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**Official Transcript of Proceedings**  
**NUCLEAR REGULATORY COMMISSION**

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Pre-Hearing Conference

Docket Number: 50-0219-LR

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SECY-02



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

3:09 p.m.

1  
2  
3 JUDGE HAWKENS: We're now on the record.  
4 This is again, Judge Hawkens and we're conducting a  
5 pre-hearing conference call in the Amergen Case,  
6 Docket Number 50-291-LR. The purpose of the  
7 conference call is to discuss administrative matters  
8 relating to the evidentiary hearing that's scheduled  
9 to begin on Monday, September 24<sup>th</sup>, in Tom's Creek,  
10 excuse me, Tom's River. Yesterday, Ms. Wolf provided  
11 the parties with an outline of the discussions points.  
12 We hope everybody's had an opportunity to review them  
13 so that they'll focus and hopefully streamline our  
14 discussion. So let's turn to that outline.

15 Item Number 1, it was my understanding  
16 that the parties had suggested a meeting prior to the  
17 evidentiary hearing for the purpose of submitting  
18 exhibits. And could I hear from each of the parties?  
19 Is that correct? Each of you would be amenable to  
20 that and in an abundance of caution to preserve time  
21 at the evidentiary hearing?

22 MR. SILVERMAN: Don Silverman for Amergen.  
23 That's correct, your Honor.

24 MR. WEBSTER: Richard Webster here, I have  
25 said that we will be happy to participate in such a

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1 pre-hearing session. The only problem is with venue.  
2 That I personally would find it difficult to get to  
3 NRC headquarters on that day. I had discussed with  
4 Amergen the idea of having myself on the phone and  
5 then having Paul Gunter actually deal physically with  
6 the exhibits but I understand from him that he may not  
7 be able to make it for reasons that he cannot control.  
8 So I don't know if that causes a problem or not.

9 JUDGE HAWKENS: Is there a different date,  
10 Mr. Webster, where you might be able to have a  
11 representative present?

12 MR. WEBSTER: Well, I think Mr. Gunter has  
13 something going on which may result in him being  
14 called away at short notice. So we could possibly  
15 nominate someone else to be present.

16 MS. WOLF: We're going to go on hold for  
17 one second.

18 (Pause)

19 JUDGE HAWKENS: Mr. Webster, Judge Hawkens  
20 here. If Mr. Gunter is not available on Wednesday,  
21 did you indicate that there may be another individual  
22 who while you're patched in and supervising the  
23 activities going on would be able to stand up and  
24 actually present the exhibits to our clerk?

25 MR. WEBSTER: Yes, that's right, somebody

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1 from Mr. Gunter's office, I understand, could do it.

2 JUDGE HAWKENS: If you're comfortable with  
3 that, the Board is comfortable with that as well.

4 MR. SILVERMAN: Your Honor, this is Don  
5 Silverman. I should interject now before we get too  
6 far down the path, that we have a real concern about  
7 the 19<sup>th</sup>.

8 JUDGE HAWKENS: Oh, okay, let's hear from  
9 you.

10 MR. SILVERMAN: Yeah, I didn't think we  
11 were going to get there just yet. To make a long  
12 story short, we have a lot of witnesses. We  
13 anticipated working and having our witnesses prepared  
14 for the hearing that week. We could easily support  
15 Thursday, the 20<sup>th</sup> in the afternoon or Friday the 21<sup>st</sup>  
16 in the morning. But it creates a pretty good  
17 predicament for us if we go on the 19<sup>th</sup>. It's right  
18 in the middle of the time when we'll be meeting with  
19 our experts.

20 JUDGE HAWKENS: We're going to go off the  
21 record for a moment.

22 MS. YOUNG: Judge Hawkens, did you want to  
23 hear from the staff?

24 JUDGE HAWKENS: Yes, let's please do, Ms.  
25 Young.

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1 MS. YOUNG: Just to let you know, the  
2 staff has no objection to either of the dates that  
3 have been proposed or times suggested.

4 JUDGE HAWKENS: Great. We appreciate your  
5 accommodation. We'll be right back.

6 (Off the record.)

7 JUDGE HAWKENS: Mr. Webster, for  
8 clarification, you indicated an individual from Mr.  
9 Gunter's office could step in for him, if necessary.  
10 That would be an individual essentially representing  
11 NRRS (phonetic) or from the NRRS office?

12 MR. WEBSTER: I'm not totally clear. He  
13 had indicated that it was somebody from the BN Nuclear  
14 Office would do it. But that NRRS wouldn't object to  
15 that, but I know it does cause some complications.

16 JUDGE HAWKENS: It does cause some  
17 complications. Also, we may run into complications  
18 here as far as availability of a quorum of board  
19 members on the afternoon of the 20<sup>th</sup> or on the 21<sup>st</sup>.  
20 Why don't we -- we know the complications that exist.  
21 Why don't we move on and we will get back to the  
22 parties tomorrow on this particular issue.

23 Let's talk not about the procedures for  
24 submission of exhibits. Mr. Wolf provided a  
25 reasonably comprehensive description of each item.

1 Let's go down them one by one and see if anybody has  
2 any question about them. First exhibit markings;  
3 starting with Citizens, and then we'll go to Amergen  
4 and then the staff. Does anybody have any questions  
5 about either the exhibit markings or the stamping  
6 exhibits? Mr. Webster?

7 MR. WEBSTER: No, I think I understand  
8 these instructions.

9 JUDGE HAWKENS: Amergen?

10 MR. SILVERMAN: Yes, your Honor, Don  
11 Silverman. We have a few questions.

12 JUDGE HAWKENS: All right.

13 MR. SILVERMAN: One is, we're a little  
14 concerned about confusion in the record with respect  
15 to changing exhibit numbers. The testimony that's  
16 been submitted by the parties has exhibits referenced  
17 and imbedded in already with references to the old  
18 exhibit numbers. And so we're seeking a clarification  
19 from you as to how we would handle that situation  
20 where they're already referenced in the testimony and  
21 they already have exhibit numbers, and the  
22 recommendation here is to change those.

23 We have no problem with the concept of the  
24 witness list being a new exhibit and the testimony  
25 being a new exhibit, D, C, C1, et cetera. But we

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1 wondered about the changing the reference titles or  
2 numbers for existing exhibits.

3 JUDGE HAWKENS: And explain to me why the  
4 current exhibit numbers would have to be changed.

5 MR. SILVERMAN: It was our impression,  
6 perhaps -- Mr. Polonsky will speak to that.

7 MR. POLONSKY: This is Mr. Polonsky.  
8 Currently, our Exhibit Number 1 and our Exhibit Number  
9 36 are CV's. We understand you'd like those moved to  
10 become a single Exhibit, Exhibit D. In doing so we  
11 would then have no Exhibit Number 1 and no Exhibit  
12 Number 36 and we weren't clear whether you expected us  
13 to renumber all the other exhibits 1 through 34, or  
14 whether we just proceed with no Exhibit Number 1 and  
15 no Exhibit Number 36.

16 JUDGE HAWKENS: I think it would be fine  
17 to go with no Exhibit Number 1 and no Exhibit Number  
18 36, just leave them blank, deliberately blank and then  
19 maintain the other exhibit numbers.

20 MR. POLONSKY: That would be the easiest  
21 for us.

22 MS. WOLF: And then just make sure to  
23 indicate on your exhibit list that Exhibit 1 removed.

24 MR. POLONSKY: Okay, removed to Exhibit D.

25 MS. WOLF: Yes, just to make clear that

1 we're not missing it.

2 THE REPORTER: Excuse me, can you identify  
3 yourself?

4 MS. WOLF: This is Debra Wolf, the law  
5 clerk.

6 MR. POLONSKY: Also, I guess it's the  
7 initial testimony is slated to be labeled as Exhibit  
8 B and rebuttal will become Exhibit C. We --

9 THE REPORTER: Is this Don Silverman?

10 MR. POLONSKY: This is Alex Polonsky  
11 again. We have submitted our testimony in multiple  
12 parts with multiple dividers. We assume you just want  
13 a single exhibit with no dividers for each of the  
14 parts for here.

15 JUDGE HAWKENS: That would be fine.

16 MR. POLONSKY: Okay.

17 JUDGE HAWKENS: That was Judge Hawkens  
18 speaking. That would fine, thank you. Anything else?

19 MR. SILVERMAN: This is Don Silverman.  
20 With respect to the marking of exhibits no, no.

21 JUDGE HAWKENS: Okay, thank you. Ms.  
22 Young, any questions on behalf of the staff?

23 MS. YOUNG: Yes, this is Ms. Young. In  
24 terms of Amergen's numbering of exhibits, to the  
25 extent that they make everything Exhibit C, they had

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1 multi-parts. Are we going to be able to do some  
2 designation on those various parts because each part  
3 has sequentially numbered pages, if I'm following the  
4 discussion correctly?

5 MR. POLONSKY: Mitzi, this is Mr.  
6 Polonsky. Our recommendation would be for any  
7 references to Amergen's testimony in a new Exhibit C  
8 or Exhibit B to simply say Exhibit B, Part 1 or Part  
9 3 and then the page number or frankly, Exhibit B, Part  
10 6, Answer Number. Will that work for you?

11 MS. YOUNG: That's extremely helpful. The  
12 other question I have is the staff testimony  
13 references the Statement of Professional  
14 Qualifications as being attached to the testimony and  
15 the Judges have recommended that we make that now an  
16 exhibit. Did you want the staff to go in and change  
17 all of those references?

18 JUDGE HAWKENS: Off the record one second.  
19 (Off the record.)

20 JUDGE HAWKENS: Ms. Young, Judge Hawken  
21 here. I think there's several ways we could hand  
22 this. Before proposing one, do you have any proposal  
23 that you think would be easiest for the staff and  
24 workable within the system we've provided?

25 MS. YOUNG: Well, I don't have an easy fix

1 for you. I can only that in the Vermont Yankee  
2 proceeding the staff resumes were attached to the  
3 testimony that was bound in the record in that  
4 proceeding, so I guess the staff would ask for  
5 permission to forego creating Exhibit A, excuse me,  
6 Exhibit D, which is the resumes.

7 MALE PARTICIPANT: (Inaudible)

8 MS. YOUNG: We could do that also. The  
9 affidavit that we have currently that, you know, says  
10 to the veracity of the testimony and the statement of  
11 professional qualifications, and the testimony  
12 references all talk about certain documents being  
13 attached and you're talking about us pulling those  
14 documents apart now, so they won't be attached. So  
15 that effects the way it's written now.

16 JUDGE ABRAMSON: This is Judge Abramson.  
17 Let me suggest, Ms. Young, that as a simple solution,  
18 just leave them where they are, don't change your  
19 testimony. If it's a desire to have a separate  
20 exhibit with the CV's attached, you can make an  
21 exhibit and just list where the CV's are.

