

# **Official Transcript of Proceedings**

## **NUCLEAR REGULATORY COMMISSION**

Title: 2.206 Petition – Mr. Salsman September 19, 2008  
Teleconference on October 16, 2008

Docket Number: (n/a)

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ENCLOSURE

1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION

3 + + + + +

4 PETITION REVIEW BOARD (PRB)

5 CONFERENCE CALL

6 + + + + +

7 THURSDAY

8 OCTOBER 16, 2008

9 + + + + +

10 The conference call was held, Jeffery A.  
11 Clark, Chairman of the Petition Review Board,  
12 presiding.

13  
14 PETITIONER: JAMES SALSMAN

15  
16 PETITION REVIEW BOARD MEMBERS

17 JEFFERY A. CLARK, Chairman

18 MAHENDRA J. SHAH, Petition Manager

19 BRETT MICHAEL KLUKAN

20 EUGENE M. PETERS

21 CHRISTOPHER M. STAAB

22 NRC STAFF

23 NORMA GARCIA-SANTOS, NMSS Petition Coordinator

24 This transcript done from an audio CD provided  
25 by the U.S. Nuclear Regulatory Commission.

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

1:00 p.m.

BRIDGE OPERATOR: Good afternoon. Is anybody on the line?

MR. SALSMAN: Hello. This is James Salsman. I'm the petitioner.

MR. SHAH: Hi, Mr. Salsman. How are you?

MR. SALSMAN: Very well, Dr. Shah. How are you?

MR. SHAH: All right. I guess you have all the people you were planning to have or?

MR. SALSMAN: I don't know. They probably will call in. I was hoping they would, but who knows?

MR. SHAH: Do you want to wait or?

MR. SALSMAN: No, no, that's okay.

MR. SHAH: You understand this is a recorded line, right?

MR. SALSMAN: That's right.

MR. SHAH: Okay.

BRIDGE OPERATOR: This is the NRC Operations Officer. Are you expecting a number of additional callers?

MR. SALSMAN: Well, maybe.

BRIDGE OPERATOR: Maybe?

MR. SALSMAN: I don't know. It's

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1 unlikely, very unlikely.

2 BRIDGE OPERATOR: Okay. If there are, I  
3 can do an automated roll call. If there's not,  
4 obviously you all know who's on the line right now.  
5 If you want me to, just ask for me and I'll do an  
6 automated roll call.

7 MR. SALSMAN: Thank you.

8 MR. SHAH: Mr. Salsman, do you want to  
9 start the teleconference?

10 MR. SALSMAN: Thank you, yes. I've read  
11 the response to the petition and I've tried to  
12 understand the requirements and have not been  
13 successful in understanding the requirements for  
14 submitting a petition of this kind. I was --

15 MR. SHAH: -- Go ahead.

16 MR. SALSMAN: I was surprised by the  
17 request for specific examples of problems with the  
18 casks or problems with the weather events which is not  
19 really predictable on a local level over time.

20 MR. SHAH: Mr. Salsman, can we -- I sent  
21 you an agenda. Can we follow the agenda?

22 MR. SALSMAN: Yes, I mentioned I read your  
23 response. The --

24 MR. SHAH: No, I was talking about the  
25 agenda for this teleconference. You have the first

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1 item there was summary of this process, 2.206 process  
2 and the petition.

3 MR. SALSMAN: Right. I'm sorry. Go  
4 ahead.

5 MR. CLARK: Mr. Salsman, this is --

6 MR. SHAH: How about if we introduce?

7 MR. CLARK: Yes, let's go ahead and  
8 introduce everybody that's here.

9 First of all, Mr. Salsman, this is Jeff  
10 Clark. I'm the Acting Deputy Director of the  
11 Licensing and Inspection Directorate in the Office of  
12 Nuclear Material Safety and Safeguards. I'm the  
13 Chairman of the 2.206 Petition process.

14 Next.

15 MS. GARCIA-SANTOS: Yes, I'm Norma Garcia  
16 and the Petition Coordinator. They keep me informed  
17 about what the process is and the process that they're  
18 following and just being informed for the petition.

19 MR. PETERS: My name is Gene Peters. I'm  
20 a technical member of the PRB.

21 MR. KLUKAN: My name is Brett Klukan. I'm  
22 an attorney in the Office of General Counsel.

23 MR. SHAH: My name is Mahendra Shah. I'm  
24 the Petition Manager for this petition you have  
25 submitted.

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1 MR. STAAB: My name is Chris Staab. I'm  
2 a technical member of the PRB.

3 MR. SHAH: Okay. Jeff.

4 MR. CLARK: Okay, Mr. Salsman, what I want  
5 to do is just go over a summary of the 2.206 process.  
6 This may be beneficial in answering your overall  
7 question and also to go over your petition and where  
8 we are in the process with that at this time.

