

RAS-37

Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

July 10, 2008 (8:30aa)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Title: North Anna Unit 3
Pre-hearing Conference

Docket Number: 52-017; ASLBP No.: 08-863-01-COL

Location: (telephone conference)

Date: Wednesday, July 2, 2008

Work Order No.: NRC-2278

Pages 1-59

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

TEMPLATE = SECY-032

DS03

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

+ + + + +

ATOMIC SAFETY AND LICENSING BOARD PANEL

+ + + + +

TELECONFERENCE

-----x

In the Matter of: : Docket No. 52-017
Dominion Virginia Power :
North Anna Unit 3 : ASLBP No.
Combined License : 08-863-01-COL

-----x

Wednesday,
July 2, 2008

BEFORE THE PANEL:
RONALD M. SPRITZER, CHAIRMAN
RICHARD F. COLE, JUDGE
ALICE C. MIGNEREY, JUDGE

SPECIAL ASSISTANT:
ALAN ROSENTHAL, JUDGE

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

(202) 234-4433

www.nealrgross.com

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

1 APPEARANCES:

2 On Behalf of Dominion Resources Services, Inc.:

3 DAVID R. LEWIS, ESQ.

4 of: Pillsbury Winthrop Shaw, LLP

5 2300 N Street, NW

6 Washington, DC 20037

7 202-663-8474

8 202-663-8007 (fax)

9 David.lewis@pillsburylaw.com

10 On Behalf of Blue Ridge Environmental Defense11 League:

12 LOUIS A. ZELLER, ESQ.

13 Blue Ridge Environmental Defense League

14 PO Box 88

15 Glendale Springs, NC 2829

16 (336)-982-2691

17 BREDL@skybest.com

18 On Behalf of the Nuclear Regulatory Commission:

19 ROBERT M. WEISMAN, ESQ.

20 US Nuclear Regulatory Commission

21 Washington, DC 20555

22 (301)-415-1696

23 Robert.Weisman@nrc.gov

24 Also Present:

25 KIM JONES, North Carolina Utilities Commission

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

P R O C E E D I N G S

(10:06:51 a.m.)

CHAIRMAN SPRITZER: We are here in the matter of Virginia Electric & Power Company doing business as Dominion Virginia Power and Old Dominion Operative. This is docket number 52-017, also ASLP number 08-863-01-COL.

We are here on the petition to intervene and request for a hearing by the Blue Ridge Environmental Defense League. And, specifically, we are going to address their contention, the admissibility of their contentions. We're here to hear oral argument. This is not an evidentiary --this is no evidence produced. We are here to hear legal argument from the parties representative solely on the issue of the admissibility of the contention.

Let me identify the members of the Board. I've already identified myself. My name is Ron Spritzer. I am the Chairman. Would the two Board members briefly identify themselves.

JUDGE COLE: Yes. My name is Richard Cole. I'm an Environmental Engineer, and member of the Licensing Board.

JUDGE MIGNEREY: This is Alice Mignerey. I am a Nuclear Chemist and Environmental Chemist, and

NEAL R. GROSS

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

(202) 234-4433

www.nealgross.com

1 I'm a member of the Licensing Board.

2 CHAIRMAN SPRITZER: Before we continue,
3 could I ask people who will not be speaking, or
4 listening but won't be participating to mute their
5 phones, if you have that capability. That would
6 reduce the noise we have to listen to, and possible
7 interference. It shouldn't interfere with your
8 ability to listen. And since you won't be speaking,
9 you don't need that capability.

10 We have a Judge who is functioning as a
11 Special Assistant to the Board, Alan Rosenthal. We
12 also may have two administrative judges listening by
13 phone, Bill Murphy and Brian Hayjack. I don't know,
14 are either one of you -- did either one of you get in?

15 JUDGE MURPHY: This is Bill Murphy.

16 CHAIRMAN SPRITZER: And, Brian, are you
17 there?

18 JUDGE HAYJACK: Yes, I am.

19 CHAIRMAN SPRITZER: These are both
20 administrative judges on the Atomic Safety and
21 Licensing Board Panel. They are not members of the
22 Board. They won't be participating. They are simply
23 listening in, as are a number of members of the
24 public. And, finally, we have in the room with us
25 here, Bill Froehlich, who is another member of the

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 panel, but who is not a judge on this particular
2 Board, and won't be participating other than to listen
3 in.

4 Okay. Let's go around one more time and
5 make sure we have a representative of each
6 participant. And would you please identify yourself
7 and the party you represent, starting with Blue Ridge
8 Environmental Defense League. I'll just refer to them
9 as BREDL, for everybody's convenience, unless there's
10 some problem with that. Would BREDL's representative
11 please identify himself.

12 MR. ZELLER: Yes, Your Honor. This is
13 Louis Zeller with the Blue Ridge Environmental Defense
14 League representing the organization here today in
15 that matter. We do prefer not BREDL, but the League,
16 if you don't mind, sir.

17 CHAIRMAN SPRITZER: All right. Very good.
18 I'll try and remember that. And next, I'll refer to
19 you as Dominion Virginia Power rather than recite the
20 whole corporate name. Would Dominion's representative
21 please identify himself?

22 MR. LEWIS: Yes, good morning. This is
23 David Lewis. I'm with the law firm Pillsbury,
24 Winthrop, Shaw, Pittman, representing Dominion.

25 CHAIRMAN SPRITZER: And the NRC staff?

NEAL R. GROSS

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

1 MR. WEISMAN: Robert Weisman representing
2 the NRC Staff.

3 CHAIRMAN SPRITZER: And the North Carolina
4 Utilities Commission, you're actually not on the list
5 of people to be participating, but you are a
6 participant in the proceeding.

7 MS. JONES: Yes. It's Kimberly Jones, and
8 I will just be monitoring today. Thank you.

9 CHAIRMAN SPRITZER: Sure. All right.
10 I've covered the ground rules for the proceeding. As
11 we've said to the participants in an order we issued
12 earlier, we're only interested in hearing argument on
13 the first three contentions.

14 Mr. Zeller, we gave you the option. We're
15 giving you a total of 30 minutes. We've given you the
16 option of reserving up to 10 minutes of that for
17 rebuttal. Do you have a preference? Do you want to
18 reserve any time for rebuttal?

19 MR. ZELLER: Yes, Your Honor. I would
20 like to reserve 10 minutes for rebuttal, please.

21 CHAIRMAN SPRITZER: Okay. That will be
22 fine. I'll try and keep time for you as best I can
23 when you get started, which will be momentarily. Any
24 of the Board members have anything else they'd like to
25 say?

NEAL R. GROSS

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

1 All right. Why don't we begin with you,
2 Mr. Zeller. Feel free to get started. We're here to
3 hear your position.

4 MR. ZELLER: All right. Thank you. This
5 is Lou Zeller, and I'm here to address the first three
6 contentions as outlined by Chairman Spritzer. I will
7 start in numerical order.

8 Contention One raised by our petition,
9 potential Contention One is that Dominion lacks a
10 realistic low-level radioactive waste plan. And, of
11 course, as you know, no facility in the United States
12 will be licensed, able to accept for disposal Class
13 A -

14 JUDGE COLE: Mr. Zeller, this is Dr. Cole.
15 We have read the filings summarizing your contention,
16 and we have read the comments on your contention by
17 the Staff, and by the Applicant. So, if you could, it
18 would be helpful to address what they said about your
19 petition, so that we might cut to the chase, as it
20 were.

21 MR. ZELLER: Yes, I understand.

22 JUDGE COLE: Because with your limited
23 amount of time, you don't have to repeat. We have
24 read your petition.

25 MR. ZELLER: Okay. Assuming that all of

NEAL R. GROSS

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

1 the parties are familiar with all of the documents
2 that we have submitted, I would say this; that NRC
3 Staff in their response argues that the Petitioners
4 failed to provide expert opinion or references to
5 specific sources and documents. This was on page 19
6 of the Staff's response. But Blue Ridge Environmental
7 Defense League has provided, according to 10 CFR
8 2.39(f)(1)(v), a concise Statement of Facts, which we
9 believe supports our position. And, further,
10 according to the regulation, provides information to
11 show that a genuine dispute exists with the Applicant
12 in this case, Dominion Virginia Power on a material
13 issue of law or fact.

14 CHAIRMAN SPRITZER: What is that dispute,
15 precisely? Particularly, can you tell us -- well, why
16 don't you define as clearly as you can what you
17 contend the factual matter is that is in dispute
18 between you and the Applicant and the NRC Staff
19 concerning Contention One.

