

# Official Transcript of Proceedings

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

(4:03 p.m.)

1  
2  
3 JUDGE McDADE: My name is Lawrence McDade.  
4 With me on the panel are Judge Wardwell and Judge  
5 Trikouros.

6 We have a prehearing conference today in  
7 the System Energy Resources early site permit for  
8 Grand Gulf. We are going to be starting the  
9 evidentiary mandatory hearing tomorrow. And we wanted  
10 to go through some of the preliminaries today to  
11 hopefully make that go a little bit smoother tomorrow.

12 First of all what I want to do is to go  
13 over some of the matters that we took up at the  
14 previous prehearing conference. And I think to a  
15 degree that to quote from Cool Hand Luke, "we had a  
16 failure to communicate." What we received what was  
17 not necessarily in the format that we had hoped to  
18 receive it in. But nevertheless, it is in a format  
19 that we think we can work with and are going to give  
20 some additional advice on that today.

21 I'm going to start with the Applicant and  
22 what we would like the Applicant to do prior to the  
23 hearing tomorrow. There is not that much. It  
24 shouldn't be that burdensome. The first -- and the  
25 only reason I go to the Applicant first is I happen to

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1 have that stack on top -- the first has to do with the  
2 testimony itself.

3 We received pre-filed testimony for the  
4 Applicant with regard to various hearing issues that  
5 we had identified. One of -- at least on what we  
6 received, however, there is no indication that that  
7 testimony is sworn.

8 At the previous hearing that we had, I had  
9 suggested that it just simply be indicated at the  
10 bottom of the testimony a statement, I declare under  
11 penalty of perjury that the foregoing is true and  
12 correct. And then that it be signed and dated. And  
13 then that satisfies all of the requirements pursuant  
14 to 28 U.S. Code Section, I believe it is 1470 -- 1746.

15 So what we are going to need and, you  
16 know, perhaps it has been submitted and it just hasn't  
17 found its way here but what I would ask the Applicant  
18 to do is tomorrow to bring with you a copy of the pre-  
19 filed testimony and that will be signed. And that way  
20 it won't be necessary to bring people in, have them  
21 swear to it specifically. But just, again, make  
22 reference to, you know, 28 U.S. Code, Section 1746.

23 But the only thing that is necessary is  
24 the language that is specified there, that they  
25 declare under penalty of perjury that the foregoing is

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1 true and correct. And then that they sign it and they  
2 date it. That is item number one.

3 Item number two has to do with the pre-  
4 marking of exhibits. We received various exhibits  
5 from the Applicant, only one of which on the copies  
6 that we received was marked as Exhibit 1. Now from  
7 the electronic copy we received, we can determine and  
8 also from context we can determine what it was. But  
9 unfortunately, down the road as far as the record of  
10 this proceeding goes, it is going to be necessary  
11 perhaps that other people are able to identify the  
12 exhibits.

13 So what we would ask that you do is have  
14 with you tomorrow all of the exhibits that are marked  
15 so it would be SERI Exhibit 1, SERI Exhibit 2, SERI  
16 Exhibit 3. We have a specific stamp and Ms. Wolf will  
17 give you a stamp prior to our terminating the hearing  
18 here today.

19 We are also going to ask the same thing  
20 from the staff because in the documents, the exhibits  
21 we received from the staff, we did not receive them  
22 marked. Some of them were marked. Most of them were  
23 not marked. And it is going to be necessary in order  
24 to maintain the identity of those documents for the  
25 record.

1           The other thing that I wanted to mention  
2           is -- and as I said, I think we had a failure to  
3           communicate -- that we indicated that for certain  
4           documents such as the safety evaluation report and the  
5           environmental impact statement that we have spent a  
6           lot of time going through that. We have copies of  
7           that. We have annotated it ourselves.

8           And if an individual is going to be  
9           referring to an exhibit out of those two documents,  
10          that we have it readily available. And we will be  
11          able to move to it. We are just going to have the  
12          entire safety evaluation report and environmental  
13          impact statement as part of the record.