9 MR. SALSMAN: A question about the roster.

10 MR. CLARK: Okay.

11 MR. SALSMAN: Are there any members from  
12 the Enforcement or Inspections division on the  
13 Petition Review Board?

14 MR. SHAH: No, we do not.

15 MR. CLARK: Well, I am the Deputy Director  
16 of the Licensing and the Inspection Directorate for  
17 Yucca Mountain.

18 MR. SALSMAN: I see. Okay. And what  
19 about enforcement?

20 MR. CLARK: No, we do not.

21 MR. SALSMAN: I see. Proceed.

22 MR. CLARK: Okay. First of all, in  
23 regards to, we have a Management Directive 8.11 that  
24 covers the 2.206 petition process and it's the policy  
25 of the Nuclear Regulatory Commission to provide

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1 members of the public with a means to request that the  
2 Commission take enforcement related action, either to  
3 modify, suspend or revoke a license or for other  
4 appropriate enforcement-related action and this is  
5 distinguished from actions such as licensing or  
6 rulemaking.

7 We received several correspondences  
8 regarding your request, but if I may, I would like to  
9 consolidate into the two points that you have made in  
10 several correspondences with us. The first one --

11 MR. SALSMAN: First, may I ask that you  
12 explain why modifying the existing license is not  
13 considered an enforcement-related action?

14 MR. CLARK: Modifying an existing license  
15 is an enforcement-related action.

16 MR. SALSMAN: That's my understanding as  
17 well. So why is there nobody from enforcement on the  
18 Petition Review Board?

19 MR. CLARK: We can understand from our  
20 position basically mine from the Licensing and  
21 Inspection Directorate that this is not an enforceable  
22 action. Actually, part of the position that you're  
23 making goes towards a potential for rulemaking or for  
24 other related actions which we'll cover in a little  
25 bit more detail when we get to that point.

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1 MR. SALSMAN: And I've already been told  
2 to file a petition for rulemaking as an alternative  
3 to petitions for modifications of licenses and I feel  
4 like I'm getting the runaround.

5 MR. SHAH: We never talked about that, did  
6 we? Did we say that -- This is Mahendra Shah.

7 MR. SALSMAN: Dr. Shah, let me tell you  
8 about that. There's a petition for rulemaking pending  
9 in the 9<sup>th</sup> Circuit currently under review and I have a  
10 series of questions and including questions that might  
11 involve ethical concerns. Now are there any questions  
12 which you consider off-limits?

13 MR. SHAH: Questions related to?

14 MR. KLUKAN: This is Brett Klukan, Mr.  
15 Salsman. Could you give an example of such a  
16 question?

17 MR. SALSMAN: Well, I sent in a list of I  
18 think it was 17 or 18 questions about why I don't  
19 understand the request for specific meteorologic  
20 predictions and I know you've received those. Dr.  
21 Shah told me that you received those by email.

22 MR. SHAH: Yes.

23 MR. SALSMAN: Okay. There is also this --  
24 It strikes me as extremely suspicious that a decision  
25 about whether or not the request was an enforcement-

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1 related action took place without the involvement of  
2 the enforcement staff. That's clearly irregular.

3 MR. CLARK: We are evaluating the  
4 technical merits of the action you proposed.

5 MR. SALSMAN: Well, technically your  
6 procedure as the management directive states that  
7 you're supposed to involve the enforcement department  
8 personnel.

9 MR. KLUKAN: Could you just -- This is  
10 Brett Klukan, Mr. Salsman. Could you point out to  
11 where, I recognize you may not have it in front of  
12 you, in the management directive you're pointing to?

13 MR. SALSMAN: Yes, I most certainly will  
14 at a later time. I'll follow up by email with that.  
15 You know, I was hoping that you would be familiar with  
16 it.

17 Anyway, let's --

18 MR. CLARK: Mr. Salsman, again this is  
19 Jeff Clark. Let's go back in one -- Just so that  
20 we're all on common ground here. State the two  
21 requests that we believe we have from you before us.

22 The first is that you asked for immediate  
23 NRC approval on a tentative basis of the licensee  
24 application filed by the U.S. Department of Energy on  
25 June 3, 2008.

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1 MR. SALSMAN: Excuse me. I think you have  
2 the date wrong. I requested the application that has  
3 been docketed and obviously approved.

4 MR. CLARK: Okay.

5 MR. SALSMAN: Thank you.

6 MR. CLARK: So you're requesting immediate  
7 NRC approval for authorization to construct a  
8 geological repository at Yucca Mountain.

9 MR. SALSMAN: And maybe even more than  
10 one. It depends on how many you need to -- How many  
11 cores you need to store? So, you know, I feel very  
12 strongly about this and now I've found out that you  
13 didn't actually follow your own procedures.