20 MR. ZELLER: Okay. At the time of
21 Dominion Virginia Power's original Early Site Permit,
22 and in subsequent documents submitted into the record
23 by the Applicant, there was no proposal for a major
24 federal action that would have led to the generation
25 of radioactive waste. Dominion maintained through

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 that procedure that Dominion is not currently
2 proposing construction and operation of new units.
3 This was in the document submitted, in the
4 Environmental Impact Statements, and as well as in
5 public statements.

6 With the submission of the Combined
7 Operating License application, the situation has
8 changed, so there is a change in the facts before the
9 Atomic Safety Licensing Board, and the Nuclear
10 Regulatory Commission, and the fact that there is no
11 place for the waste outlined to go to any place,
12 except for an on-site storage. So either the waste
13 plan for on-site storage needs to be altered, or
14 another disposal needs to be identified, and it is
15 not.

16 JUDGE ROSENTHAL: Mr. Zeller, this is
17 Judge Rosenthal. Staff argues with respect to
18 Contention One, among other things, that you have
19 failed to identify any applicable requirement
20 pertaining to the storage and disposal of low-level
21 radioactive waste, much less how such a requirement
22 might be material to the findings the NRC must make
23 regarding the application.

24 Now, precisely what requirement do you
25 find in the Commission's regulatory scheme that would

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 counter this assertion by the staff, which is found on
2 page 22 of its response?

3 MR. ZELLER: Well, the fact that Dominion
4 Virginia Power has now applied for a COL in which it
5 actually proposes a new nuclear power plant at the
6 site on Lake Anna, will generate large volumes of
7 radioactive waste. This is new and significant
8 information in itself, and the changed circumstances
9 require supplement of the Environmental Impact
10 Statement under 10 CFR 51.92.

11 CHAIRMAN SPRITZER: Well, they already -
12 this is Judge Spritzer. By the way, let me just ask,
13 is the Court Reporter still on the line?

14 THE REPORTER: Yes, I am. I disconnect my
15 handset so I can get better sound.

16 CHAIRMAN SPRITZER: Oh, okay.

17 THE REPORTER: That's that dramatic delay.

18 CHAIRMAN SPRITZER: Okay. No problem.
19 This is Judge Spritzer, again.

20 Let's assume -- I mean, I don't think
21 there's any dispute here that there is no -- the
22 facility in Barnwell is closed just a few days ago to
23 waste from reactors in Virginia and various other
24 states. But is there something you can point us to?
25 You're asserting that they have some duty to submit a

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 low-level radioactive waste management plan. I must
2 say, I haven't been able to find any such requirement
3 in the regulations. That's not, at least so far, but
4 can you direct us to any specific regulation that
5 would require a plan, if that's really -- you say they
6 need to submit.

7 MR. ZELLER: Well, as I said, there is a
8 need for -- under the rules and regulations, and
9 within the Environmental Report, and in the
10 application itself to dispose of radioactive waste,
11 both to the air, to the water, and solid waste.

12 We recognize that this Contention raises
13 a challenge to the generic assumptions and
14 conclusions, but we respectfully submit that the
15 information constitutes new and significant
16 information not considered in any previous
17 Environmental Impact Statement for radioactive waste
18 disposal.

19 CHAIRMAN SPRITZER: This is Judge Spritzer
20 again. They did --- in the EIS comments were
21 submitted on this issue. It may even be that your
22 organization was one of the ones that commented on
23 this, saying that the EIS was defective because it
24 didn't include information, or didn't acknowledge the
25 fact that the Barnwell facility was going to close.

NEAL R. GROSS

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

1 And the response from the Staff which prepared the EIS
2 was, basically, this is not the exact words, but to
3 the effect that we think they're more than capable of
4 managing any interim storage they may have to do until
5 they can find an alternative disposal site.

6 JUDGE COLE: This is Dr. Cole. I think
7 he's referring to the EIS associated with the Early
8 Site Permit.

9 CHAIRMAN SPRITZER: Right. The one EIS
10 that's been prepared, do you feel that that's
11 deficient in some way, because it is in the EIS. They
12 did cite it, and I believe the Staff, and maybe also
13 Dominion cited it in their responses to your petition.
14 Is it your position that that response is defective?

15 MR. ZELLER: Well, I guess in answer to
16 your question - this is Lou Zeller again - that we
17 seek admission of the Contention, because, as I said,
18 there is a generic question here which would affect
19 all of the pending and extant license applications for
20 new nuclear power plants. The changing situation on
21 the ground with the closure of Barnwell means that
22 another, perhaps a generic resolution to this problem
23 is in the offing, but we raise this Contention here to
24 be sure that we've done it in a timely way, and that
25 the -- to preserve our rights under this to make sure

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 that this is plugged into the existing case.

2 So in order to not put too fine a point on
3 it, not to whip sod between the generic issues which
4 the Nuclear Regulatory Commission often uses to
5 address a problem, that there is also the site-
6 specific issues. And that's why we're raising this
7 Contention here.

8 CHAIRMAN SPRITZER: Okay. This is Judge
9 Spritzer, again. I think we understand your position
10 on Contention One. One more question.

11 JUDGE COLE: Yes. This is Judge Cole.
12 The situation with respect to the closing of Barnwell
13 is a problem for all of the plants outside of the few
14 states that can participate and continue to
15 participate in Barnwell. And that problem is
16 immediate right now for all those reactors outside
17 now. Don't you think that that problem will be
18 resolved before eight or ten years from now, when it's
19 going to be a problem for Unit Three?

20 MR. ZELLER: This is Lou Zeller again. It
21 may well be, but we don't know that here today on July
22 the 2nd, 2008. We don't know how long it will take.
23 If experience is any guide, the Low-Level Waste Policy
24 Act was passed, I believe, in 1980, and there's still
25 no resolution for a national low-level radioactive

NEAL R. GROSS

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

(202) 234-4433

www.nealgross.com

1 waste disposal method.

2 CHAIRMAN SPRITZER: Okay. This is Judge
3 Spritzer again. Unless there are any further
4 questions on this, you might want to move on to
5 Contention Two. You've got about 10 minutes.

6 MR. ZELLER: Yes, thank you. Thank you,
7 Chairman Spritzer. I appreciate that.

8 Okay. Contention Two is that Unit 3 would
9 be built on top of a seismic fault.

10 JUDGE ROSENTHAL: This is Judge Rosenthal.
11 My impression is that this might have been on the
12 Early Site proceeding, that there was a determination
13 that none of the seven seismic faults at or about the
14 North Anna site are capable. Now, if that's the case,
15 why is there an issue at this point with the unit
16 being built at its proposed location?

17 It seems to me that you haven't --
18 justifying that Contention, you haven't countered at
19 all the testimony, as I understand it, regarding the
20 non-capability nature of these faults.

21 MR. ZELLER: Yes, Your Honor. Thank you
22 for clarifying that. This is Lou Zeller, again.

23 Well, the core of our concerns raised in
24 Contention Two do center on seismic hazard in central
25 Virginia, and Dominion Virginia Power's request for a

NEAL R. GROSS

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

1 variance for vibratory ground motion, technical term,
2 at the North Anna Power Station.

3 JUDGE COLE: Mr. Zeller, this is Dr. Cole,
4 again. In my study of the reason why that variance
5 was suggested, it was because of new found information
6 in preparation for the application for the COL, and
7 they actually found a different location for capable
8 material underneath the site, and so that would change
9 the necessary horizontal and vertical spectra for
10 seismic design.

11 That being the case, then with the new
12 found information, it's then more accurate site
13 information, and that's the reason for the variance,
14 because the spectra they used for the ESP application
15 was for a different elevation of capable material. So
16 this was just new found information, and they're just
17 bringing it up-to-date. Now, what's the problem with
18 that?

19 MR. ZELLER: Part of the problem - this is
20 Lou Zeller, again - that we have outlined, I believe,
21 in our Contention is that the seismic data itself is
22 based on, and the application itself really is based
23 on a design control document which is referred to
24 throughout the Combined Operating License application.

25 I won't belabor the point that we've

NEAL R. GROSS

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

1 raised in our filings that there are -- we pointed to
2 several defects and several errors, identified with
3 regards to the ability of a station at this plant to
4 withstand seismic shock.

