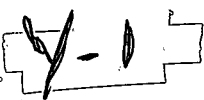


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NUCLEAR REGULATORY COMMISSION

Title: Eastern Testing and Inspection, Inc.

Docket Number: IA-08-022-EA, IA-08-023-EA,

Location: (telephone conference)

Date: Wednesday, April 29, 2009

Work Order No.: NRC-2794

Pages 1-46

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

+ + + + +

TELECONFERENCE

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IN THE MATTER OF: :

DHIRAJ SONI, HIMAT SONI, : Docket Nos.
and EASTERN TESTING & : IA-08-022-EA,
INSPECTION, INC. : IA-08-023-EA

(Enforcement Action) :

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Wednesday, April 29, 2009

BEFORE:

ANN MARSHALL YOUNG Administrative Law Judge,

 Chairman

BRUCE R. MATTHEWS Administrative Technical

 Judge

PAUL B. ABRAMSON Administrative Law and

 Technical Judge

1 APPEARANCES:

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ALSO PRESENT:
CATHERINE MARCO, ESQ., NRC/OGC
CARRIE STAFFORD, ESQ., NRC/OGC
KIMBERLY SEXTON, ESQ., NRC/OGC
NICK HILTON, NRC/Office of Enforcement
SUSANNE WOODS, NRC/Office of Enforcement
MICHELE BURGESS, NRC/Federal and State Materials and
Environmental Management Program
GLENDA VILLAMAR, NRC/Federal and State Materials and
Environmental Management Program

P R O C E E D I N G S

(10:00 a.m.)

1
2
3 JUDGE YOUNG: As I said, my name is Ann
4 Marshall Young. I'm the Chair and the Lawyer Judge on
5 the Licensing Board. And we also have on the board
6 Judge Bruce Matthews, who is a Technical Judge with
7 us, and Judge Paul Abramson, who is both a Technical
8 and a Legal Judge.

9 If we could go -- let's go first to the
10 staff and then Mr. Andersen, staff, why don't you
11 introduce yourselves, staff counsel, and also indicate
12 who you have or expect to have with you in this
13 conference.

14 MS. BARKMAN: Okay. This is Molly Barkman
15 for the staff. I have with me co-counsel Carrie
16 Stafford and Kimberly Sexton and Catherine Marco.

17 And then we also have from our Office of
18 Enforcement Nick Hilton and Susanne Woods. And from
19 our Office of Federal and State Materials and
20 Environmental Management Program, Michele Burgess and
21 Glenda Villamar.

22 JUDGE YOUNG: And we can get the spellings
23 of those later for the Court Reporter if we need to.

24 And who are we -- did you name -- does
25 that list include the person you are expecting still

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1 to --

2 MS. BARKMAN: We're all here now, yes.

3 JUDGE YOUNG: Okay. Great.

4 And then, Mr. Andersen, why don't you
5 introduce yourself and indicate who you are
6 representing.

7 MR. ANDERSEN: Yes, good morning, Judge
8 Young. My name is Robert M. Andersen, A-N-D-E-R-S-E-
9 N. And I represent Mr. Himat Soni, Mr. Dhiraj Soni,
10 and the corporate entity Eastern Testing.

11 JUDGE YOUNG: All right.

12 Before we sort of get into the meat and
13 substance, so to speak, of what we're here to address,
14 I just want to go over what I see as being four
15 categories of types of issues that we would like to
16 address in addition to any questions or issues that
17 any of you would like to bring up.

18 First there are what we'll term
19 relationship issues, the relationship between the
20 parties in conjunction with the motion for
21 consolidation and some other related issues.

22 Then second, security related issues
23 having to do with the nature of some of the
24 information and the designation of some of the
25 documents in the case as Official Use Only security-

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1 related information. And the impact of that on this
2 proceeding and how it is conducted and handled and so
3 forth.

4 Then third, scheduling and timing issues,
5 obviously the orders prohibiting involvement in NRC
6 license activities went into effect in February. And
7 so we realize that there may be some timing issues
8 that the parties are concerned about there.

9 And then related to that, we are also
10 wondering whether the parties either have or are
11 interested in discussing any settlement, whether it
12 might be appropriate to ask the Chief Judge to appoint
13 a separate Settlement Judge to assist you in that if
14 you are interested in that.

15 And then finally, the actual issues for
16 any hearing that will be held in the cases, assuming
17 you don't settle everything.