14          There, however, in the -- both from the  
15          staff and from the Applicant, there are documents that  
16          are referred to and figures that are referred to that  
17          are not part of either of those documents. And what  
18          we are going to ask is that you go through the  
19          documents that you have submitted and simply take a  
20          look at those figures that you have made reference to.  
21          And include them as exhibits.

22          And basically if you choose not to, then  
23          what we will do is just strike references to those  
24          from the pre-filed testimony. Some of them we don't  
25          have ready access to and are not quite certain whether

1 or not it is just simply the same figure over again.  
2 For example, on Hearing Issue A, site  
3 characterization, that we received from the Applicant,  
4 it makes reference, for example, to, you know, the  
5 UFSAR. And documents out of that.

6 Now it may be that that same figure is  
7 carried over and it is the same document that appears  
8 throughout. But the fact is that if you were making  
9 reference to documents out of the UFSAR or the SSAR or  
10 the ER or in some instances there is an engineering  
11 report, specifically ER-02, which both SERI and the  
12 staff make reference to, we need those as exhibits.

13 And what we would simply ask you to do is  
14 keep everything that you have already identified as an  
15 exhibit because it is refer to as exhibits in the pre-  
16 filed testimony. We don't want you to change it.  
17 Just simply continue on after that and add these  
18 additional exhibits and, you know, we will then enter  
19 those into the record.

20 What I propose to do at the beginning of  
21 the hearing tomorrow is just simply to accept into  
22 evidence all of the pre-filed testimony. Initially  
23 just simply have the staff identify the pre-filed  
24 testimony that they are offering with regard to each  
25 hearing issue, A, B, C, D through I and admit that

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1 pre-filed testimony to then have the same thing with  
2 regard to the Applicant, to have all of the pre-filed,  
3 pre-marked exhibits admitted at that point unless  
4 there is an objection by one side or the other. And  
5 we can then just simply move on at that point in time.

6 But we are not going to have people refer  
7 to exhibits in the pre-filed testimony unless they are  
8 received in evidence. We understand that it may well  
9 be necessary based on a question that we ask for a  
10 witness to refer to a document that has not previously  
11 been in evidence in which case at that point, we will  
12 just mark it as the next sequential exhibit and  
13 receive it in evidence and move one.

14 But we would ask that you have all of  
15 those pre-marked at the beginning of the hearing  
16 tomorrow.

17 We would also ask, because it may well be  
18 necessary for us to refer to it in our final opinion,  
19 that we are going to receive not only the  
20 environmental impact statement and the safety  
21 evaluation report into evidence but since there has  
22 been significant reference in the pre-filed testimony  
23 and we anticipate there will be reference in the  
24 testimony tomorrow to the UFSAR, the SSAR, the ER, and  
25 engineering report -- SERI engineering report -02,

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1 that you bring those with you. We are going to  
2 receive them as exhibits.

3 Now I realize that these are voluminous.  
4 They are available electronically. So all that we are  
5 going to ask is that you bring the title page. When  
6 we were discussing this originally I suggested  
7 bringing the first page and one of my colleagues said  
8 yes, and that will probably be one that is marked  
9 intentionally left blank. You know so let me specify  
10 the title page of the particular document. And have  
11 that marked as an exhibit rather than bringing in the  
12 entire stack.

13 And what we will do is accept the  
14 document, whether it be the SSAR, the ER, the  
15 engineering report into evidence in its entirety. And  
16 that way we will be able to refer to it if necessary  
17 in rendering our opinion in this particular case.

18 Are there any questions on anything that  
19 I have gone over so far?

20 MS. SUTTON: Your Honor, to be crystal  
21 clear --

22 JUDGE McDADE: Could you -- I know just  
23 for the record State your name?

24 MS. SUTTON: Oh, this is Kathryn Sutton,  
25 Morgan, Lewis, representing the Applicant. All of the

1 figures that are referenced in our pre-filed testimony  
2 should be brought forward as exhibits?