5 There is also the question - I guess I'd
6 say the basement question is that the design control
7 document for the Economically Simplified Boiling Water
8 Reactor, the ESBWR, is still a pig in a poke. We
9 don't know what that reactor will look like. In fact,
10 it's still under modification.

11 JUDGE COLE: Yes, sir. This is Dr. Cole.
12 I understand that, sir, but the generic spectra that
13 was used for the application, apparently provides for
14 larger values than is provided in either of the two
15 site-specific spectra. That being the case then, it
16 would be more conservative, because it's like an
17 umbrella. What's wrong with my reasoning there, sir?

18 MR. ZELLER: Well, in our investigations -
19 this is Lou Zeller, again - the information, for
20 example, from the Virginia Department of Mines,
21 Mineral and Energy talks about the historic -- well,
22 actually, the history of seismic activity in the State
23 of Virginia with a series of magnitude five or greater
24 shocks during the past 200 years, as long as they have
25 recorded this type of data.

NEAL R. GROSS

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

1 There's a 13 percent probability for
2 another magnitude five shock within the next 10 years,
3 and a 29 percent probability within the next 25 years,
4 which is well within the licensing period, the
5 prospective licensing period of Unit 3 at the North
6 Anna Station. The largest possible earthquakes which
7 could occur in the Commonwealth are quite large.

8 To be safe, the seismic hazard studies for
9 critical facilities, nuclear power plants and other
10 facilities, such as reservoirs, I guess the answer to
11 the question is no, is that -- and the question is are
12 they the largest possible earthquakes that could occur
13 in the Commonwealth? Some of the other information
14 that we are aware of is that damaging earthquakes in
15 Virginia are likely to be serious, more serious than
16 in other areas of the country. Attenuation of
17 earthquake vibrations is much lower in eastern sites
18 because of the bedrock structures, and that areas of
19 damage in the Eastern United States, as compared to
20 the West United States, could be 10 times as large for
21 comparable size shockwave of magnitude five or
22 magnitude six.

23 Charlottesville is identified within the
24 periphery of the Central Virginia seismic zone. I'm
25 not saying that Dominion Virginia Power has not done

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 some investigations, but at this stage, we'd like to
2 know what the Nuclear Regulatory Commission has done
3 in terms of an independent assessment here. And that
4 goes back to the reliability of the information
5 submitted by Dominion Virginia Power.

6 Again, I won't belabor what I have already
7 written in our initial petition, and subsequent
8 filings, but we have a problem with the voracity of
9 some of the information based on the history. And
10 that goes back 20 and 30 years, actually, to the
11 siting of Units 1 and 2 at North Anna.

12 CHAIRMAN SPRITZER: Can you identify what
13 -- this is Judge Spritzer. Can you identify anything
14 specific that you have a problem with the voracity of?
15 It's kind of difficult for us to deal with a very
16 general allegation that says don't trust the
17 Applicant. Is there something specific you could
18 point to on this issue?

19 MR. ZELLER: Yes, sir. We believe that
20 the variance for vibratory ground motion should not be
21 granted by the Atomic Safety Licensing Board, or the
22 Nuclear Regulatory Commission. At the very least,
23 they should stay within the parameters which were
24 identified previously.

25 JUDGE COLE: Well, sir, the results of the

NEAL R. GROSS

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

1 variance would provide for, or information that's just
2 not that much different than the earlier on-site
3 spectra. Do you agree with that, or disagree?

4 MR. ZELLER: In terms of percentages,
5 you're right, but I think that the -- if we are
6 dancing that close to the edge of the water, then I
7 think we should take a step or two back from that edge
8 in order to provide an adequate margin of safety.

9 The previous information I was citing from
10 the Department of Mines, Minerals, and Energy indicate
11 that a much more serious earthquake than postulated
12 perhaps in the design basis earthquake is quite
13 possible in the State of Virginia, and that needs to
14 be addressed. And it needs to be done independently
15 from the documents submitted by Dominion Virginia
16 Power.

17 JUDGE COLE: All right. Thank you, Mr.
18 Zeller. This is Dr. Cole again.

19 Considerable time and effort was spent
20 examining the seismic situation at the Early Site
21 Permit hearing. In fact, they dedicated over 100
22 pages in one of the Staff documents to seismicity.
23 And the Board decision on Early Site Permit has five
24 or six pages just on the seismicity situation.

25 MR. ZELLER: Right.

NEAL R. GROSS

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

1 JUDGE COLE: And both the Applicant and
2 the Staff say that issue was handled at the Early Site
3 Permit stage. And according to Commission
4 regulations, then it's not fair game for the COL
5 hearing. How would you respond to that?

6 MR. ZELLER: Well, going back to the
7 docket number 52-008, we can see that the design
8 considerations are necessary. This is from the FSER
9 review items in the Early Site Permit application,
10 Revision 5. But design considerations, that is the
11 design of the plant itself, will determine, for
12 example, the actual levels needed for the vertical and
13 horizontal ratios to be determined.

14 The design considerations, as I said, are
15 still up in the air, because we don't have a final
16 ESBWR, so there are -- even though much work has been
17 done, granted, we still don't know if reactor final
18 design would look like, and how it will affect the
19 site design in the final construction and operation.

20 JUDGE COLE: Again, this is Dr. Cole.
21 Hasn't the Commission addressed how the Board should
22 handle a situation like that, in that I believe what
23 they say is when a design consideration comes up, that
24 we should defer to the Staff review on that point,
25 rather than litigate it. So is that issue now not

NEAL R. GROSS

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

1 ripe, or is it ripe for consideration now?

2 MR. ZELLER: Until the ESBWR is finalized,
3 it would be difficult to say categorically that it has
4 been done. An independent review on the part of the
5 Nuclear Regulatory Commission I think is advised in
6 this matter. I'm not sure if the Commission has on
7 staff the people who could do such an independent
8 review. I know I've seen discussions about internal
9 staffing with various types of experts in this field
10 and others. And I understand that that's not
11 finalized yet, but I do think that there does need to
12 be some internal expertise people on staff working for
13 the Nuclear Regulatory Commission who could do an
14 independent job here.

15 Going back to some of the Early Site
16 Permit issues raised, for example, by Judge Karlin, in
17 that the Early Site Permit has some deficiencies which
18 are identified by Judge Karlin, and, in fact, should
19 not have been issued. Now, I understand that the
20 record was perfected, and that's parlance that the
21 Nuclear Regulatory Commission itself uses. I don't
22 agree with it. I believe that the permit should be
23 perfected, not the record in this matter. But the
24 issues, I think, are reflected in his comments.

25 JUDGE COLE: This is Dr. Cole, again. I

NEAL R. GROSS

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

1 don't believe Dr. Karlin addressed seismic issues.

2 MR. ZELLER: No, he did not, but he did
3 address the Early Site Permit itself, which is, of
4 course, the reference document for the Combined
5 Operating License Application, as is the ESBWR.

6 JUDGE COLE: All right, sir. Dr. Cole.
7 I understand your position, sir.

8 CHAIRMAN SPRITZER: This is Ron Spritzer
9 again. Mr. Zeller, you've gone over your 20 minutes,
10 but we've been peppering you with questions, so we'll
11 give you five minutes more without cutting into your
12 rebuttal time to talk about your Third Contention, if
13 you're ready to proceed to that.

14 MR. ZELLER: All right. Thank you. Yes,
15 I am, Your Honor.

16 Contention Three is about water. The
17 question we would raise if this Contention is admitted
18 is will North Anna operate in compliance with federal,
19 state, and local water regulations for the expected
20 operating life of 40 years?

21 We have provided information, and are
22 prepared to provide more information about the cooling
23 tower, which was modified in the Early Site Permitting
24 process, but which we believe still leaves a lot to be
25 desired because of the -- many of the issues regarding

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 make-up water which I went into in some of the early
2 documents. The operation of Unit 3, the wet/dry
3 cooling, it's estimated that the minimum water level
4 experienced during the drought of 2003 would drop to
5 a dangerous level. Given the possibility of errors
6 and the plausible variances in some of the input data
7 in the development of these data, we do not believe
8 this provides a sufficient margin of safety for
9 operation.

10 JUDGE ROSENTHAL: Mr. Zeller, this is
11 Judge Rosenthal. Two of the Staff's responses to your
12 Contention Three were, first, that the issue you seek
13 to raise was resolved in the ESP proceeding, and may
14 no be re-litigated in this proceeding. Second, that
15 to the extent that you seek a determination on whether
16 operation of the Unit 3 would comply with the CWA,
17 that that matter is beyond the scope of the
18 proceeding. Now, what response do you have to those
19 two specific claims on the part of the Staff; one,
20 that it's not open to re-litigation; and, two, that
21 it's beyond the scope of the proceeding?

