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Title: Entergy Nuclear Vermont Yankee
Pre-Hearing Conference

Docket Number: 50-271-LR; ASLBP No.: 06-849-03-LR

Location: (telephone conference)

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UNITED STATES OF AMERICA

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NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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TELECONFERENCE

In the Matter of: ||

ENTERGY NUCLEAR VERMONT ||

YANKEE, LLC and ENTERGY ||

NUCLEAR OPERATIONS INC., ||

(Vermont Yankee Nuclear ||

Power Station) ||

Docket No. 50-271-LR
ASLBP No. 06-849-03-LR

Tuesday, June 12, 2007

The above-entitled conference was convened, pursuant to notice, at 2:00 p.m.

BEFORE:

ALEX S. KARLIN, Administrative Law Judge, Chair
RICHARD E. WARDWELL, Administrative Law Judge
THOMAS S. ELLEMAN, Administrative Law Judge

1 APPEARANCES:

2 On Behalf of the Licensee:

3 DAVID LEWIS, Esquire; and

4 MATIAS E. TRAVIESO-DIAZ, Esquire

5 of: Pillsbury Winthrop Shaw Pittman, LLP

6 2300 N Street, N.W.

7 Washington, D.C. 20037

8 (202) 663-8142

9
10 On Behalf of Intervenor State of Vermont:

11 ANTHONY Z. ROISMAN, ESQ.

12 of: Hershenson, Carter, Scott & McGee, P.C.

13 P.O. Box 909

14 Norwich, Vermont 05055

15 (802) 295-2800

16 and

17 SARAH HOFFMAN, ESQ.

18 of: Department of Public Service

19 State of Vermont

20 112 State Street - Drawer 20

21 Montpelier, Vermont 05620

22 (802) 828-3088

23

24

25

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1 APPEARANCES (Continued):

2 On Behalf of Intervenor New England Coalition:

3 KAREN TYLER, Esquire

4 of: Shems Dunkiel Kassel & Saunders PLLC

5 91 College Street

6 Burlington, VT 05401

7
8 On Behalf of the State of New Hampshire:

9 PETER ROTH, Esquire

10 Office of Attorney General

11 State of New Hampshire

12
13 On Behalf of New Hampshire Office of Public
14 Affairs:

15 DIANE SCRENCI

16
17 On Behalf of the Nuclear Regulatory Commission:

18 MARY BATY; Esquire; and

19 MITZI YOUNG, Esquire

20 of: Office of the General Counsel

21 U.S. Nuclear Regulatory Commission

22 Mail Stop O-15 D21

23 Washington, D.C. 20555

24 (301) 415-3725

25

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1 OTHER BOARD PERSONNEL PRESENT:

2 MARCIA CARPENTIER, Esquire

3 KAREN VALLOCH, Administrative Assistant

4

5 OTHER NRC STAFF PRESENT:

6 RAJENDER ALUKUCK, Branch Chief

7 RICHARD EMCH, Environmental Project

8 Manager

9 JONATHAN ROWLEY, Project Manager

10

11 OTHER ENTERGY STAFF PRESENT:

12 ALAN COX

13 MICHAEL MATTEL

14

15 OTHER NEC MEMBERS PRESENT:

16 RAYMOND SHADIS

17

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

2 (2:02 p.m.)

3 JUDGE KARLIN: This is Alex Karlin. With
4 me here in the Rockville office of the Atomic Safety
5 and Licensing Board is Judge Wardwell; our law clerk
6 and lawyer, Marcia Carpentier; and Karen Valloch, our
7 administrative assistant.

8 Judge Elleman, are you on the line, please
9 for the record?

10 JUDGE ELLEMAN: Yes, I am, Judge Karlin.

11 JUDGE KARLIN: Great. Thank you.

12 We are now convening the prehearing
13 conference call in the matter of Entergy Nuclear,
14 Vermont Yankee for docket number 50-271-LR and ASLBP
15 number 06-849-03-LR.

16 This is a prehearing conference call being
17 held on June 12th pursuant to an order that we issued
18 on May 18th. And we would propose to follow the items
19 covered in that order. But before we start and for
20 the record, I would like each representatives for each
21 party to identify themselves and name all of the
22 members, other lawyers, or other clients or
23 participants that are with them.

24 Why don't we start with NEC? Ms. Tyler?

25 MS. TYLER: Karen Tyler. Ray Shadis is

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1 also on the line.

2 JUDGE KARLIN: Okay. Great. Good
3 afternoon.

4 MS. TYLER: Afternoon.

5 JUDGE KARLIN: Entergy? Mr. Lewis?

6 MR. LEWIS: Yes. This is David Lewis.
7 And with me is Matias Travieso-Diaz. I also believe
8 that Mr. Mike Mattel is on the line. I haven't heard
9 his voice, but I believe that he was going to join in.

10 MR. MATTEL: Yes, I am. And also Alan Cox
11 is tied in with us.

12 JUDGE KARLIN: Good. Great. Welcome,
13 gentlemen.

14 State of Vermont, please? Ms. Hoffman?

15 MS. HOFFMAN: Sarah Hoffman, Director of
16 Public Service, State of Vermont. We also have on a
17 separate line Anthony Roisman.

18 JUDGE KARLIN: Welcome. Welcome. NRC
19 staff? Ms. Baty?

20 MS. BATY: Yes. I'm here with Mitzi
21 Young, my co-counsel. And we have the project
22 manager, Jonathan Rowley. We have his branch chief,
23 Raj Alukuck. And we have Richard Emch, the
24 environmental project manager.

25 JUDGE KARLIN: Great. Welcome. And from

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1 the State of New Hampshire, I believe, Mr. Roth, you
2 are on the line?

3 MR. ROTH: That's correct.

4 JUDGE KARLIN: Anyone else joining you?

5 MR. ROTH: I just have a summer law clerk
6 with me. I won't introduce him.

7 JUDGE KARLIN: Well, all right. And I
8 know that Ms. Screnci from the Office of Public
9 Affairs is on the line. Anyone else with you, Ms.
10 Screnci?

11 MS. SCRENCI: No. Just me, Judge.

12 JUDGE KARLIN: All right. Thank you.
13 Welcome. Anyone else? Anyone else on the line?

14 (No response.)

15 JUDGE KARLIN: All right. Thanks. We'll
16 proceed. Ground rules as usual. We please try to
17 identify yourself as you begin speaking to help the
18 Court Reporter capture all of this accurately.

19 The purpose of this call, really, is we
20 haven't had a prehearing conference in this case for
21 more than six months. And so we thought it would be
22 timely to do so at this point.

23 In our May 18th order, we laid down some
24 thoughts or ideas that we thought could be covered.
25 And what I'm going to do is list those at the moment.

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1 That is sort of our agenda that I think we'll use.

2 And so as I have it, there are nine items
3 that I would like to cover. Some of them probably
4 will go very quickly. First is the status of the
5 staff's work and effort on reviewing and doing the EIS
6 and the SER. Second is if there are any questions or
7 issues that the parties need to bring forward
8 concerning mandatory disclosures, the hearing file, or
9 other sort of discovery issues. Three is the
10 scheduling of a possible site visit. Four is the
11 scheduling of a possible limited appearance statement
12 session. Five is clarification or simplification of
13 issues. That sort of comes from 10 CFR 2.309(c) and
14 from an earlier case management conference; six,
15 amendments to the pleadings, question mark; seven,
16 stipulations or admissions; eight, settlement. And we
17 do take note that we are glad to see the parties were
18 able to settle one of the issues. And that's great
19 because the Commission encourages settlement. And
20 nine is scheduling, talk a little bit about the
21 scheduling of the evidentiary hearing. That's a new
22 item that we did not have in the order that I thought
23 we might as well cover here.