22 MS. WOLF: Hold on one second.

23 JUDGE ABRAMSON: Put them in, just say  
24 duplicative of X, so that we know it's not new. Did  
25 you follow that, Ms. Young?

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1 MS. YOUNG: Yes, I did. If we had had  
2 these instructions before, of course, we could have  
3 structured our testimony differently, but we're happy  
4 to accommodate the Board and whatever its needs are to  
5 understand this record. We're just trying to figure  
6 out how much we should modify our existing testimony  
7 for something other than a typo.

8 MS. WOLF: Yeah, just submit them as  
9 Exhibit D with all the CV's and leave everything else  
10 the same. It will be duplicative but just -- I don't  
11 think you had that many witnesses, so it would be an  
12 inordinate amount of paper, correct?

13 MS. YOUNG: You are absolutely correct.

14 MS. WOLF: That was Debra Wolf speaking.  
15 Okay, so just do it that way.

16 MS. YOUNG: Thank you, Debra, it's Mitzi.

17 JUDGE ABRAMSON: Yeah, this is Judge  
18 Abramson. Just make sure when you put the duplicate  
19 in that you indicate it is duplicative of such and  
20 such.

21 MS. YOUNG: We can do that, Judge  
22 Abramson, thank you. The only other question the  
23 staff has is that my understanding is testimony, the  
24 Exhibits of the A's or the B, C, D, or whatever, B and  
25 C would not be entered into the record on the 19<sup>th</sup>; is

1 that correct, or the 20<sup>th</sup>, whatever date we pick?  
2 That that would be entered into the record, only once  
3 someone is there to swear to the authenticity and then  
4 it would be bound in the transcript as if read.

5 JUDGE HAWKENS: No, we won't be binding it  
6 into the transcript as if read. We'll be -- if we do  
7 meet the week prior to the evidentiary hearing itself,  
8 that's why we're going to require it to be sworn  
9 beforehand. We can simply admit it as an exhibit on  
10 that day.

11 MS. YOUNG: Judge Hawken, this is Mitzi  
12 Young again. The staff has a concern because when  
13 testimony is not in the transcript sometimes it's  
14 difficult to follow the questioning associated with  
15 that testimony. So maybe this effects one of the  
16 issues that are later on the list that Debra Wolf  
17 provided us but we think it's pretty important to have  
18 testimony in the transcript in close proximity to the  
19 questions that are being asked from that testimony.

20 JUDGE HAWKENS: I can understand that, but  
21 we don't share that concern. I think if it's  
22 submitted as an exhibit it will be sufficiently easy  
23 for the Board to follow and to the extent there's any  
24 challenge, it will be even easier for either an  
25 administrative appellate body or judicial appellate

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1 body to review, Ms. Young.

2 JUDGE ABRAMSON: And by the way, Ms.  
3 Young, this is Judge Abramson, you all are aware that  
4 it's our expectation you'll have all the experts in  
5 the room all the time and we're likely to be asking  
6 questions and jump around from testimony to testimony.  
7 So if you had it bound in the record in one spot and  
8 we're asking an expert who's sitting in the audience  
9 and not on the stand, but previously sworn it, about  
10 something he said which would be someplace else in the  
11 record, you wouldn't have that proximity in the record  
12 anyway.

13 MS. YOUNG: The staff was unaware of the  
14 procedure that would necessarily be followed since  
15 some of the information that's requested on this  
16 talking point list is the number of panels and number  
17 of participants, so, you know, all that is good  
18 information for us in terms of our planning for that  
19 day.

20 The board asked that the testimony be  
21 signed. Is that something different than the  
22 affidavits that we have submitted with the pre-filed  
23 testimony?

24 JUDGE HAWKENS: No, it's the affidavits  
25 submitted satisfy that.

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1 MS. YOUNG: Thank you for that  
2 clarification. Now, do those affidavits need to be an  
3 extra exhibit?

4 JUDGE HAWKENS: No, they are part of the  
5 testimony itself.

6 MR. WEBSTER: This is Richard Webster for  
7 Six Citizens Group. May I ask a clarifying question  
8 on the point about witnesses or are we going to  
9 discuss that later?

10 JUDGE HAWKENS: No, go ahead and ask it  
11 now, Mr. Webster.

12 MR. WEBSTER: Thank you, Judge. When the  
13 Board states all witnesses will be present at all  
14 times, does that mean all witnesses for all parties or  
15 just for the party, we'll divide up different days for  
16 different parties or how will we do it?

17 JUDGE HAWKENS: We're going to be there  
18 for two and a half days and it's the Board's  
19 expectation that all the witnesses will be available  
20 all those days, Mr. Webster. Does that pose a  
21 problem for you?

22 MR. WEBSTER: Potentially, it does, Judge,  
23 yes.

24 JUDGE HAWKENS: We hope it doesn't. How  
25 many witnesses do you have?

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1 MR. WEBSTER: Well, I'm -- I currently  
2 have one witness and I have another witness in the  
3 wings, so to speak, that I may use on sur-rebuttal,  
4 but there would be an issue if I had to have that  
5 other witness there all the time.

6 JUDGE ABRAMSON: Mr. Webster, this is  
7 Judge Abramson. Our plan, our expectation is that  
8 your principal witness, Dr. Hausler, will be present  
9 while we have witnesses with similar expertise from  
10 the other parties there and that we will be examining  
11 any one of the three or four experts and it is likely  
12 we will be asking all the experts to reply to what's  
13 going on in the question and answers. So we expect we  
14 will need Dr. Hausler there while we're examining  
15 others in areas where he has provided testimony.

16 MR. WEBSTER: That's understood. Dr.  
17 Hausler does not pose a major concern I have. I've  
18 asked him to be available for all three days. But  
19 potentially this other witness is one that's -- is  
20 more difficult because he can't hold the time and also  
21 his time is extremely expensive.

22 JUDGE ABRAMSON: To the extent you may be  
23 running into a problem with that, Mr. Webster, I  
24 suggest that you make that determination with the  
25 potential witness on the day that he would or would

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1 not be available and then discuss it with the other  
2 parties and come up with a proposed solution. We're  
3 limited here by the time period which the parties  
4 agreed to and it's important we stay within that time  
5 period and as I say, to the extent that this is an  
6 individual with expertise in a very discrete limited  
7 area, and the other parties are able to accommodate  
8 any limited time period he may be available, you can  
9 endeavor to reach agreement with them and then make a  
10 proposal to the Board on that.

11 MR. WEBSTER: Good, thank you, Judge.

12 JUDGE HAWKENS: We're going off the record  
13 one moment.

14 (Off the record.)

15 JUDGE ABRAMSON: Mr. Webster, this is  
16 Judge Abramson again. Sir, let me make sure I  
17 understand this correctly. You're considering  
18 bringing in an additional expert or more than one to  
19 deal with your sur-rebuttal testimony which is due to  
20 be filed shortly?

21 MR. WEBSTER: That's correct.

22 JUDGE ABRAMSON: And so there's -- it's  
23 not as if you expect to spring some surprise testimony  
24 on us at the hearing. This is just information and  
25 testimony that will have been filed before the

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1 hearing.

2 MR. WEBSTER: Right, the intention is that  
3 we will file sur-rebuttal which will include testimony  
4 from this expert.

5 JUDGE ABRAMSON: Okay.

6 MR. WEBSTER: But obviously, you know, we  
7 understand that we need to make the expert available  
8 at the hearing at the same time.

9 JUDGE ABRAMSON: Thank you. Unless there  
10 are any further questions on those items, let's move  
11 to number of copies. Do either of that parties have  
12 any questions on that? Citizens?

13 MR. WEBSTER: No.

14 JUDGE HAWKENS: Amergen?

15 MR. SILVERMAN: I just want to confirm  
16 that those copies will -- if acceptable you would like  
17 those in looseleaf form. We'll provide them without  
18 dividers, without tabs, just a full set of the  
19 documents.

20 MS. WOLF: Actually, it would be best when  
21 -- the is Debra Wolf, when providing them if you did  
22 put like just a divider, like even just a sheet of  
23 paper in between. It will be easier for the Office of  
24 Secretary to know where, for instance, Exhibit 2 ends  
25 and Exhibit 3 begins. Some of the exhibits, maybe

1 it's Amergen 16, is incredibly long, that's one of  
2 your calculation codes, so that way the Office of the  
3 Secretary doesn't have to thumb through very single  
4 page to find where it ends.

5 MR. SILVERMAN: This is Don Silverman.  
6 That's no problem at all. Thank you.

7 MS. WOLF: And just to be clear, on the  
8 day, if we do it earlier or if we do at the time, when  
9 I say three piles, I don't want like 45 piles three  
10 each. It will be much easier of you just hand me  
11 three piles that are 1 through 45, so I could just put  
12 them in a box and get them ready to go to the Office  
13 of the Secretary.

14 JUDGE HAWKENS: Ms. Young, any questions  
15 on numbers?

16 MS. YOUNG: No questions from the staff.

17 JUDGE HAWKENS: Thank you. We'll be going  
18 to exhibit list. Mr. Webster, do you have any  
19 questions about that?

20 MR. WEBSTER: No, I don't, Judge, thank  
21 you.

22 JUDGE HAWKENS: Amergen?

23 MR. SILVERMAN: None, your Honor.

24 JUDGE HAWKENS: Thank you. Ms. Young?

25 MS. YOUNG: No questions from the staff.

1 JUDGE HAWKENS: Thank you. Item E, the  
2 pre-filed testimony, we touched on this earlier. Mr.  
3 Webster, do you have any questions about it?

4 MR. WEBSTER: I'm not -- not about this  
5 one, no, Judge, thank you.

6 JUDGE HAWKENS: All right. Thank you.  
7 Amergen?

8 MR. SILVERMAN: Just one question, your  
9 Honor, this is Mr. Silverman. There are some errata  
10 to some of the testimony and we would just like to  
11 know whether the Board's preference is that those  
12 errata be submitted as separate exhibits, perhaps,  
13 track changes version or whether we should submit just  
14 an entirely new and corrected piece of testimony  
15 reflecting the changes from the erratas?

16 MS. WOLF: Hold on one second.

17 MS. YOUNG: Would you like to hear from  
18 the staff?

19 MS. WOLF: Sure.

20 MS. YOUNG: I understand in other  
21 proceedings that errata has been provided by having a  
22 conformed copy and a hand marked errata copy. So the  
23 staff would suggest that procedure.

24 MS. WOLF: Okay.

25 MS. YOUNG: That way the parties can

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1 easily notice what's been changed.