22 MR. ZELLER: Well, within the EIS itself,
23 we see that there's differences between the maximum
24 water conservation mode, and the operation of the
25 cooling system here. During periods of - and this

NEAL R. GROSS

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

1 comes from the EIS - during periods of favorable
2 atmospheric conditions, more than one-third of
3 rejected heat may be dissipated through the dry
4 towers; that is the -

5 JUDGE ROSENTHAL: No, you're not - with
6 due respect, this is Judge Rosenthal again - I would
7 appreciate it if you would address my specific
8 question, which is what is your response to the
9 Staff's argument that this matter was resolved in the
10 ESP proceeding, and may not be re-litigated. And,
11 two, that the matter of compliance with the CWA is
12 beyond the scope of the proceeding. So I would
13 appreciate it if you would address those two arguments
14 the Staff advances, rather than, once again, discuss
15 what your view is of the merits of the cooling system
16 issue.

17 MR. ZELLER: Thank you, Judge. Well, the
18 issues are not resolved, I guess is the plain answer
19 to that. As I was saying, the operation of the
20 cooling tower would drop, in fact, to dangerously
21 close levels to the minimum in the situation.
22 Remembering that there are two existing reactors, and
23 the variance granted under the Clean Water Act to the
24 NPDES permit for the existing reactors, and I
25 understand that the NRC is not in a permitting

NEAL R. GROSS

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

(202) 234-4433

www.nealgross.com

1 position in that case, but it does affect the basis
2 for the license granted by the Nuclear Regulatory
3 Commission, nevertheless. So, given the possibility
4 of errors and variances in the modeling input data, we
5 believe that this does not provide sufficient or safe
6 operating margin.

7 JUDGE ROSENTHAL: What you're saying -
8 this is Judge Rosenthal, again - in essence, I guess,
9 is that you do not like the way it was resolved in the
10 ESP proceeding. But isn't the scheme here that issues
11 of that kind were to be litigated in the ESP
12 proceeding, and whatever conclusions were reached
13 there were the end of the game on that particular
14 issue?

15 Now, you may not be satisfied with the
16 resolution of the water issues on the ESP proceeding
17 level, but under the Commission's regulatory scheme,
18 isn't that quite beside the point, your
19 dissatisfaction? These were issues that were to be
20 resolved, and from the Commission's standpoint have
21 been resolved at a prior time.

22 MR. ZELLER: Thank you. This is Lou
23 Zeller, again. Under NEPA Baseline Issues 2 and 3, I
24 think what you're referring to, under which the Board
25 must independently consider the final balance among

NEAL R. GROSS

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

1 conflicting factors contained in the record, and
2 consider reasonable alternatives.

3 One of the problems identified at that
4 time was the failure of the NRC Staff, itself, to
5 require Dominion Virginia Power to look into
6 alternative sites. The site at which we are talking
7 about for the proposed Unit 3 on the Lake with two
8 other existing reactors was not the only site. This
9 was a critical deficiency identified by the previous
10 Licensing Board panel, which we maintain has not been
11 addressed. If the record has been perfected, there
12 are still outstanding questions here, which affect not
13 only the water usage in the lake, which I've already
14 outlined. So no, we are not satisfied. And we
15 believe the Contention should be admitted for that
16 reason, and a more full record developed, and
17 exploration of these issues, because there is expert
18 opinion available, which we believe will show that the
19 impacts to the lake are not within the requirements of
20 the Atomic Energy Act, or the National Environmental
21 Policy Act.

22 CHAIRMAN SPRITZER: All right. Thank you,
23 Mr. Zeller. You've gone a bit over, but as I said, we
24 will still give you the 10 minutes for rebuttal. But
25 right now, we would like to hear from -- well, we

NEAL R. GROSS

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

1 divided 30 minutes between -- we gave 30 minutes total
2 to the Staff and to Dominion. You are free, as we
3 said, to decide who goes first, and how you're going
4 to divide that 30 minutes; although, the original
5 division was 15 minutes for each of you. I don't know
6 if you've reallocated that or not.

7 MR. LEWIS: This is David Lewis. We
8 haven't reallocated the time.

9 CHAIRMAN SPRITZER: All right. So 15
10 minutes, and I'll try and keep track. About 11:00
11 would be the limit.

12 MR. LEWIS: All right. Thank you. Again,
13 this is David Lewis.

14 Let me talk briefly on Contention One. I
15 think the focus of Mr. Zeller's argument is really on
16 the environmental aspects, his particular assertion
17 that there is new and significant information simply
18 because we've filed a COLA. In fact, that seems to be
19 the only basis on which he's claiming there's some new
20 and significant information that would allow
21 reconsideration of an issue considered in the ESP
22 proceeding.

23 I would simply submit that the filing of
24 a COLA cannot possibly constitute new and significant
25 information under the NRC regulation. If that were

NEAL R. GROSS

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

1 true, it would swallow up the entire rule. There
2 would never be any finality, and that would, in effect
3 completely read out of the regulations the
4 Commission's intent to resolve environmental issues in
5 the state proceeding.

6 CHAIRMAN SPRITZER: Mr. Lewis, this is Ron
7 Spritzer. With regard to Contention One, in
8 Contentions Two and Three we have issues that clearly
9 were considered in the ESP proceeding. With
10 Contention One, though, as far as I've been able to
11 determine from the decision in the ESP, from the ESP
12 hearing, that was not -- there was no issue actually
13 litigated with regard to low-level radioactive waste.
14 I take it when you say the issue was resolved, that's
15 because there was some discussion of it in the EIS?

16 MR. LEWIS: That's correct. It was not
17 litigated, but the Commission's rules give finality
18 and preclusion to issues that were addressed and
19 resolved in a final Environmental Impact Statement
20 absent the identification of new and significant
21 information.

22 CHAIRMAN SPRITZER: That leads back to the
23 question, though, what it does mean for something to
24 be resolved? The Commission's regulations don't
25 precisely define what that means. And, quite frankly,

NEAL R. GROSS

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

1 it's clear enough to me where you have that something
2 has been resolved, it's been addressed in litigation
3 before the Board, or before the Commission, but what
4 is your -- what would you like us to -- how would you
5 like us to define the term "resolved", when we have an
6 issue like this that the Staff has addressed in either
7 a Safety Analysis Report, or an EIS, but there's
8 actually been no litigation? Are you saying any issue
9 that the Staff mentioned even in passing is sufficient
10 to be resolved?

11 MR. LEWIS: I don't know about mentioned
12 in passing, but the NRC Staff in the FEIS evaluation
13 the impacts of construction on operation of new units
14 at North Anna. It's intent in the FEIS was to analyze
15 all of the impacts of construction and operation to
16 the extent practicable. The issues that examined
17 included the impacts of fuel cycle activities, which
18 include waste management. They also included the
19 impacts of radiological impacts, occupational
20 radiological impacts, and evaluated those impacts in
21 the EIS.

22 The issues that are unresolved, I would
23 submit to you, are the issues that the Staff
24 specifically identified as being unresolved. They're
25 identified in Appendix J.3 of the final Environmental

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 Impact Statement. The Staff went through the
2 exercise. In each of its sections, they prepared
3 their Environmental Impact Statement using the
4 Environmental Standard Review Plan, and every instance
5 where they found there was some issue they could not
6 evaluate further, they identified it as an unresolved
7 issue in the EIS, and then they listed it in Appendix
8 J.3 of the EIS to specifically place all persons on
9 notice of those issues they could not resolve. And I
10 would take that exactly at face value. Those are the
11 unresolved issues. All others are resolved.

12 CHAIRMAN SPRITZER: All right. Anyone
13 else have any questions on that point? Very good.

14 MR. LEWIS: Let me proceed to Contention
15 Two, the seismic contention. I heard Mr. Zeller talk
16 a lot about risk and studies, and earthquakes in other
17 portions of Virginia, but the contention here is
18 solely that Unit 3 will be built on a fault; and,
19 therefore, the plant should not be built. That is the
20 sole contention raised in Contention Two, the sole
21 assertion.

22 That issue does not raise an issue that's
23 permissible in this proceeding, because the faults
24 that are underlie the North Anna site have ben
25 determined in the ESP proceeding to be not capable.

