this is Mr.
8 Roisman. I believe that a Petitioner meets their
9 burden of going forward by getting a contention
10 admitted, and withstanding any motion for summary
11 judgment. In order to withstand a motion for summary
12 judgment, a Petitioner would have to make a prima
13 facie case. That is the burden of going forward, so
14 I don't think that it follows that we then,
15 necessarily, have to start with the pre-filed
16 testimony. That would not be the normal rule, and if
17 I remember correctly from the old, old days, the cases
18 always started with the Applicant and the Staff
19 putting the SER and the EIS, and the environmental
20 report, and the safety evaluation report by the
21 Applicant, SAR I guess it is, into evidence as the
22 starter.

23 JUDGE KARLIN: Well, you assume - first
24 off, I disagree that simply getting a contention
25 admitted is the -- it carries the burden of going

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 forward. Contention admissibility is a lesser
2 standard than that. Second, you assume that there
3 will be motions for summary disposition, and I don't
4 assume that; nor do I think they're necessarily very
5 productive in an L-type of proceeding, in any event,
6 but we'll probably see some, anyway.

7 All right. Let's move on to 17 - time
8 limits for motions for cross examination. The regs
9 don't really lay out a time limit for that. We
10 contemplate that that would be some time around the
11 same time as the motions for - I'm sorry - the time
12 when the direct examination proposals or plans are
13 submitted. Any consensus otherwise? Ms. Young,
14 perhaps you can finish us off here.

15 MS. YOUNG: Well, Judge Karlin, I believe
16 the regs do indicate in 2.12.04(a) that motions for
17 cross examination should be controlled by the 23 time
18 period, the 10-day time period. Staff would not
19 object to a 20-day period following whatever event a
20 party believed would cause that time to initiate. So
21 if it's pre-filing of testimony, that would be okay
22 for the Staff.

23 MR. LEWIS: Judge Karlin, that was also
24 Entergy's position.

25 JUDGE KARLIN: Okay. Anything else on

NEAL R. GROSS

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

1 that one? I don't think that, if you say 2.1204
2 motions - where are we dealing with motion requests?
3 Some time frame laid out?

4 MS. YOUNG: Yes.

5 JUDGE KARLIN: Where?

6 MS. YOUNG: Look at 2.1204.

7 JUDGE KARLIN: Yes.

8 MS. YOUNG: It says (b) request for cross
9 examinations.

10 JUDGE KARLIN: Yes.

11 MS. YOUNG: And (a) says that everything
12 under this section is controlled by the 3.23 time
13 frames.

14 JUDGE KARLIN: Well, it doesn't say "time
15 frame", it just says 2.2 - it references that
16 regulation.

17 MS. YOUNG: Yes, but that regulation
18 includes the 10-day period, that you have to come and
19 raise a motion within 10 days of the occurrence of the
20 event.

21 JUDGE KARLIN: Right.

22 MS. YOUNG: That's the Staff's reading.

23 JUDGE KARLIN: Okay. Well, what event
24 would you be referring to then?

25 MS. YOUNG: It would be the filing of

NEAL R. GROSS

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

1 either the testimony or information that an
2 eyewitness, not just an expert witness, has
3 credibility issues that you need to ask the cross
4 examination.

5 JUDGE KARLIN: Oh, I see. No, okay. I
6 think that's a different -- okay. I think I
7 understand what you said. I'm not sure I agree with
8 it, but okay. Anything else on 17?

9 MR. ROISMAN: Mr. Chairman, just so you're
10 clear on the State's position - we believe that the
11 work required to make out the cross examination plan
12 that is part of the 1204 requirement is identical to
13 the work that would be required to make out the cross
14 examination plan that's submitted to the Board, if a
15 party is asking the Board to do the cross examination.
16 And that the only logical thing to do is to have those
17 two events occur at the same time. The Board would
18 not be able to make a reasonable decision about 1204
19 if it did not have in front of it what the parties
20 thought the Board ought to be, itself, asking in the
21 way of questions.

22 JUDGE KARLIN: All right. All right,
23 that's fine. We've gone through 1-17. We have a
24 couple of other items we want to talk about, and I've
25 already told you, the parties, and you have not --

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 MS. TYLER: I'm sorry. This is Karen
2 Tyler for NEC. We just had one comment on number 17.