2 (Pause)

3 MS. WOLF: Hi, this is Debra Wolf. With  
4 respect to the actual marked exhibit, the Office of  
5 the Secretary just needs a clean copy, so in terms of  
6 the three stamped copies you need to provide to the  
7 Office of the Secretary, that can be clean. It  
8 doesn't need to contain the errata, but the suggestion  
9 you made, Ms. Young, that would be good for the Board  
10 and if you want to provide that also for the parties.

11 MS. YOUNG: This is Ms. Young. That's  
12 what we plan to do.

13 MS. WOLF: Okay, yeah, so just a clean  
14 version for SECY but then either track changes or what  
15 did you say, an errata that --

16 JUDGE ABRAMSON: She wants to hand-mark  
17 and that's okay, and I think Mr. Silverman said --  
18 this is Judge Abramson. Mr. Silverman said he wants  
19 to use track changes. That's fine. The parties and  
20 the Board will need to know what's changed. So track  
21 changes or hand-marking is fine. SECY just needs a  
22 clean final copy.

23 MS. WOLF: Thank you, Judge Abramson.

24 MR. WEBSTER: This is Richard Webster.  
25 Just to clarify then, where errata have already been

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1 submitted, for instance, we submitted a renumbered  
2 version of Dr. Hausler's rebuttal testimony, should we  
3 just produce the clean copy because the parties and  
4 the Board have already been notified of those changes  
5 or should we produce both a clean copy and the --

6 JUDGE HAWKENS: The clean copy for SECY is  
7 fine.

8 MR. WEBSTER: Okay. But for new changes  
9 to the testimony which haven't been so far notified to  
10 the parties, that should be both an errata copy with  
11 track changes as well as --

12 JUDGE HAWKENS: As well as a clean copy,  
13 correct.

14 MR. WEBSTER: -- clean copy. Understood,  
15 thank you.

16 MS. WOLF: And the copies for the Board  
17 with respect to errata for pre-files, you should  
18 provide two additional in addition to the copies of  
19 the Board under Part 3, how we only asked for two  
20 sets, just provide separate, just two additional  
21 copies of the testimony, so that there's four in total  
22 of just testimony if that's clear.

23 MR. SILVERMAN: No, it's not, Ms. Wolfe.

24 MS. WOLF: Do you know what I'm saying?  
25 Okay, skipping -- just with respect to testimony to

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1 Part 3, copies for the Board, if you'll notice, we're  
2 only asking for two sets of submitted exhibits, which  
3 would include the pre-filed testimony that we want in  
4 a three-ring binder, if you'll notice that's missing  
5 two copies necessarily because two of the Board  
6 members don't -- are requesting brand new copies. So  
7 with respect to the two bound sets of exhibits you're  
8 providing under Part 3, do what Mitzi had said with  
9 respect to the handwritten errata or the track  
10 changes, whatever, and then provide two additional  
11 just copies of the pre-filed testimony.

12 So before pre-filed testimony is submitted  
13 to the Board, there are only two full sets of exhibits  
14 submitted to the Board. Is that clear or no?

15 MR. POLONSKY: This is Mr. Polonsky. You  
16 want four sets of the pre-trial testimony but you only  
17 need two sets of the submitted exhibits.

18 MS. WOLF: Yes.

19 MR. POLONSKY: Okay.

20 MR. WEBSTER: So, this is Richard Webster  
21 again. Just to be absolutely clear --

22 MS. WOLF: Go for it.

23 MR. WEBSTER: -- in total the Board will  
24 require three stamped copies of the exhibits.

25 MS. WOLF: For Office of the Secretary.

1 MR. WEBSTER: For Office of the Secretary,  
2 plus two sets of the exhibits for the Board.

3 MS. WOLF: Yes, bound in a three-ring  
4 binder.

5 MR. WEBSTER: And labeled in the same way  
6 as those for the Secretary.

7 MS. WOLF: Yes.

8 MR. WEBSTER: Okay, then in addition -- so  
9 that's all together five copies of the exhibits so  
10 far.

11 MS. WOLF: Yes.

12 MR. WEBSTER: Then in addition to those  
13 five copies, the Board would also require four copies  
14 of any errata.

15 MS. WOLF: Yes, yes.

16 MR. POLONSKY: This is Mr. Polonsky. I  
17 just want to clarify, the four copies applies not to  
18 errata that -- to be filed in the future, but it  
19 sounds like all errata, including those that have  
20 already been filed. Is that correct?

21 MS. WOLF: Okay, this is Debra Wolf again.  
22 For instance, Amergen -- not Amergen, Citizens has  
23 filed an errata a couple weeks ago and staff, correct  
24 me if I'm wrong, you filed an errata as well.

25 MS. YOUNG: That's correct.

1 MS. WOLF: Those don't need to be redone.  
2 We have those, we know about those. If there's  
3 anything more being changed between today and whatever  
4 date we have this all submitted be it September 24<sup>th</sup>  
5 or September 20<sup>th</sup>, that's what we need to be made  
6 clear either via track changes and errata handwritten.  
7 That needs to be provided to each of the parties and  
8 just bring four stapled copies to the Board. That's  
9 it.

10 MS. YOUNG: This is Mitzi Young for the  
11 staff. So you're requesting four copies of conformed  
12 testimony and four copies of errata if it applies,  
13 correct, for the Board?

14 MS. WOLF: Sure, let's just do it that  
15 way. Whatever is going to be easiest for all of you.  
16 We really just need the errata. The conformed copies  
17 are for the Office of the Secretary.

18 MS. YOUNG: By conform them you mean just  
19 clean, a clean no touches to it, copy. It's totally  
20 updated and includes every single errata made so far.

21 MS. WOLF: Any change made, it should be  
22 a very clean copy because that's going to go to the  
23 Office of the Secretary. They don't care what's  
24 changed. They just want to see the clean copy. The  
25 Board is going to care what's changed, so we need the

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1 four track changed, errata version. The Board doesn't  
2 need new copies, clean new copies. Those are solely  
3 for the Office of the Secretary. Is that clear?

4 MS. YOUNG: This is Mitzi Young for the  
5 staff. Crystal clear.

6 MS. WOLF: Okay.

7 JUDGE HAWKENS: And Citizens and Amergen?

8 MR. SILVERMAN: This is Amergen, that's  
9 fine, your Honor.

10 JUDGE HAWKENS: I have to admit, it was  
11 not completely to me, so if anybody does have  
12 questions after this, you should feel free to give  
13 Debra a call.

14 MS. WOLF: I'll e-mail all --

15 JUDGE HAWKENS: Don't all a Judge.

16 MS. WOLF: I'll e-mail all of you this  
17 again, just with respect to the pre-filed testimony  
18 because it isn't very clear and so if you have any  
19 questions after I e-mail it to you, you can -- after  
20 I e-mail it to you, you can any more questions.

21 MR. SILVERMAN: Okay, sounds good.

22 JUDGE HAWKENS: All right, moving on to  
23 Item F, the CV's. Does anybody have any questions  
24 about them? We did touch on that earlier.

25 MR. WEBSTER: Yes, this is Richard

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1 Webster. I have a quick question. I think in  
2 response to one of the motions in limine, we submitted  
3 some additional information on Dr. Hausler's  
4 qualifications,

5 JUDGE HAWKENS: All right.

6 MR. WEBSTER: Should we include that as  
7 part of the CV's?

8 JUDGE HAWKENS: Yes, you should.

9 MR. WEBSTER: Okay, thank you.

10 JUDGE HAWKENS: Amergen, questions?

11 MR. SILVERMAN: No questions on that item,  
12 your Honor.

13 JUDGE HAWKENS: NRC staff?

14 MS. YOUNG: The staff has no comments on  
15 this.

16 JUDGE HAWKENS: All right. Item G, do any  
17 of the parties anticipate making any presentations at  
18 the hearing? Mr. Webster?

19 MR. WEBSTER: Well, I would -- I guess I  
20 have to answer this question without understanding the  
21 overall format of the hearing that the Board  
22 envisions. If there's an opportunity for opening  
23 statements or for closing statements, then we would  
24 anticipate using some explanatory figures.

25 JUDGE HAWKENS: We're going to go off

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1 record one moment.

2 (Off the record.)

3 JUDGE HAWKENS: Mr. Webster, Judge Hawkens  
4 here. We anticipate that we would give the parties a  
5 very brief amount of time to make an opening statement  
6 and a longer time to make a closing statement. Of  
7 course, this is not the time for the attorneys when  
8 they make their opening statements to be endeavoring  
9 to make their case. It will be up to their technical  
10 witnesses to be making the case. So I just want to  
11 make it clear, you will have the opportunity for an  
12 opening statement. And you can get back to Ms. Wolf  
13 on whether you anticipate using a PowerPoint or any  
14 type of presentation.

15 If, in fact, you do decide you want to do  
16 that, though, they should be treated as an exhibit, as  
17 we indicate in Item G. Does that answer your  
18 question?

19 MR. WEBSTER: It does. Although, if the  
20 PowerPoint is to be treated as an exhibit, I would ask  
21 that we be given an opportunity to submit it  
22 immediately prior or you know, at the time the hearing  
23 commences.

24 MR. SILVERMAN: We would object to that,  
25 your Honor. This is Amergen.

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1 JUDGE HAWKENS: Go ahead, Amergen.

2 MR. SILVERMAN: We would just think that  
3 this record ought to be as complete as possible by the  
4 time the sur-rebuttal testimony comes in. We have a  
5 very limited time between then and the hearing, and to  
6 be presented with new information at the 11<sup>th</sup> hour is  
7 not fair and appropriate in our view.

8 MR. WEBSTER: May I respond to that,  
9 Judge?

10 JUDGE HAWKENS: Please, go ahead, Mr.  
11 Webster.

12 MR. WEBSTER: We, of course, wouldn't be  
13 submitted any new evidentiary material at all. The  
14 opening statement of the attorneys is purely argument  
15 of counsel and therefore, would consist of material  
16 drawn from the already submitted evidence and some  
17 legal arguments.

18 MS. YOUNG: Mr. Hawkens, this is the NRC  
19 staff.

20 JUDGE HAWKENS: I'd like to hear from the  
21 NRC staff, if you'd like to say something.

22 MS. YOUNG: Certainly. You know, we have  
23 written presentations in the Subpart L proceeding and  
24 so the counsel have already had the opportunity to  
25 make their arguments. We also have a limited amount

1 of time available for the hearing, two and a half  
2 days, so to the extent the Board would like to hear  
3 oral and closing statements, I think the Board needs  
4 to set a time limit on those and I would think that we  
5 would not need to resort to PowerPoint presentations  
6 for such statements. They should be brief since the  
7 matters have already been briefed in advance.

