

RAS 12574

# Official Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

Title: Entergy Nuclear Operations, Inc.  
Pre-Hearing Conference

DOCKETED  
USNRC

November 22, 2006 (11:20am)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Docket Number: 50-2930LR

Location: (telephone conference)

Date: Monday, November 20, 2006

Work Order No.: NRC-1314

Pages 494-556

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TEMPLATE = SECY-032

SECY-02



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

(1:06 p.m)

1  
2  
3 JUDGE YOUNG: Let's go on and go on the  
4 record.

5 My name is Ann Marshall Young. I'm the  
6 Chair of the Licensing Board, and I have here with me  
7 in Rockville Judge Paul Abramson, Judge Richard Cole,  
8 and our law clerk Jared Lindsay.

9 I'd like to ask all of the parties to  
10 identify yourselves starting with staff. Spell your  
11 names for the court reporter.

12 And, Court Reporter, if you need any  
13 additional spellings or spellings of our names, we can  
14 also stay on at the end of the hearing to do that.

15 Let's start with the staff. Indicate if  
16 you have anyone with you who is with you.

17 MS. UTTAL: Yes, this is Susan Uttal, U-  
18 t-t-a-l. I'm counsel for the staff. I have quite a  
19 few people with me from the Office of OGC. I have  
20 David Roth and Molly Markman, who is one of our honor  
21 law grads, and then I have a lot of people from the  
22 staff. I'm not so sure that they all need to be  
23 introduced. I do have the two project managers, Perry  
24 Buckberg and Alicia Williamson with me. The rest of  
25 the people are basically here just for scheduling

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1 purposes, just to make sure that there's nothing  
2 interfering with whatever schedule we set up.

3 JUDGE YOUNG: Okay. Let's see. Entergy,  
4 Mr. Lewis.

5 MR. LEWIS: Judge Young, this is David  
6 Lewis, and I have with me my partner, Paul Gaukler.  
7 We're from the law firm Pillsbury, Winthrop, Shaw,  
8 Pittman, representing Entergy.

9 JUDGE YOUNG: Pilgrim Watch?

10 MS. BARTLETT: Yes. This is Molly  
11 Bartlett, B-a-r-t-l-e-t-t, from Pilgrim Watch, and  
12 it's just me today.

13 JUDGE YOUNG: Okay. Ms. Hollis, for the  
14 Town of Plymouth.

15 MS. HOLLIS: Yes. This is Sheila Hollis  
16 from the Town of Plymouth and with the firm of Duane  
17 Morris, and attending with me today are Helesa, H-e-l-  
18 e-s-a, Lahey, L-a-h-e-y, who is an associate, and Lee  
19 Lontz, L-e-e L-o-n-t-z, who is the legal assistant.

20 JUDGE YOUNG: The Town of Duxbury.

21 MR. NORD: Yes. It will be Kevin Nord of  
22 the Sub Fire Chief Emergency Management Director, and  
23 the last name is spelled N-o-r-d. And I also have  
24 Richard MacDonald, Town Manager, and his last name is  
25 M-a-c in the spelling.

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1 JUDGE YOUNG: Okay. So with regard to any  
2 reporters who are on the line at this time and Mr.  
3 Sheehan, the Public Affairs Office in Region I,  
4 obviously you're welcome to listen, but I think all  
5 parties should remember that this is a legal  
6 proceeding, and while in conferences judges and  
7 parties may be somewhat less formal than in an actual  
8 hearing, it must be remembered that the general  
9 expectations regarding appropriate decorum in legal  
10 proceedings will apply.

11 I'm just going to go through a few things.  
12 This is Judge Young again. I forgot to identify  
13 myself.

14 I'm just going to go through a few things  
15 at the outset to address a few procedural matters and  
16 then give you sort of an overview of what we expect to  
17 do today.

18 First, as has been sort of indicated  
19 informally already, but I want to indicate it more  
20 formally now, to avoid confusion and to follow the  
21 generally expected legal process, we will expect each  
22 party to identify one lead lawyer or representative  
23 who will speak for that party at all times and in all  
24 instances, except when, for example, a witness may be  
25 questioned by a different lawyer or when the lead

1 lawyer or representative is unavoidably unavailable  
2 and has designated another person to act in his or her  
3 place.

4 So that unless necessary and unavoidable,  
5 when response or notification is needed from parties,  
6 including on scheduling matters, this should be done  
7 through the lead lawyer or representative only, who  
8 will have already spoken with all of the other  
9 participants in the process and ascertained their  
10 availability so that all parties and the Board can  
11 know when they're heard from that lead lawyer or  
12 representative that what he or she has said represents  
13 that party's position on whatever is at issue, whether  
14 it be procedural, scheduling, substantive, or other.

15 I know there was a little confusion on  
16 that before, but we do want to require that each party  
17 designate one person for that purpose. You can either  
18 do it today at this time or by next Monday I think  
19 would be a reasonable time to do that, which would be  
20 November 27th.

21 MS. HOLLIS: Your Honor, this is Sheila  
22 Hollis. I have a quick question.

23 JUDGE YOUNG: Yes.

24 MS. HOLLIS: If the lawyer has already  
25 been identified previously, like in our case, do we

1 need to submit again?

2 JUDGE YOUNG: No, not if you just tell me  
3 today that you're still the lead lawyer. That's fine.  
4 Actually, why don't I just go through all of the  
5 parties?

6 Ms. Uttal, are you going to stay the lead  
7 lawyer for this purpose or is Mr. Ross going to be?

8 MS. UTTAL: No, I'm the lead lawyer.

9 JUDGE YOUNG: Okay, and Ms. Bartlett, I'm  
10 assuming you're the lead lawyer because you're the  
11 only lawyer for Pilgrim Watch.

12 MS. BARTLETT: Yes, I am.

13 JUDGE YOUNG: Entergy, Mr. Lewis, are you  
14 the lead lawyer?

15 MR. LEWIS: That's correct, Judge Young.

16 JUDGE YOUNG: And, Mr. Nord, I know that  
17 you're not -- well, I'm assuming that you're not a  
18 lawyer. Maybe I'm wrong.

19 MR. NORD: No, I don't have that  
20 classification. Thank you.

21 JUDGE YOUNG: Okay. Please, if you would  
22 -- actually, let me just back up here. Did you follow  
23 what I was saying before about the need to identify  
24 one person who would be the lead lawyer or  
25 representative?

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1 MR. NORD: Yes, and that will be myself as  
2 far as being the lead representative for the Town of  
3 Duxbury.

4 JUDGE YOUNG: Okay. So that's not only  
5 for our purposes but for all other parties' purposes.  
6 Whenever there's something that needs to be done by a  
7 certain time, service on that lead lawyer or  
8 representative or notice from that lead lawyer or  
9 representative will be what we're going to be looking  
10 to.

11 And sometimes people who aren't lawyers  
12 don't understand all of the legal processes, and  
13 that's normal. Feel free to ask questions.

14 One of the rules that we'll follow is that  
15 the party, each party will speak through their lead  
16 attorney or representative at all times, and we won't  
17 have more than one speaking for a party to avoid  
18 confusion unless as I say the lead lawyer or  
19 representative designates the other or for some  
20 particular reason there's a need to have the other  
21 person, if there is another person, speak for them.

22 One other sort of procedural matter.  
23 Since the Towns of Plymouth and Duxbury -- actually  
24 let me stop there for a minute. It sounds like  
25 someone is knocking on something, tapping on

1 something.

2 MS. UTTAL: It sounds the same on our end.  
3 It's maybe a pen or something.

4 JUDGE YOUNG: Maybe it's an electrical  
5 thing. Okay.

6 All right. Then the next procedural  
7 matter, the Towns of Plymouth and Duxbury do have the  
8 right to participate in this proceeding under 10 CFR  
9 Section 2.315, and under that section, they have the  
10 right to introduce evidence, interrogate witnesses  
11 where cross examination is permitted and provide  
12 advice without requiring them to take a position, file  
13 proposed findings of fact and conclusions of law.

14 What would go with the right -- well,  
15 first, since you do have that right, assuming no  
16 objection, we will permit the Towns of Plymouth and  
17 Duxbury to participate on both admitted contentions as  
18 they have given notification that they do wish to  
19 participate on both of the contentions.