24 I think if -- I will just double check
25 with my colleagues on the Board. Are there any other

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1 things that we need to bring up at this point?

2 JUDGE ELLEMAN: This is Judge Elleman. I
3 have nothing.

4 JUDGE WARDWELL: And I have nothing. This
5 is Judge Wardwell.

6 JUDGE KARLIN: Okay. I mean, we had all
7 talked about this before. So we're covered there. I
8 just want to make sure I didn't forget anything.

9 We also in our order on May 18th invited
10 the parties to suggest other additional agenda items.
11 And no one did so. So I think that is pretty much
12 what we will try to cover.

13 And I think, as we said in the order, we
14 are not here to talk about or hear any oral argument
15 on the motion for summary disposition, on NRC
16 contention 3 or 4. We now have another motion for
17 summary disposition. Nor are we going to hear oral
18 argument on the motion to strike. So we're not here
19 to really talk about that.

20 With that, is there anything else that the
21 parties have as a last minute addition or question
22 about the agenda?

23 (No response.)

24 JUDGE KARLIN: Okay. Hearing none, we did
25 ask the parties to try to confer ahead of time amongst

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1 yourselves to see if you had any consensus or other
2 joint proposals with regard to any of the items on the
3 agenda. Let me ask. Did you designate a spokesman as
4 a result of that? Were you able to have such a
5 conference among yourselves?

6 MR. LEWIS: Judge Karlin, this is David
7 Lewis. We did have a conference call last week. We
8 haven't designated a spokesman. There were some
9 things that we discussed that we can report on.

10 JUDGE KARLIN: Okay. Well, maybe as we go
11 through each of the items, you all can address them.
12 And if there was something that came out of that
13 discussion, perhaps you will share that with us as
14 well. Would that be the best way to do that?

15 MR. LEWIS: I think so.

16 JUDGE KARLIN: Okay. Great.

17 1. STATUS OF STAFF'S REVIEW

18 JUDGE KARLIN: Status of staff's review?
19 We see from your monthly reports that things seem to
20 be going along fine. Are we still looking at issuing
21 the final SER and EIS in early August? Ms. Baty?

22 MS. BATY: Yes, Your Honor. There are no
23 changes in the anticipated dates that we filed and
24 forwarded to you of last November. August 1st for the
25 SER and August 3rd for the final SEIS.

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1 JUDGE KARLIN: Great. Okay. Anything
2 else to report on that effort? No issues or questions
3 that have come up?

4 MS. BATY: No.

5 JUDGE KARLIN: Okay. Great. Good. 2.
6 QUESTIONS OR ISSUES FROM PARTIES CONCERNING MANDATORY
7 DISCLOSURES, HEARING FILE, OR DISCOVERY ISSUES

8 JUDGE KARLIN: Next item, mandatory
9 disclosures. Obviously we had a couple of motions to
10 compel that were related to, I guess it was, NEC
11 contention 1. Those are now moot as far as we can
12 tell because of the Commission's ruling on that.

13 We're not here to invite any other
14 disputes or problems, but are there any issues on
15 mandatory disclosures that we need to know about at
16 this point?

17 MS. TYLER: This is Karen Tyler for NEC.
18 We have discussed two issues with Entergy. They have
19 disclosed a lot of documents in image file format,
20 .gif files. And we found those difficult to work with
21 and that they're not searchable.

22 So we have requested that, at least on a
23 forward-going basis, Entergy produce as many documents
24 as possible in a searchable file format. And Mr.
25 Lewis has agreed to look into the feasibility of that.

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1 JUDGE KARLIN: Okay.

2 MS. TYLER: But that is one problem that
3 we're encountering in working with, really, thousands
4 of pages of documents.

5 The second thing is Mr. Lewis has let us
6 know that Entergy does have information concerning the
7 May inspection of the steam dryer but that that
8 information was not available in time to include with
9 the June round of document disclosures.

10 We would intend to submit that information
11 as a supplement to our opposition to the contention 3
12 motion for summary judgment. And we are anticipating
13 the disclosure of that information in July. So I
14 wanted to mention that as well.

15 JUDGE KARLIN: All right. Well, with
16 regard to the motion disposition on contention 3,
17 let's see. You're saying that you think that there
18 may be information forthcoming that you think you
19 would like to submit?

20 MS. TYLER: Yes. There was an inspection
21 performed of the Vermont Yankee steam dryer during the
22 May refueling outage, just this past month. And there
23 is new information about the condition of the dryer.

24 Entergy was not able to release it to us
25 in June. Apparently it was only available late in May

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1 according to Mr. Lewis. But we are anticipating that
2 Entergy will disclose that information in July.

3 And we do consider it very much relevant
4 to the contention 3 motion for summary judgment, to
5 our opposition to it.

6 JUDGE ELLEMAN: Okay. Mr. Lewis, what is
7 your reaction to that?

8 MR. LEWIS: Two items. And Ms. Tyler is
9 right. We spoke of these things last week. We have
10 been looking about whether it is feasible to produce
11 documents in searchable format. And I have not yet
12 gotten back to Ms. Tyler.

13 We're not sure whether we're going to be
14 able to do that. We're using a standard discovery
15 software that produces image files in order that every
16 page be an identical image of the document that we're
17 disclosing. And each page is Bates stamped. Try and
18 make them searchable.

19 If we produce them in their native format,
20 we're going to lose the ability to Bates documents and
21 also lose the ability to make sure that what we're
22 revising is a conforming image of what we have.

23 So I did want to talk to Ms. Tyler more
24 about it because I've not had this discussion with her
25 yet and I intend to do so. But it's not a trivial

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1 exercise to do what NEC is requesting.

2 With regard to the recent data on the
3 steam dryers, we did in our disclosure disclose the
4 fact that there are image videos of the steam dryer
5 inspections that were just done in this last outage in
6 May. And we have disclosed that. That video is
7 available for review.

8 There is an addition. And the outage has
9 just very recently finished reports that are being
10 generated that were not available at the time we
11 called for our most recent disclosure. Normally they
12 would be provided at our next update.

13 We are concerned about NEC's suggestion
14 that there should be a further response to our summary
15 disposition motion after this is disclosed in July.
16 We may do -- there are different things we may do. We
17 haven't yet figured out what to do. But we may, in
18 fact, decide to disclose it early and avoid any
19 argument about the potential for delay.

20 JUDGE ELLEMAN: All right. Well, the
21 motion for summary disposition on NEC contention 3, I
22 guess, has been briefed. Absent something unusual, I
23 would think the briefing is complete.

24 However, under the Federal Rules of Civil
25 Procedure, at least, I believe there are provisions

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1 that deal with the situation where it's difficult or
2 problematic to respond to a motion for summary
3 disposition or motion for summary judgment in the
4 federal rules if key information is pending or not
5 available in some way and is likely to become
6 available in some reasonable time frame. The rule is
7 certainly not that detailed, but there is something in
8 the federal rules, 56, that deals with this situation,
9 I believe.