3 JUDGE KARLIN: Yes.

4 MS. TYLER: May I speak, before we move
5 on?

6 JUDGE KARLIN: Sure.

7 MS. TYLER: We took a look at the order
8 that you suggested we review, the scheduling order in
9 the ETU proceeding.

10 JUDGE KARLIN: Right.

11 MS. TYLER: I noted that in that
12 proceeding, the parties were allowed 15 days from the
13 filing of rebuttal testimony to put in both proposed
14 questions for the Board, and also proposals for cross
15 examination. But I think there was only one
16 contention at issue in that proceeding; whereas, in
17 this proceeding, NEC is dealing potentially with four
18 contentions, so we would suggest that perhaps more
19 than 15 days from the filing of rebuttal would be
20 appropriate, and would suggest 30 days.

21 JUDGE KARLIN: All right. But I would
22 note to you that that 15-day time frame was set when
23 there were four contentions in the hearing at that
24 time.

25 MS. TYLER: Okay.

NEAL R. GROSS

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

1 JUDGE KARLIN: So it wasn't the function
2 of only being one, that 15-day time frame was used,
3 but that is a data point to keep in mind.

4 MS. TYLER: Yes.

5 JUDGE KARLIN: Okay. Before we move on,
6 I guess we ought to - I would ask Ms. Patterson,
7 you've been quite patient and quiet here,
8 appropriately so, I think, but in any event, do you
9 have anything to comment or add here?

10 MS. PATTERSON: No, I don't. Thank you,
11 Judge Karlin.

12 JUDGE KARLIN: All right. Thank you.
13 Just want to make sure you're still with us here.
14 It's been a long call. 18 - again, are there any
15 other items that either the other members of the Board
16 here, or the parties think need to be raised
17 procedural scheduling matters? No.

18 MS. TYLER: This is Karen Tyler, again,
19 for NEC.

20 JUDGE KARLIN: Yes.

21 MS. TYLER: We are wondering whether the
22 Board will set a deadline for the pre-filing of
23 hearing exhibits?

24 JUDGE KARLIN: The hearing exhibits will
25 be filed at the same time as the initial testimony,

NEAL R. GROSS

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

1 and the rebuttal testimony. That will be the
2 deadline.

3 MS. TYLER: Okay. Thank you.

4 JUDGE KARLIN: And you need to keep in
5 mind that - and this is some way down the pike here -
6 but when you submit your initial testimony, and your
7 hearing exhibits that go with that, and your rebuttal
8 testimony, and the exhibits that go with that, that is
9 to be your entire presentation and argument, and do
10 not presume that you will have an opportunity to
11 address issues, or do anything else. I mean, your
12 full shot needs to be presented at that time,
13 documents and testimony. And we may have a hearing,
14 and we may ask questions, and we may not ask
15 questions. If we don't have any questions, we do not,
16 necessarily, see that there will be much of an oral
17 hearing, so I think everyone needs to take those
18 filings quite seriously.

19 Okay. Moving on, additional topics - we
20 have a couple of additional topics. I think that was
21 quite efficient. I appreciate everyone's thinking
22 through some of these issues, and obviously, you had
23 attended to them and tried to resolve, so that was
24 helpful. Here are a couple of additional topics. I'm
25 not sure whether we'll actually address them in the

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 order, the scheduling order that we have to issue, but
2 I think it ought to be noted.

3 The duty to make a sincere effort to
4 contact and resolve issues before you file a motion -
5 2.23(b) requires this, certifications, you've made a
6 sincere effort to contact and resolve it, and we take
7 that pretty seriously. Keep in mind that this applies
8 to all motions, and for the most part, most requests
9 are essentially motions. This is not a prefatory
10 call, such as the missiles have been launched, do you
11 want to surrender, so I think you need to make some
12 sincere effort. And if you don't, your motion may be
13 tossed, just simply on that basis, despite its
14 otherwise meritorious material. And look at 63 NRC
15 116, for a case where that came up, 63 NRC 116.

16 Extensions of time - I think we probably
17 will try to address this in our order. Once the
18 schedule is set, it becomes a relatively serious
19 thing. There are, as I believe Mr. Roisman noted,
20 some inhibitions upon the Board in adjusting the
21 schedule. 2.334(c) - look at that. We want to try to
22 set a reasonable schedule, we want to follow it, so if
23 you've got a motion for an extension of time, file it
24 as early as possible, as soon as you have some inkling
25 you're going to need the time. We do not want to see

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 motions for extension of time filed after the deadline
2 has already expired, except in some extraordinary
3 case, and we will try to address that in the order,
4 initial scheduling order.

5 FYI filings - as we've had some experience
6 already, let's try to avoid those. We don't want to
7 clutter this record of this proceeding with everything
8 that happens to be filed in the proceeding with the
9 Staff. Just give us what's essential. If you've got
10 something you need to file, usually we want to see it
11 in the form of a motion. You want us to do something
12 about it, rather than just say, for your information,
13 attached is a copy of X. We have enough material to
14 read. The Federal Rules of Civil Procedure, 15D,
15 provides some guidance as to when to use supplemental
16 pleadings.