8 The staff currently anticipates that it  
9 not need to make an opening nor closing statement.

10 JUDGE HAWKENS: All right, thank you.

11 MR. WEBSTER: May I just comment, Judge?  
12 Sometimes diagrams can be useful for brevity and  
13 actually shorten the presentation rather than extend  
14 it.

15 JUDGE HAWKENS: All right, one second,  
16 going off record.

17 (Off the record.)

18 JUDGE HAWKENS: Back on line, this is  
19 Judge Hawkins. The presentations envisioned in G, Mr.  
20 Webster, are not intended to be used by counsel during  
21 the opening statements or the closing statements.  
22 Rather it's to the extent that an expert is being  
23 questioned and feels like they may be able to  
24 illustrate an answer for the Board, that's the type of  
25 presentation we were contemplating. So we will not be

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1 permitting presentations during the opening argument  
2 or during the closing. So you need not worry about  
3 that. However, we will be allowing the parties a  
4 short time and will be indicating this in an order to  
5 make an opening presentation and a closing  
6 presentation as well.

7 MR. WEBSTER: Judge, can I just ask a  
8 clarifying question, this is Richard Webster again?

9 JUDGE HAWKENS: Go ahead, Mr. Webster.

10 MR. WEBSTER: We have submitted with our  
11 testimony, with Dr. Hausler's testimony, quite a  
12 number of diagrams and figures. I had anticipated  
13 having those available, you know, as a -- not really  
14 as a figure for him to be able to refer to and  
15 perhaps, having those in PowerPoint form.

16 JUDGE HAWKENS: And to the extent he  
17 wishes to use them in response to our questions, he  
18 may do that.

19 MR. WEBSTER: Okay, then my question is,  
20 do we submit those as an exhibit? We've already  
21 submitted them within our exhibits.

22 JUDGE HAWKENS: Go ahead.

23 MS. WOLF: This is Debra Wolf. The ones  
24 you're referring to, have they each been submitted as  
25 an exhibit?

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1 MR. WEBSTER: They're contained within the  
2 testimony or the memoranda of Dr. Hausler.

3 MS. WOLF: Okay, hold on one second.

4 (Pause)

5 MS. WOLF: This Debra Wolf. If it's  
6 already been admitted as an exhibit or as part of an  
7 exhibit and we'll get to A/V equipment such as that in  
8 a little bit, they don't need to be remarked as a new  
9 exhibit. You can show a series of exhibits or parts  
10 of one exhibit while a witness is testifying and it  
11 does not need to be marked as a whole new exhibit.  
12 It's just simply stuff that you perhaps were going to  
13 submit on sur-rebuttal, if that was going to be  
14 something, that would be fine.

15 To let you know, anything shown to the  
16 Board on the computer or anything just needs to be  
17 marked as an exhibit, starting marked as an exhibit,  
18 then you're fine.

19 MR. WEBSTER: Okay, great, thank you and  
20 then one final question then would be the deadline for  
21 any such exhibits. May we assume that sur-rebuttal is  
22 the last time that any party may propose a new  
23 exhibit?

24 JUDGE HAWKENS: Yes, that is correct.

25 JUDGE ABRAMSON: This is Judge Abramson.

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1 Just so you are all crystal clear, what's likely to  
2 happen in this proceeding is we will have one of the  
3 experts on the stand being examined by the Judges, and  
4 remember that's how this works. We will be asking  
5 this expert questions. That expert may very well and  
6 in fact, is highly likely to be asked questions about  
7 some of the graphs or figures or information that has  
8 already been submitted by that expert.

9 That expert may also very well be asked  
10 about graphs or information or testimony submitted by  
11 another expert and other experts who are in the room  
12 may be asked about those exhibits or graphs while we  
13 are examining that particular expert. And it is  
14 possible that one or more of the experts may, at that  
15 point, wish to create a new exhibit which can be a  
16 rough sketch which we would then all be looking at.

17 That's the way these proceedings work and  
18 those would be new exhibits introduced during the  
19 hearing at the time of the hearing. Otherwise there  
20 should be nothing new.

21 JUDGE HAWKENS: Mr. Webster, is that a  
22 full answer? Do you have any further questions?

23 MR. WEBSTER: I have no further questions.  
24 That's a great answer. Thank you.

25 JUDGE HAWKENS: All right, thank you.

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1 Either Amergen or the NRC staff?

2 MR. SILVERMAN: None for Amergen.

3 MS. YOUNG: No comments from the staff.

4 JUDGE HAWKENS: Thank you. Item H, does  
5 any party anticipate a discussion of proprietary  
6 information at the hearing? Citizens?

7 MR. WEBSTER: Not at this time, Judge. I  
8 do have to review it one more time, but at this time,  
9 no.

10 JUDGE HAWKENS: All right, thank you.  
11 Amergen and the staff?

12 MR. SILVERMAN: For Amergen, none at this  
13 time, your Honor.

14 JUDGE BARATTA: This is Judge Baratta.  
15 Are all the GE calcs, those are proprietary?

16 MR. POLONSKY: This is Mr. Polonsky. The  
17 two main calculations, I believe are not proprietary  
18 but those have not yet been submitted and Amergen was  
19 not planning to submit those anyway. We've view those  
20 as derivation of the seprance (phonetic) criteria.

21 MS. YOUNG: This is Mitzi Young for the  
22 staff. The staff does not plan on using proprietary  
23 information at this time.

24 JUDGE HAWKENS: Thank you.

25 MS. WOLF: One moment.

1 (Pause)

2 JUDGE ABRAMSON: Okay, this is Judge  
3 Abramson. Let me try to explain one principal concern  
4 that the Board has. We are focused on what the  
5 acceptance criteria are and in our mind, that relates  
6 to the GE computations and what the -- not the  
7 underlying computer code but what those computations  
8 did and what assumptions were made in doing them and  
9 we need to understand those -- that to the extent it's  
10 necessary to understand the current licensing basis  
11 and the acceptance criteria. So we would request that  
12 that applicant bring that proprietary information with  
13 them to the hearing and if the staff has any similar  
14 proprietary information relating from -- deriving from  
15 its review, that the staff bring those with them.

16 At the hearing, if it's necessary to deal  
17 with proprietary information, we will deal with them  
18 at that time and we will close those portions of the  
19 hearing where we deal with it. Is that clear?

20 MR. POLONSKY: This is Mr. Polonsky. Just  
21 so I can help instruct my client, the underlying  
22 calculations and detailed assumptions, you're  
23 interested in that information that went into the  
24 calculation itself?

25 JUDGE ABRAMSON: We need to understand

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1 what the precise nature of the acceptance criteria are  
2 and that means we need to understand the nodalization,  
3 the elementization if you will, the assumptions about  
4 thickness and all the parameters that were -- that are  
5 necessary to understand the current licensing basis,  
6 vis-a-vis, these two buckling criteria. It doesn't  
7 mean we need to understand a computer code or that we  
8 need information about the underlying code. We need  
9 to understand to put it in the most simplistic form,  
10 the thickness and structural strengths of the various  
11 elements in the model and how those elements were --  
12 how those thicknesses were distributed in GE's  
13 analysis that led to these acceptance criteria that  
14 are now the current licensing basis.

15 MR. POLONSKY: Can we take a couple of  
16 moments? This is Mr. Polonsky?

17 JUDGE ABRAMSON: Sure.

18 MS. WOLF: We're just going to go off.

19 (Off the record.)

20 MR. POLONSKY: This is Mr. Polonsky. Is  
21 the Board back on?

22 JUDGE HAWKENS: Yes.

23 MR. POLONSKY: I guess two levels of  
24 questions. The first is, we believe that the reports  
25 themselves may not have the detailed input information

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1 that the Board seeks; what the specific loads were,  
2 for example, that were used in the buckling scenarios,  
3 that appears to be something the Board is interested  
4 in and it's not clear to me here that that information  
5 is in those reports.

6 JUDGE HAWKENS: Mr. Polonsky, we are not  
7 interested in the loads. We are interested in knowing  
8 what the assumed thicknesses were with the -- the way  
9 we assumed this happened is, GE did a calculation with  
10 a set of assumed thicknesses, did some variations on  
11 thickness until it found where it thought the buckling  
12 limit was approached and used those thicknesses to  
13 determine the acceptance criteria. That's our best  
14 guess but we need to understand that so that we can  
15 understand the current licensing basis so that we can  
16 address the rest of this issue.

17 So I don't think it's a load question.  
18 It's a question of what was, if you will, the geometry  
19 of the shell that GE determined or used in determining  
20 its thresholds.

21 JUDGE BARATTA: This is Judge Baratta. In  
22 one of your pretrial testimony, I think you eluded to  
23 how that was done basically doing a sensitivity  
24 calculation. And we have some questions about that.  
25 I believe it will require you to present some material

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1 that's probably contained in those reports. That's  
2 what we're leading up to.

3 MR. SILVERMAN: Let us have one more  
4 moment, your Honor.

5 (Off the record.)

6 MR. POLONSKY: This is Mr. Polonsky.  
7 We're trying to understand where the line is going to  
8 be drawn by the Board for where the derivation of the  
9 acceptance criteria becomes an issue.

10 JUDGE BARATTA: This is Judge Baratta.  
11 It's not an issue. We're just trying to understand it  
12 so that when we have to issue our decision, we can  
13 provide a reasonable, understandable explanation and  
14 an explanation as to, you know, how close we think you  
15 are or whatever, whatever the outcome might be, but in  
16 order to do that, I've still got some questions about  
17 it. We're not questioning the derivation. We're not  
18 questioning the validity of it. What we're  
19 questioning is how it was done so we can understand  
20 how it was done and make sense out of it.

21 JUDGE ABRAMSON: This is Judge Abramson.  
22 Let me try to expand on this a little bit. From my  
23 perspective, the derivation of the acceptance criteria  
24 lies in the computer code. The acceptance criteria  
25 were derived by the use of a computer code and some

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1 assumptions about the geometry of the degraded shell.  
2 There was an assumption made about how the shell  
3 thickness varied over space and from that, GE loaded  
4 it up, did the calculations and came up with a  
5 thickness distribution function from which it said,  
6 "We are now" -- "This is the acceptance criteria  
7 because if the thicknesses get thinner than this in  
8 certain regions, it could approach buckling".

9 That's the derivation and that's not at  
10 issue. What we need to know is, what was the  
11 thickness distribution function that GE used in  
12 getting that because that's the only way one can  
13 compare it to the current degraded state of the shell.

14 MS. YOUNG: Judge Abramson, this is Mitzi  
15 Young for the staff. My understanding is that some of  
16 these questions at least were included in those  
17 propounded to the parties for responding to the  
18 rebuttal. And the question I have is that the Judges  
19 apparently have more questions in this area. Would it  
20 be possible for you to write those questions down so  
21 we can explain these matters because I'm not sure that  
22 the introduction of some proprietary report is needed  
23 to answer the Judge's inquiry.