NEAL R. GROSS

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

1 And absent some demonstration that that's wrong, all
2 the discussions about other studies, and the variants,
3 and the snippets that BREDL has taken from the ESP
4 proceeding is irrelevant. The fact is that in the ESP
5 proceeding, there was a determination that the unnamed
6 fault under the North Anna site is not capable. If
7 it's not capable, it cannot contribute to the seismic
8 hazard under the NRC standards. And that disposes of
9 this contention.

10 The variance that BREDL mentions has
11 nothing to do with whether this fault is capable or
12 not. And, by the way, just to clarify terminology,
13 Judge Cole, you referred to capable material. So
14 there's no misunderstanding, capable describes a
15 tectonic source, and a tectonic source is capable that
16 it can contribute to the seismic hazard.

17 The way the methodology works, the way the
18 NRC's Seismic Hazard Analysis works is that you do a
19 probabilistic seismic hazard analysis. You identify
20 capable tectonic sources. You use those capable
21 tectonic sources to establish a seismic response
22 spectra in hard rock. At that point, you then
23 extrapolate that response spectra to the top of
24 competent material. You consider the attenuation or
25 amplification over the soil column from hard rock, the

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 top of competent material, and you come up with a
2 seismic response spectrum at that control point, at
3 the top of competent rock.

4 The only variance that we have sought is
5 this extrapolation of the response spectrum at hard
6 rock to be a response spectrum at the top of competent
7 rock. The main reason for that minor, minor variance
8 is that we had assumed in the ESP proceeding, since we
9 did not have an exact footprint, that the top of
10 competent rock would be at 250 feet elevation. When
11 we actually did the exact footprint and did borings
12 exactly where the seismic Category One structures is,
13 we determined the top of competent rock was at 273
14 feet. That makes the extrapolation a little different.
15 You're extrapolating, considering amplification or
16 attenuation over a slightly greater column, and so
17 there was a very, very minute change in the response
18 spectrum at the top of competent rock. Again, that
19 has absolutely nothing to do with whether there is any
20 capable fault underneath the site.

21 JUDGE COLE: This is Dr. Cole. Thank you
22 for that. If I said "capable material", I misspoke.
23 I meant competent material, or competent rock, as you
24 pointed out.

25 MR. LEWIS: Yes. I have no doubt you knew

NEAL R. GROSS

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

1 that. I just wanted to clarify the record so it didn't
2 remain that way.

3 Mr. Zeller mentions this variance, but I
4 can aptly say that they have provided absolutely no
5 basis -- I mean, their contention does not challenge
6 the variance. Even if it did, there is absolutely no
7 basis asserted by BREDL to accept that the variance is
8 in any way incorrect or inconsistent with NRC
9 standards.

10 Let me just turn to Contention Three, if
11 there's no questions on Contention Two.

12 CHAIRMAN SPRITZER: This is Ron Spritzer,
13 again. I have one general question on this. We're
14 kind of getting into a new issue. I think the Staff
15 pointed this out in their response here, when we're
16 trying to define the relationship between ESP
17 proceeding, and a COL proceeding, and what's resolved,
18 and what's precluded.

19 What significance, if any, would you
20 attach to the fact that the Federal Register notice
21 for the COL proceeding -- let me back up. The Federal
22 Register notice for the ESP proceeding, while it
23 certainly laid out issues that were within the scope
24 of the ESP proceeding, didn't give any warning, at
25 least that I've been able to locate, to people that if

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 they didn't raise - potential interveners - that if
2 they didn't raise issues in the ESP proceeding, they'd
3 be precluded from raising them in the future.

4 MR. LEWIS: I think adequate notice is
5 provided completely by the NRC regulations. The NRC
6 regulations are consistent, and clear, and were at the
7 ESP proceeding that the purpose of the ESP proceeding
8 was to resolve site suitability, and assert as many
9 environmental issues as possible.

10 Further, BREDL cannot claim surprise.
11 They were a participant in the ESP proceeding. They
12 knew completely well that the purpose of the ESP
13 proceeding was to resolve site suitability issues. I
14 think many of our pleadings in that proceeding focused
15 on this. In fact, I think our very first response to
16 BREDL's petition in the ESP proceeding went through
17 and discussed the purpose of the ESP proceeding, and
18 the very fact that it was meant to resolve these sorts
19 of issues so they would not have to be looked at
20 later.

21 CHAIRMAN SPRITZER: Right.

22 MR. LEWIS: Now, BREDL is no stranger to
23 this process.

24 CHAIRMAN SPRITZER: Okay.

25 JUDGE ROSENTHAL: This is Judge Rosenthal.

NEAL R. GROSS

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

1 That well may be so in terms of the League, but isn't
2 it possible that other potential hearing requesters or
3 interveners might have looked at the Notice of
4 Opportunity for Hearing issued in connection with the
5 ESP proceeding, and not drawn that impression? In
6 other words, why isn't Judge Spritzer right in
7 expressing some concern over the fact that the Notice
8 of Opportunity itself issues back in 2003 did not make
9 it clear that with respect to site suitability issues,
10 anybody that had a concern better speak then, or
11 forever hold their peace. To expect people, reading
12 that notice, to immediately go to the NRC regulation
13 to determine what the impact of the ESP proceeding
14 might have, was a little much. It seems to me that
15 the notice itself should have given at least some
16 indication as to the long-term significance of the ESP
17 proceeding.

18 MR. LEWIS: Judge Rosenthal, I would
19 submit to you that it should be presumed that
20 participants in NRC hearings are familiar with the NRC
21 regulations, and read the NRC regulations, and
22 understand the rules. And that -

23 JUDGE ROSENTHAL: Participants, perhaps,
24 Mr. Lewis. I am talking about the members of the
25 general public in the area of a proposed facility. I

NEAL R. GROSS

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

1 mean, I think, with all due respect, to expect them to
2 be parsing closely the provisions of the NRC
3 regulations, many of which are rather archaic, is a
4 little much. Once the individual gets into a
5 proceeding, to hold him, or her, or it accountable for
6 being familiar with the terms of the regulations is
7 quite a different matter. That's just my personal
8 view.

9 MR. LEWIS: I understand, Judge Rosenthal.
10 I would also submit, in the ESP proceeding, in fact,
11 the petitioners in that case were a group of
12 petitioners. The petitioners joined together, and so
13 BREDL was joined with NIRS and public citizen, and
14 marshaled their forces, so there was a group of
15 interveners who jointly intervened and participated in
16 that proceeding, representing presumably many of their
17 members.

18 CHAIRMAN SPRITZER: This is Judge
19 Spritzer, again. I could see some more greater force
20 to your argument when we talk about issues like site
21 geology that seem to squarely fit within site
22 suitability. On the other hand, the closure of the
23 Barnwell facility and its effect, if any, seems to me
24 to be a little, at least to a non-expert in the field,
25 seems a little far removed from the concept of site

NEAL R. GROSS

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

1 suitability, which is what the ESP proceeding is
2 primarily concerned with.

3 It seems to have been the case here that
4 the EIS, as you pointed out, went substantially
5 beyond, and maybe it was required to do that under
6 NEPA, but it seems to have gone well beyond what I
7 would think of as site suitability, gotten into the
8 fuel cycle, among other things, as you mentioned.

9 I guess the issue I'm kind of struggling
10 with is how far should we go in terms of cutting
11 people off, when they had no notice that the ESP,
12 apart from whatever general knowledge of the
13 regulations they might have, they had no notice in the
14 Federal Register notice itself. And the issue wasn't
15 addressed in the litigation, and seems somewhat far
16 removed from site suitability.

17 MR. LEWIS: Well, I guess I can offer
18 this, in addition. It's my recollection that before
19 the intervention opportunity in the ESP proceeding,
20 there was a public environmental scoping meeting,
21 where the NRC Staff went out of its way to explain
22 what the scope of the environmental review was, how
23 the ESP process works, and its interaction with a
24 later COL proceeding, and what the intervention
25 opportunities were. That was a fairly widely

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 participated meeting that was specifically conducted
2 to inform the public of this process, their
3 opportunities, the scope of the Environmental Impact
4 Statement; specifically, that it would look at
5 construction and operation. The NRC rules for ESP
6 made it clear that the Environmental Impact Statement
7 would look at the impacts of construction and
8 operation, that it was the requirement for our
9 environmental report.

10 The NRC Staff really went out of its way
11 in the ESP proceeding to make sure that members of the
12 public understood before there was any intervention
13 opportunity, what the scope of this proceeding was,
14 and what the opportunities were.