17 Motions for summary disposition - I would
18 suggest you look at 63 NRC 116, again. It seems to
19 me, and again I'm speaking only for myself, that
20 motions for summary disposition are only appropriate
21 if there's no dispute on any factual issue.

22 And, thus, if there's a battle of expert
23 opinion, that is not very appropriate for a motion for
24 summary disposition. Don't use them just to educate
25 the Board, don't use them as a discovery device.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 Motions for summary disposition require that the
2 moving party list what they claim to be undisputed
3 facts, and require that the opposing party respond to
4 each of those undisputed facts.

5 That can look a lot like an interrogatory,
6 or maybe motion for admission. Don't file them just
7 for discovery purposes. But if you want to have
8 request for admissions, to submit a request for
9 admissions, and we think that might be a good way to
10 hone down some of the disputes, please let us know,
11 and I think that should be an appropriate thing to do,
12 a request for admissions. Maybe you can work up
13 stipulations.

14 Finally, citations. Please try to cite
15 the relevant regulations to us. It helps us a lot in
16 terms of understanding your motion and your reasoning,
17 and if case law is involved, I find it very important
18 for the lawyers to distinguish between a holding of a
19 case and dicta in a case. Many of the cases are rife
20 with wonderful statements of principles, but
21 oftentimes that's not what they're holding at all, and
22 I think we need to try to understand. We try to
23 distinguish between those two.

24 I think that's all I've got at the moment.
25 Any other items, Judge Wardwell, Judge Elleman?

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 JUDGE ELLEMAN: This Judge Elleman. I
2 would just make a very brief comment. I heard at the
3 beginning of this conversation that the parties had
4 made a great deal of progress in discussing issues.
5 And I would express the hope you continue those
6 discussions in the hope that some of these contentions
7 could be resolved in advance of a hearing.

8 JUDGE KARLIN: I think we all would agree
9 with that. And I think you all have, obviously, spent
10 some time thinking about the issues and conferring.
11 Thank you for your patience, and your contribution.
12 What we'll be doing, I don't have an action item list
13 here, but we will be issuing an initial scheduling
14 order which we're obliged to do, that will lay out how
15 we hope the schedules will proceed. It will be
16 triggered or contingent upon the events of the Staff's
17 schedule, obviously. And we will try to get that out
18 before Thanksgiving, let's say.

19 In the meantime, the obligation of 2.323
20 to file a motion objecting to any of the documents on
21 any of the privilege logs is suspended until we issue
22 that order, and we'll set a time frame for the initial
23 objections, and probably speak to the issue of any
24 later objections. The later objections will be a 10-
25 day rule, just like 2.323 provides.

NEAL R. GROSS

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

1 And with that --

2 MS. YOUNG: Judge Karlin, this is Ms.
3 Young.

4 JUDGE KARLIN: Yes, Ms. Young.

5 MS. YOUNG: In terms of the Board's
6 comment on the use of requests for admissions, would
7 the Board contemplate that a motion would be filed
8 before that would be used? I can understand how
9 stipulations would be appropriate in terms of
10 agreements among the parties, but the Staff's reading
11 of 2.1203(d) is that requests for admissions, which is
12 a general discovery device, is not available in the
13 Subpart L proceeding, and the parties were to get
14 permission for that.

15 JUDGE KARLIN: Yes, I'm not sure. I think
16 that a motion for leave to file requests for
17 admissions would be the appropriate mechanism. I'm
18 not sure whether this is totally barred because it's
19 a form of discovery or not. I mean, I think it's also
20 a form of stipulations, of settlements, in line with
21 what's -- let's look at Item 12 on this list -
22 opportunity to develop stipulations or admissions of
23 fact in accordance with 2.329(c)3. We want to
24 encourage that, so I think we will be - I think that
25 is available here. I think a motion for leave would be

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 the appropriate entre to that. But I think we would
2 probably encourage, and if it's not just some
3 inappropriate discovery - I mean, I think it would be
4 a good way to boil down some of these. But I agree
5 with you, I think there is a problem, and I think
6 motions for leave to file requests for admissions
7 would be the best way to approach it.

8 MR. ROISMAN: Mr. Chairman, this is Mr.
9 Roisman. I had one question for you about motions in
10 limine, and particularly, motions in limine with
11 regard to admissibility of expert witness testimony.
12 I assume that motions like that would not be able to
13 be filed until after the testimony has been filed
14 identifying who the witness is, and what the witness
15 proposes to say.