24 JUDGE ABRAMSON: It's our intent when we  
25 issue an order ruling on the latest series of motions

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1 to include some instructions to the parties about what  
2 they should be prepared to discuss. This is one of  
3 them. We're not in a position to do it a lot better  
4 than we already did and some of the answers were got  
5 were not terribly helpful. So we will need to have  
6 your experts there so we can discuss it with them, and  
7 as I told you in our last conference call, this is not  
8 something the lawyers are likely to understand. It is  
9 something the technical people should understand.

10 JUDGE BARATTA: This is Judge Baratta. If  
11 they need in responding to our questions, to introduce  
12 proprietary information, so be it.

13 MR. POLONSKY: Judge Baratta and Abramson,  
14 this is Mr. Polonsky. My concern is having my witness  
15 adequately prepared. It sounds like the sensitivity  
16 analysis which is the basis for the local buckling  
17 criterion, I believe that's already been submitted as  
18 an attachment to the ACRS presentation. We can  
19 include that as an exhibit. Frankly, we just  
20 hesitated to do so because we wanted to create a clear  
21 line between what was the derivation of the acceptance  
22 criteria and the current licensing basis, which we  
23 viewed as off limits in the proceeding.

24 JUDGE ABRAMSON: And we -- this is Judge  
25 Abramson. As we have stated on several occasion, the

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1 derivation of the acceptance criteria is off limits.  
2 But what we do need to understand is what is the  
3 acceptance criteria, and frankly, from what we've seen  
4 it is not yet clear to us.

5 MR. WEBSTER: Judge, this is Richard  
6 Webster. May I just ask a question? We have in our  
7 position paper so far we have said that we have been  
8 unable to support or find any evidence that the GE  
9 analysis was actually incorporated into the current  
10 licensing basis. Amergen so far has put forward no  
11 evidence whatsoever for that.

12 JUDGE ABRAMSON: This is not the time to  
13 address that, Mr. Webster. Not the time to address  
14 that. Not in this conference call.

15 MR. WEBSTER: I understand that, Judge.  
16 I just wanted to be clear that that is not a given as  
17 far as Citizens are concerned.

18 JUDGE ABRAMSON: We will be asking the  
19 staff and the Applicant to explain what the current  
20 licensing basis and in our minds that hinges  
21 singularly on what the acceptance criteria is and that  
22 in itself is a function of what the GE analysis  
23 geometry was if nothing. I mean really we're only  
24 talking about geometry, what is the thickness of the  
25 shell, what's the spatial distribution of the

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1 thickness of the shell of the drywell liner that GE  
2 assumed when it did its buckling calculation, its  
3 limiting buckling calculation. The limiting buckling  
4 calculation is what created or is the source, the sole  
5 source, of the acceptance criteria. So we need to  
6 know the thickness distribution function across the  
7 drywell liner for those two limiting calculations, one  
8 for the local and one for the general.

9 MR. POLONSKY: This is Mr. Polonsky. We  
10 will have someone at the hearing who can specifically  
11 address those questions for the Board, but we would  
12 prefer not to include exhibits for the reasons I  
13 stated previously.

14 JUDGE ABRAMSON: That's fine. That's  
15 fine. And that's all we need to know. I'm sure you  
16 all understand that what the issue here is is how do  
17 you take the data you have from UT measurements and  
18 from that understand whether or not you're approaching  
19 the limit that GE computed in its calculations. So we  
20 need to understand those two and how they interact.

21 MR. WEBSTER: Judge, this is Richard  
22 Webster. I think it would be helpful to have all the  
23 GE analyses as exhibits because it's important to have  
24 the date sequence as well as the contents of those to  
25 understand exactly which calculations were included in

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1 the CLB and which ones weren't.

2 JUDGE ABRAMSON: Mr. Webster, this is up  
3 to the staff and the Applicant to tell what the  
4 geometry is. All that is at issue in this proceeding  
5 as I understand it and my colleagues will correct me  
6 if I get this wrong is whether or not the UT testing  
7 is sufficient, the periodicity of UT testing is  
8 sufficient, and for us to determine that we only need  
9 to know what the current margins are and to determine  
10 those we need to know how the current degradation  
11 state compares to the acceptance criteria.

12 The acceptance criteria is something  
13 that's between the Applicant and the staff. Whatever  
14 the CLB is, the staff must know because the staff  
15 approves it. So the staff can tell us what the CLB  
16 is. That's a function of the acceptance criteria.  
17 The acceptance criteria is singularly dependent upon  
18 the spatial distribution of remaining thickness that  
19 GE assumed in its analysis unless I got this wrong and  
20 I'm sure your experts should be able to tell me if I  
21 got that wrong when you bring your structural experts  
22 in.

23 JUDGE HAWKENS: And to the extent they can  
24 do that, to the extent Amergen can do that, and answer  
25 Judge Baratta's questions and Judge Abramson's

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1 questions without the need to submit additional  
2 exhibits we will accept that.

3 MS. YOUNG: Judge Hawkens, this is Mitzi  
4 Young for the staff. The witnesses that I have in the  
5 room who help prepare the staff's testimony tell me  
6 that they believe they've already answered these  
7 questions in their responses. So it's not just a  
8 matter the lawyers limited understanding of these  
9 issues. But we will endeavor at the hearing to be  
10 able to respond to the Judges' questions that are  
11 posed.

12 We are concerned though that to the extent  
13 the Judges seem to want to inquire behind the  
14 derivation of the acceptance criteria, that this is a  
15 hearing about more than just any margin that exists  
16 between that criteria and the current thickness of the  
17 shell. So I guess the staff will have to reserve  
18 their objections on this procedure for a later date.

19 JUDGE BARATTA: Ms. Young, not to  
20 interrupt you, but your witnesses did not do that good  
21 of a job. So you'd better sit down and counsel with  
22 them that they're going to be asked some additional  
23 questions and those questions may very well get into  
24 that derivation.

25 MS. YOUNG: That's fine, Judge Baratta.

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1 We're available to answer the judges' inquiries.

2 JUDGE BARATTA: Thank you.

3 JUDGE HAWKENS: All right. Moving onto  
4 Item 3, copies for the Board. I think we discussed  
5 that item. Does anybody have any questions on copies  
6 for the Board? Citizens?

7 MR. WEBSTER: No questions at this time,  
8 Judge. Thank you.

9 JUDGE HAWKENS: Thank you. Amergen?

10 MR. SILVERMAN: None.

11 JUDGE HAWKENS: NRC Staff?

12 MS. YOUNG: Nothing from the staff.

13 JUDGE HAWKENS: All right. Thank you.  
14 Item No. 4, witnesses. Does anybody have any  
15 questions regarding that. I know, Mr. Webster, you  
16 indicated that there may be a problem, availability of  
17 a potential rebuttal witness. But aside from that,  
18 does anybody have any questions, any dilemmas?

19 MR. SILVERMAN: This is Don Silverman,  
20 Your Honor. Just a suggestion and perhaps its what  
21 you intended but to the intent that you're asking any  
22 line of questioning we would recommend that the  
23 witness for all the parties be available and on the  
24 stand at the same time so that all of our witnesses on  
25 a particular panel, all of the staff witnesses and Dr.

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1 Hausler would be there so that you can most  
2 efficiently go back and forth between those witnesses  
3 and ask whatever questions you want as opposed to  
4 having Citizens' expert come on afterwards.

5 JUDGE BARATTA: Yes, that's a highly  
6 desired, this is Judge Baratta. That's very desirable  
7 that we have it set up that way. Whether or not  
8 physically we can accommodate that will depend upon  
9 the size of the panels. What we have done in the past  
10 is once people have been sworn in they don't  
11 necessarily sit in the witness box. They may very  
12 well be at the counselors' tables or whatever. But we  
13 do try to do that where we move from one panel  
14 essentially to another so as to get very good flow of  
15 information dialogue. We will try to do that, I  
16 think, and that's our plan.

17 MS. WOLF: Could we go off for one second?

18 (A short recess was taken.)

19 JUDGE HAWKENS: All right. We're back  
20 online. One question for each of the parties,  
21 although we can count, we have not yet counted, the  
22 individuals at the hearing venue were wondering how  
23 many total expert witnesses would be there so they can  
24 try to come up with a plan for seating and also have  
25 sufficient seats reserved for them. So could each

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1 parties advise the total number of experts that will  
2 be joining them?

3 MR. SILVERMAN: Yes, I have that  
4 information. This is Don Silverman, Your Honor. For  
5 Amergen, we had envisioned that the panels' witnesses  
6 that we've identified in our testimony would appear as  
7 panels. Just as you see those panels established in  
8 the testimony, the largest panel has five witnesses.  
9 Most of the panels have two, three or four. It would  
10 be wonderful if we reserved another seat if it were  
11 there for one of our other witnesses if the need  
12 arose. But our largest panel would be five.

13 MS. WOLF: So is that five witnesses in  
14 total? We're just actually looking for the big  
15 number.

16 MR. SILVERMAN: The big number.

17 MS. WOLF: Is it -- Because I know that  
18 for instance that your technical was numerous panels.

19 MR. SILVERMAN: We're counting now. We'll  
20 let you know in a moment or two what our total number  
21 of witnesses is.

22 MS. WOLF: Okay.

23 MR. SILVERMAN: Although we would  
24 envision, like I said, most of them if they're not in  
25 the panel would be sitting in that audience.

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1 JUDGE HAWKENS: Correct. We understand  
2 that. Thank you.

3 MR. SILVERMAN: We'll have that number for  
4 you in a moment.

5 MR. WEBSTER: For Citizens, the total of  
6 the witnesses, we were anticipating two.

7 JUDGE HAWKENS: Thank you.

8 MS. YOUNG: This is Mitzi Young for the  
9 staff. We have five witnesses in total.

10 JUDGE HAWKENS: Thank you, Ms. Young.

11 MR. SILVERMAN: One second and I'll have  
12 that number for you. I believe it's 14.

13 JUDGE HAWKENS: Thank you and can counsel  
14 please also advise how many individuals they would  
15 anticipate sitting at counsel table with them?

16 MR. SILVERMAN: For Amergen, a maximum of  
17 three, Your Honor.

18 MR. WEBSTER: For Citizens, I anticipate  
19 two.

20 MS. YOUNG: This is the staff. We plan on  
21 having two counsel and available seating for two  
22 technical people which could be behind counsel, not  
23 necessarily at the table.