3 JUDGE McDADE: Yes.

4 MS. SUTTON: Thank you.

5 JUDGE McDADE: And again except those that  
6 are in -- specifically identified as being in the  
7 environmental impact statement or the safety  
8 evaluation report.

9 MS. SUTTON: All right. All figure others  
10 than FSAR and DIS?

11 JUDGE McDADE: Yes.

12 MS. SUTTON: Thank you.

13 JUDGE McDADE: Okay. Any questions from  
14 the staff?

15 MR. RUND: None from the staff.

16 JUDGE McDADE: Okay. The procedure that  
17 we would suggest for tomorrow would be that once we  
18 get started if, first of all, the staff can have those  
19 individuals who are going to be witnesses for Hearing  
20 Issue A and Hearing Issue B available at the beginning  
21 of the hearing. We don't need everybody to be  
22 available and just sitting outside. They can be over  
23 in their offices.

24 And what we would suggest is that when we  
25 finish with Hearing Issue A, that you then call and

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1 have Hearing Issue C witnesses come over so that way  
2 we can move from one hearing issue to the next. What  
3 we will do is go first of all to the staff. And then on  
4 each hearing issue, if there is any additional  
5 testimony that either we want from the applicant or  
6 that the applicant wishes to present, will go to the  
7 applicant on that particular hearing issue. So we  
8 will go Hearing Issue A first, staff, Hearing Issue A,  
9 Applicant B. And just sort of work through it that  
10 way.

11 With regard to one of the items  
12 specifically --

13 JUDGE WARDWELL: May I make a suggestion?  
14 I had noted down that we should have covered yesterday  
15 when we talked about some of these things. But the  
16 way the court is laid out, it is conducive to sitting  
17 all the witnesses, both staff and Applicant at the  
18 same time.

19 If the Applicant takes those extra seats  
20 and the staff takes the normal witness panel and then  
21 still do the procedure you are dealing with but if  
22 there ends up to a bit of a, you know, extra  
23 amplification that either one of the witnesses would  
24 like to provide on the other, then there wouldn't be  
25 a jostling around necessarily of people. And they

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1 would all be available. Does that make sense to the  
2 rest of the panel's desires or wishes?

3 JUDGE McDADE: Well, we can certainly  
4 discuss that. All of the witnesses will be here at  
5 the time and we can get out the party hats and  
6 determine the seating arrangements in the morning. I  
7 have no objection to that.

8 I don't know whether or not the staff will  
9 have an objection or the Applicant will have an  
10 objection. Let them think about it overnight and they  
11 can let us know at the beginning of the hearing  
12 tomorrow how they want to proceed on that.

13 I would note that with regard to one of  
14 the hearing issues, specifically Hearing Issue C, as  
15 I indicated at our previous prehearing conference,  
16 there may be a hearing issue where the testimony was,  
17 in our view, adequate. And we had no specific further  
18 questions.

19 So we are not going to ask that the  
20 witnesses for Hearing Issue C, which are the seismic  
21 impacts, to actually come over here. We would ask  
22 that you keep them available. It may well be that  
23 during the course of the hearing, something will come  
24 up. A question won't be answered through other  
25 witnesses. And at the end of the hearing, we might

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1 need to call I believe it is Dr. Chang.

2 JUDGE WARDWELL: You mean for seismic?

3 JUDGE McDADE: Yes.

4 JUDGE WARDWELL: No, I think -- oh, you  
5 could be right. Sorry.

6 JUDGE McDADE: No, I'm sorry.

7 JUDGE WARDWELL: He was at Jewel Tech.

8 JUDGE McDADE: Yes.

9 JUDGE WARDWELL: Yes.

10 JUDGE McDADE: We would call them, you  
11 know, at the end so at least have them available but  
12 it is not going to be necessary for you to bring them  
13 over at the end of Hearing Issue B.

14 We anticipate that there are going to be  
15 an awful lot of -- a possibility that there may be  
16 exhibits that you wish to bring to our attention. We  
17 would ask two things.