15 CHAIRMAN SPRITZER: Okay. Let me -- and
16 we'll give you some time on Contention Three, but let
17 me just ask one more on Contention One. If we decide
18 that this issue wasn't resolved at the ESP stage, I
19 take it you have some additional reasons why you think
20 we should not admit it in the COL proceeding. If you
21 could briefly outline what those are.

22 MR. LEWIS: On Contention One?

23 CHAIRMAN SPRITZER: On Contention One.

24 MR. LEWIS: Well -

25 CHAIRMAN SPRITZER: Why is anything -- and

NEAL R. GROSS

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

1 maybe you're the -- I understand, it's not disputed
2 that the Barnwell facility is closed. What I've had
3 a problem with understanding is why does that matter
4 in the context of this COL proceeding? Your Unit 3,
5 as I understand it, is not scheduled to start
6 operation until 2015. It's very difficult to sit here
7 today and know what disposal options will or will not
8 be available.

9 It seems to me, it's somewhat speculative.
10 Maybe you could outline for me what -- but, on the
11 other hand, I take it the Applicant in a COL
12 proceeding does have to satisfy the NRC somehow that
13 the various waste streams generated by this new
14 reactor will be handled in accordance with NRC
15 regulations. Can you kind of just outline for me what
16 the relevant regulatory requirements are, and how
17 they're met?

18 MR. LEWIS: Yes. As part of the COL, we
19 have to describe our solid waste management system.
20 We have to explain what the systems are for treating
21 waste. We have to describe the shielding of the
22 systems. Almost all of those issues, however, are
23 generic design issues that are addressed in the DCD.
24 The DCD describes the RAD waste building, describes
25 the solid waste management system, provides the

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 shielding calculations. And most of that information
2 is simply adopted and incorporated by reference in
3 Dominion's COLA.

4 There is, in fact, substantial waste
5 storage capability for Class B and C waste in that
6 design. While the total waste storage capacity for
7 all waste, including Class A waste is six months, the
8 percentage of waste that constitutes Class B and C
9 waste is actually only a tiny percentage of that,
10 about 5 percent. So if you try and think about what
11 six months of that total waste storage capability
12 translates into, if you're just using that capability
13 for Class B and C waste, it's, in fact, many years of
14 waste storage capability in the existing design.

15 Beyond the fact that this is a resolved
16 issue on the environmental front, and, therefore, we
17 submit is impermissible, our other main objection to
18 BREDL's contention is that simply didn't provide
19 information demonstrating that it was a genuine
20 material dispute. A material dispute, under the NRC's
21 rules, is one that will affect the outcome of the
22 proceeding. Therefore, the issue is, has BREDL
23 provided information indicating that there's some
24 deficiency of the application that would warrant
25 denial of the application.

NEAL R. GROSS

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

1 CHAIRMAN SPRITZER: Right.

2 MR. LEWIS: Here they have not provided,
3 as we've pointed out before, any expert opinion, or
4 source, or reference, or identification of the non-
5 compliance with the regulations, anything indicating
6 that yes, this is really a material issue, one that is
7 so significant that the application cannot be granted.

8 CHAIRMAN SPRITZER: Right. Okay. I think
9 I understand your position. If you'd like to address
10 Contention Three, we'll give you another five minutes.

11 MR. LEWIS: Thank you. I'll just address
12 this briefly. I've heard Mr. Zeller refer to
13 alternative sites. Nowhere in the four corners of
14 their contention or their reply, and, in fact, is one
15 of the issues that can't be examined, whether there's
16 significant new information or not under the NRC
17 rules. NRC made it very clear in the 2007 amendments
18 that alternative sites is resolved with finality,
19 period, but it's totally beyond the scope of the
20 Contention Three that BREDL raised.

21 The aquatic impacts, the adequacy of the
22 water supply, the thermal impacts were probably the
23 most scrutinized and evaluated issue in the ESP
24 proceeding. They were analyzed extensively. BREDL,
25 in fact, litigated aspects of that. They litigated

NEAL R. GROSS

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

1 the thermal impacts. I can think of no better example
2 of an issue that was thoroughly evaluated and resolved
3 in the ESP proceeding than the water impacts.

4 BREDL, in one of their pleadings refers to
5 the EPA's 316(b) regulations. It indicates that
6 there's some determination that should be made with
7 respect to the intake under 316(b) that sits rightly
8 with the NRC. I just want to point out to you that
9 they're referring to their Phase II 316(b) rules have
10 been suspended, but there's certainly no issue at all
11 that a plant that's using cooling towers has any
12 316(b) issue. There's no question that a plant with
13 cooling towers is using best available technology,
14 even if that issue were still within the scope of this
15 proceeding.

16 I guess the bottom line is, when BREDL was
17 asked why is this an unresolved issue, Mr. Zeller
18 referred to possibilities of errors in modeling things
19 in the ESP proceeding. The vague references to
20 possibilities certainly doesn't mean an unresolved
21 issue. And, in fact, BREDL's reference to the
22 modeling that was done at the ESP proceeding, in fact,
23 indicates that what BREDL was trying to challenge is
24 the determination that was made in the ESP proceeding,
25 and there's simply no open issue that was left in that

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 proceeding.

2 CHAIRMAN SPRITZER: Very good. Thank you,
3 Mr. Lewis. We will now hear from the NRC Staff.

4 MR. WEISMAN: Thank you, Your Honor. Bob
5 Weisman speaking for the NRC Staff. And I will first
6 address Contention One, but I think I may be also
7 addressing one of your questions.

8 The argument is that the League says that
9 the discussion was academic in the ESP FEIS, and FER,
10 Safety Evaluation Report. And a little bit of history
11 I think is in order here.

12 You go all the way back to 1988 in the
13 proposed rule for Part 52. There is a statement in
14 the Federal Register Notice proposing that rule, but
15 the overall purpose is to improve reactor safety, and
16 to streamline the licensing process by permitting
17 early resolution of environmental and safety issues
18 related to the reactor site and design. That's at 53
19 Federal Register, the first page is 32060, and this is
20 on page 32061.

21 CHAIRMAN SPRITZER: I guess the question
22 would be, when they refer to the reactor design, I
23 think they're referring to the certified design
24 process.

25 MR. WEISMAN: Yes, Your Honor.

NEAL R. GROSS

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

1 CHAIRMAN SPRITZER: And when they're
2 referring to the site, they're talking about the ESP
3 proceeding where we look at site suitability. I guess
4 the problem at least I was having with the -- I
5 understand the application of the regulation dealing
6 with resolved issues to the second and third
7 contentions where there was actual litigation and the
8 issues being clearly related to site suitability.

9 The first issue, however, the low-level
10 radioactive waste management plan/closure of the
11 Barnwell facility, how would you -- what is your
12 argument as to why we should consider that to have
13 been resolved at the ESP proceeding? It seems to me
14 somewhat removed from site suitability, at least the
15 common understanding of that term.

16 MR. WEISMAN: Yes, Your Honor. And in
17 this respect, I think it's important to maintain the
18 understanding that proposed Contention One goes to two
19 separate issues, an environmental issue, and a safety
20 issue. The safety issue would not be resolved. That
21 wasn't addressed in the ESP proceeding.

22 CHAIRMAN SPRITZER: Right.

23 MR. WEISMAN: But the environmental issue
24 was addressed.

25 CHAIRMAN SPRITZER: Because it was

NEAL R. GROSS

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

1 addressed in the EIS?

2 MR. WEISMAN: Yes, sir. And it,
3 therefore, should be considered resolved in this
4 proceeding.

5 CHAIRMAN SPRITZER: This is Ron Spritzer,
6 by the way, for the court reporter's benefit. I've
7 been breaking my own rule of not consistently
8 identifying myself. But is it your position that
9 anything that is addressed in the EIS, and by
10 regulation, an EIS has to be prepared at the ESP
11 stage, so anything that you cover in the EIS, people
12 get only -- the potential interveners get only one
13 shot, and that's to challenge the EIS in the ESP
14 proceeding, at least for anything that's actually
15 discussed in the EIS.