20 Since you do have the rights that I just  
21 listed, what would go with that would be an  
22 obligation, we think, to participate in discovery and  
23 disclosure of witnesses and documents, other evidence  
24 as set forth in 10 CFR 2.336. But we did want to hear  
25 from each of you as to what your expectation was with

1 regard to presentation of evidence and hear from all  
2 parties on the issue of discovery.

3 Now, we can hold off on that until we get  
4 to discussing discovery issues more generally, but I  
5 did want to let you know that we want to address that  
6 today.

7 Another thing that we would like the  
8 parties to think about and advise us later on in the  
9 conference is when do you think it would be  
10 appropriate to have additional limited appearance  
11 statements? We have had one session, and I guess  
12 maybe I should not assume that you want to have more,  
13 but if we have more, when would be an appropriate time  
14 for that?

15 We will be going over a sort of tentative  
16 schedule today that's based on the model milestones  
17 and the information that's been provided by the staff.  
18 We have -- is someone having a fire drill?

19 MR. NORD: --was just going off. Sorry  
20 about that.

21 JUDGE YOUNG: Oh, okay. Let's see. Where  
22 was I?

23 PARTICIPANTS: Milestones.

24 JUDGE YOUNG: Right. We have made a  
25 tentative schedule that we want to discuss with you

1 today based on the model milestones. We assume that  
2 all parties have familiarized themselves with the  
3 model milestones, and the procedural rules that apply  
4 to this proceedings.

5 Just to give you an overview, the main  
6 thing, I guess, that we want to do today is go over  
7 the tentative schedule with some tentative dates  
8 plugged in there.

9 I know what I was going to say before, and  
10 that is Entergy counsel has indicated that it might be  
11 appropriate to have an earlier date for summary  
12 disposition motions, which we think is a good idea.  
13 If anyone disagrees with that, we want to hear your  
14 positions on that.

15 The normal time that we have already  
16 specified as the time period for submitting new  
17 contentions would be 30 days after receipt of the new  
18 information, and one of the reasons we went through  
19 designating who would be lead counsel or lead  
20 representative is as soon as whatever information is  
21 at issue is delivered to and received by or received  
22 at the office of, I should say, the lead counsel or  
23 lead representative, that would be the date that that  
24 30 days begins to run.

25 I also want to talk about discovery and

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1 disclosure issues that I mentioned before and also  
2 that have been addressed by the parties' joint  
3 stipulation and motions. If there's any other  
4 scheduling issues, for example, a site visit, to  
5 address those.

6 And I guess before we go any further, let  
7 me ask the parties do any of you have any additional  
8 items that you'd like to add to the agenda.

9 (No response.)

10 JUDGE YOUNG: Hearing none, I assume no  
11 one has any additional items.

12 MR. LEWIS: No, Judge. This is David  
13 Lewis. No.

14 JUDGE YOUNG: Before we go any further,  
15 let me just ask. I don't know if you've been  
16 following the other case that Mr. Lewis is involved  
17 with that Mass AG was involved with, the Vermont  
18 Yankee license renewal case, but I believe they set up  
19 summary disposition motion deadlines for this coming  
20 June, which would be after the draft SEIS and SER have  
21 been issued, but prior to the final SEIS and SER.

22 We were thinking about doing pretty much  
23 the same thing. Does any party wish to be heard on  
24 that issue?

25 MR. LEWIS: Judge Young, this is Mr.

1 Lewis.

2 That was what I was thinking. It would be  
3 Entergy's proposal that summary disposition motions  
4 would be due no later than 45 days before those final  
5 documents, therefore any summary disposition motion on  
6 Pilgrim Watch Contention 1, which is the safety issue,  
7 would be due 45 days before the final SER or 45 days  
8 before it looks like it's July 1st is the date for  
9 that document.

10 And our proposal is on environmental  
11 contentions any motion for summary disposition would  
12 be due 45 days before the final SEIS is issued. It  
13 looks to me the date is 5/27. It would be 45 days  
14 before that.

15 And the rationale is once the final  
16 documents are out, then you might as well go to  
17 hearing. At that point the motions for summary  
18 disposition just add a month and half of delay. So  
19 the most efficient way is if there are summary  
20 disposition motions due in before those final  
21 documents.

22 That's our proposal.

23 JUDGE YOUNG: I guess when we were  
24 thinking about it, the one way that we were thinking  
25 differently would be -- and I guess it's primarily

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1 because even once the draft documents are out, we  
2 don't know for sure exactly when the final documents  
3 are going to be out.

4 And as matter of fact, let me sort of  
5 backtrack here. In coming up with a tentative  
6 schedule, looking at the model milestones and then  
7 looking at the procedural rules, we didn't really  
8 intend to go in great detail into this.

9 But in going through that, I realized that  
10 there were some places where procedural rules and  
11 model milestones might not work with each other. For  
12 example, I believe milestones require that a hearing  
13 start, let's see, 175 days after issuance of the SER  
14 and NEPA document, and then 20 days before that would  
15 be the written direct testimony.

16 However, in the rule, there's a 20-day  
17 time period after submission of the direct testimony  
18 for submitting rebuttal testimony, and there may be a  
19 time for replies. In any event, that would obviously  
20 not work very well because 20 days for rebuttal  
21 testimony would put you on the very first day of the  
22 hearing, and it wouldn't give any of the parties any  
23 time to read that, let alone the Judges, as Judge  
24 Ambramson has just said.

25 So what we've done is we've tried to go

1 through and take into account the milestones, relevant  
2 procedural rules, and come up with something that  
3 seems to us to take into account all of the different  
4 things that might occur.

5 We're going to go through it in a little  
6 while. What we realized when we did this is that even  
7 though it seems like everything is a bit off into the  
8 future, that we really will have some party or the  
9 Judges will be doing something most every month, if  
10 not every month, between now and the end of this  
11 proceeding.

12 So with that said, and the revision to  
13 what Mr. Lewis said of setting the deadline for  
14 summary disposition motions starting from the issuance  
15 of the draft documents rather than counting back from  
16 the issuance of the final documents, does any other  
17 part have anything that you'd like to say in agreement  
18 or disagreement about the idea for doing summary  
19 disposition motions earlier?

20 MS. BARTLETT: Yes, Judge Young, I do.  
21 this is Molly Bartlett, Pilgrim Watch.

22 You have to forgive me because I'm in a  
23 little bit of a muddle over all of these dates. I've  
24 started kind of going around in circles. That is to  
25 say some of them seem to be inconsistent.

1                   But if you could possibly go through your  
2 tentative schedule before addressing this because I  
3 can't quite see where everything is landing the way it  
4 has been described.

5                   JUDGE YOUNG: Okay.

6                   MS. HOLLIS: And, Your Honor, this is  
7 Sheila Hollis for Plymouth, and it would be helpful,  
8 too, Your Honor, if you could just provide -- shed a  
9 little light on the motion for summary disposition and  
10 what would be subject to the summary disposition  
11 motions, what subjects would be covered. Is it the  
12 two contentions that have been admitted?

13                  JUDGE YOUNG: Right.

14                  MS. HOLLIS: Okay.

15                  JUDGE YOUNG: Right. Yes, and before I go  
16 through the schedule, does anybody else want to be  
17 heard just on the general idea of doing summary  
18 disposition motions earlier than the model milestones?

19                  MS. BARTLETT: This is Molly Bartlett  
20 again.

21                  Just to finish the thought that I was  
22 trying to express, I was going through these model  
23 milestones assuming that they were referring to the  
24 final SER an final EIS.

25                  JUDGE YOUNG: Yes, and we are assuming the

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1 same thing.

2 MS. BARTLETT: Okay, all right.

3 JUDGE ABRAMSON: This is Judge Abramson.

4 Let me just say with respect to summary  
5 disposition motions -- can you all hear me all right?

6 MS. UTTAL: It sounds like an Edward Munch  
7 painting come to life scream.

8 JUDGE ABRAMSON: Ut-oh, I don't know if  
9 that's good or bad.

10 (Laughter.)