24 JUDGE HAWKENS: Thank you.

25 MS. WOLF: We'll try and make sure that we

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1 reserve the first row or two of the hearing facility  
2 for all of our support people be it technical,  
3 administrative, lawyers, what have you, so that they  
4 can sit right behind you if not at the table.

5 JUDGE HAWKENS: Moving on to item -- Are  
6 there any other questions about witnesses, Item 4?

7 (No response.)

8 JUDGE HAWKENS: All right. Item 5,  
9 discussion of proprietary information at the hearing,  
10 I believe that's self-explanatory unless anybody tells  
11 me otherwise. Mr. Webster?

12 MR. WEBSTER: No questions here.

13 JUDGE HAWKENS: Thank you. Amergen?

14 MR. SILVERMAN: No questions for Amergen.

15 JUDGE HAWKENS: Ms. Young?

16 MS. YOUNG: Nothing from the staff.

17 JUDGE HAWKENS: Thank you. Item 6,  
18 electronic copies of exhibits, each party providing a  
19 set of CD ROMs to Ms. Young, excuse me, Ms. Wolf. Mr.  
20 Webster, do you have any questions about that?

21 MR. WEBSTER: What time frame are we  
22 anticipating this would be done?

23 JUDGE HAWKENS: When would you like that?

24 MS. WOLF: The day, this would be done the  
25 same day you'd submit every other piece of evidence.

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1 JUDGE HAWKENS: Is that the 14<sup>th</sup>?

2 MS. WOLF: No, that will be the day.

3 JUDGE HAWKENS: The day, okay.

4 MS. WOLF: This will be accompanying when  
5 you hand me the three piles for SECY and the two  
6 binders for the Board. You'll also just hand one set  
7 of CDs.

8 MR. WEBSTER: Understood. Thank you.

9 JUDGE HAWKENS: Amergen and the staff, any  
10 questions?

11 MR. POLONSKY: This is Mr. Polonsky. Just  
12 a clarification, you'd like that in PDF format or any  
13 format as the parties choose?

14 MS. WOLF: Any format the parties choose.

15 MR. POLONSKY: Thank you.

16 JUDGE HAWKENS: And Ms. Young, having not  
17 heard from you, I assume you have no questions.

18 MS. YOUNG: No questions.

19 JUDGE HAWKENS: All right. The next item  
20 is directed to Ms. Young, Item 7. Just wondering if  
21 all the ACRS reports had been submitted, were they  
22 included in the NRC Staff Exhibit 1?

23 MS. YOUNG: Yes. The ACRS report was  
24 attached at page 5-3. It's already published with the  
25 SER.

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1 JUDGE HAWKENS: Okay. And do you have any  
2 questions then about Item 7?

3 MS. YOUNG: Nothing. We understand what  
4 the Board wants.

5 JUDGE HAWKENS: Thank you. Item 8, does  
6 any party at this point anticipate using, having a  
7 need for audio visual equipment?

8 MR. WEBSTER: Yes. Richard Webster for  
9 Citizens. Yes, we would like to be able to project  
10 some of the figures at the time that they're being  
11 discussed. It would be clarifying for both the  
12 audience and the Board.

13 MS. WOLF: We have word from the Toms  
14 River, the facility we're going to be using, the Ocean  
15 County Administration Building that they have a  
16 screen, a projector and a large television sets that  
17 have been used for presentations. I think I indicated  
18 -- My understanding is that they don't have internet  
19 access. Now I think that definitely means no like an  
20 ethernet access. Whether you can get your wireless,  
21 they didn't tell us. I don't know. But that's the  
22 equipment they have. So something other than that  
23 that you're going to require, obviously laptops, such  
24 as that, I assume.

25 (Off the record comments.)

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1 MS. WOLF: I have to assume they can.  
2 We'll double-check. Judge Abramson is asking if you  
3 can hook your laptop up to the TV. We'll double-check  
4 that.

5 MR. WEBSTER: That's all we would like to  
6 do if possible.

7 MR. POLONSKY: This is Alex Polonsky. The  
8 same here. We would like the ability to connect to a  
9 laptop and project. I would hope they'd would have  
10 the same projector that would connect to a laptop, but  
11 I guess we could always bring our own if you can't get  
12 clarification in time.

13 MS. WOLF: We'll find out in the next week  
14 or two and I'll let you know.

15 MR. POLONSKY: Thank you.

16 MS. WOLF: Does that staff need anything  
17 other than those sorts of items?

18 MS. YOUNG: This is Mitzi Young. I don't  
19 believe so, but from the Board's comments previously,  
20 there was an expectation that the parties may have to  
21 create a new exhibit in the room in an attempt to  
22 respond to the Board's questioning. Was there a plan  
23 to have like an overhead projector or something there  
24 so you could have some piece of paper that could be  
25 rendered to the record?

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1 MS. WOLF: Yes. We'll double-check that  
2 the projector is an overhead projector and the Board  
3 will ensure that we bring, that we have the  
4 transparencies and the pen. I'll make sure we bring  
5 that sort of stuff if necessary. Is that what you  
6 meant?

7 MS. YOUNG: Yes. Thank you very much.

8 MS. WOLF: I'll make sure we have them.  
9 We'll double-check. I'll email you all hopefully by  
10 Friday if we can get in touch with the woman. But as  
11 soon as we get in touch with her, I'll let you know  
12 what I find out about equipment.

13 MR. POLONSKY: Deb, this is Mr. Polonsky  
14 as well. Will there be plugs near the tables or near  
15 the walls? Are we allowed to bring extension cords?  
16 Are there fire hazzard restrictions? Things like  
17 that?

18 MS. WOLF: We will find that out. I don't  
19 think, but we'll find out.

20 MR. POLONSKY: Thanks.

21 (Off the record discussion.)

22 JUDGE HAWKENS: All right. We marched  
23 slowly through the outline. Do the parties at this  
24 point have any additional matters they want to bring  
25 up?

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1 MS. YOUNG: This is Ms. Young for the  
2 staff. I had a question about the delivery schedule  
3 for transcripts since we have an extremely abbreviated  
4 time to write findings. Had the Board ordered next  
5 day delivery on the transcripts?

6 MS. WOLF: Already done. You'll be  
7 getting next day. Oh, wait, no. You're getting --  
8 Because they can't do -- It's very difficult  
9 apparently for Neal Gross to do onsite delivery.  
10 We've made it that you'll have all the transcripts  
11 assuming this hearing goes through 12:00 noon on  
12 Wednesday. When you come into the office on Thursday,  
13 they'll be waiting for you. (Aside.) Is that correct?

14 JUDGE ABRAMSON: That's what you told me  
15 earlier.

16 MS. YOUNG: Thursday at 10:00 a.m.

17 MS. WOLF: A.M. right?

18 JUDGE ABRAMSON: So if they want to know  
19 what happened on Wednesday what happened on Tuesday,  
20 they don't have transcripts.

21 MS. WOLF: Would that be sufficient if you  
22 come in on Thursday morning that you have all the  
23 transcripts?

24 MS. YOUNG: I think Judge Abramson  
25 understood the question. To the extent that parties

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1 gives testimony on Monday and Tuesday it would be nice  
2 to have a transcript available to know how it came out  
3 in the wash.

4 MS. WOLF: So you want it in Toms River on  
5 Wednesday or you want it in NRC Headquarters on  
6 Wednesday?

7 MS. YOUNG: The question was would it be  
8 possible to have next day delivery the days we're  
9 there, in other words, getting Monday's and Tuesday's  
10 transcript the next day.

11 MS. WOLF: You want onside delivery.

12 MS. YOUNG: Yes.

13 MS. WOLF: Okay. We'll look into it.  
14 There's nothing I can tell you at this point.

15 MR. POLONSKY: Deb, this is Alex Polonsky.  
16 Is there any way we can get electronic versions? That  
17 will save the whole physical delivery issue and  
18 locational issue?

19 MS. WOLF: I'll find out.

20 MR. POLONSKY: Thanks.

21 MS. WOLF: I'll email you all certainly by  
22 Friday, hopefully tomorrow. But we have been trying  
23 to get the court reporter to do as quickly as possible  
24 for the hearing given the schedule.

25 MS. YOUNG: Okay. This is Ms. Young for

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1 the staff again. This may be a matter that's left for  
2 a later time, but did the Board have any expectations  
3 on how transcript corrections should be done after the  
4 hearing?

5 JUDGE HAWKENS: No current expectations.  
6 No. Do you have any suggestions?

7 MS. YOUNG: Well, normally we try to  
8 provide a time period where if someone notices there's  
9 an error in transcription of testimony that could be  
10 provided, you know, filed with the Board.

11 JUDGE HAWKENS: Yes.

12 MS. YOUNG: Sometimes it's ten days.

13 JUDGE HAWKENS: All right. We'll address  
14 that at a later time, Ms. Young. Thank you.

15 MS. YOUNG: All right. The other question  
16 the staff has is how the Judges plan on handling  
17 objections during the hearing itself.

18 JUDGE HAWKENS: Can you explain your  
19 question a little bit more, Ms. Young?

20 MS. YOUNG: The question has to do with if  
21 it looks like questioning at the hearing is exceeding  
22 the scope of either the contention or an answer to the  
23 Board's question is exceeding the scope of the  
24 question. Would the Board be willing to hear  
25 objections at that time?

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1 JUDGE HAWKENS: Yes, we would, of course.

2 MS. WOLF: Can you hold on one second?

3 (A short recess was taken.)

4 JUDGE HAWKENS: Ms. Young, Judge Hawkens  
5 here. Our handling of objection will be as  
6 customarily done. Of course, you may object. We'll  
7 hear from the other side and then we'll make a ruling.  
8 Having said that, Judge Baratta would like to add  
9 something.

10 JUDGE BARATTA: Ms. Young, I'd like to  
11 caution you that this is not a hearing where you will  
12 be objecting to other counsel's or other party's  
13 questions. You'll be objecting to questions posed by  
14 the Board and that should be done very sparingly.  
15 That's all I'll say.

16 MS. YOUNG: That was the reason for the  
17 question, Judge Baratta. Thank you. The other  
18 question I have is with respect to exhibits that are  
19 duplicative of attachments to Dr. Hausler's testimony,  
20 for example. I believe Attachments 3 and 4 are  
21 Exhibits 12 or 13 for Citizens and Exhibit 37 is also  
22 Attachment 5 for Citizens. Do the judges have any  
23 explanation or expectation on how that should be  
24 handled? Are we going to put those things in twice?

25 MS. WOLF: Okay. Hold on one second.

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1 (A short recess was taken.)

2 MS. WOLF: Okay. To answer your  
3 questions, and I'll just reference Citizen's testimony  
4 because that's what you had meant, on the exhibit list  
5 kind of similar to what we've said with Amergen. For  
6 instance, Exhibit 12 which I believe is the same as  
7 Attachment 3 to Hausler's testimony, am I correct?