16 MR. WEISMAN: Bob Weisman for the Staff.
17 Yes, Your Honor, that's correct. And, in fact, the
18 Commission has addressed that issue -

19 CHAIRMAN SPRITZER: Okay.

20 MR. WEISMAN: -- in the decision on the
21 North Anna ESP. If you look at CLI 07-27, that's 66
22 NRC 215 at page 259, the Commission says, "We,
23 therefore, agree with the Staff that in the
24 environmental context the contents of the SEIS bounds
25 the reach of both issue preclusion and Staff inquiry

NEAL R. GROSS

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

1 into new and significant information in a future CP or
2 COL proceeding", referencing an EST granted for the
3 North Anna ESP site.

4 And in that regard, I would just like to
5 mention that the Applicant said that the only
6 unresolved issues remaining to be disposed of are
7 those listed in Appendix J. The Staff would disagree
8 with that. If there is an issue that is not resolved,
9 it's not listed in Appendix J, it would be the FEIS
10 that is the controlling document, just as the
11 Commission stated in its decision.

12 JUDGE ROSENTHAL: Mr. Weisman, this is
13 Judge Rosenthal. I have a concern with respect to the
14 Notice of Opportunity for Hearing that was issued with
15 regard to this, the COL proceeding. I find not a
16 single mention in that Notice of Opportunity for
17 Hearing with regard to previous ESP proceeding, not
18 mentioned at all.

19 Now, if, as you insist, and the Applicant
20 insists, the ESP proceeding has such an impact upon
21 what is open consideration in this COL proceeding, I
22 am at a loss to understand why it was not an absolute
23 requirement that this Notice of Opportunity for
24 Hearing first make reference to the ESP proceeding;
25 and, two, make it clear what as a result of that

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 proceeding was not on the table.

2 Now, I appreciate the fact that the League
3 was a participant in the ESP proceeding, and maybe it
4 was other organizations were involved with it, but
5 these notices are addressed to the world at-large, and
6 most particularly to all of the people that reside in
7 and about the facility in question, and thus, have
8 standing. And it seems to me that, quite frankly,
9 that this notice was grossly deficient, possibility
10 legally deficient, failing to, as part of its
11 background statement, to allude to the ESP proceeding,
12 and to indicate what was on the table here as a result
13 thereof.

14 I would note in contrast that the Notice
15 of Opportunity issued back in 2003 with regard to the
16 ESP proceeding went into considerable detail as to
17 what issues were on the table in that proceeding.

18 MR. WEISMAN: Yes, Your Honor. I don't
19 have it in front of me, but the Staff - I'm sorry -
20 the Commission issued a supplement to the Notice of
21 Hearing in this proceeding that explicitly culls out
22 the ESP. Since I don't have it in front of you, I
23 can't read the language to you.

24 JUDGE ROSENTHAL: Well, did it then extend
25 the time for the -- I'm not aware -

NEAL R. GROSS

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

1 MR. WEISMAN: No, Your Honor. It did not
2 extend the time for filing.

3 JUDGE ROSENTHAL: Well, then what -- it
4 seems to me in that circumstance that it doesn't cure
5 the defect. Now, I must say that it comes as a
6 surprise to me this morning that there was such
7 notice, and our law clerk, who is sitting next to me,
8 professes, I think, an ignorance of its existence. I
9 don't understand what its relevance is, if it didn't
10 have the effect of extending time for the filing of
11 petitions or requests for hearing, petitions for
12 intervention.

13 MR. WEISMAN: Well, Your Honor, that
14 notice explicitly dealt with the question of whether
15 or not there should be an extension of time for filing
16 contentions, and determined that there should be no
17 such extension. It was signed out by the Secretary of
18 the Commission.

19 JUDGE ROSENTHAL: All right. But then I
20 get back to the question of why isn't the notice that
21 was issued defective in that it didn't provide
22 information that was relevant in terms of the making
23 of a decision as to whether to seek a hearing in a
24 particular proceeding. You're telling me well, it was
25 cured later, but in being cured later, no relief was

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 provided to individuals who might have been misled by
2 the content of the notice that was issued that
3 triggered the period for the filing of a hearing
4 request.

5 MR. WEISMAN: I guess I would say in
6 response, Your Honor, that the supplement to the
7 Notice of Hearing clearly put the public on notice.

8 JUDGE ROSENTHAL: But it didn't -- I hate
9 to continue to press this point. It may be put the
10 public on notice. It should have been provided to them
11 earlier, but what it didn't do was to extend the
12 period of time in which to file contentions.

13 Now, let me just ask you this simple
14 question. Would you agree that the notice as issued
15 on March the 10th, 2008 was deficient, its failure to
16 make any reference to the ESP proceeding?

17 MR. WEISMAN: Your Honor, I think that I
18 would disagree that it was deficient. The notice did
19 refer to the ESP. It just did not give a specific
20 reference the ESP could be found on the website -

21 JUDGE ROSENTHAL: All right. I would like
22 to know where -

23 MR. WEISMAN: -- on the NRC website.

24 JUDGE ROSENTHAL: Do you have the notice
25 before you?

NEAL R. GROSS

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

1 MR. WEISMAN: I do not have that notice
2 before me right now.

3 JUDGE ROSENTHAL: I didn't find any
4 specific reference to the ESP in that notice. And if
5 you can find one, I would appreciate it being supplied
6 in a supplemental memorandum.

7 MR. WEISMAN: Yes, Your Honor. I can --
8 if we can take a very short recess, I have the notice
9 in my office, and I could go fetch it and speak to
10 that right now.

11 CHAIRMAN SPRITZER: Mr. Weisman, why don't
12 you -- I think we would prefer to follow Judge
13 Rosenthal's suggestion and send it to us separately.

14 MR. WEISMAN: Yes, Your Honor.

15 CHAIRMAN SPRITZER: We're kind of -- one
16 of our members is kind of pressed for time here.

17 MR. WEISMAN: Yes, Your Honor.

18 CHAIRMAN SPRITZER: Sorry about that, but
19 let's proceed, if we can. On Contention One, let's
20 get beyond the question of whether this was foreclosed
21 by the ESP proceeding. I'm trying to understand. On
22 the one hand, I take it you would agree that there is
23 no specific requirement that an Applicant for a COL
24 submit something called a "Low-Level Radioactive Waste
25 Management Plan." Is that a requirement of the

NEAL R. GROSS

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

1 regulations anywhere that you're aware of?

2 MR. WEISMAN: There's no requirement in
3 Section 52.79.

4 CHAIRMAN SPRITZER: Well, anywhere that
5 would apply to the COL application submitted by
6 Dominion.

7 MR. WEISMAN: No, sir.

8 CHAIRMAN SPRITZER: Okay. On the other
9 hand, I take it you do look at this issue somehow;
10 that is, if an Applicant clearly did not have adequate
11 storage capacity on site for waste that it's clearly
12 going to generate in the course of its operation,
13 would that be an issue that would be relevant in the
14 COL proceeding somehow?

15 MR. WEISMAN: Yes, Your Honor. The Staff
16 will review the Applicant's ability to store that
17 waste.

18 CHAIRMAN SPRITZER: And is that part of
19 the Part 52 regulations, or my understanding is they
20 also have to get some sort of permit or license under
21 10 CFR Part 30.

22 MR. WEISMAN: Typically, the Part -- the
23 way it has always been done is that the operating
24 license includes part of licenses for Part 30, Part
25 40, and Part 70 with respect to the different

NEAL R. GROSS

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

1 materials that an Applicant seeks to possess. I
2 believe that this would be part of the review to
3 support the issuance of a Part 30 license, and the
4 requirements, as stated in the Staff brief, are in
5 Part 20 for storage of material. The Staff will
6 certainly review those matters, and the Staff may well
7 ask questions about storage of those materials.

8 CHAIRMAN SPRITZER: All right. So we've
9 got a Contention here that's backed by appropriate
10 factual evidence that says based on the fact we no
11 longer have the Barnwell facility, we can now show you
12 that this facility lacks adequate storage capacity for
13 low-level waste, or radioactive waste, generally.
14 That would sound, to me, to be something closer to an
15 admissible contention, where we had a dispute that was
16 material to some finding you have to make, the Staff
17 has to make, ultimately, the Commission, in order to
18 issue the license. Does that sound correct to you?

19 MR. WEISMAN: Your Honor, I would say that
20 neither the Staff, nor the Applicant, nor the Board
21 can supply the basis for a contention proposed by
22 Petitioners.

23 CHAIRMAN SPRITZER: Oh, I'm not suggesting
24 we can. I'm just trying to figure out how this issue
25 might relate, if at all, to any issue that would be

NEAL R. GROSS

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

1 material. I'm not saying they submitted any such
2 evidence, at all. And, obviously, I recognize we
3 can't supply it for them.