18 It sort of seems to us that unless at this
19 point you're willing and able to tell us that you're
20 pretty close to settlement on everything, in which
21 case that would shorten this conference significantly.

22 Probably the first set of issues that
23 might be appropriate to discuss would be the security-
24 related issues simply because that may have an effect
25 on this prehearing conference.

1 We have a Court Reporter, as I said, and
2 this will be transcribed. And in the ordinary course
3 of business, what will happen is that ultimately a
4 copy of that transcript will be placed in the NRC's
5 electronic hearing docket and on the NRC's public
6 website.

7 So to the extent that any information came
8 up in this discussion that any party felt would fall
9 under the staff's designation of security-related
10 information, that might have an impact on how we
11 conduct this conference.

12 We had asked the staff to be ready to cite
13 any and all law, rules, and other authority relating
14 to these issues and to have an NRC security expert in
15 attendance to answer any practical questions and
16 related issues on this.

17 And I guess just as sort of a backdrop,
18 we're aware of various procedures for conducting
19 hearings, for example, involving Safeguards
20 information or classified information.

21 And we're aware that there is a policy on
22 Sensitive Unclassified -- SUNSI, S-U-N-S-I, Sensitive
23 Unclassified Non-Safeguards Information handling
24 requirements.

25 But we're not clear on what the parties'

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1 views are, what the expectations are in terms of how
2 this proceeding should be handled and what this means
3 in terms of how a hearing should be conducted.
4 Normally in hearings, they are open hearings. The
5 public can be there. The press is almost always
6 present.

7 And so we would really like, I guess, to
8 hear first from the staff on this. And then from Mr.
9 Andersen if you have any differences with the staff on
10 any of these issues.

11 And then we're open to hearing your
12 suggestions on what would be the appropriate manner in
13 which to proceed.

14 Let me just ask which NRC counsel will be
15 addressing this issue? And have I made myself more or
16 less clear on what our concerns are?

17 MR. ANDERSEN: Yes, Your Honor. This is
18 Rob Andersen. You've made it clear to me.

19 MS. BARKMAN: Yes, we understand. This is
20 Molly Barkman for the staff. We've been looking at
21 this. We don't see any problem with having an open
22 hearing in this case.

23 I don't think we'll have to get into the
24 type of sensitive information -- the sensitive
25 information is the particular ways in which the

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1 licensee's ETI has implemented this order. And I
2 don't think any particulars are going to actually have
3 to come up at the hearing.

4 It will be in documents so we'll have to
5 protect some documents in discovery or we might have
6 to redact them. We can still serve them over the e-
7 filing system.

8 We'll just have to mark them as non-
9 public. And the Secretary's office is aware that
10 there might be some documents in this case that would
11 have to be withheld as non-public.

12 If it comes down to it, maybe we can
13 stipulate to some facts with Mr. Andersen ahead of
14 time so those documents maybe could be kept non-
15 public. And then we could just talk in general terms
16 at the hearing if we need to.

17 But there shouldn't -- there won't be any
18 STI or classified information involved. It will just
19 be the SUNSI information.

20 MR. ANDERSEN: I'm in total agreement.
21 This is Rob Andersen again for the Sonis and for ETI.
22 And I don't see any problem with having a public
23 hearing. If we get to it, I do want to discuss
24 something that I've already conferred with Ms. Barkman
25 about. And that's settlement at some point.

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1 Our hope is that a hearing would not be
2 necessary. But if it is, we have no problems with the
3 procedures that have been outlined.

4 JUDGE YOUNG: I guess I have -- one
5 question comes to my mind and that is -- well, first
6 of all, let me just say I think we all encourage
7 settlement if that's possible. That obviously would
8 be the most satisfactory solution for the parties if
9 you are able to come to an agreement between the two
10 of you.

11 But I guess my concern about a hearing if
12 we did actually go to a hearing is that given that
13 this is an adversarial process and that there are
14 allegations that have been made about the particular
15 ways in which the security requirements were or were
16 not complied with, that it might actually be somewhat
17 difficult to avoid talking about those ways because
18 from what we have read -- and I'll at least speak for
19 myself -- it seems like the dispute is over that very
20 thing.

21 In other words, what actually happened,
22 how were those required procedures addressed? What
23 did people do with regard to those? And I guess I'm
24 having a little bit of difficulty understanding how
25 you can talk about that without getting into what the

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1 required procedures are.