16 Will the Board entertain those motions
17 just under the normal 323 - 10 days after, or is there
18 a different procedure to use? And sometimes, if the
19 motions are granted, a summary judgment motion might
20 then be appropriate, because without the witness, the
21 party would be unable to prove their case.

22 And so I'm wondering whether or not,
23 regardless of what you do on the summary judgment
24 generically that we discussed before, will the order
25 recognize an opportunity for a summary judgment motion

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 to be filed if a witness is excluded as the result of
2 the granting of an in limine motion?

3 JUDGE KARLIN: That's a good point. I
4 think we - the motions in limine, we would probably
5 set a time frame for motions in limine, which will be
6 after the testimony is submitted, initial and
7 rebuttal. The deadlines for motions for summary
8 disposition may have a relief valve if there's
9 something extraordinary that comes up, but I think -
10 so that's a good point. We'll take it into
11 consideration.

12 Keep in mind, that at that point, motions
13 for summary disposition right before the hearing might
14 be not very - not a very wise use of our time, or
15 anybody's time. And we have the authority to prohibit
16 or bar them, and we're just going through a hearing.

17 And the hearing may be very short. The
18 hearing is the same as the motion for summary
19 disposition. Submit it to us, your motion and your
20 documents, and your experts, and your experts, and we
21 decide whether we like them or not, and we make a
22 ruling. The only difference is in an L proceeding, we
23 actually can weigh the credibility of two different
24 experts; whereas, in a motion for summary disposition,
25 we cannot. There's a factual dispute, motion for

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 summary disposition denied.

2 MR. LEWIS: Judge Karlin, this is Mr.
3 Lewis. I would think in the circumstance that Mr.
4 Roisman described, where one party doesn't submit any
5 testimony on its issue, or otherwise defaults, that's
6 just grounds for a motion to dismiss.

7 JUDGE KARLIN: Yes. Okay. Well, I'm not
8 sure whether we have a real good answer at this point,
9 but I think we will try to accommodate all reasonable
10 procedural requirements and administer this in a fair
11 way. And I appreciate your time and effort here. We
12 finished this in less than two hours, happily so.

13 MS. YOUNG: Judge Karlin.

14 JUDGE KARLIN: Yes?

15 MS. YOUNG: Question from the Staff,
16 please.

JUDGE KARLIN: Yes, Ms. Young?

17 MS. YOUNG: Do the parties assume that
18 given that there was general agreement on the 30-day
19 update, that the parties are not required to do an
20 update of their disclosures and hearing files on
21 November 6th, which is our estimate of when it's due
22 next?

23 JUDGE KARLIN: Good question. Answer is
24 yes. We'll hold that in abeyance until we issue our
25 ruling.

1 MS. YOUNG: Thank you.

2 JUDGE KARLIN: Very good. That's a good
3 point.

4 MR. LEWIS: Judge Karlin, may I raise a
5 point?

6 JUDGE KARLIN: Yes, this is Mr. Lewis?

7 MR. LEWIS: I'm sorry. I was thinking
8 what you were saying on summary disposition. As I
9 mentioned earlier, the trial before the Environmental
10 court will probably occur maybe March or April, with
11 a decision sometime thereafter, and it's very possible
12 that one side or the other will then be collaterally
13 estopped on certain issues. And I would presume that
14 such a motion, which is a legal motion, would be
15 appropriate at any time.

16 JUDGE KARLIN: I'm not going to try to
17 resolve that at this point.

18 MR. LEWIS: I just didn't want it
19 precluded inadvertently.

20 JUDGE KARLIN: We're not ruling on
21 anything at this point, but we're going to set a
22 deadline for motion for summary disposition, and we do
23 not want to have a train wreck at the end of this
24 proceeding, where we've got a bunch of motions for
25 summary disposition, and the duty to prepare for the

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 Subpart L proceedings, so we're going to try to move
2 that out to some reasonable date. We're not going -
3 and that's our approach.

4 All right. Anything else? Great. Thank
5 you. Thank you to everyone for participating.

6 (Whereupon, the proceedings went off the
7 record at 11:54:41 a.m.)

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

(202) 234-4433

www.nealrgross.com

CERTIFICATE

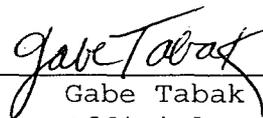
This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: Pre-Hearing Conference of
Vermont Yankee Nuclear Power
Station

Docket Number: 50-271

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.



Gabe Tabak
Official Reporter
Neal R. Gross & Co., Inc.

NEAL R. GROSS

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