10 Are you familiar with those provisions,
11 Ms. Tyler?

12 MS. TYLER: I don't have the rule in front
13 of me, but that was the provision under which I was
14 planning to submit --

15 MR. LEWIS: Let's talk to the --

16 MS. TYLER: -- this after-the-fact
17 information, so to speak.

18 JUDGE ELLEMAN: Right. Mr. Lewis?

19 MR. LEWIS: I'm sorry. I didn't mean to
20 interrupt. This is Mr. Lewis. Just to be clear, our
21 position based on what we have seen so far is that
22 this additional information is not necessary and
23 relevant to the disposition of the contention, which
24 is the adequacy of the aging management program. But
25 if there is a motion, we will respond to it.

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1 We were looking at perhaps disclosing this
2 information, just even to eliminate any potential for
3 dispute, not admitting that any of this is necessary
4 or a valid reason for delaying a ruling on the summary
5 disposition motion.

6 JUDGE ELLEMAN: No. Of course. Of
7 course, I understand that is how you would approach
8 it. And perhaps it would be useful if you could
9 accelerate your disclosure of that information, rather
10 than wait until the first of the month. I mean, we
11 are kind of at the middle of the month at this point.

12 Could you disclose that? Is there
13 anything holding up your being able to disclose that
14 on the 15th or something like that, June 15?

15 MR. LEWIS: We have been actively
16 exploring whether we could do so and exploring this
17 over the last couple of days. So I would rather not
18 make a commitment at this point, but I just want to
19 assure you that we are looking at that.

20 MS. TYLER: I would also add -- this is
21 Karen Tyler -- that Mr. Lewis has offered to make
22 videotapes of the dryer available to NEC on site at
23 VY. And I am planning to take him up on that offer
24 and schedule a date for that --

25 MR. LEWIS: And that was --

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1 MS. TYLER: -- field review.

2 MR. LEWIS: Yes. And that was part of our
3 prior disclosure.

4 MS. TYLER: Yes.

5 JUDGE ELLEMAN: Yes. Well, this is useful
6 to be aware of. We have got a motion for summary
7 disposition pending in front of us, two of them,
8 actually, but the one on NEC contention 3 has been
9 briefed. And presumably it would be right for us to
10 make a decision. We would probably be loathe to make
11 a decision and then find, for example, a ruling that
12 was granted and then have to see a new contention
13 filed because something new came out of the inspection
14 that ostensibly justifies a new contention. So we
15 probably want to avoid that extra work effort.

16 But, Ms. Tyler, you sort of need to know
17 that absent your filing something on the record to
18 sort of alert us to the fact that you think something
19 is relevant and you want to have some time on that, I
20 think we -- well, I'm not saying we're going to render
21 a decision the next couple of weeks, but I just think
22 you ought to file something.

23 MS. TYLER: I would note that, Judge
24 Elleman, in our opposition to the motion for summary
25 judgment, we did note that this inspection of the

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1 dryer in May was scheduled and that we anticipated
2 that information concerning the condition of the dryer
3 was to be released soon and that we did request in our
4 opposition that the Board not decide the motion for
5 summary judgment before that information was
6 available.

7 JUDGE ELLEMAN: Okay. Can you cite me to
8 the page on that?

9 MS. TYLER: Sure. If you give me one
10 moment? I'll just have to locate the filing, which I
11 don't have right here in front of me.

12 JUDGE ELLEMAN: Well, you should.

13 MS. TYLER: I apologize for that.

14 JUDGE ELLEMAN: Motion six. On page 6 of
15 your answer, Ms. Tyler, Marcia Carpentier has been so
16 kind to point out, "Entergy's motion should not be
17 decided until the results of the steam dryer
18 inspection plan are released. I understand" --

19 MS. TYLER: That's right.

20 JUDGE ELLEMAN: -- "they will be
21 inspected. Complete documentation." Okay. So you
22 put something on the record.

23 MS. TYLER: Yes. And I actually brought
24 up the issue again in our response to the NRC's
25 answer, which I know is subject to a pending motion to

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1 strike.

2 JUDGE ELLEMAN: Right. Okay.

3 MS. TYLER: We raised the issue twice.

4 JUDGE ELLEMAN: Okay. Well, then I don't
5 think you need to file anything else on that at at the
6 moment. Well, that's all I'm going to say, I mean, on
7 that unless my colleagues have anything they want to.

8 JUDGE WARDWELL: Judge Wardwell has
9 nothing.

10 JUDGE KARLIN: I have nothing. Judge
11 Karlin.

12 MS. BATY: Your Honors, this is Mary Baty
13 for the staff. I just wanted to ask you a question
14 here. Are you treating, Ms. Tyler, that as a formal
15 request to hold your decision in abeyance until the
16 data from the inspections is available?

17 JUDGE ELLEMAN: Well, that does appear to
18 be what is stated on page 6 of their answer. We
19 shouldn't decide this until the results become
20 available. I would have preferred them to cite by
21 analogy Federal Rules of Procedure 56, which I believe
22 would provide some criteria by which to do this.
23 Anyway, I think they have requested this.

24 MS. BATY: Yes. I guess the staff would
25 say that it's not under NRC jurisprudence. You don't

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1 normally bury a request like that. A motion
2 requesting that the Board hold its decision in
3 abeyance, hold its motion in abeyance would be
4 necessary, included in the caption of the pleading.

5 I mean, it can be all in one, but it was
6 just kind of tacked onto that end that that request
7 was made. And so we wouldn't have posed a motion
8 requesting the Board hold the decision in abeyance.

9 MR. LEWIS: Judge Karlin, this is David
10 Lewis. We also didn't do it as a motion. We do not
11 have the right to reply to an answer and did not. We
12 did not view it as a motion or any sort of motion to
13 hold a ruling in abeyance and certainly was no
14 consultation to treat it as a motion under whatever
15 the new ruling --

16 MS. TYLER: This is Karen Tyler. If the
17 parties feel the need for that additional paperwork,
18 I'm certainly happy to file a formal motion making
19 this request.

20 Judge Karlin, I would note that, again, in
21 our response to the NRC staff, we did cite 10 CFR
22 2.710(c), which states that "Where a party opposing
23 summary judgment can't present facts essential to
24 justify the parties' opposition, the presiding officer
25 may deny the motion order continuance or make another

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1 appropriate order." So we did cite that NRC rule.

2 JUDGE KARLIN: That's the analog to
3 Federal Rule of Civil Procedure 56.

4 MS. TYLER: That's right. And we did cite
5 that NRC regulation.

6 JUDGE KARLIN: Well, why don't you file
7 such a motion? We'll give you, let's say, a week.

8 MS. TYLER: Okay.

9 JUDGE KARLIN: File such a motion. Keep
10 it short, less than five pages.

11 MS. TYLER: Okay.

12 JUDGE KARLIN: Responses will be the same,
13 five pages a week later. Would that be okay,
14 everyone?

15 MR. LEWIS: This is David Lewis. That's
16 fine.

17 MS. BATY: Yes. Mary Baty for the staff.
18 That's fine.

19 JUDGE KARLIN: Okay. So seven days from
20 today. Let's call for any such motion if -- I guess
21 that would be the 19th. And responses or answers to
22 that would be the 26th. We won't issue a separate
23 order on that. So just everyone take note and please
24 proceed on that basis.

25 Okay. Anything else on the mandatory

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1 disclosure issues?

2 (No response.)