14 MR. CLARK: Well, Mr. Salsman, let me tell  
15 you this.

16 MR. SALSMAN: It's the same pattern and  
17 practice of negligence and irresponsibility on the  
18 part of the Commission and I think those responsible  
19 should be held responsible.

20 MR. CLARK: Mr. Salsman, on the first  
21 aspect, the first item, immediate NRC approval of the  
22 license application, I'm going to state to you that  
23 clearly it's not within the realm of enforceable  
24 action.

25 MR. SALSMAN: Oh, really.

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1 MR. CLARK: Because there is no license  
2 approval at this time and we cannot from a request  
3 from the public circumvent a lengthy technical review  
4 and safety review to immediately license this  
5 facility.

6 MR. SALSMAN: Not even in the case of an  
7 emergency.

8 MR. CLARK: You would have to provide the  
9 benefit to the American public of circumventing like I  
10 said basically a year long technical review to  
11 determine the safety of Yucca Mountain.

12 MR. SALSMAN: Seven hundred thousand jobs  
13 if we construct 35 plants by 2030.

14 MR. CLARK: I think, Mr. Salsman, that's  
15 immaterial to what we're stating.

16 MR. SALSMAN: Is it immaterial or are we  
17 talking about what it costs to insure not just the  
18 facilities that are covered by the Price Anderson Act  
19 but the related facilities supporting the plants and  
20 the neighborhoods around the plants and storage  
21 facilities.

22 MR. CLARK: I understand what you're  
23 saying, Mr. Salsman. But again, that's not an  
24 enforceable action.

25 MR. SALSMAN: Why not?

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1 MR. CLARK: Because there is not a tenable  
2 license application until we do the technical review.

3 MR. PETERS: Maybe I can say it another  
4 way. This is Gene Peters. We can only take an  
5 enforcement action against a licensee and we do not  
6 have a licensee at this point for the proposed Yucca  
7 Mountain geologic repository because that application  
8 has only recently been docketed. It is undergoing a  
9 mandatory safety review which is directed by the  
10 Congress under the Nuclear Waste Policy Act and the  
11 NRC.

12 MR. SALSMAN: Are you trying to tell me  
13 that you don't license any Department of Energy  
14 facilities at all?

15 MR. PETERS: Actually, I don't think we  
16 do. Only those that have been privatized like USEC  
17 (phonetic). We do not regulate Hanford or Savannah  
18 River (phonetic).

19 MR. SALSMAN: What about the facilities  
20 surrounding the Department of Energy facilities and  
21 supporting them and adjacent to them? You know, it's  
22 clear that whether you have a licensee or not, you  
23 definitely have licenses which require immediate  
24 enforcement action.

25 MR. PETERS: The Department of Energy does

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1 not hold a license for Yucca Mountain at this time.  
2 So it cannot be an enforcement action.

3 MR. SALSMAN: Well, you know, if I had a  
4 trash can full of burning paper and you had a closet,  
5 would you tell me that I couldn't apply to open the  
6 closet and put the trash can in the closet and close  
7 without a technical review?

8 MR. CLARK: Well, I hate to go through  
9 analogies, Mr. Salsman.

10 MR. SALSMAN: I know.

11 MR. CLARK: This is Jeff Clark. You know,  
12 because analogies are subject to interpretation.

13 MR. SALSMAN: Yes, let's say we had  
14 control of the atmosphere in the closet and whatever -  
15 -

16 MR. CLARK: The problem is we don't know  
17 what the closet is right now. The technical  
18 application has just come in for Yucca Mountain from  
19 the Department of Energy.

20 MR. SALSMAN: And you're not willing to  
21 give them the benefit of the doubt.

22 MR. PETERS: We cannot.

23 MR. SALSMAN: Even though they have been  
24 apparently keeping up with OSHA standards for uranium  
25 toxicity and you have not.

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1 MR. PETERS: The Congress of the United  
2 States has specifically directed the Nuclear  
3 Regulatory Commission to evaluate the license  
4 application for Yucca Mountain.

5 MR. SALSMAN: Specifically.

6 MR. PETERS: That is the Congressional  
7 mandate that we cannot circumvent.

8 MR. SALSMAN: There is a specific law for  
9 Yucca Mountain.

10 MR. PETERS: Yes. The Nuclear Waste  
11 Policy Act of 1982 as amended in 1987, the Nuclear  
12 Waste Policy Act amendment, the Energy Policy Act of  
13 1992, the President's Site Recommendation in 2002. I  
14 assure you. This has received national priority.