11 JUDGE ABRAMSON: With respect to summary  
12 disposition, if you really think about this, what  
13 you've got on the table in front of us now are two  
14 contentions that are in many ways amenable to a cure,  
15 and what we've often seen in proceedings like this is  
16 that the applicant will come in with some sort of a  
17 cure, and having cured the alleged fault, move for  
18 summary disposition, and that could happen well before  
19 even the drafts are out, we don't mean to preclude  
20 that possibility by setting a deadline for the summary  
21 disposition motions.

22 Now, once there is a cure, even if summary  
23 disposition is granted, what can also happen at that  
24 point is that the material that effectuates the cure  
25 now is new material and can be the subject of an

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1 amended or a new contention.

2 So there's a very fluid process, and when  
3 we talk about setting a deadline for summary  
4 disposition, we're really trying to get the last  
5 summary disposition motions out of the way enough in  
6 advance of a hearing so that it doesn't get in the way  
7 of our review for the hearing.

8 MS. UTTAL: Judge Abramson, this is Susan  
9 Uttal.

10 What about if the opposition, if summary  
11 disposition is not granted and something comes out in  
12 the final papers that would make a summary disposition  
13 more viable?

14 JUDGE ABRAMSON: The same thing, I think.

15 JUDGE YOUNG: Yes, this is Judge Young  
16 again.

17 Also, I agree. I think the idea of having  
18 the final deadline for summary disposition motions,  
19 not precluding motions earlier, but precluding motions  
20 later, is that if you wait until after the final  
21 documents are issued, then you're really making it  
22 very difficult, if not impossible, for the parties and  
23 the Board to prepare adequately for a hearing through  
24 the submission of written testimony, rebuttal  
25 testimony, reading that, becoming familiar with it,

1 putting a deadline in there for filing questions for  
2 us to ask, for filing any request to cross examine.

3 So I think that the way we were thinking  
4 about it was that it would be a final deadline for any  
5 summary disposition motions, and those would be on any  
6 admitted contention to date. If any new information  
7 of any sort came in, then that would start a 30-day  
8 time period running for anyone to file any new  
9 contentions. Then there would be a response time and  
10 a reply time, and there might be argument on whether  
11 it's new or late filed or so forth, but if another  
12 contention is admitted, then anything that was  
13 admitted prior to the summary disposition motion  
14 deadline -- and we're thinking in terms of one rather  
15 than more than one -- then those could be subject to  
16 the same type of motion.

17 MS. HOLLIS: Your Honor, it's Sheila  
18 Hollis again, and with respect to the late contentions  
19 that may be submitted, would these late contentions  
20 have to be related to existing contentions or would  
21 they be entirely new, separate, and apart as things  
22 arise in the hearing?

23 JUDGE YOUNG: They could be on anything.  
24 It would not be limited to the ones that are currently  
25 before us.

1 I think another example of something  
2 besides the draft documents that come out that  
3 sometimes prompts a new contention would be RAI  
4 responses. Now, there is case law that says that you  
5 can't rely on RAIs. That's request for additional  
6 information. Excuse me. That's an acronym there.

7 That a party cannot rely on RAIs to  
8 support a contention, but if there's an RAI response  
9 that provides new information, then that might be the  
10 subject of a new contention, and then the parties  
11 would argue over whether it's really new; if it's not  
12 really new, is it timely, et cetera, et cetera.

13 So there's that standing 30-day time  
14 period for that. We're going to go through, as we go  
15 through the tentative deadlines. I think the general  
16 approach to contentions would be that there would be  
17 a two to three day period after the original  
18 contention for the responses, and then maybe a week  
19 after that for replies, and then we would try to get  
20 our ruling done within a month or so after that.

21 JUDGE ABRAMSON: If I may, Judge Abramson  
22 again.

23 Just for clarity for the intervenors and  
24 the two towns, the way the process works is you're  
25 expected at this point to have submitted all of your

1 arguments based on the information you have, and so  
2 you're allowed as new information comes in to  
3 challenge whether something in that new information  
4 leads to a flaw in the license application.

5 But only the new information. So--

6 MS. HOLLIS: Does it have to be new and  
7 significant?

8 JUDGE ABRAMSON: Yes, of course, it has to  
9 be significant. Otherwise it's not significant.

10 MS. HOLLIS: Okay.

11 JUDGE ABRAMSON: And you can read all  
12 about that in the case law, but the point we're trying  
13 to make here is that what we're thinking, what we're  
14 going to establish is a 30-day window during which if  
15 there is a challenge based on new and significant  
16 information, we will find it timely, and we will be  
17 focusing on whether or not it is new and significant.

18 MS. HOLLIS: Thank you.

19 Sheila Hollis. Sorry. I didn't identify  
20 myself

21 JUDGE YOUNG: Anything else on summary  
22 disposition generally before we go into talking about  
23 some actual tentative dates to start us moving?

24 MS. BARTLETT: Molly Bartlett again.

25 Yeah, I just think it will become clearer

1 to me once you run through the dates. I'm still  
2 having trouble grappling with 12]05 versus the model  
3 milestones and all of those dates in between.

4 JUDGE YOUNG: Okay.

5 MS. BARTLETT: So feel free.

6 JUDGE YOUNG: Okay.

7 JUDGE ABRAMSON: Just bear in mind that  
8 the model milestones are just that. They're models.

9 MS. BARTLETT: Yes.

10 JUDGE YOUNG: I'm going to start on this  
11 tentative schedule in just a moment. There's just a  
12 couple of other things I wanted to note first.

13 We assume that this is not the case, given  
14 -- well, we assume that this is not the case that any  
15 party would want to do a hearing on the safety  
16 contentions earlier than the final SER. That is an  
17 option, I think, under the model milestones, but is  
18 any party interested in that or do you think that  
19 would be appropriate?

20 (No response.)

21 JUDGE YOUNG: Hearing no response, we're  
22 assuming that also, and we have not built that into  
23 the schedule.

24 Again, the trigger date for various  
25 deadlines would be the date of receipt by the lead

1 counsel or representative -- hello? Do we have  
2 everyone?

3 MR. LEWIS: Judge, this is Mr. Lewis. I'm  
4 still here.

5 MS. HOLLIS: Sheila Hollis here.

6 MS. BARTLETT: Molly Bartlett.

7 MR. NORD: Still here.

8 JUDGE YOUNG: Court reporter? Court  
9 reporter?

10 THE REPORTER: You've got me.

11 JUDGE YOUNG: Okay. Great.

12 The other thing that we wanted to indicate  
13 is that we want the staff to update us on the first of  
14 each month as to any anticipated changes in the  
15 delivery dates of the draft and final documents.  
16 Right now everyone has been notified of the dates for  
17 those, and we're going to work off those in our  
18 tentative schedule.

19 If they should change so that they move  
20 these things forward, obviously make them later than  
21 they would go forward by day for day unless there's  
22 something that would move that a little further to  
23 account for some holiday or whatever.

24 MR. LEWIS: Judge Young?

25 JUDGE YOUNG: Yes.

1 MR. LEWIS: This is Mr. Lewis.

2 May I make a clarification just for the  
3 benefit of the parties and interested states?

4 The initial safety evaluation report that  
5 is issued and is scheduled for March 1st, my  
6 understanding is it's not a draft. It's the safety  
7 evaluation. It's the one that has open items on  
8 certain issues.

9 JUDGE YOUNG: Okay.

10 MR. LEWIS: Whatever issue is addressed  
11 without an open item in that FTR is my understanding  
12 that is the final deposition on that issue.

13 MS. UTTAL: This is Susan Uttal.

14 That's correct, Your Honor.

15 JUDGE ABRAMSON: Do I understand correctly  
16 then from the Applicant and staff that if the issues  
17 that are subject to the contention are addressed in  
18 those without open items, that that would be the end  
19 of it, that it won't be modified going into the final?

20 JUDGE YOUNG: And let me add a question to  
21 that. Obviously the most important thing for our  
22 purposes at this point -- it might become broader  
23 later -- is on the safety issue of the underground  
24 pipes and tanks that we've admitted in Contention 1,  
25 does the staff anticipate that that will be part of

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1 the March 1st SER or the July 1st?