18 First of all that one, with regard to the  
19 exhibits that you bring tomorrow. Please bring an  
20 electronic copy of everything marked. I mean we have  
21 an electronic copy but the electronic copies that we  
22 have are not marked as exhibits. So we would ask that  
23 in addition to paper copies, you bring an electronic  
24 copy of it as well.

25 Also if it is feasible with regard to

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1 these other documents that you feel that it may be  
2 important for your witnesses to refer to, whether it  
3 is the SSAR, the ER, the engineering report, if you  
4 could have that loaded on a computer, you will be able  
5 to plug your computer in here and be able to call  
6 those documents up. You will be able to display them  
7 on the screen.

8 And we can then refer to them as exhibits.  
9 We can then have the exhibits printed in hard copy and  
10 be able to, you know, have those as part of the  
11 permanent record. So it just may be a lot easier for  
12 you to find certain documents electronically. And we  
13 will have it available at the conclusion of the  
14 hearing if there are any questions with regard to what  
15 you need and what are to be compatible.

16 From what I understand, almost any laptop  
17 is going to be compatible and is going to be able to  
18 plug into the audio visual system here with those  
19 exhibits, you know, that you may wish to present  
20 during the course of the testimony in response to a  
21 question.

22 JUDGE WARDWELL: I think one of the -- the  
23 only requirement that is desirable is that you have an  
24 800 by 600 dpi video option for that display. It is  
25 just more seamless if that is the type of laptop that

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1 you have.

2 In actuality, some of the newer ones have  
3 fancier stuff that sometimes has a few challenges. So  
4 the older the laptop you have, the better in this case  
5 for visual display of something that you might want to  
6 present.

7 JUDGE McDADE: Okay. Now on certain of  
8 the hearing issues there are going to be presentations  
9 made prior to the question. Given the fact that we  
10 are now in the 21st century, many people feel that in  
11 order to give a presentation, you have to have a  
12 PowerPoint.

13 While we want to make sure not to  
14 discourage that but to say that if they do have a  
15 PowerPoint, the slides that they are going to use in  
16 the PowerPoint need to be marked as exhibits. And we  
17 need to have them both electronically and also paper  
18 copies. So just add them on at the end, you know, as  
19 sequential exhibits.

20 Again, we are not either encouraging the  
21 PowerPoint or discouraging it. All we are doing is  
22 just indicating that if it does come in that, you  
23 know, what we need to do is to have those as exhibits  
24 so that they will not be lost in the vapors at the end  
25 of the hearing but there be a permanent record of what

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1 was presented during it.

2 Another thing, we received sort of in a  
3 second wave what would be referred to as supplemental  
4 pre-filed testimony concerning geotechnical issues and  
5 hydrology issues. And we are making an assumption  
6 that these are offered to answer certain questions  
7 that were left open during the proposed findings of  
8 fact and conclusions of law.

9 You know specifically with regard to the  
10 hydrology, various footnotes, six, seven, eight, nine,  
11 ten, 11, 12, you know, these appear to be referencing  
12 those particular footnotes. The geotechnical --

13 JUDGE WARDWELL: And 13.

14 JUDGE McDADE: Okay. I'm not intending  
15 mine to be all inclusive. But what I want is for you  
16 to be all inclusive. And at the beginning of the  
17 hearing specifically be able to address and tell us  
18 with regard to each of these exactly what they are  
19 intending to respond to so that we don't make a  
20 mistake and miss it.

21 So that if you can just present to us and  
22 we will ask you at the beginning with regard to the  
23 hydrology supplemental pre-filed testimony -- which of  
24 those footnotes, which of the questions left open in  
25 the proposed findings of fact and conclusions of law

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1 do you believe this addresses? The same with the  
2 geotechnical issues so that that is clear on the  
3 record.

4 Is there anything else that you think  
5 needs to be covered?

6 JUDGE TRIKOUROS: Yes, I have one more  
7 question. With respect to presentations tomorrow for  
8 those hearing issues that we identified presentations  
9 for, is it the plan -- I assume you know at this point  
10 -- is it the plan to use a PowerPoint presentation  
11 with handouts?