3 JUDGE KARLIN: That was useful. Thank
4 you.

3. SCHEDULING OF POSSIBLE SITE VISIT

5 4. SCHEDULING OF POSSIBLE LIMITED APPEARANCE

6 STATEMENT SESSION

7 JUDGE KARLIN: All right. Scheduling site
8 visit, scheduling limited appearance. We thought we
9 would talk about those together in that if we're going
10 to make this trip -- and this Board I think thinks
11 it's a useful exercise. We obviously do them
12 together.

13 Our thinking is that any such limited
14 appearance statement session should be after the staff
15 has issued the final environmental impact statement
16 and after it has issued the final safety evaluation
17 report, give the public some time to read that and
18 digest it and hopefully use that as a basis for their
19 oral statements.

20 And I recollect that we discussed this
21 back on November 1st. And the parties were generally
22 in favor of this being a good idea. In fact, Mr.
23 Roisman suggested that we come up in October, I think
24 it was.

25 MR. ROISMAN: Absolutely.

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1 JUDGE KARLIN: And so, with that, I mean,
2 we are contemplating scheduling these two events at
3 the same time and would like to find out first from
4 Entergy because if we would go to the site, obviously
5 you would be our host and we don't want to interfere
6 with any ongoing work or technical things or
7 inspections that are happening, but what does it look
8 like? Have you been able to check, Mr. Lewis, with
9 your client about the first three weeks in October?

10 MR. LEWIS: Judge Karlin, this is David
11 Lewis. I did not know you were looking specifically
12 at those dates --

13 JUDGE KARLIN: Right.

14 MR. LEWIS: -- for like a site visit. I
15 have discussed it. And we are very happy to host that
16 for the Board and the parties. Our refueling outage
17 just occurred. So I am not aware of any other outage
18 coming up.

19 I could ask Mr. Mike Mattel, who is on the
20 phone with us, if there is anything in October, but I
21 have not had that discussion.

22 JUDGE KARLIN: I appreciate we were kind
23 of hitting you cold on the exact weeks or months. So
24 we wouldn't hold you to anything right now, but
25 perhaps -- and Mr. -- is it Mattel? -- do you know of

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1 anything that would be problematic in that time frame?

2 MR. MATTEL: We would need to look at our
3 calendar. One of the things we have scheduled
4 regularly is e-plan drills with the state. And
5 amongst our own organization, we have increased the
6 frequency of those and any major audits at that time.
7 But a three-week window should be pretty adequate.

8 MR. LEWIS: Judge Karlin, can we commit to
9 get back to you and provide dates in October where we
10 know there are no plant conflicts?

11 JUDGE KARLIN: Yes, please. Could you do
12 that?

13 MR. LEWIS: I'll do that.

14 JUDGE KARLIN: If you could file
15 something? Would you say a week would be all right?

16 MR. LEWIS: Certainly.

17 JUDGE KARLIN: If you could file something
18 which would let us know what your availability, what
19 the facility's availability, is during the first three
20 weeks of October, that would be great.

21 If anyone else wants to file something at
22 the same time one week from today, the 19th,
23 indicating blackout dates or real severe problems, you
24 are free to do that as well. Would that be okay?

25 What we would plan to do is have a site

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1 visit. It would be probably conducted in a similar
2 way to the one we did, the other Board did, before
3 when we were up to Vermont Yankee and Entergy was kind
4 enough to give us an opportunity to see those parts of
5 the facility relevant to the contentions and that sort
6 of thing. But we will issue an order.

7 Now, I think when we talked about this
8 before, I believe -- let's see -- we did have a
9 question as to an agenda. Does anybody have anything
10 they need to say about site visit or limited
11 appearance statement session?

12 (No response.)

13 JUDGE KARLIN: Okay. Then if we could get
14 some dates from Entergy, that would be great. And
15 we'll try to set something down. We will also have to
16 coordinate with finding a venue for the limited
17 appearance statement sessions.

18 Last time the other Board, we used the
19 Latches Theatre. Does anyone have any better idea or
20 suggestion? I mean, that wasn't too bad, but, you
21 know, it wasn't perfect.

22 Perhaps, Mr. Lewis, do you all have any
23 ideas up there or the state perhaps?

24 MS. HOFFMAN: Judge Karlin, this is Sarah
25 Hoffman. The only other place -- and you have been

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1 there as well -- is the Quality Inn that's big enough
2 for this kind of meeting besides the Latches. And in
3 some ways, it's better than the Latches because it
4 doesn't have that theatre aspect to it, but the
5 Latches can hold more people.

6 JUDGE KARLIN: Right, right. Yes. Okay.

7 MR. LEWIS: Judge Karlin, the only other
8 suggestion is the room at the high school, the public
9 meeting room, --

10 JUDGE KARLIN: Oh, right.

11 MR. LEWIS: -- where we had our original
12 prehearing conference.

13 JUDGE KARLIN: Yes. Our tendency would be
14 to try to have one part of the limited appearance
15 statement session during the day and one part in the
16 evening to accommodate people's work schedules and
17 that sort of thing.

18 MR. LEWIS: It's hard when school's in.

19 JUDGE KARLIN: Yes. School may be in
20 session, although we might be able to check and see if
21 they have a holiday or a teacher in-service day or
22 something like that would work. Okay. That's worth
23 checking because those are reasonable venues.

24 One of the things we would like to
25 encourage -- and we will say this as we approach the

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1 actual limited appearance statement session -- is for
2 everyone to try to do their best to inform their
3 membership and the public constituents and
4 stakeholders as to what the limited appearance
5 statement session is about, what it's for. And
6 hopefully we can have a good -- and conduct it in a
7 civil way and be helpful.

8 MS. BATY: Your Honor, if I may, the staff
9 has two things. One is that the staff would prefer
10 not the first week but later in October, probably for
11 budgetary reasons.

12 The other thing is that based on the
13 Oyster Creek experience with the limited appearance
14 session, the staff would request the Board address the
15 issue of who can speak at the limited appearance
16 session so that the parties are clear about that.

17 JUDGE KARLIN: With regard to the first
18 week, what is the nature of the problem with the first
19 week in October?

20 MS. BATY: The first half of October,
21 there is a budget carryover and some constraint and
22 potential for -- travel may be frozen at that point.
23 That's the problem.

24 JUDGE KARLIN: Okay.

25 MS. BATY: And then there's a federal

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1 holiday, too.

2 JUDGE KARLIN: Oh, yes.

3 MS. BATY: Columbus Day.

4 JUDGE KARLIN: Well, I thought we would
5 have it on the holiday so that the taxpayers get the
6 maximum amount of work out of us federal workers.

7 PARTICIPANT: And assurance that no one is
8 doing anything else that day.

9 JUDGE KARLIN: Right, right.

10 MS. BATY: If we are on a continuing
11 resolution, it could be problematic. So staff just
12 wanted to raise that.

13 JUDGE KARLIN: All right. All right.
14 With regard to the Oyster Creek situation, we don't
15 intend to run into an Oyster Creek problem. We have
16 had the limited appearance statement session up in
17 Vermont in the prior case.

18 And I think we will just try to follow the
19 same approach, which would be this is for the public,
20 not for the parties, the advocates to be standing up
21 and arguing. But it is for the public. If a person
22 happens to be a member of some entity or an employee
23 of some entity that's a party here, we're not going to
24 throw them out of the session or not hear them.