15 MR. SALSMAN: So what you're telling me is  
16 that Congress has specifically told you to follow your  
17 procedures which in this case are most prudently  
18 modifying any licenses the Department of Energy or any  
19 related facility has in order to expedite their  
20 construction of the facilities that they've applied to  
21 create.

22 MR. SHAH: But, Mr. Salsman, this is  
23 Mahendra Shah. Before you conclude that there is an  
24 emergency, we have to talk about the case. You  
25 haven't provided sufficient facts as far as the

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1 storage facility. That's the second issue you had.  
2 So you're talking about taking action I, but action II  
3 is where you're pointing out an issue or emergency and  
4 that's what I think Jeff was about to summarize.

5 So if you can let Jeff complete his part,  
6 we would appreciate that.

7 MR. CLARK: Let me state the second  
8 request that you made to us. The second one was to  
9 modify the licenses of dry cask storage facilities to  
10 transport their spent nuclear fuel to Yucca Mountain  
11 once built if the application was still being reviewed  
12 or, as you stated, the application as docketed is now  
13 being reviewed.

14 Our action, the 2.206 Petition Review  
15 Board as I stated is to see if your requests meet the  
16 criteria of a 2.206 petition, that being that it can  
17 invoke the actions that I spoke of before to modify,  
18 suspend or revoke a license or that they provide a  
19 specific safety concern and safety nexus to describing  
20 an action that we would take for an already existing  
21 licensee to put something into a safe condition.

22 MR. SALSMAN: I think the circular  
23 reasoning is internally inconsistent.

24 MR. KLUKAN: In what manner, this is Brett  
25 Klukan, Mr. Salsman, is it circular?

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1 MR. SALSMAN: You say that you can't grant  
2 the tentative approval because you don't have a  
3 licensee. But you can't modify the license -- the  
4 conditions to the emergency which were stated quite  
5 clearly in the request for tentative approval, can't  
6 be granted because you don't have sufficient  
7 emergency.

8 Well, you know, it's going to take a  
9 tornado hit on one of your storage facilities or a  
10 truck or whatever it is and really bad contamination  
11 and then you'll have to get up in the morning, turn on  
12 the news and then you'll have to go look at yourself  
13 in the mirror and I wonder how many of you are going  
14 to be able to do that.

15 MR. CLARK: Mr. Salsman, I understand that  
16 you do have concerns and we would like to address your  
17 concerns.

18 MR. SALSMAN: Thank you.

19 MR. CLARK: But you also have to  
20 understand the function of our board. Our board --

21 MR. SALSMAN: I understand quite well the  
22 function of your board.

23 MR. CLARK: Our board is for --

24 MR. SALSMAN: But I wish it was following  
25 the documented function instead of the continued

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1 pattern and practice of negligence which is so  
2 evident.

3 MR. PETERS: I just wanted to separate the  
4 two issues. We have the ability to take action on the  
5 dry cask storage facilities if the threat is  
6 sufficient independent of Yucca Mountain.

7 MR. SALSMAN: I'm not interested in  
8 discussing the circular reading any further. You have  
9 my questions. I think that you completely failed to  
10 consider several important aspects, not just uranium  
11 toxicity to the reproduction system and to the immune  
12 system and to the neurons, behavioral effects, but  
13 you've also failed to even keep up with the basic  
14 ICRP-derived formula for eliminating exposure to  
15 acceptable amounts.

16 The Department of Energy has published  
17 documents in 2000 and 2004 which clearly state that  
18 you're way out of date and you don't know what you're  
19 talking about. You're trying to -- you think you're  
20 trying to encourage production, but what you're doing  
21 is you're keeping the insurance rates high. So those  
22 700,000 jobs you can just say forget it if that's the  
23 way you're going to treat this problem.

24 MR. SHAH: Mr. Salsman, can we focus on  
25 the purpose of this teleconference which is for you to

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1 provide additional information --

2 MR. SALSMAN: I think we should start  
3 focusing on the purpose of the Atomic Energy Act.

4 MR. SHAH: Well, the purpose of --

5 MR. SALSMAN: Which is to provide economic  
6 and effectiveness as well as health and safety.

7 MR. KLUKAN: Mr. Salsman, this is Brett  
8 Klukan. That is not the purpose of this that we have  
9 afforded you. It is not to discuss generally AEA.  
10 It's to give you an additional opportunity to support  
11 your claims made in the 2.206 --

12 MR. SALSMAN: I've been supporting my  
13 claims and I think I have made a solid case and you  
14 have not offered a single point of evidence opposing  
15 my support. What do you have?

16 MR. SHAH: So do you have any additional  
17 information that you wanted to tell us about?

18 MR. SALSMAN: No.

19 MR. SHAH: Okay. I think then the purpose  
20 of this teleconference I think is served and completed  
21 today.

22 (Telephone click.)

23 Thank you.

24 (End of tape.)

25

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