2 MS. UTTAL: Well, it will be in both, but  
3 it could be that there are open items March 1st.

4 JUDGE ABRAMSON: That's the point.

5 JUDGE YOUNG: My question is will there be  
6 any open items left after March 1st.

7 MS. UTTAL: It's likely, but I don't know  
8 for sure.

9 JUDGE YOUNG: Do you want to take a  
10 minute?

11 THE REPORTER: Will people identify  
12 themselves?

13 JUDGE YOUNG: That was Susan Uttal, and  
14 this is Judge Young and Judge Abramson also spoke for  
15 just a minute.

16 Well, I think we need to know that. I  
17 think that's fairly significant in terms of the  
18 schedule. So if you do have a predicted date on when  
19 that subject is expected to be complete without any  
20 open items, we would like for you to notify us as soon  
21 as possible.

22 MS. UTTAL: Well, as of now, it will be  
23 the July date. If something changes, I'll let you  
24 know.

25 JUDGE YOUNG: Okay.

1 MR. LEWIS: And Judge Young, this is Mr.  
2 Lewis.

3 I wasn't suggesting that we should start  
4 the hearing after that initial SER. A lot of times  
5 you still wait for the final SER to come out simply  
6 because the staff reviewers are working on multiple  
7 issues, and it's generally the preference to allow  
8 those reviewers to finish their work before you  
9 require them to go to hearing, and they may be working  
10 on other issues.

11 I was simply pointing out though that that  
12 initial SER isn't a draft.

13 JUDGE YOUNG: Consider our use of the word  
14 "draft" sort of shorthand, incomplete, unfinished,  
15 whatever you want to call it.

16 Anything else before we move into talking  
17 about the actual schedule or the actual tentative  
18 schedule? Pardon me.

19 (No response.)

20 JUDGE YOUNG: Okay. There's several  
21 things that we have not included in this, and we will  
22 want you to address. So we'll go back up and talk  
23 about these in a minute, and that is the site visit,  
24 if any, staff declaration of position on contentions,  
25 which I think was done in the Vermont Yankee case,

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1 which might be helpful to set a deadline for that, and  
2 then also a deadline for a proposed protective order  
3 and nondisclosure agreement regarding any privileged  
4 issues in your disclosures.

5 If you haven't looked at the Vermont  
6 Yankee order that was issued Friday, they set a  
7 deadline for the submission of an agreed proposed  
8 protective order and nondisclosure agreement, and then  
9 if you can't agree, deadlines for submission of  
10 alternate ones, and so forth.

11 We haven't addressed those. We'll come  
12 back to them, but just moving into what we're thinking  
13 here in terms of tentative dates, based on the draft  
14 SEIS being issued on December 8th, we would  
15 tentatively set the deadline for new contentions on it  
16 for January 8th, responses on January 22nd, replies on  
17 January 29th, and then we would try to get our ruling  
18 done within the next month.

19 The deadline to adopt any admitted  
20 contention would be ten days after the ruling. A  
21 similar schedule, and I've tried to make these dates  
22 fall not on weekends, the incomplete SER, the date  
23 that we've been given is March 1st. Any new  
24 contentions based on it would be due April 2nd,  
25 responses April 16th, replies April 23rd, a ruling

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1 within the next month or so, the adoption deadline ten  
2 days after the ruling.

3 Then to sort of take into account those  
4 two sets of dates, the motion for summary disposition  
5 deadline would be June 11th, and that would be on all  
6 issues, on both contentions that have been admitted  
7 and any others that may have been admitted to that  
8 point.

9 Responses on June 29th, rulings a month  
10 after that, and then that would take us to the  
11 projected date for the final SER, which is July 1st.

12 Then any new contentions based on the  
13 final SER would be July 31st, responses August 6th,  
14 replies August 13th, the ruling within the next month  
15 after that, month or so. The final SEIS, July 27th.  
16 New contentions, August 27th, responses September  
17 10th, replies September 7th, a ruling within the next  
18 month or so after that.

19 Final witness list, and obviously you're  
20 going to be updating each other monthly, assuming we  
21 approve your proposed stipulation and motion, and we  
22 don't have any problem doing that. However, I think  
23 it is a good idea to make those disclosures go back to  
24 the 14-day required period in the rule after the  
25 issuance of the final document and then have the

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1 actual final witness list be the end of October,  
2 October 30th, unless for unavoidable reasons there are  
3 supplementary responses that are filed after that  
4 date.

5 Now, the way we look at the duty to  
6 supplement your disclosures is that that would  
7 continue through the hearing until the record is  
8 closed. So that if any party learned of new  
9 information that would have been disclosed earlier but  
10 for the fact that you didn't know about it, you would  
11 disclose that up until the record is closed, and if  
12 any disclosure is made that would warrant calling a  
13 new witness because it was unavoidable, because you  
14 didn't know about the need for it earlier, and none of  
15 your witnesses that you've listed can address that,  
16 then that final date could be moved forward with  
17 regard to that one witness or any that are necessary  
18 to deal with any such information.

19 We don't expect that that kind of thing  
20 would happen, but that would be the sort of safety  
21 valve for that.

22 So after the final witness list on October  
23 30th, then we were thinking of November 12th for  
24 requests under 10 CFR 2.310(d), to address any part of  
25 the hearing under Subpart G based on disclosure of

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1 eyewitness and/or issues of motive or intent, anything  
2 that arose as a result of receiving those witness  
3 lists.

4 Then December 3rd, 2007, for the  
5 simultaneous filing of statements of position, written  
6 direct testimony, and exhibits.

7 December 17th for simultaneous filing of  
8 rebuttal statements, testimony and exhibits.

9 January 7th, 2008 for proposed questions  
10 for the Judges to pose to witnesses under 10 CFR  
11 2.1207.

12 On the same date, January 7th, motions to  
13 allow cross examination under 10 CFR 2.1204, including  
14 a cross examination plan as set out in that rule.

15 Any of these obviously can come in  
16 earlier, but we're thinking about these as tentative  
17 filing deadlines.

18 The same date, January 7th for any motions  
19 in limine. That's l-i-m-i-n-e, and Mr. Nord's motion  
20 to exclude some evidence because it's not relevant or  
21 shouldn't come in under whatever theory the party  
22 might have based generally on the rules of evidence.

23 We don't follow the rules of evidence  
24 formally, but that would be a deadline for those types  
25 of motions.

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1                   January 14th would be the deadline for  
2 responses to any motions that were filed on January  
3 7th or any proposed questions, et cetera.

4                   We would try to get our ruling on those  
5 out by early February. I've got February 5th down  
6 here tentatively.

7                   Under the model milestones, we would have  
8 been January 18th for the hearing, and some of these  
9 other deadlines would have been later. What we've  
10 done is we've moved some of the other deadlines  
11 backwards earlier, and we would try to start the  
12 hearing on February 26th to give everyone time to  
13 prepare, and as a weather fall-back because we were,  
14 frankly, a little bit concerned about going up to  
15 Plymouth in the middle of the winter, notwithstanding  
16 that last night on TV the pilgrims were able to  
17 weather the winter. I think some of them died, but we  
18 were --

19                   JUDGE ABRAMSON: We have the benefit of a  
20 little better technology.

21                   JUDGE YOUNG: We do.

22                   MS. BARTLETT: It's not so bad here.

23                   MS. HOLLIS: We're hoping to give you a  
24 little bit better reception than perhaps the poor  
25 pilgrims experienced on their trip over.

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1 JUDGE YOUNG: This is Judge Young again.  
2 I don't know if anyone knows what I'm  
3 talking about. History Channel had a thing on about  
4 what it was really like when the pilgrims came to  
5 Plymouth, and actually it made me sort of nostalgic to  
6 go up there again.

7 But we were a bit concerned about the  
8 weather. So we were thinking a tentative date to  
9 start the hearing would be February 26th, but we  
10 should probably put in a weather fall-back based on  
11 prior experience going to cold parts of the country in  
12 the winter, and so we were thinking March 11th for  
13 that.

14 And then following the hearing there would  
15 be deadlines for proposed findings of fact and  
16 conclusions of law, responses, and so forth.