12 MS. SUTTON: With respect to the  
13 Applicant, we are going to be providing the first half  
14 of the Hearing Issue G presentation. And we do plan  
15 to use a PowerPoint, yes.

16 JUDGE TRIKOUROS: And you have handouts  
17 associated with that?

18 MS. SUTTON: Yes, Your Honor. We plan to  
19 enter it as an exhibit with hard copy and electronic.

20 JUDGE TRIKOUROS: What about the staff?

21 MR. RUND: Jonathan rund for the staff.  
22 Yes, with regard to all the hearing issues that the  
23 Board has requested presentations, we will be using  
24 PowerPoint slides. And we will provide handouts.

25 JUDGE McDADE: Okay. And they will be

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1 pre-marked as exhibits so that we can receive them  
2 into evidence.

3 MR. RUND: That is correct.

4 MS. SUTTON: I have a question. This is  
5 Kathryn Sutton. Do you have a preference as to the  
6 number of hard copies. I know the rules call for two.  
7 We plan to bring enough for the Board, the court  
8 reporter, and Ms. Wolf. Will that be sufficient?

9 JUDGE McDADE: If you could bring I guess  
10 first of all to make sure -- I don't know how many the  
11 counsel for the staff will need but just to discuss  
12 with them how many they want. And the same thing, you  
13 know, there is no sense to bring more than they want.  
14 But just work that out among yourselves.

15 As far as what you would pass up to the  
16 panel, if we could have six copies of it, one for each  
17 of the judges, for Ms. Wolf, for the court reporter.  
18 And then another copy that none of us will get near  
19 with a pen and makes notes on so that we could use  
20 that as part of the permanent record that we will make  
21 sure gets filed with the permanent record.

22 So if you just, for our purposes, have  
23 six. And then however many the other party requests.

24 MS. SUTTON: Thank you.

25 JUDGE McDADE: Okay. Now as we indicated

1 that before each hearing issue, we will give an  
2 opportunity for counsel to make a very brief summary  
3 by way of an opening statement with regard to that  
4 particular hearing issue.

5 From the standpoint of the Applicant, they  
6 can either speak directly after the staff or wait  
7 until after the staff presents their witnesses and  
8 before you present your witnesses. You know we will,  
9 you know, allow your preference.

10 We would ask in marking the exhibits you  
11 take these stamps, just, you know, mark them  
12 consistently, you know, probably in the upper right-  
13 hand corner.

14 If it looks better in the upper left-hand  
15 corner, that is fine. But just so that they are  
16 consistent. If they are marked on the front of it so  
17 that when these things get entered electronically into  
18 ADAMS that the markings will be readily available and  
19 identifiable.

20 Does the staff have any question about  
21 anything for tomorrow?

22 MR. RUND: If we have corrections for the  
23 testimony, how do you want us to handle that? Do you  
24 want an errata sheet?

25 JUDGE McDADE: The answer is yes. And

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1 thank you. I should have mentioned that.

2 If you can just hand up to us an errata  
3 sheet at the beginning, all of us have gone through  
4 the pre-filed testimony that we received. We have  
5 made notes on it. And we really don't want to sort of  
6 start over again and transpose our notes into a new  
7 copy of it. So just give us the errata sheet that we  
8 can just attach to it for our own purposes.

9 However what we would ask you to do is to  
10 have a clean copy, a corrected copy of all of the pre-  
11 filed testimony that then can be received and will be  
12 filed with SECY to be part of the permanent record.

13 But you don't need to bring in scores of  
14 copies for it and just generate more paper. Just  
15 bring in one copy of the corrected copy that we will  
16 then maintain as part of the permanent record to be  
17 entered, you know, with SECY and then be available on  
18 ADAMS.

19 MR. RUND: Thank you.

20 JUDGE McDADE: Any further questions from  
21 the staff? From the Applicant?

22 MS. SUTTON: Kathryn Sutton. Not a  
23 question but we do prefer to have the witnesses from  
24 the Applicant up at the table and entered early in the  
25 process. We believe it would facilitate the answering

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1 of questions.