8 MS. YOUNG: That's correct, I believe.

9 MS. WOLF: So on the exhibit list, Mr.  
10 Webster, you should write Exhibit 12, the title of it,  
11 and underneath it in parentheses or whatever  
12 "Identical to Attachment 3 to Hausler Pre File  
13 testimony." So that way when we're looking at the  
14 exhibit list, we know what's duplicative. It should  
15 still be submitted continuously the way you've  
16 submitted it, but the exhibit list should indicate  
17 what is identical.

18 MR. WEBSTER: Mr. Webster. Thank you. So  
19 we will submit duplicative copies as we have done  
20 before.

21 MS. WOLF: That's fine.

22 MR. WEBSTER: We'll just make that change  
23 to the exhibit list then.

24 MS. WOLF: Yes.

25 MR. WEBSTER: Thank you.

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1 MS. YOUNG: Ms. Young for the staff again.  
2 My understanding is Citizen's Exhibit 38 is Citizen's  
3 answers to the Board's questions. Everyone else  
4 submitted that as testimony. Did the Board expect  
5 Citizens to renumber that or redesignate that as  
6 Exhibit C?

7 MS. WOLF: All right. Hold on one second.

8 (A short recess was taken.)

9 JUDGE HAWKENS: Ms. Young what -- This is  
10 Judge Hawkens. What was your concern about Exhibit 38  
11 being submitted as a nontestimonial exhibit?

12 MS. YOUNG: The only question was does  
13 that need to be redesignated as Exhibit C which is  
14 testimony? It included the response to the Judges'  
15 questions.

16 (Off the record discussion.)

17 JUDGE HAWKENS: It seems to me in the  
18 format of a memorandum rather than testimonial and to  
19 that I have no problem and the fact that my fellow  
20 board members are shaking their heads, we have no  
21 problem with it being submitted as Exhibit No. 38.

22 MR. POLONSKY: This is Mr. Polonsky. Just  
23 a clarification because that statement confused me a  
24 little bit. It's my understanding that the way  
25 Citizen's has submitted their testimony is that

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1 they've provided minimal responses to questions and  
2 answers and then detailed memoranda from Dr. Hausler  
3 as their testimony.

4 (Off the record comment.)

5 JUDGE HAWKENS: Mr. Webster, what's your  
6 response to that?

7 MR. WEBSTER: The response -- The  
8 questions and answers summarize Dr. Hausler's  
9 testimony and it's supported by the memoranda.

10 JUDGE HAWKENS: And is there any question  
11 about the authenticity or the authorship of these  
12 memoranda? Is that what somebody is concerned about?  
13 Mr. Polonsky?

14 MR. POLONSKY: I think the issue is just  
15 one of simplification and organization that if the  
16 board and the parties are looking to all of the  
17 party's testimony in a single packet that they won't  
18 find it all. They'll have to go searching through  
19 exhibits to find it. That's all.

20 JUDGE HAWKENS: Mr. Webster, would you  
21 have an problem with including this memorandum which  
22 sounds like it's in direct support of Dr. Hausler's  
23 testimony with the exhibit that's lettered with his  
24 testimony?

25 MR. WEBSTER: Not at all. We would be

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1 very happy to provide it.

2 JUDGE HAWKENS: It would not be simply  
3 this one but you indicated that his testimony is more  
4 summary and this really is the explication of that.  
5 So you'd have to put all the memoranda with the  
6 exhibit that's lettered with his testimony.

7 MR. WEBSTER: Right. That's totally fine,  
8 Judge. In fact, for the first round of submission, we  
9 did do that and then we had a objection from Amergen  
10 that we shouldn't do that. So we did it the other way  
11 around.

12 JUDGE HAWKENS: All right.

13 MR. WEBSTER: We're happy to do it  
14 whichever way the Board wants.

15 JUDGE HAWKENS: Please go ahead and do  
16 that then.

17 MR. WEBSTER: Okay.

18 JUDGE HAWKENS: Include it as an  
19 attachment to the testimony.

20 MR. WEBSTER: Okay. Thank you.

21 MS. WOLF: And then for on your exhibit  
22 list, you can indicate for Exhibit 38, correct me if  
23 I'm wrong, Judge Hawks, that it just indicate it's  
24 been removed.

25 JUDGE HAWKENS: Right.

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1 MS. WOLF: Or removed to Attachment,  
2 whatever you want to call it, 6 to the testimony or  
3 whatever attachment number it is. I'm not saying it's  
4 number six. Is that clear? Kind of what we told  
5 Amergen to do for their CVs.

6 MR. WEBSTER: May I propose that we  
7 include it labeled as Exhibit 30 because Delta House's  
8 testimony for the surrebuttal, I believe, refers to  
9 Exhibit 38. Therefore, I think it would be slightly  
10 easier to say on the exhibit list to say also included  
11 within Dr. Hausler's testimonial package.

12 MS. WOLF: Okay.

13 MR. WEBSTER: So leave the testimony  
14 referring to Exhibit 38.

15 MS. WOLF: Hold on one moment.

16 (A short recess was taken.)

17 MS. WOLF: Okay. Yes. You can make it  
18 duplicative. Just add it as an attachment and you can  
19 keep it as Exhibit 38. It will submitted twice.

20 JUDGE HAWKENS: Just mark where the X is  
21 Y.

22 MR. WEBSTER: Yes. Absolutely. Thank  
23 you.

24 JUDGE HAWKENS: Any further questions?

25 MR. WEBSTER: Ms. Young, are you finished?

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1 MS. YOUNG: Nothing from the staff. Thank  
2 you so much.

3 MR. WEBSTER: I have a couple of questions  
4 with regard to some material which has been referred  
5 to and actually gets back to some of the GE stuff.  
6 It's material that's been referred to but hasn't been  
7 submitted as exhibits. For instance, I know the  
8 Sandia Report was referred to by staff in their  
9 initial testimony. We as Citizens then provided some  
10 response discussing the Sandia Report. But I don't  
11 believe the Sandia Report has been submitted as an  
12 exhibit and my question is whether the Board can  
13 notice the report or whether somebody should be  
14 submitting it as an exhibit.

15 JUDGE BARATTA: This is Judge Baratta.  
16 Again, I think that the Sandia Report is likely to  
17 brought up at the hearing in the form of questions.  
18 So we can at that time admit it as an exhibit if need  
19 be.

20 JUDGE ABRAMSON: This is Judge Abramson.  
21 My preference is that when a party references a report  
22 the report should be submitted as an exhibit. We  
23 should never have an incomplete record that we have to  
24 go look for or that some other party has to go look  
25 for information. So my preference would be that if --

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1 And you all know whether there are other instances of  
2 this, whether it's just the Sandia Report or there are  
3 other instances. But I would request that each party  
4 submit all reports it has referenced as exhibits.

5 MR. WEBSTER: As an example, Judge, the  
6 questions that the Board asked were specific about GE  
7 modeling and so all parties have referenced various  
8 reports from GE. But I don't think any of us have  
9 provided. I guess we had anticipated that Amergen  
10 would provide those reports, but they didn't do so.  
11 So if that's the rule, we should agree who will submit  
12 those reports, I guess.

13 JUDGE HAWKENS: Let's go back to the GE  
14 reports because that's where the biggest bone of  
15 contention has been. Amergen has only been asked  
16 questions about the geometric description of the GE  
17 report. That information I think we have seen graphs  
18 of. But if there's something and those tables are  
19 taken out of that report, we're not requiring that the  
20 report itself be submitted because we didn't ask about  
21 other information. But if you see something that's  
22 been submitted that relies on something else that is  
23 material to where we were going, then let's hear about  
24 it.

25 MS. YOUNG: This is Ms. Young for the

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1 staff. I believe Citizens has referred to a lot of  
2 documents it has not made exhibits, particularly in  
3 the last round of rebuttal testimony. Some of those  
4 documents appear at pages three and six of the  
5 rebuttal presentation by Citizens.

6 JUDGE HAWKENS: I agree. This is Judge  
7 Hawkens here. The point Judge Abramson made and it's  
8 one that I agree with fully is that to the extent a  
9 party relies on something and that's material to the  
10 party's argument that document or the relevant portion  
11 of the document should be included as part of the  
12 record and we would request that the parties comply  
13 with that.

14 MR. WEBSTER: Judge, if I may explain.  
15 Most of that material that we've referred to was  
16 actually discussing the CLB and again that was in  
17 response to a question. We had anticipated that the  
18 NRC would actually provide most of that material. But  
19 in the end, it didn't do so.

20 JUDGE HAWKENS: You remember that's not at  
21 issue here. The derivation of it is not at issue and  
22 as we stated earlier, it's up to Amergen and the NRC  
23 staff to the extent they feel that material is  
24 essential to the record to our understanding, we  
25 expect them to submit it. To the extent they can

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1 provide the Board with sufficient understanding for us  
2 to make our decision without submitting that into  
3 evidence, that will satisfy us.

4 JUDGE ABRAMSON: And, this is Judge  
5 Abramson, similar to the extent you're relying on  
6 something that you've read in an NRC report or some  
7 other report, you need to submit the relevant pieces  
8 of that rather than just reference it. We understand  
9 you thought they were going to be in and they weren't.  
10 But now is the time.

11 MR. WEBSTER: I understand that. I think  
12 all parties would agree that we're relying on, for  
13 instance, the safety evaluation report that was put  
14 out by the NRC, I believe, in 1991 or '92. I think it  
15 was mid '92. Do other parties disagree that we're  
16 relying on, that everybody is relying on that? I  
17 mean, I think we all are. So we should agree between  
18 ourselves who is putting it in.

19 JUDGE ABRAMSON: You don't need the whole  
20 SER. You need the relevant piece.

21 MS. WOLF: We're going to go off record  
22 for one second.

23 (Whereupon, a short recess was taken.)

24 JUDGE HAWKENS: On the record. This is  
25 Judge Hawken and I hope this answers your question,

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1 Mr. Webster. To the extent a party refers to  
2 something without putting it into the record, the  
3 Board is not going to search for it and the Board may  
4 or may not give an credence to a representation which  
5 it cannot verify. Therefore, if a party believes that  
6 something it relies upon is material to the argument  
7 and material to the decision making process, it's  
8 important for that party to ensure that it's submitted  
9 as an exhibit as part of the record.

10 MR. WEBSTER: Judge, just to clarify  
11 further, may I provide an example?

12 JUDGE HAWKENS: I think I've made what we  
13 expect clear and to the extent that you have something  
14 that's not in the record you think should be put in  
15 there I encourage you to put it in and likewise if  
16 Amergen or the staff is relying on something that is  
17 not in the record, I encourage them to put it in.