17 I have a few other things just to go over.  
18 One, discovery issues, motions, possibility of  
19 settlement, and so forth, but having gone through that  
20 list of tentative dates, does that change or, Ms.  
21 Bartlett, do you want to address the summary  
22 disposition issue at this point based on that?

23 And we'd like to give all of you an  
24 opportunity to give any responses or say anything  
25 you'd like about this tentative schedule that we've

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1 sort of --

2 JUDGE ABRAMSON: Conjured.

3 JUDGE YOUNG: -- conjured here.

4 Ms. Bartlett, why don't you go first if  
5 you have anything?

6 MS. BARTLETT: Well, so I'm understanding  
7 you have June 11th as the -- and this is where you can  
8 see my confusion -- this is the last date for the --

9 JUDGE YOUNG: The last date for motions  
10 for summary disposition, and the reason for that is  
11 because that really gets us -- it's a little bit  
12 sooner than Mr. Lewis had suggested, and obviously it  
13 would be Mr. Lewis --

14 MR. LEWIS: Actually Judge, it's about the  
15 same because if you counted back 45 days it would have  
16 been June 15th. So it's very close.

17 JUDGE YOUNG: Right. It's close. And  
18 this is really for our benefit primarily I guess I'd  
19 have to say. Usually it's only the applicant,  
20 sometimes the staff who would be filing such motions.  
21 What it would require of the intervenors for the two  
22 towns would be to file responses and affidavits  
23 responding to the assertions of fact, and then we  
24 would rule on it following the general standard for  
25 summary disposition motions. We'd construe it in

1 favor of the opponent of the motion.

2 And then once those rulings are made, that  
3 have been set as a deadline, then we would go to  
4 hearing on anything that we did not grant summary  
5 judgment on, and we wouldn't slow down the process for  
6 anyone, not just us, but for the parties to prepare  
7 for the hearing, which can be interrupted and made  
8 much more difficult if you have motions for summary  
9 disposition coming much closer to the hearing date.

10 MS. BARTLETT: This is Molly Bartlett  
11 again.

12 So instead of the two 1205 things 45 days  
13 before the commencement of the hearing, we're now sort  
14 of six months?

15 JUDGE YOUNG: Quite a bit, yes.

16 MS. BARTLETT: Yeah.

17 JUDGE YOUNG: Yeah.

18 MS. BARTLETT: Well, you've tried to  
19 explain. I have to mull it over, but I can't --

20 JUDGE YOUNG: I think it benefits --

21 MS. BARTLETT: -- understand why the rules  
22 are the way they are.

23 JUDGE ABRAMSON: Ms. Bartlett, generally  
24 this works it for your benefit.

25 JUDGE YOUNG: Right.

1 JUDGE ABRAMSON: It would be unusual for  
2 an intervenor to make a motion for summary  
3 disposition.

4 JUDGE YOUNG: Right. It's for your  
5 benefit and it's for our benefit, and since Mr. Lewis  
6 basically agrees to that, it seems reasonable to us.

7 MS. BARTLETT: Yes.

8 JUDGE YOUNG: So unless there's some  
9 strong expression of objection to that, then we'd  
10 probably go in that direction.

11 MS. UTTAL: Judge.

12 JUDGE YOUNG: Yes.

13 MS. UTTAL: I may have some problems with  
14 this. Can you give me a few minutes just to talk to  
15 the staff, please?

16 JUDGE YOUNG: All right. Keep in mind  
17 that we only have the conference line for a certain  
18 amount of time, but let's give you three minutes right  
19 now.

20 MS. UTTAL: Thank you.

21 JUDGE YOUNG: We'll just put you on mute.

22 (Pause in proceedings.)

23 JUDGE YOUNG: Okay. Is the staff ready?

24 MS. UTTAL: Yes, Judge. I'm a little  
25 worried about having the summary judgment motions so

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1 early. If the staff has not completed their analysis  
2 or there are some differences between the draft and  
3 the final, the staff may not be ready at that point to  
4 make a summary judgment motion, may have to make it  
5 after the final documents are filed. So we'd like to  
6 be able to have the opportunity after the documents  
7 are filed to make any summary judgment motion.

8 JUDGE YOUNG: We'll take your argument  
9 under consideration. However, I think given the  
10 importance of the model milestones to the Commission,  
11 I think we're going to have to probably give that  
12 precedence, but we will take your arguments under  
13 consideration.

14 MS. UTTAL: Okay, and one more thing. I  
15 have a problem with one date on this tentative  
16 schedule, and that's for the draft SER and the late  
17 contentions that may be filed after that for April  
18 2nd. I'm scheduled to be away until April 9th. I  
19 won't be back until April 10th, which since I'm the  
20 lead attorney and the other attorneys that I have with  
21 me here today are just basically temporary because  
22 they're on a Loss Program (phonetic) and they rotate  
23 between the different sections. Basically it all  
24 relies on me.

25 So that I won't be back until the 9th --

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1 until the 10th, and I won't have sufficient time to do  
2 a response by the 16th.

3 JUDGE YOUNG: What I think would be the  
4 best thing would be to go ahead and have your  
5 assistant counsel start drawing up the document. As  
6 we said, this is a tentative schedule. If it turns  
7 out that you still don't have time within the six days  
8 or seven days between the -- six days between the 10th  
9 and the 16th to edit the proposed draft response that  
10 your assistant counsel produces in your absence, then  
11 we can deal with that, but we want to try to avoid  
12 doing things like that if possible, especially where  
13 you do have another lawyer who can do draft documents  
14 like that.

15 Anything else?

16 MS. UTTAL: Okay. That's fine. Thank  
17 you, Judge.

18 JUDGE YOUNG: Any other parties have  
19 anything to add about the tentative schedule or any  
20 things that we may have left out of it?

21 MR. LEWIS: Judge Young, this is David  
22 Lewis.

23 Two observations. One is the period for  
24 filing new contentions after the final SER and final  
25 EIS, it's a rarity that there are new contentions on

1 those final documents. Typically if there are any,  
2 it's usually based on the draft EIS or on the initial  
3 SER with open items. Usually that shows most of the  
4 NRC staff's position.

5 JUDGE YOUNG: Right. It would only be the  
6 things that were open and are no longer open and we  
7 presume that something new has come out in the  
8 interim.

9 MR. LEWIS: That's right, and my  
10 suggestion then is because it is unusual and fairly  
11 rare for new contentions to be proffered at that late  
12 date, that perhaps the final witness list and the  
13 subsequent milestones should be moved up, and if there  
14 are new contentions filed they be handled in parallel

15 So I would suggest that perhaps all of the  
16 milestones starting with the final witness list  
17 should, you know, be moved up a month or six weeks.

18 JUDGE ABRAMSON: Mr. Lewis, this is Judge  
19 Abramson.

20 This is a tentative schedule. It  
21 certainly will be modified as events take their normal  
22 course, and if in fact, there are no other  
23 contentions, then this schedule should and will be  
24 modified.

25 And while I've got the floor, let me just

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1 comment that for any party who has difficulty meeting  
2 a deadline when the events that have triggered those  
3 deadlines have taken place, we will not look kindly on  
4 hearing the day before the deadline or the day of the  
5 deadline that a party can't meet it.

6 So, Ms. Uttal, if, in fact, you find  
7 yourself in a position unable to meet a deadline,  
8 please give us four or five business days' notice.

9 MS. UTTAL: Certainly, Judge.

10 MR. LEWIS: This is Davis Lewis. That  
11 works too. If there are no motions for new  
12 contentions and the schedule be adjusted, then it  
13 would save us waiting just another month for not much  
14 reason.

15 My other observation was on the November  
16 12th deadline for requesting to use subpart G  
17 procedures. Is it Entergy's position that the  
18 election of subpart G procedures was required to be  
19 done at the outset of the proceeding? And I  
20 understand different Boards have ruled differently in  
21 other proceedings, but it's a very considerable  
22 disruption to switch procedures at a very late date.  
23 And so I would just want to preserve our objection.  
24 I don't want to -- if that's the Judge's ruling, I  
25 understand it, but I would want to preserve the

1 ability to object later on.