25 I don't think we want to get into any more

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1 detail than that. I think we're going to be pretty
2 reasonable in terms of letting people speak and within
3 the time available and that sort of thing. That's
4 always a limitation. But I think we will be all
5 right. Okay?

6 Anything else on those two items?

7 (No response.) 5. CLARIFICATION OR
8 SIMPLIFICATION OF ISSUES

9 JUDGE KARLIN: Okay. Let us move to the
10 item number 5, I guess, which would be clarification
11 or simplification of issues. Anything we can do to
12 clarify these?

13 I know you have got motions for summary
14 disposition pending. So that might clarify some
15 things. Any other discussions on that to report?

16 MR. LEWIS: Judge Karlin, this is David
17 Lewis. We did talk with the other parties about our
18 willingness. And I think all the parties were
19 willing. If there are contentions that survive
20 summary disposition, hard as I believe that to be, we
21 are all willing to discuss possible stipulations after
22 the rulings in order to try and simplify the
23 presentation of evidence. So that the parties are
24 willing to do that after we get the rulings on summary
25 disposition.

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1 In addition, we have talked about the
2 possibility of having the experts for both sides on
3 the flow accelerated corrosion contention, talked to
4 each other. Entergy's thinking is that after NEC
5 responds to our motion for summary disposition, at
6 that point, NEC will have seen our case.

7 We will have seen NEC's case. And we
8 might be able to arrange the experts to talk to each
9 other to see at that point whether there is any common
10 ground.

11 JUDGE KARLIN: Right. That's good. I
12 think that's a good idea. Stipulations or admissions
13 would be appropriate after there has been a resolution
14 on the motions for summary disposition probably, more
15 appropriate to talk about then.

16 Let me ask, while we're on that topic,
17 does anyone intend to file a motion for summary
18 disposition with the only remaining contention that
19 doesn't have one on it? I guess it's NEC 2.

20 MR. LEWIS: I'm sorry, Judge Karlin. I
21 should have mentioned that. Also Entergy, we informed
22 the other parties in our call last week that we had
23 decided, instead of relying on a program to manage
24 environmentally assisted fatigue in the future, that
25 we were going to do the fatigue analyses.

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1 We have now had a contractor of structural
2 integrity perform a revised fatigue analysis
3 considering environmentally assisted fatigue. We
4 disclosed those reports in our last disclosure. The
5 reports still have to be reviewed by Entergy.

6 So we're not quite ready to move to
7 dismiss the contention as moot. But we did inform the
8 parties that that is our intention after Entergy has
9 had a chance to review and accept the revised fatigue
10 analyses.

11 JUDGE KARLIN: Okay. So you're saying you
12 do contemplate, intend at least at this point, to file
13 a motion for summary disposition.

14 MR. LEWIS: We didn't see it as a motion
15 for summary disposition. We saw it simply as a motion
16 to dismiss as moot. The contention is that our
17 application, instead of providing revised fatigue
18 analyses, relies on a program of repair or reanalysis
19 in the future. We intend to complete the reanalysis
20 and eliminate the portion of our application that
21 relies on future actions and simply dismiss the
22 contention as moot.

23 JUDGE KARLIN: Okay. Well, when do you
24 plan to file that?

25 MR. LEWIS: We have only just recently

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1 received the structural integrity reports. They have
2 to be reviewed and accepted by the plant staff. It's
3 not going to be by June 15th. It's probably July, end
4 of July maybe.

5 JUDGE KARLIN: Well, we have in our
6 initial scheduling order, as you will remember, as you
7 alluded to, a deadline for motions for summary
8 disposition of June 15th, 2007.

9 If you wan to cast or recast this as a
10 motion to dismiss as moot, typically we see those
11 combined. But, you know, it sounds to me like I'm a
12 little uneasy with getting something at the end of
13 July. You know, this is a little bit of a surprise to
14 us. And I'm not sure how my colleagues will feel
15 about it. We obviously want to resolve things.

16 And if they can and need to be resolved
17 early, our effort was -- and I think we said that at
18 the outset -- that we want these things sorted out
19 earlier, rather than later. Why is this report coming
20 in at this date? Why wasn't it generated earlier?

21 MR. LEWIS: It's a number of reports. I
22 think it's nine reports. It takes a while to generate
23 revised fatigue analyses. We have to perform them for
24 all the critical components and locations that are
25 subject to environmentally assisted fatigue. The

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1 analyses have been done. They now have to be reviewed
2 and accepted.

3 And, unfortunately, we also have the
4 outage scheduled in May and the ACRS meeting. And so
5 the persons who normally would be reviewing these
6 reports were also tied up with this outage,
7 inspections, and the ACRS meeting. So we have not
8 been able to. It has just simply been resources,
9 Judge Karlin.

10 MS. TYLER: This is Karen Tyler. I would
11 add that once NEC has received Entergy's final
12 reanalysis report, we'll be referring them to NEC's
13 consultants. And depending on those person's opinions
14 of the reanalysis, NEC might shoot to file a new
15 contention.

16 JUDGE KARLIN: Yes, of course. Yes, we
17 understand. Well --

18 MS. BATY: Your Honors, Mary Baty for the
19 staff. We might add as a follow-on that when these
20 reports come in, it could impact the staff SER. And
21 if we don't get them, that could push back our SER
22 date. We may have to revise our SER based on the
23 information that --

24 MR. LEWIS: Judge Karlin, let me explain
25 again that we have disclosed the structural integrity

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1 reanalyses, the reports, in our most recent
2 disclosure. They are out there and disclosed.

3 I believe there are two that are
4 proprietary that we disclosed on our proprietary log
5 and, therefore, would also be available for review
6 subject to the binding of the protective agreement.
7 So we have disclosed these reports, and they are out
8 there. And there is no delay. It is simply a matter
9 --

10 JUDGE KARLIN: When were they disclosed?
11 The beginning of the month or something?

12 MR. LEWIS: In our disclosure, the
13 disclosure that went in on whatever the first Thursday
14 was.

15 MS. BATY: Your Honor, for the staff Mary
16 Baty. The staff only reviews information that is
17 submitted on the docket. And the disclosures are not
18 submitted on the docket. So the staff wouldn't be
19 reviewing them.

20 JUDGE KARLIN: Well, I think the staff is
21 obliged to review that which is filed in this
22 litigation or at least is made available through
23 discovery in this litigation. I think that doesn't
24 quite cut it, but go ahead, Ms. Tyler.

25 MS. BATY: Can I cut in, Your Honor? I

1 need to clarify the technical review looks at what --
2 I mean, the staff obviously is reviewing the
3 information that is disclosed. But as far as the
4 technical review is concerned, that is limited to the
5 -- that looks at what is on the docket, formally
6 submitted on the docket.

7 And part of that is the license
8 application. If the license application is revised,
9 that would affect the staff's findings.

10 JUDGE KARLIN: Well, as I say, the staff
11 is obliged to look at whatever is filed in this
12 adjudicatory proceeding. And if it's technical or
13 legal, that's fine. Pick it up and take a look at it
14 and refer to your technical staff.

15 Ms. Tyler, yes?

16 MS. TYLER: Well, I do need to clarify an
17 important issue here for NEC. NEC I don't think would
18 want to expend its limited resources reviewing reports
19 that are not yet final.