4 MR. WEISMAN: I guess in response to that,
5 all I can say, Your Honor, is it's, obviously,
6 possible to write a good contention on a wide variety
7 of matters that would come before the Board.

8 CHAIRMAN SPRITZER: This just isn't one of
9 them.

10 MR. WEISMAN: This isn't one of them.

11 CHAIRMAN SPRITZER: All right. Thank you.
12 I may have cut you off, and put you back on Contention
13 One. Did you want to say something about either Two
14 or Three?

15 MR. WEISMAN: I would like to briefly
16 address Contention Two. BREDL - I'm sorry - the
17 League points to a matter regarding the so-called VH
18 ratios, the ratio of vertical spectra to horizontal
19 spectra, but those matters have to do with ground
20 motion. Since unnamed Fault A is not a capable fault
21 as set forth in the SER and NUREG-1835 for the ESP
22 application, there isn't any connection between that
23 unnamed fault at the site and the VH ratios, which the
24 WIG mentioned in its oral argument. I haven't seen --
25 the Staff does not believe there's any information in

NEAL R. GROSS

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

1 the petition or the reply to connect unnamed Fault A
2 to those ratios. That's all I have on Contention Two,
3 proposed Contention Two.

4 CHAIRMAN SPRITZER: Do you have anything
5 on Contention Three?

6 MR. WEISMAN: I think that I would just
7 mention that these issues have been fully raised.
8 These environmental issues were fully raised and
9 considered in the ESP proceeding. I really don't have
10 anything to add.

11 CHAIRMAN SPRITZER: All right. Would it
12 be fair to say that -- well, to your knowledge, does
13 the Commission ever, or the Staff ever get into trying
14 to predict whether someone, an Applicant is going to
15 be able to obtain a permit, what the terms of a permit
16 might be under the Clean Water Act? That sounds to me
17 like something we would -- that the Commission would
18 not do, or the Staff would not do, but let me just ask
19 a question that I already think I know the answer to.
20 Is there any situation in which that occurs, that
21 you're aware of?

22 MR. WEISMAN: That is a good question,
23 Your Honor, and the Staff does sometimes consider a
24 legal limit say on a contaminant concentration, for
25 instance, in an outflow. But it doesn't consider --

NEAL R. GROSS

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

1 it doesn't try to predict what the terms of a permit
2 will be. Rather, it considers what would be the
3 environmental impact of that effluent, whether it's
4 water use, whether it's consumption of water, whether
5 it's contaminants in water, the Staff discusses what
6 the environmental impacts might be from those matters.

7 CHAIRMAN SPRITZER: And would that
8 normally be in the EIS?

9 MR. WEISMAN: Yes, Your Honor.

10 CHAIRMAN SPRITZER: Very good. Does
11 anyone else have any questions for the Staff? All
12 right. Thank you.

13 Mr. Zeller, you now have 10 minutes for
14 rebuttal. I would like to remind you that please
15 confine your rebuttal to responding to what Dominion
16 and the Staff has had to say, rather than raising
17 completely new points or arguments.

18 MR. ZELLER: Yes. Thank you, Your Honor.
19 This is Lou Zeller.

20 To begin with the point that was just
21 discussed, the ground motion, the vertical-horizontal
22 ratio, and whatnot, that information is part of the
23 problem that we have identified, and would continue to
24 elaborate on with expert opinion.

25 It's interesting that the environmental

NEAL R. GROSS

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

1 impact is, in fact, the issues that we are talking
2 about here with regards to the environmental impact,
3 and the prospective construction and operation
4 license. So I do believe that there are grounds here
5 for a NEPA contention.

6 With regards to issue number two, the risk
7 studies, and the faults, and whether a fault is
8 capable or not, again, is an issue which is, I think,
9 fundamental to both the NEPA issues, as well as the
10 safety of the plant, itself. So I don't want to go
11 into much more detail about that right now, but we
12 would be happy to submit further information about
13 this elaborating our concerns, perhaps in a more
14 concise way.

15 And, finally, I think I have identified
16 within our Contention One, the low-level waste
17 contention, I would just capstone on that saying that
18 the Applicant should at least analyze impacts of the
19 possible alternatives for the low-level waste
20 disposal, and that's not been done. And, so, I look
21 forward to having this contention admitted, and those
22 issues permitted for a more complete record, if
23 nothing else, and to make a determination that there
24 is some kind of a realistic plan here.

25 In closing, I would say that it's not a

NEAL R. GROSS

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

1 new issue, but it has to do with public confidence,
2 and the Nuclear Regulatory Commission's ability to
3 license nuclear reactors in the 21st century. And I do
4 think that there are reforms that are necessary, there
5 are subsidies for nuclear power reactors, and safety
6 problems at nuclear power plants which pose a threat
7 to the community in the central Virginia area. And,
8 therefore, I do think, I would recommend to the Board
9 that it go beyond the minimum requirements, that it
10 truly explore some of the contentions that we have
11 raised, if only to demonstrate that it is doing the
12 best job that it can, not to just go through the
13 motions and dismiss contentions because they are not
14 perfectly presented, or in some procedural way able to
15 be disposed of. I do think there are real issues
16 here, whether we have stated them as well as we could.
17 We can always do a better job, and we look forward to
18 doing that.

19 CHAIRMAN SPRITZER: All right. Thank you,
20 Mr. Zeller. And unless any members have any further
21 questions, I think we are at the end of our
22 conference.

23 MR. WEISMAN: Your Honor, this is Bob
24 Weisman for the Staff. I'd just like to correct
25 something. I misspoke before. Judge Rosenthal is, in

NEAL R. GROSS

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

1 fact, correct, that the Notice of Hearing does not
2 mention the ESP, and I wanted to correct that for the
3 record.

4 CHAIRMAN SPRITZER: Very good.

5 MR. LEWIS: Judge Spritzer, this is David
6 Lewis. Would you like the citation to the
7 supplemental notice?

8 CHAIRMAN SPRITZER: Yes.

9 MR. LEWIS: It's 73 Federal Register
10 21162, April 18th, 2008. And, in addition, there's a
11 Commission order dated May 1st, 2008, which addressed
12 whether the period for contentions should be extended.

13 CHAIRMAN SPRITZER: Right. All right.
14 Anything else?

15 MR. MARIOTTE: Your Honor, this is Michael
16 Mariotte from Nuclear Information Resource Service.
17 May I ask a question, not a substantive question?

18 CHAIRMAN SPRITZER: We really have been
19 quite strict in limiting non-participants to not
20 participating.

21 MR. MARIOTTE: Well, it's sort of a
22 procedural thing.

23 CHAIRMAN SPRITZER: All right. If you
24 could make it very quick.

25 MR. MARIOTTE: When was this pre-

NEAL R. GROSS

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

1 conference notice to the public?

2 CHAIRMAN SPRITZER: I think that's
3 something you can get on ADAMS. We have all of our
4 orders are available on ADAMS. I'm not going to go
5 through a history of this.

6 MR. MARIOTTE: Okay. I just wanted to
7 find out when this particular one was noticed.

8 CHAIRMAN SPRITZER: I believe it was June
9 11th, but you should check ADAMS and make sure they
10 have the correct dates.

11 MR. MARIOTTE: Okay. Thank you.

12 CHAIRMAN SPRITZER: Okay. Thank you for
13 your participation. It's been informative, and helped
14 us understand the issues somewhat better. And we will
15 now conclude the teleconference. Thank you.

16 MR. LEWIS: Thank you, Judge Spritzer.

17 MR. ZELLER: Thank you.

18 (Whereupon, the proceedings went off the
19 record at 11:30:21 a.m.)

20

21

22

23

24

25

CERTIFICATE

This is to certify that the attached proceedings
before the United States Nuclear Regulatory Commission
in the matter of: North Anna Unit 3

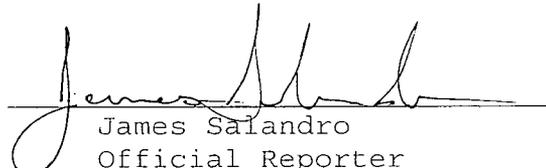
Name of Proceeding: Pre-hearing Conference

Docket Number: 52-017;

ASLBP No.: 08-0863-01-COL

Location: (Telephone Conference)

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


James Salandro
Official Reporter
Neal R. Gross & Co., Inc.

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

(202) 234-4433

www.nealrgross.com