2 JUDGE YOUNG: Let me just address a couple  
3 of the things that you have raised here. First of  
4 all, on the last issue that you've raised, frankly, I  
5 was assuming the same thing and then I became aware  
6 that the Vermont Yankee Board was treating it  
7 differently.

8 Now my understanding of that Board's  
9 treatment of the issue and what made me include this  
10 on the tentative list is that while the subpart G, the  
11 request to do the subpart G procedures is actually to  
12 be made or if you want anything other than the subpart  
13 L, for a proceeding like this, that would need to be  
14 made in the petition.

15 However, as I understand, the Vermont  
16 Yankee Board's reasoning and this is not based on  
17 talking to anyone. This is based on my own tentative  
18 analysis, and that is if the general part of it goes,  
19 the requirements goes, that you requested, has to be  
20 done with the petition. But the part that relates to  
21 an eye witness couldn't be done at that point.

22 And therefore, if a witness gets named in  
23 the final witness list that hasn't been named before  
24 that, that a party has reason to believe with regard  
25 to that witness alone or those witnesses that are

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1 named only at that point, that they can make a request  
2 with regard to that contention only.

3 I think there is in the language of the  
4 rule, it says that, "where the presiding officer finds  
5 that resolution of the contention or contested matter  
6 necessitates resolution of issues of material fact",  
7 etcetera.

8 So I think that that was the reasoning for  
9 that. We would certainly welcome briefing on that and  
10 if you want to submit a brief by next week with 10  
11 pages maximum and response the week after, you are  
12 welcome to do that.

13 That's in there. I included that in our  
14 tentative schedule in the event that that reading of  
15 the rule is appropriate and since it does refer to eye  
16 witnesses, it seems reasonable to assume that that  
17 narrow aspect of requesting subpart G procedures not  
18 for the whole proceeding but only for one part of it  
19 might be appropriate. But if you want to file a brief  
20 on that, you can do that let's say December 1st -- let  
21 me see. I'll get my calendar out.

22 How about December -- well, could you get  
23 it by a week from today? About December 29th? It's  
24 just one small issue. I mean November 29th. That's  
25 a week from Wednesday. December 1st?

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1 MR. LEWIS: If I'm silent, does it get  
2 longer?

3 (Laughter.)

4 MR. LEWIS: I can live with December 1st,  
5 Judge Young.

6 JUDGE YOUNG: December 1st. And then one  
7 week after that, December 8 for responses. Okay, now  
8 as to your other comments, obviously, there's a  
9 possibility of there being new contentions filed.  
10 Since there's that possibility, pardon my voice, I  
11 don't think it would be appropriate to have these  
12 other deadlines run parallel to those because the  
13 final witness list and the filing of statements of  
14 position, written direct testimony and so forth, if  
15 there are new contentions admitted, you wouldn't be  
16 able to have those deadlines during that same period  
17 of time.

18 Now you could separate out the issues, but  
19 since we're dealing with a fairly complex, tentative  
20 schedule here anyway, I'm personally a little hesitant  
21 to make it even more complex by having different  
22 deadlines for different issues that would be virtually  
23 impossible for everyone to keep up with very  
24 reasonably.

25 So I think the most appropriate solution

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1 would be, as Judge Abramson suggested, if it turns out  
2 there are no new contentions filed, at that point  
3 either the Board on its own motion or on the motion of  
4 a party, could move forward some of the other  
5 deadlines, if it would help people to prepare more.

6 I think we're probably still of the  
7 opinion that beginning a hearing right in the middle  
8 of winter might -- at least not in the holidays --  
9 might not be real appropriate, but certainly we'd be  
10 open to motions to change those things.

11 And on the other side of that, if the  
12 Staff finds out that these documents that either the  
13 draft ones or the final ones are going to be issued  
14 later and notify us of that and it's possible, then we  
15 would move things forward. We're just going to have  
16 to try to be reasonable and work with things as they  
17 come.

18 Any other responses to the tentative  
19 schedule that I've set out?

20 What about a site visit? Do the parties  
21 think one would be appropriate? And if so, is that  
22 something that could be done early on in the process?

23 MR. LEWIS: Judge Young, this is David  
24 Lewis. If the Board would like a site visit, we'd be  
25 happy to make the arrangements. It may be something

1 that -- it's already late in the year, so you may want  
2 to do it in the spring.

3 MS. BARTLETT: Judge Young, it's Molly  
4 Bartlett. I'm just looking through the dates. I  
5 think we would want a site visit, but I'm trying to  
6 figure out where that would fall. This would be after  
7 the draft documents are in?

8 JUDGE YOUNG: I think what we're thinking  
9 is if you all can come up with a general time that you  
10 all agree on and we'll try to work with you to do that  
11 as soon as close to your proposed date as possible and  
12 the only reason I suggested that be done sooner is  
13 because there's not as much happening. Although if  
14 there are new contentions filed starting in January,  
15 there might be some things happening soon, but we are  
16 getting close to winter, so the spring might be better  
17 as Mr. Lewis said.

18 That's really sort of -- I think we're  
19 viewing it is if parties think that would be a good  
20 thing to do, we're more or less flexible on that  
21 issue.

22 JUDGE ABRAMSON: This is Judge Abramson.  
23 Let me just say that the purpose of a site visit from  
24 my perspective would be to shed light on the issues in  
25 front of us. And at the moment, the issues in front

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1 of us concern underground tanks and pipes and the  
2 potential pathways to the town and they can concern  
3 the emergency evacuation procedures and the weather  
4 and how the SAMA analysis would be done.

5 So if there is some value to us in making  
6 a site visit to get a better grasp of that  
7 information, fine. Otherwise, we're wasting our time.  
8 I think that we need to talk about it among ourselves  
9 and maybe the parties need to think about what value  
10 there would be. Of course, any site visits would be -  
11 - we would expect all of the parties to be present.

12 JUDGE YOUNG: Think about that, also think  
13 about the question I raised about limited appearance  
14 sessions. If any parties are going to request or  
15 think that it would be appropriate to allow further  
16 limited appearance statements.

17 The other two things, we'd like to get the  
18 Staff's position. I don't think you've indicated your  
19 position at this point on the contentions. When do  
20 you think the Staff could let us know what your  
21 position is on the -- the two contentions we have  
22 before us at the moment, or right now?

23 MS. UTTAL: I don't understand what you're  
24 after, Judge Young. This is Susan Uttal.

25 We've posed admission of the contentions

1 in our pleadings. Do you need something more than  
2 that?

3 JUDGE YOUNG: It may be just filing that  
4 with your prefiled direct testimony is enough. I  
5 think I got that because the Vermont Yankee Board  
6 either did or was considering requiring you to state  
7 your position on the contentions earlier. And I think  
8 the thinking was that if in doing your analysis you  
9 decided that you might support part of the contention  
10 or oppose part of it, etcetera, that it would be good  
11 to have that for all of us to know that earlier rather  
12 than later.

13 So you know, if you were to change your  
14 position, that would be helpful to know earlier and  
15 you might include that in your disclosure, your  
16 monthly disclosures.

17 MS. UTTAL: Okay, we'll think about the  
18 best way to do it and if we do have a change of  
19 position, we'll try to let you know at the earliest  
20 possible date.

21 JUDGE YOUNG: Okay. And then on any  
22 proposed protective order nondisclosure agreement, do  
23 the parties anticipate that this will be something  
24 that will arise in this proceeding or not?

25 (No response.)

1 JUDGE YOUNG: Can you tell and do we need  
2 to set a deadline for it?

3 MS. UTTAL: From the Staff's point of  
4 view, I don't think there are any safeguards involved  
5 here. I don't know. I think proprietary information  
6 or -- Mr. Lewis?

7 MR. LEWIS: Entergy's proposal was that if  
8 the other parties were interested in any of the  
9 documents that we have logged as protective we would  
10 be glad to discuss with them a confidentiality  
11 agreement. And if we could work out the terms, then  
12 we can make them available.

13 I promise you they're remarkably boring  
14 documents, but --

15 JUDGE YOUNG: Why don't you just keep us  
16 posted and all of you keep in mind that once you  
17 receive these disclosures and privilege logs and so  
18 forth, that you need to go ahead and act on those as  
19 soon as possible so that if this becomes something  
20 that would be appropriate, that you do it sooner  
21 rather than later. Normally, I can't think of many,  
22 if any, instances where the parties are not able to  
23 work this out among themselves, but I did want to just  
24 mention it.