20 And, as I understood, Mr. Lewis and I did
21 discuss this issue last week. And I understood that
22 the information that they have disclosed is not final.
23 And as far as the deadline, we have 30 days to review
24 new information, as I understand it, and decide
25 whether to file a new contention.

1 I don't think that that clock should run.
2 until we have received Entergy's actually final
3 analysis.

4 MR. LEWIS: This is Mr. Lewis. I'm not
5 sure there's going to be any further analysis. We
6 have provided structural integrities, reports
7 providing the revised fatigue analyses. Entergy needs
8 to review those reports to accept them or there may
9 not be any further report or analysis.

10 MS. TYLER: Right. If they don't accept
11 them, though, why should NEC spend money reviewing
12 reports that Entergy still might choose not to accept?
13 I think that is my question.

14 JUDGE KARLIN: Well, we're getting into a
15 number of issues here. Let me just try to respond for
16 myself. I have consulted with my colleagues. I think
17 when things are filed, whether it's denominated as a
18 draft or partial or whatever, I think you are obliged
19 to review what is filed or made available to you by
20 the other parties.

21 And, for example, if there is a draft
22 environmental impact statement that is issued and it
23 raises certain issues and those are ones upon which
24 you want to base a new contention, you need to proceed
25 to do that and not sit on your hands until the final

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1 environmental impact statement is issued and say,
2 "Aha. Now it's final. Now I'll file the contention."

3 I think a similar approach would apply to
4 this kind of information that has been made available
5 to you, Ms. Tyler. I mean, it seems to me, Mr. Lewis,
6 that you have been working, your client has been
7 working diligently to come up with some of the stress
8 analysis, fatigue analysis for some time with the idea
9 that this would dispose of NEC contention number 2.

10 MR. LEWIS: That's correct, Judge Karlin.

11 JUDGE KARLIN: So it's not a new idea.
12 It's not you have been working on this for months and
13 months. I don't know why you need another six weeks
14 to file a motion for summary disposition or motion to
15 dismiss as moot, whichever you want to call it.

16 You've got your report. You've got your
17 plan in mind. And I guess the plan is to try to knock
18 out NEC contention 2 based upon what you have been
19 working on, your client has been working on for many,
20 many months.

21 So why do you need an extra six weeks from
22 the deadline, we submit -- I mean, I am not real happy
23 with pulling sort of a -- putting a new label on the
24 same thing and saying, "Therefore, we don't have to
25 get it in by June 15th."

1 I think if something inevitably comes up
2 late, you have been planning this. You know this is
3 here. You've got your reports already on the table.
4 You've shared them with the other parties. What's
5 holding you up from filing your motion to dismiss or
6 motion for summary disposition?

7 MR. LEWIS: The only thing that is holding
8 us up, Judge Karlin, is the fact that Entergy's
9 engineers needed to review the reports to accept them
10 and adopt them as their own.

11 JUDGE KARLIN: All right. Well, I'm not
12 in a position to be able to make a ruling for my Board
13 here, but, you know, we may have to consult and decide
14 how we proceed.

15 I'm not sure whether now we -- this is
16 unfortunate because what you are doing, Mr. Lewis, is
17 causing a problem. We wanted to front-end load some
18 of this and get some of these things sorted out one
19 way or the other.

20 And June 15th was imposed for a reason.
21 You're undermining that reason. We're going to have
22 new contentions. We're going to have, you know,
23 briefings just when parties are supposed to be filing
24 their initial statements of fact and all the other
25 things have to be filed. We tried to avoid that.

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1 MR. LEWIS: I am hoping that these
2 analyses will leave no room for additional contentions
3 and that they will simply boost the original
4 contention, which was you should have these analyses
5 presented. These analyses are done under the ASME
6 code.

7 JUDGE KARLIN: Yes. Okay. Well, I mean,
8 hope springs eternal. And that might work.

9 JUDGE WARDWELL: I can see the path where
10 it might make the contention moot but doesn't
11 necessarily clarify whether or not a new contention
12 springs out of that information, I think. So I
13 understand what you're saying, Mr. Lewis, but as far
14 as I am concerned -- and this is Judge Wardwell
15 speaking -- there is still that problem with the
16 effects on the scheduling.

17 MR. LEWIS: Judge Karlin, let me do this.
18 Let me go back and talk to my client and just see what
19 it is that we can do, what is the best that we can do.

20 JUDGE KARLIN: Well, okay. You can talk
21 with your client. That would be good. And we have
22 this June 15th deadline. We will not look with favor
23 upon trying to maneuver around it.

24 If necessary, we may have to set a
25 deadline for motions to dismiss as moot if you want to

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1 call it that of the same contentions. It's the same
2 thing. And I think the spirit of that provision,
3 paragraph page 7 of our initial scheduling order, is
4 undermined by what you are suggesting here, Mr. Lewis.

5 MR. LEWIS: I apologize, Judge Karlin. I
6 wasn't trying to undermine it. I mean, I have always
7 understood that motion to file -- that a contention to
8 be dismissed as moot at any point in an proceeding,
9 even during a hearing --

10 JUDGE KARLIN: Well, you have given us
11 good reason how we can improve our initial scheduling
12 orders and add a new phrase in there.

13 MR. ROISMAN: Mr. Chairman, this is Mr.
14 Roisman?

15 JUDGE KARLIN: Yes, Mr. Roisman?

16 MR. ROISMAN: One thing that you said that
17 was of concern to Vermont was the statement about
18 draft impact statement, final impact statement. As
19 you know, the initial contention, I think it was, 2 by
20 Vermont which was denied was a contention that dealt
21 with the land use as a result of indefinite storage.
22 That was turned down by the Board.

23 And we then followed a course of action,
24 which was to take that issue and bring it to the
25 attention of the staff during the scoping hearing that

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1 they held requesting information on their draft EIS.
2 And we submitted that to them.

3 Nothing was done with it by them in the
4 draft EIS. But the way the staff -- if you read the
5 regulations, it doesn't say that they have to to
6 respond to anything about scoping and that they
7 respond to public comments only in the final EIS.

8 We did not feel that moving for a new
9 contention based upon the staff's failure to discuss
10 the issue in the draft EIS was appropriate, that this
11 matter was still under consideration by them, that, in
12 effect, we had not yet exhausted our administrative
13 remedies. And we're still hopeful that in the final
14 EIS, the staff will address that issue.

15 So if they don't, the state may then file
16 a contention based upon the failure of the final EIS
17 to address the issue. That contention would be
18 cognizable by the Board, and it wouldn't be a -- it's
19 arguably not a cognizable issue under your earlier
20 ruling about new and significant information until the
21 final impact statement comes out and the new and
22 significant information is missing from it.

23 And I don't want to argue the issue at
24 this point, but I was afraid that what you said may
25 have prejudged the question, which could become an

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1 important question for the state at some point after
2 the first week of August.

3 MR. LEWIS: Judge Karlin, this is Mr.
4 Lewis. I don't want to argue it either, but we are
5 certainly going to object to any contention that's
6 raised on the FEIS if it could have been raised based
7 on the DEIS.

8 MR. ROISMAN: Well, that makes a mockery
9 out of calling it a draft EIS, then. I mean, we
10 submitted all of this comment to the staff in the
11 draft EIS. We didn't surprise anybody with it. It's
12 all --

13 JUDGE KARLIN: All right. Why don't we
14 let Ms. Baty say a couple -- what is your thought on
15 that, Ms. Baty?

16 MS. BATY: The staff's response is that a
17 late filed contention has to meet those standards for
18 a late filed contention.