18 MR. WEBSTER: Okay. Thank you.

19 MS. YOUNG: Judge Hawkens?

20 JUDGE HAWKENS: Yes.

21 MS. YOUNG: This is Ms. Young. I have a  
22 question.

23 JUDGE HAWKENS: Go ahead.

24 MS. YOUNG: On a separate matter. We've  
25 been talking about the assumptions underlying the GE

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1 modeling. Did Citizens intend to submit with its  
2 surrebuttal testimony information regarding Dr.  
3 Hausler's assumptions in developing his contour plots  
4 and, in addition to that, whatever computer program he  
5 used to develop those plots?

6 JUDGE HAWKENS: Mr. Webster, I believe  
7 that was directed to you.

8 MR. WEBSTER: We had not -- Well, the  
9 assumptions Dr. Hausler has used are self-evident; I  
10 think, which is that he's applied, he used, the  
11 dataset provided by Amergen and has applied a  
12 contouring program to those. We can supply the name  
13 of the contouring program. I'm not sure if we already  
14 have. I'm not sure there's much else to say.

15 JUDGE HAWKENS: All right. Thank you.  
16 We're running short on time. Ms. Valloch tells me so.  
17 Before we get cut off, there are two points that I  
18 would like to mention and if we find out that we need  
19 additional time we'll set up another conference call.

20 First, Amergen, you indicated that  
21 Wednesday was not good for you for submitting  
22 exhibits, Wednesday, the 19<sup>th</sup>, but you suggested that  
23 Thursday, the 20<sup>th</sup>, in the afternoon you would be  
24 available for that. Is that correct?

25 MR. SILVERMAN: That is correct, Your

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1 Honor.

2 JUDGE HAWKENS: How late in the morning  
3 can you start?

4 MR. SILVERMAN: On the 20<sup>th</sup>?

5 JUDGE HAWKENS: Yes.

6 MR. SILVERMAN: We would be flexible on  
7 that as well. If sometime in the morning worked for  
8 you and the rest of the parties we could accommodate  
9 it. I would prefer perhaps not before 10:00 a.m., but  
10 we would try to accommodate your interests and the  
11 other parties's interests on that.

12 JUDGE HAWKENS: All right. Thank you.  
13 Mr. Webster, Thursday, would you be available by  
14 telephone and would you have either Mr. Guenther or  
15 another representative available for that or do you  
16 need to check that out?

17 MR. WEBSTER: I can confirm my  
18 availability. I need to check Mr. Guenther or the  
19 other party.

20 JUDGE HAWKENS: All right. If you could  
21 do that and get back to Ms. Wolf at your earliest  
22 convenience, we would be grateful. NRC staff, your  
23 availability?

24 MS. YOUNG: The staff is available at that  
25 time also.

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1 JUDGE HAWKENS: All right. Let me ask the  
2 parties this question. The process and the exhibits  
3 that would actually be submitted into evidence and  
4 I'll start with Ms. Young on that, how would you  
5 anticipate getting together and reaching agreement  
6 prior to that date so that the exhibits that would be  
7 submitted into evidence would simply be those that you  
8 would agree upon and then you would wait for the  
9 hearing to submit the others into evidence subject to  
10 objection?

11 MS. YOUNG: I would have no objection to  
12 that procedure. We've tried to reach stipulations in  
13 this case and up to now we haven't been successful due  
14 to the tightness of the schedules for various filings.

15 JUDGE HAWKENS: Right.

16 MS. YOUNG: We don't really have that much  
17 time to prepare our surrebuttal. So we'll try, Judge  
18 Hawkens, but I can't promise you we'll be able to  
19 reach total agreement between the three of us. At  
20 least, that's the staff's projection.

21 JUDGE HAWKENS: I understand.

22 MR. SILVERMAN: Your Honor, this is Don  
23 Silverman. With respect to testimony and exhibits  
24 that have already been filed by the parties in the  
25 direct and rebuttal testimony.

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1 JUDGE HAWKENS: Yes.

2 MR. SILVERMAN: We would only be objecting  
3 to the extent we have already objected in our motions  
4 in limine and we would probably just simply renew that  
5 for the record at the time. Obviously with respect to  
6 surrebuttal testimony and exhibits that may be  
7 attached, we would like to reserve the right to  
8 perhaps have an oral motion in limine at this  
9 prehearing session if necessary.

10 JUDGE HAWKENS: All right. Mr. Webster?

11 MR. WEBSTER: Yes. I broadly concur with  
12 the other parties that although we would like to have  
13 the right to object to any new exhibits the motions in  
14 limine basically border our objections.

15 JUDGE HAWKENS: All right. Then, Mr.  
16 Webster, Ms. Wolf will await word from you on the  
17 availability of a representative for late morning on  
18 Thursday, September 20<sup>th</sup>.

19 Also we have noticed both in Amergen's and  
20 NRC staff's most recent submissions regarding motions  
21 to strike their view that to the extent something is  
22 submitted into evidence as an exhibit it should  
23 actually, if material is irrelevant or otherwise not  
24 admissible, be stricken, not included in the exhibit  
25 and the Board has discussed that and we agree with

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1 that and what we are going to do within the next few  
2 days is review the exhibits and material submitted by  
3 Citizens. In light of our order, our most recent  
4 order, where we ruled on the motions in limine and  
5 agreed that certain evidence submitted by Citizens was  
6 not admissible, we're going to provide the parties  
7 and, in particular, Mr. Webster with the exhibits with  
8 line-outs on them and we would expect, Mr. Webster, to  
9 the extent we are able to have that prehearing meeting  
10 on Thursday, the 20<sup>th</sup> of September, the items you  
11 would submit into evidence as exhibits would not  
12 include the objectionable material.

13 MR. WEBSTER: That's totally fine. Would  
14 you like the exhibits to reflect -- You'd just like  
15 clean exhibits, I guess.

16 JUDGE HAWKENS: Correct. They would be  
17 just clean exhibits and you could either use a black  
18 magic marker to remove it or you could actually strike  
19 it on a computer. We'd leave that up to you.

20 MR. WEBSTER: Okay. Thank you.

21 MS. WOLF: One moment.

22 (Whereupon, a short recess was taken.)

23 JUDGE HAWKENS: Mr. Webster, Judge Hawken  
24 here again. I just want to make it clear. Ms. Wolf  
25 brought this to my attention. To the extent we want

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1 a clean copy, we envision a copy that, in fact, does  
2 not include the deleted material at all. Therefore,  
3 for example, Attachment 3 to your initial statement,  
4 it was a memorandum from Dr. Hausler to you dated  
5 April 25 and in the margin you had the deleted  
6 material. To the extent you submit something like  
7 this into evidence or this into evidence as an  
8 exhibit, we would expect the deleted material to be  
9 gone in its entirety.

10 MR. WEBSTER: I understand that, Judge.

11 JUDGE HAWKENS: All right.

12 MR. WEBSTER: What we did before was just  
13 to notify the parties of what had been deleted.

14 JUDGE HAWKENS: Understand.

15 MS. WOLF: So as submitted as part of an  
16 exhibit, I guess that would be Exhibit B because  
17 that's your initial testimony, that material would be  
18 gone. Correct? The deleted portion or were you  
19 intending to keep it in there?

20 JUDGE HAWKENS: Let me answer that for  
21 you. We would expect that to be gone.

22 MR. WEBSTER: That's what I understood,  
23 yes.

24 JUDGE HAWKENS: Yes. I thought you did.  
25 I just wanted to make that clear.

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1 MR. WEBSTER: Sorry. I just was trying to  
2 figure out if it was a trick question or an old one.

3 JUDGE HAWKENS: I'm with you. It was not  
4 a trick question. And we're approaching our time  
5 limit, but I think we probably have five minutes or  
6 so. Does anybody have anything else we need to  
7 address?

8 MR. SILVERMAN: This is Mr. Silverman.  
9 Two very brief ones perhaps for Ms. Wolf if she could  
10 check on if she hasn't already. One is how early we  
11 can get into the hearing room the morning of the 24<sup>th</sup>.

12 MS. WOLF: Right now, my understanding is  
13 8:00 a.m. but I'll find out if you can get there  
14 earlier.

15 MR. SILVERMAN: Okay. Thank you. And the  
16 second one is it would be useful to know if there were  
17 some private rooms available like a caucus room where  
18 if we have a 15 minute break and we'd like to chat  
19 with our witnesses we would have a place to do that.

20 MS. WOLF: We're working on it right now.  
21 We'll let you know. Hopefully. We don't have any  
22 guarantees at this moment but it's presently being  
23 worked on.

24 MR. SILVERMAN: Thank you.

25 MS. YOUNG: Ms. Young for the staff.

1        Could the Board indicate when it would be issuing its  
2        ruling on the pending motion?

3                JUDGE HAWKENS:    It's our goal to get it  
4        out early next week, Ms. Young.

5                MS. YOUNG:    Thank you and at that time,  
6        would any additional questions for the parties be  
7        included?

8                JUDGE HAWKENS:    Yes, it would.    Actually,  
9        these are not going to be in a form of questions.  
10       They're going to be instructions advising the parties  
11       what to be prepared to discuss and have their experts  
12       prepared to discuss.

13               MS. YOUNG:    Thank you.

14               JUDGE HAWKENS:    Mr. Webster, anything  
15       else?

16               MR. WEBSTER:    Nothing from me.    Thank you.

17               JUDGE HAWKENS:    (Aside)    Do you all have  
18       any further questions?    Debra, do you have anything  
19       else?

20               MS. WOLF:        I'll be emailing everyone  
21       either this afternoon, evening or tomorrow to clarify  
22       what I made unduly confusing and, after that, you can  
23       ask any other questions you have if you can't think of  
24       them now and I'll pass them along to the Board.

25               MS. YOUNG:    Thank you, Debra.

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1 MS. WOLF: No problem.

2 MR. SILVERMAN: Thank you.

3 JUDGE HAWKENS: The Board is going to go -  
4 - First of all, Mr. Court Reporter, do you have any  
5 questions for the Board as far as what we've said that  
6 you didn't understand?

7 COURT REPORTER: Yes. I'm here now.

8 JUDGE HAWKENS: All right. The Board will  
9 go off the line and to the extent the Court Reporter  
10 has questions for the parties, I'd ask they stay  
11 online so you can answer them for him. Thank you very  
12 much.

13 MR. WEBSTER: Thank you.

14 JUDGE HAWKENS: Off the record.

15 (Whereupon, at 5:01 p.m., the above-  
16 entitled matter was concluded.)

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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: Oyster Creek Nuclear  
Generating Station

Docket Number: 50-0219-LR

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.

  
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