25 All right, let's see. Just a few other

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1 things. Note that there is a limitation on schedule  
2 changes under 2.334. We have to make a finding of  
3 good cause, whether the requesting party has exercised  
4 due diligence to adhere to the schedule, whether the  
5 requested change to the result of unavoidable  
6 circumstances and so forth.

7 Please also keep in mind the requirement  
8 with regard to motions. Let's see. And that is that  
9 a motion under 2.323(b), "a motion must be rejected"  
10 is what the rule says "if it does not include a  
11 certification by the attorney or representative."

12 Mr. Nord, you're still with us, right?

13 Mr. Nord?

14 MR. NORD: Yes, ma'am. I'm here.

15 JUDGE YOUNG: Okay, any motion that's  
16 filed must include a certification by the attorney or  
17 representative, that would be you, of the moving party  
18 that the movant has made a sincere effort to contact  
19 the other parties in the proceeding and resolve the  
20 issues raised in the motion and that the movant's  
21 efforts to resolve the issues have been unsuccessful.

22 So you need to contact each other and try  
23 to work out things by agreement before making a motion  
24 to us. And you need to do that quickly so that you  
25 can make your motions timely.

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1                   Now this would also apply to any motions  
2 for extensions which as I said, there are limited  
3 grounds for those, so keep those in mind. Definitely,  
4 any motions for extension have to be filed before the  
5 deadline that you're asking to have extended and you  
6 need to have appropriate reasons in there, unavoidable  
7 circumstances and so forth.

8                   So I think we would approve the joint  
9 stipulation motion on discloses except that the  
10 updates would go back to being either bi-weekly or we  
11 could just say the first and fifteenth of every month  
12 after the draft, SER, using the colloquial there  
13 and/or EIS is issued.

14                   Now we --

15                   MR. LEWIS: Judge Young, did you mean the  
16 initial documents or the final documents?

17                   JUDGE YOUNG: I think I meant the initial  
18 documents.

19                   Once you've got the initial documents  
20 that, as you pointed out, pretty much defines where we  
21 are except for any open items, so it might be  
22 appropriate to provide more frequent updates since as  
23 we're going through that tentative schedule, a lot is  
24 going to start going on, once we get the draft  
25 documents, so I think --

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1 MR. LEWIS: I would have suggested that  
2 the final documents, when you're getting ready for a  
3 hearing, that you really want the updates every 14  
4 days. And in the other --

5 JUDGE YOUNG: Well, if you all agree to 30  
6 days up until the final documents. I don't think we  
7 have a problem with that. Does everyone agree with  
8 that? Is that -- I guess you do, since you --  
9 actually, I should ask Plymouth and Duxbury, are you  
10 going to be presenting evidence? If you are, we think  
11 that you should participate in these disclosures and  
12 we'll hold you to all the same requirements as other  
13 parties.

14 At this point, do either of you know  
15 whether you're going to be presenting any evidence or  
16 whether you're just going to be I guess the only  
17 remaining thing would be to submit proposed questions  
18 to us to ask or request to cross examine that would  
19 meet the standards of the rules and so forth.

20 Do either of you anticipate having your  
21 own witnesses and submitting your own testimony?

22 MS. BARTLETT: Your Honor, at this time I  
23 cannot answer that question. We have not crossed that  
24 bridge yet.

25 MR. LEWIS: Judge Young, this is Mr.

1 Lewis. I meant to come back to this issue at the  
2 beginning. I actually did not realize that with the  
3 new rules, these disclosure requirements applied to  
4 interested states. The rules refer to parties, the  
5 duty of parties to give other parties, to disclose  
6 things to other parties.

7 As far as I know, I'm not aware of any  
8 case law of this, so it's caught me a little bit by  
9 surprise. I don't believe, for example, we have  
10 provided that CDs we produced, we gave to Pilgrim  
11 Watch and the NRC Staff. We didn't give them to the  
12 two towns. Duxbury at that time I don't think had  
13 even provided us notice. I wasn't aware of that.

14 JUDGE YOUNG: Let's hear from all of you  
15 on that. I think that's a fairly significant  
16 question. In one sense, it's easier to look at it  
17 from the standpoint of if either of the towns, either  
18 or both of the towns decides that you're going to  
19 submit evidence, then I think it would make sense for  
20 you to start participating in the disclosure. So  
21 first address that, and then second, even assuming  
22 that you're not planning to present evidence, do you  
23 want to be included as recipients of the disclosures?

24 JUDGE ABRAMSON: Judge Abramson, again.  
25 If you think about what the regulations permit an

1 interested state to do which is they're permitted to  
2 submit evidence and to cross examine the witnesses, if  
3 they intend to exercise either or both of those  
4 rights, it would not be appropriate, it seems to me  
5 for them not to have access to the information and  
6 provide their information to the other players in the  
7 field.

8 MR. LEWIS: Judge Abramson, I understand  
9 that and I agree. If they're going to present a  
10 witness, I think it's appropriate ahead of time to  
11 disclose the witness and the bases and maybe for the  
12 same reason it's also appropriate for the parties to  
13 be providing disclosures to the interested states.

14 JUDGE YOUNG: Did you have any objection  
15 to doing that or had you just not thought of it?

16 MR. LEWIS: I hadn't thought of it and I  
17 hadn't read the regulations that way.

18 I'm glad to send them the same CDs. I'm  
19 sure we served, at least the town of Plymouth with a  
20 copy of our pleading. I don't think again that -- we  
21 served both towns with a copy of the pleadings?

22 I'll be happy to send them a copy of the  
23 CDs, a set, and on a going-forward basis make sure  
24 that any supplementation is provided them as well.

25 JUDGE YOUNG: It seems that that would be

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1 appropriate for all parties to include both towns in  
2 your service list. I have started including them in  
3 our electronic service list and unless any party has  
4 any strong objection to that, I think that would be an  
5 appropriate thing to do.

6 And then I guess I would also like to ask  
7 and this would be more directed at the towns  
8 themselves, if you should decide at some point that  
9 you would like to call a witness and present written  
10 direct or rebuttal testimony, once you make that  
11 determination or think that is likely to happen, would  
12 you have any objection to starting to participate in  
13 making disclosures of your own. It would seem that  
14 you would need to under basic rules of fair play. If  
15 you're going to present the evidence, you would need  
16 to give disclosure on that.

17 MR. LEWIS: Judge Abramson, this is Mr.  
18 Lewis. If Entergy is being asked to provide the  
19 disclosures to the interested states and the rules are  
20 being read that way, I think they have to be  
21 reciprocal.

22 JUDGE YOUNG: Do you have any problem with  
23 that Ms. Hollis or Mr. Nord?

24 MR. NORD: Duxbury doesn't have any issue  
25 with that.

1 MS. BARTLETT: Nor does Plymouth.

2 JUDGE YOUNG: Okay, then that resolves  
3 that issue.

4 Hold on one second.

5 (Pause.)

6 Okay, obviously, we're going to -- we  
7 don't know whether the final dates will be the same,  
8 but we're going to keep our -- in the schedule, a date  
9 for the simultaneous filing of statements of position,  
10 written direct testimony and exhibits and simultaneous  
11 filing of rebuttal statements, testimony and exhibits,  
12 followed by the proposed questions for the Judge's.

13 So we're thinking it might be appropriate  
14 to set some deadline prior to that with the  
15 understanding, of course, that if you should decide  
16 earlier, either of the towns, if you should decide  
17 earlier that you might want to call a witness, that  
18 you would disclose that, but that it might also be  
19 appropriate to set a deadline, telling us and the  
20 other parties whether you will be calling a witness  
21 and then I guess the exception to that would be  
22 obviously if there are late disclosures. I have that  
23 caveat earlier. If there are late disclosures, there  
24 would be an exception to the final witness list.

25 Actually, maybe it would be the best thing

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1 to make that deadline the deadline for final witness  
2 list? Could you live with that? That makes sense.