2 I know you are going to address this again  
3 tomorrow but we have discussed this and our preference  
4 is to have them up in front early.

5 JUDGE McDADE: Well, I'm not certain --  
6 you mean at the same time as the staff --

7 MS. SUTTON: Correct.

8 JUDGE McDADE: -- witnesses?

9 MS. SUTTON: Available for questions at  
10 the same time as recommended by Judge Wardwell.

11 JUDGE McDADE: Okay. What is the staff's  
12 position? Do you want to answer that now? Or do you  
13 want to think about it and let us know in the morning?

14 MR. RUND: The staff is fine with that.  
15 If they can get their -- I guess it is different  
16 depending on whether it is a presentation or if the  
17 Board is going to be asking questions. But in either  
18 case, I think it would move things along.

19 JUDGE McDADE: I mean I just don't want it  
20 to get unruly and it is going to be necessary to make  
21 sure that people identify who they are and who they  
22 are with to make sure that the record, the appropriate  
23 record is maintained. And we don't want to sort of  
24 get into a battle of the bands, you know, where, you  
25 know, one person from the staff is saying is so and

1 the Applicant is saying is not.

2 We would rather, you know, they not come  
3 to blows. We will keep them apart , you know, far  
4 enough so that doesn't happen. But, you know, we are  
5 flexible with regard to, you know, how you all feel  
6 the presentation will be most effective and most  
7 informative to us.

8 So if there is agreement between you all  
9 as to how to do it, you know, we are willing to  
10 accommodate that.

11 Judge Wardwell, anything further?

12 JUDGE WARDWELL: Yes, the only comment I  
13 will make on that is as far as my perspective is  
14 concerned, I'd like to see them separated.

15 That is why if you could keep your  
16 witnesses there and group how many extra chairs you  
17 need up in there to get them there and the same thing  
18 with the staff being in the traditional witness box,  
19 then it helps my meager little brain keep track of who  
20 is who when they are speaking. So that will assist  
21 me.

22 JUDGE McDADE: Judge Trikouros?

23 JUDGE TRIKOUROS: Yes, I just wanted to  
24 point out that we did set up a podium . In case  
25 somebody feels more comfortable speaking at a podium,

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1 they are welcome to use that.

2 JUDGE McDADE: Okay. Again, I want to  
3 apologize for the delay in getting started. I don't  
4 know what happened with regard to the court reporter.  
5 We will give the tape of what we have done so far this  
6 afternoon over the last half hour to the stenographer  
7 so that there will be a transcript available for you  
8 all. But it probably won't be available tonight or  
9 tomorrow.

10 MS. SUTTON: One last question. You  
11 mentioned during the last prehearing conference that  
12 you would like to have certain additional supporting  
13 personnel listening by telephone if necessary. Will  
14 there be a phone line established for that purpose?

15 JUDGE McDADE: Yes.

16 MS. SUTTON: And we should coordinate with  
17 Ms. Wolf on that front?

18 JUDGE McDADE: Well, we will put you in  
19 touch -- when we break right now, we will put you in  
20 touch with the appropriate technical person.

21 I believe that last time we had set up a  
22 phone link for the staff. If there is a particular  
23 location where you are going to have people that we  
24 can set up a phone link to, you know, we can  
25 accomplish that.

1                   But, you know, let us put you in touch  
2 with the technical people to be able to set that up  
3 and make sure that it goes okay.

4                   MS. SUTTON: Thank you.

5                   JUDGE McDADE: That being said, I guess  
6 this prehearing conference will be adjourned. We will  
7 see you all tomorrow morning at nine o'clock and be  
8 ready to proceed.

9                   Thank you.

10                   (Whereupon, the above-entitled prehearing  
11 conference was concluded at 4:30 p.m.)

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CERTIFICATE

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

Name of Proceeding: Early Site Permit for  
Grand Gulf ESP Site

Docket Number: 52-009-ESP

Location: Rockville, Maryland

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.



Charles Morrison  
Official Reporter  
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