19 JUDGE KARLIN: Well, okay.

20 MS. BATY: It's based on information in
21 the 30-day standard to respond to information that's
22 available and 30 days to respond after a document is
23 produced based on that.

24 JUDGE KARLIN: Okay. Well, Mr. Roisman,
25 we're not going to decide that issue here today.

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1 MR. ROISMAN: That's what I wanted to
2 avoid.

3 JUDGE KARLIN: And I hope if you intend to
4 do this, I suggest you pull out the case law and take
5 a look at it and read the regs very carefully because
6 I think the anti-sandbagging principle may be at work
7 here that it is problematic, but if you have got a
8 gripe about a draft environmental -- a draft
9 environmental impact statement has some information in
10 it that's new and significant, then we just have to
11 take 2.309(f)(2) or whatever it is and start applying
12 it to whether or not there is a need to file a new
13 contention. At the same time, you file comments on
14 the draft environmental impact statement.

15 Whether you can wait six months or a year
16 and do the final environmental impact statement, oh,
17 they didn't change anything. And, therefore, now
18 we're going to file the contention, it kind of
19 back-end loads everything and causes a problem.

20 MR. ROISMAN: It isn't that they put in
21 new and significant information. It's that they left
22 out.

23 JUDGE KARLIN: They didn't change
24 something you wanted changed.

25 MR. ROISMAN: No. They didn't add

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1 something that we thought should have been in there.

2 JUDGE KARLIN: Well, that's --

3 MR. ROISMAN: And we told them in the
4 scoping that they should address it. And then we told
5 them in the comment section. But the objection is
6 that there is no cause of action for a defective draft
7 impact statement.

8 The cause of action is for a defective
9 final impact statement. If they issue a final impact
10 statement and we decide to file a contention, the
11 contention will be that the agency is preparing to
12 take final action based on a defective impact
13 statement.

14 The Board has a duty to decide whether the
15 impact statement is defective. We don't know that
16 until there is a final. And having a contention over
17 whether or not a draft includes something is a
18 pointless contention. It will not advance the case.
19 It's playing form over substance to require a party to
20 file a contention about something the staff has not
21 yet done finally and to say, "This is a contention
22 which will immediately be mooted" when the final
23 impact statement is issued, either because now there
24 is no draft anymore and, therefore, there can't be a
25 contention about the deficiencies in the draft or

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1 because they have actually done what you have asked
2 them to do.

3 JUDGE ELLEMAN: Well, okay. I think that
4 opposition will be hotly contested. And we will just
5 have to see, listen. If the event occurs, we will
6 read the briefs and study it and try to apply the law
7 and the regs as best we understand them. But it is a
8 knotty question, I think.

9 JUDGE WARDWELL: And let me make sure it's
10 clear on my part. This is Judge Wardwell again. I
11 believe that new contentions can be filed on the FEIS,
12 but the risk is at the person doing it to assure that
13 there wasn't justification to submit that at the draft
14 stage, that it has to be something that supports the
15 fact that it is new and significant at the final stage
16 that could not be addressed and wasn't there at the
17 draft stage. And so the risk is at the party that
18 decides to wait until the final to assure that if they
19 believe it to be new and significant information, that
20 there is confidence on their part that, in fact, this
21 Board also agrees with that position.

22 JUDGE KARLIN: Yes.

23 JUDGE WARDWELL: And I think that is a
24 challenge, as Judge Karlin has alluded to.

25 JUDGE KARLIN: Yes.

1 JUDGE WARDWELL: I don't think it's
2 preemptive that you can't put something in with the
3 FEIS, but the risk is there that the Board may decide
4 that it could have been done at the draft stage.

5 JUDGE KARLIN: Yes. Okay. We'll all have
6 to read 2.309(f)(2) carefully --

7 MR. ROISMAN: As if we haven't before.

8 JUDGE KARLIN: -- again and see if -- I'm
9 not sure how.

10 MR. ROISMAN: On and on.

11 JUDGE KARLIN: Well, yes, exactly. All
12 right. Moving on --

13 MS. TYLER: I'm sorry. This is Karen
14 Tyler. Could we return briefly to the subject to
15 contention 2 before we completely move on?

16 JUDGE KARLIN: What is it we need to say
17 more about it?

18 MS. TYLER: Well, when I discussed these
19 environmental fatigue analysis reports with Mr. Lewis,
20 I understood an internal review process at Entergy was
21 ongoing, which I understood to mean that the reports
22 could potentially be revised and were draft
23 essentially.

24 I am now hearing that, in fact, the
25 reports won't be changed. And I think I understood

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1 you to say earlier that, even though it's possible
2 that Entergy won't accept this analysis, NEC is still
3 obliged to review it now and file new contentions
4 based on this yet unaccepted analysis, which we have
5 30 days to do.

6 And I would like to request that NEC be
7 permitted 30 days from today in which to review these
8 reports, as opposed to 30 days from the date they were
9 produced.

10 JUDGE KARLIN: Does anybody have any
11 objection to that? Mr. Lewis?

12 MR. LEWIS: No, Judge Karlin.

13 JUDGE KARLIN: Okay.

14 MS. BATY: The staff doesn't have any
15 objection, Your Honor.

16 JUDGE KARLIN: All right. Then we'll
17 proceed on that basis. We'll proceed on that basis.
18 So we're done with the NEC contention 2. That is to
19 say, there appears to be a motion of some sort that
20 may be coming down the pike.

21 I think I will talk to my colleagues and
22 see if we want to address a deadline for that motion
23 or think through whether or not it is already captured
24 by our existing deadline. But we don't want it coming
25 in late. And so that's a concern we have.

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1 Let me change gears. I think I heard you
2 say earlier that you were conducting some
3 expert-to-expert discussions on some of the other
4 contentions, one of the other contentions.

5 MR. LEWIS: Judge Karlin, I would just say
6 that in our call last week, we had discussed that
7 possibility. And what Entergy wanted to suggest, this
8 is NEC 4, the flow accelerated corrosion contention.

9 Our suggestion is that after NEC responds
10 to our motion for summary disposition, at that point
11 we will talk with NEC and explore about getting our
12 experts to talk to see how close we are apart.

13 At this point we have put our case on the
14 table. We would like to see NEC's response --

15 JUDGE KARLIN: Okay.

16 MR. LEWIS: -- and then, you know,
17 depending on what that looks like, to see whether it
18 makes sense to at that point see if we are close
19 enough that maybe we can get rid of the issue.

20 JUDGE KARLIN: I think that would be
21 great. I encourage you to do that promptly. NEC, are
22 you amenable to that?

23 MS. TYLER: Yes.

24 JUDGE KARLIN: All right. Good. So you
25 will file your response, your answer, as it were, I

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1 guess on June 25th, if I calculate it right. And then
2 soon afterwards, why don't you have your experts or
3 see if you can talk?

4 What I would like to avoid, if we could,
5 is, first off, we're going to have this briefed and
6 ready for a decision. One scenario is we issue a
7 decision and two days later you settle it. And that
8 would be somewhat problematic. If you're going to
9 settle it or resolve it, we would like to know about
10 it as quickly as possible if you can do that.