3 MS. UTTAL: Could you reiterate the date  
4 on that, Your Honor?

5 JUDGE YOUNG: That would be October 30th.

6 MS. UTTAL: I think by then we would have  
7 a sense of it. Just from our standpoint, obviously,  
8 our concern is resources and availability of  
9 witnesses.

10 JUDGE YOUNG: Right.

11 MS. UTTAL: Financial resources and the  
12 physical resources of the town to participate to that  
13 extent.

14 JUDGE YOUNG: Okay, well, Mr. Nord, do you  
15 think you can live with that, then? That would be  
16 October 30th?

17 MR. NORD: Yes, I think that would be  
18 fine.

19 JUDGE YOUNG: Okay, very good. Okay, I'm  
20 just going through my list here again, before we come  
21 to a conclusion.

22 Let's see. I'm going to say something and  
23 this is not directed at anyone in particular because  
24 I haven't had this problem with any of you at all, but  
25 I have with other lawyers in other cases and that is

1 and it's been stated by a lot of people all the way up  
2 to Justice Sandra Day O'Conor about the problems that  
3 go with sort of game playing in discovery. I'm sure  
4 that none of you need to be told this, but I just want  
5 to put it on the record. Let's try to avoid any of  
6 that kind of game playing, either on the sort of  
7 saving your disclosures until the very last minute or  
8 the dump truck idea is one of the Judges in Vermont  
9 Yankee said. Just giving a party so much that it's  
10 very difficult to find the kernels of relevant  
11 information in that.

12 I think that if everyone can sort of  
13 operate in good faith, be timely, provide information  
14 as soon as possible, provide the relevant information,  
15 don't withhold parts and just turn them over at the  
16 last minute, I think all the lawyers anyway know about  
17 the kinds of games that I'm talking about, and as I  
18 said, it's probably unnecessary for me to say it, but  
19 I thought it's probably always a good thing just to be  
20 cautious to say it in any event.

21 And again, there will remain a duty to  
22 supplement your disclosure until the hearing is  
23 concluded and the record is closed.

24 One other discovery issue, I noticed Mr.  
25 Lewis said in Vermont Yankee, you sort of volunteered

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1 to allow depositions once it became obvious who the  
2 main witnesses were going to be.

3 MR. LEWIS: No, ma'am.

4 JUDGE YOUNG: Pardon?

5 MR. LEWIS: No, ma'am.

6 JUDGE YOUNG: Didn't you do that? I  
7 thought you did.

8 MR. LEWIS: No, I think during the pre-  
9 hearing conference there was a discussion about the  
10 selection of subpart G procedures. And what I  
11 suggested, rather than if there was an issue, rather  
12 than going to subpart G proceedings on the eve of  
13 hearing which would have then invoked disclosures and  
14 these massive document searches and the whole nine  
15 yards, that a much more appropriate resolution of that  
16 kind of issue would be for the parties to talk and see  
17 if they would voluntarily agree to depositions or  
18 simply a motion to allow cross examination, that going  
19 to subpart G procedures on the eve of the hearing was  
20 the blunderbuss approach.

21 JUDGE YOUNG: Actually, I think the main  
22 thing there is the cross examination. That's the main  
23 aspect of it. Pardon me if I misread you. Obviously,  
24 if all the parties want to voluntarily agree on  
25 anything, we will generally go along with that. If

1 anything that comes up that you want our help on, if  
2 any disputes arise, any challenges with regard to  
3 privileges, etcetera, please bring those to our  
4 attention as soon as possible.

5 Only two things remain on my list. One is  
6 if at any point it looks as though there's a  
7 possibility of settling any of the issues, simplifying  
8 them, if at any point you think that you might benefit  
9 from the appointment of a separate settlement Judge  
10 who would not be communicating with us, but who would  
11 be available to assist you in working out any  
12 settlement of any of the issues, please let us know  
13 and I will be glad to ask the Chief Judge to appoint  
14 a settlement Judge.

15 Finally, Mr. Nord, I don't know if you  
16 have seen the original scheduling order in this case.  
17 I think it's dated June 14th. It has directions on  
18 how to serve documents. I will try to repeat that in  
19 our scheduling order which we are going to try to get  
20 out by December 10th, if any of these briefs on the  
21 subpart G issue pushes out a little bit, it won't be  
22 long after that.

23 But in any event, basically, to summarize  
24 very briefly, I think we all have -- the one person  
25 who's email came back to me was the fire chief. If

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1 you can give us his correct email, I think we'll all  
2 have each other's email addresses and if you have  
3 something to file, file it electronically through  
4 email and by the other methods set out in our earlier  
5 order and I'll repeat in this order and that's  
6 basically by mail. It tells you how to do it, if you  
7 want to do it by fax or by overnight or hand delivery.  
8 There are different addresses here that apply for  
9 regular mail and overnight or hand delivery. Our  
10 regular mail, the address is Washington, but we're  
11 actually located in Rockville, Maryland, so the  
12 overnight or hand delivery has to be to our Rockville  
13 address which will be listed.

14 You can also go in ADAMS. Mr. Nord, if  
15 you haven't learned how to use NRC's ADAMS, I  
16 recommend that you do because all the documents in  
17 this proceeding will be put into the ADAMS system and  
18 you can go there and look at documents in this or any  
19 other proceedings

20 MR. NORD: I wasn't aware of that, but I  
21 will do that and I just looked at some of my papers  
22 and I didn't get that June notice.

23 JUDGE YOUNG: You wouldn't have at that  
24 point, right.

25 MR. NORD: If you need my email address

1 now I will certainly be able to give it to you at this  
2 time or how would you like it?

3 JUDGE YOUNG: Why don't you give us all --  
4 his email address, because it did come back when I  
5 sent it. I'm trying to remember -- go ahead..

6 MR. NORD: It's nord@oid.

7 JUDGE YOUNG: We have yours.

8 MR. NORD: Okay. That would be the one to  
9 send it to.

10 JUDGE YOUNG: Oh, okay, I'm sorry, excuse  
11 me. I got you mixed up.

12 So tell us your email address. I do need  
13 it.

14 MR. NORD: For the fire chef, Kevin Nord,  
15 it's nord@town.duxbury.ma.us.

16 JUDGE YOUNG: I think we may have made a  
17 mistake by putting your first name in --  
18 nord@town.duxbury.ma.us?

19 MR. NORD: That's correct, ma'am.

20 MS. UTTAL: Judge, this is Susan Uttal, we  
21 had a lot of trouble serving anybody in Duxbury. We  
22 tried a couple of addresses and it all bounced back  
23 and they -- I spoke to a woman at Duxbury and she  
24 checked it out with their IT people and they said we  
25 had the correct addresses, so there's something in

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1 what we're sending from the NRC, that may be bouncing  
2 it back.

3 I've been serving Duxbury by fax.

4 JUDGE YOUNG: Okay. Well, Mr. Nord, maybe  
5 you can check on that since you know we've been having  
6 trouble. Has anybody else?

7 MS. BARTLETT: This is Molly Bartlett. I  
8 do know that many people switched over their service  
9 from Adelphia to Comcast and for some it's been a  
10 black hole for email in town. So it may have just  
11 been a temporary thing.

12 JUDGE YOUNG: Okay.

13 MS. HOLLIS: And Your Honor, this is  
14 Sheila Hollis, There's been this Adelphia switchover  
15 has caused a lot of trouble for Plymouth as well. The  
16 town manager's office, among others, hasn't been  
17 getting incoming email at all.

18 JUDGE YOUNG: Okay, until that is  
19 resolved, then there may be problems and if they come  
20 back. I think we probably have everyone's fax numbers  
21 on your notices of appearance.

22 Does any party have anything else or know  
23 of anything that I've overlooked?

24 All right, then that would conclude this  
25 conference. Let's stay on the line for one minute for

1 the court reporter, do you need any spellings?

2 COURT REPORTER: I just have a couple of  
3 questions. One moment.

4 (Whereupon, at 2:35 p.m., the  
5 teleconference was concluded.)

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

Name of Proceeding: Entergy Nuclear Operations  
Pre-Hearing Conference

Docket Number: 50-2930LR

Location: (Telephone conference)

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.



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