11 Second is on the last Vermont Yankee case
12 that I had, we had two contentions that NEC pursued.
13 And after the initial filings of testimony, NEC
14 dropped one of the two contentions. And that was
15 after a lot of enormous amount of work had gone into
16 it.

17 Now, maybe that was inevitable in a way it
18 had to be, but if you're going to settle something,
19 you know, let's try to move it and do it, rather than
20 wait at the courthouse steps and after everyone has
21 gone through a substantial amount of effort and then
22 settle it.

23 I mean, if you can settle it, you know, or
24 address it or simplify it or stipulate to certain
25 things now, please, please, please do so. You will

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1 find us supportive of that.

2 Okay. I don't know whether there is
3 anything else within clarifications, simplifications,
4 amending pleadings, stipulations, settlement, that
5 sort of thing. Anything else in this category that
6 needs to be discussed?

7 MR. LEWIS: No, Judge Karlin, not from
8 Entergy's perspective. 9.

9 SCHEDULING

10 JUDGE KARLIN: Okay. Hearing no one else,
11 we will just -- I think that is pretty much it except
12 for scheduling of the evidentiary hearing. And this
13 is, of course, assuming there will be one. Well, we
14 have two motions for summary disposition. It looks
15 like we're cutting a third.

16 But we plan to schedule or contemplate an
17 evidentiary hearing. And if it all gets resolved,
18 through settlement or otherwise, ahead of time, we can
19 pull the plug on it.

20 We are thinking about February and March
21 of '08. And we are not sure of the venue, but we
22 would like to make it up there in the Brattleboro area
23 of the facility, maybe the new famed courtroom, maybe
24 some other courtroom or other facility.

25 What I would like to ask all the parties

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1 to do and the State of New Hampshire if you intend to
2 participate as an interested state is to submit to us,
3 let's say, in ten days blackout schedules for the
4 months of February and March of '08; that is, those
5 dates and only those dates that are clearly and
6 justifiably not available for an evidentiary hearing
7 so that we can start blocking out some time and see if
8 there is a time frame that will fit.

9 I know that this entails talking with your
10 witnesses and clients. And it could be a number of
11 people. And we don't really know at this point how
12 many people it would be.

13 So do your best, but don't just --
14 because, you know, we may have to end up following up
15 and asking what is the justification. So please give
16 us your blackout dates and your reasons why you are
17 blacked out for those dates. And submit those, let's
18 say -- well, let's just say by the 26th of June. That
19 would be two weeks.

20 MS. TYLER: This is Karen Tyler. I may
21 have missed something that you have already said,
22 Judge Karlin, but which month are we looking at?

23 JUDGE KARLIN: I'm sorry. February or
24 March of 2008.

25 MS. TYLER: Thank you.

1 JUDGE KARLIN: If you could get blackout
2 dates for those two months? That is what it kind of
3 looks like if we follow the schedule and the sequence
4 of events that are in the initial scheduling order.
5 It could be a week earlier or two. You know, who
6 knows?

7 All right. With that, is there anything
8 else that we need to cover? First I will ask Judge
9 Wardwell. Anything?

10 JUDGE WARDWELL: I don't have anything.

11 JUDGE KARLIN: Judge Elleman?

12 JUDGE ELLEMAN: I have no items.

13 MS. BATY: Your Honor, because there are
14 a lot of folks on leave, would it be possible to move
15 the date to get back to you on scheduling to the end
16 of the month, to June 30th? We just have a couple of
17 more days to try to catch as many people as possible.

18 JUDGE KARLIN: That's all right. That's
19 fine.

20 MS. BATY: Can we make it -- let's see.
21 June 29th would be the end of the month.

22 JUDGE KARLIN: June 29th. Yes, that would
23 be fine.

24 MS. BATY: Thank you.

25 JUDGE KARLIN: Okay. Anything else from

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1 any of the parties?

2 (No response.)

3 JUDGE KARLIN: All right. Well, thank you
4 all for participating. We're looking for some filings
5 in a week, 7 days, and 14 days. Let's see if we
6 review what they are.

7 First you're going to give -- let me do
8 this backwards. You're going to give us your blackout
9 dates for February and March '08 by June 29th.
10 Backing up again, you're going to give us your --
11 let's see. What is it? Two weeks from now.

12 (Whereupon, the judges conferred off the
13 record.)

14 JUDGE KARLIN: Submit a motion by the 19th
15 if you have one in terms of extension of time to
16 respond or additional time to respond with the other
17 parties having an opportunity to file a week later on
18 the, what, 26th, in answer to that. And I think the
19 other one is -- no. I guess maybe that's it.

20 Oh, and NEC has got 30 days from today to
21 -- well, let's just put it this way. The 30-day time
22 clock for filing of new contentions with regard to and
23 limited to this particular report everyone was talking
24 about starts today for NEC.

25 MR. ROTH: Your Honor, this is Peter Roth

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1 from the State of New Hampshire. Would it make sense
2 to schedule one or more additional status conferences
3 between now and the evidentiary hearing at this point?

4 JUDGE KARLIN: Well, certainly it would
5 make -- we would probably schedule them. I don't
6 think at this point we're prepared to do that, but I
7 think it will be a good idea. So I think we will be
8 having such conference calls. That's a good idea.

9 MR. ROTH: Thank you.

10 JUDGE WARDWELL: Moving now to the dates,
11 Mr. Lewis is going to submit by the 19th the potential
12 dates for the site visit.

13 JUDGE KARLIN: All right. That's all I
14 can remember at the moment. Hopefully everyone is
15 taking good notes.

16 MS. BATY: Your Honor, can I ask a
17 question about the NEC's potential motion due on the
18 19th? There is a five-page limit on that?

19 JUDGE KARLIN: Is this Ms. Hoffman?

20 MS. BATY: No. This is Ms. Baty.

21 JUDGE KARLIN: Oh, Ms. Baty.

22 MS. BATY: A five-page limit on the motion
23 and the responses or --

24 JUDGE KARLIN: Yes, yes.

25 MS. BATY: I just want to be clear about

1 page limits.

2 JUDGE KARLIN: Oh, we did say that
3 earlier. I didn't repeat it, but I don't think I need
4 to repeat it. It's five pages.

5 MS. BATY: Okay. Thank you.

6 JUDGE KARLIN: Thank you.

7 MS. BATY: And then the staff is awaiting
8 an appearance from the State of New Hampshire. Has
9 Mr. Roth filed an appearance?

10 JUDGE KARLIN: I believe he did. I think
11 I got something today --

12 MS. BATY: Okay.

13 JUDGE KARLIN: -- in the mail. And maybe
14 electronically we might have gotten it ahead of time.

15 MS. BATY: Okay. So we can update our
16 service list, right --

17 JUDGE KARLIN: Right, right.

18 MS. BATY: -- and remove Ms. Patterson?

19 JUDGE KARLIN: Right. Okay. Thank you
20 very much for your time and patience. I felt this was
21 helpful. And we'll now adjourn the call. Thank you
22 very much.

23 MS. BATY: Thanks very much, Judge.

24 (Whereupon, the foregoing matter was
25 concluded at 3:10 p.m.)

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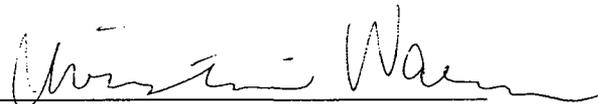
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Yankee

Pre-Hearing Conference

Docket Number: 50-271-LR

Location: (Telephone conference)

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