2 MR. ANDERSEN: Your Honor, this is Rob
3 Andersen again. I think that when you get into the
4 responses that we've filed and read them very
5 carefully, you'll see that most of the facts are not
6 disputed regarding compliance, noncompliance.

7 There are some arguments that my clients
8 are making about how clear the requirements were and
9 when they had to be complied with. But those are
10 issues that are basically administrative issues, not
11 the substance of what's in the requirements. And for
12 the most part, those issues are admitted to.

13 What it really boils down to is the
14 counsel went through an attempt to settle this before
15 -- my clients were deceptive or intentionally
16 inaccurate. That's why --

17 COURT REPORTER: This is the Court
18 Reporter.

19 PARTICIPANT: Yes, I apologize. I have it
20 back. Mr. Andersen, I have the majority of what you
21 were saying. But I missed the last part -- the last
22 portion.

23 MR. ANDERSEN: Well, let me just start
24 over if I could. It isn't that long.

25 I think that it is pretty clear that some

1 of the operative noncompliance issues have already
2 been admitted to. And the question primarily is
3 whether or not there was intentional or other actions
4 taken after the compliance date that indicated it was
5 intentionally not complied with.

6 And I think that for the most part, Your
7 Honor, that those issues can be handled without
8 delving into a great deal of information that wouldn't
9 be suitable for public hearing.

10 But we have, you know, we have no stake in
11 either public or nonpublic. My clients do not have a
12 position on going forward on either format. Whatever
13 suits Your Honor and what is required by the security
14 requirements and security information requirements of
15 NRC is fine with us.

16 And if that also involves something where
17 you may have to close the hearing once it has started
18 for a particular portion of it, that would be
19 acceptable to us. Again, when we get to settlement,
20 we'll discuss that further.

21 JUDGE YOUNG: Let me see if I can ask a
22 question without crossing the line here. And, again,
23 I want to preface that by saying that there is the
24 public aspect of these hearings. And so I think we
25 have to consider how we would deal with any issue that

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1 arose that would necessitate it becoming a closed
2 hearing, if there were any members of the public there
3 or any members of the press there that wanted to
4 remain in the room.

5 That's why I wanted the staff to address
6 the legal authority for keeping these things out of
7 the public eye. And the more -- the thing that I
8 wanted to say -- that I'm going to try to say in a
9 precise way that will get to the point I'm trying to
10 make is there seems to be some dispute about the
11 nature of a discussion or discussions that were had
12 between Mr. Dhiraj -- that's D-H-I-R-A-J, Soni, S-O-N-
13 I, and local law enforcement officers.

14 And I guess the second consideration that
15 would serve as a backdrop for that is the fact that if
16 this does go to hearing, the board will be called upon
17 to reach conclusions on the wilfulness,
18 intentionality, et cetera of whatever actions were or
19 were not taken by Mr. Himat Soni and Mr. Dhiraj Soni.

20 And since a large part of the defense
21 appears to be the nature of the motivation, the nature
22 of the intention, and the nature of the discussions I
23 referred to, it might be difficult for us to do our
24 jobs without gaining a better understanding of those
25 things -- the wilfulness, purposefulness, intention of

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1 the two Mr. Sonis, and the nature of the discussions.

2 And it appears that the parties -- the
3 staff and the respondents, I'll call them, are in some
4 dispute about all those things. Am I wrong on that?

5 MR. ANDERSEN: No, you're absolutely
6 right, Your Honor. But the vast majority of that
7 doesn't involve, at least in my mind, classified or
8 secret, sensitive, or otherwise undisclosable
9 information.

10 If I could make a suggestion, Your Honor,
11 I don't know if it is appropriate, perhaps the
12 decision on whether the hearing should be open or not
13 could be deferred until we've, you know, had
14 settlement discussions and completed discovery. And
15 have focused down on what the actual fact issues that
16 can't be stipulated to will take place at a hearing.
17 I don't know if that's possible or if it makes sense.
18 But it is a suggestion.

19 JUDGE YOUNG: That -- I think that's
20 probably a very good suggestion. And that gets to
21 some of the other issues that we wanted to talk about.

22 But while we're still on this issue, let
23 me ask the staff to respond to the concerns that I
24 raised. And also to the question of what the legal
25 authority -- what legal authority we're talking about

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1 here.

2 MS. BARKMAN: The legal authority is 10
3 CFR 2.390, withholding security-related information.
4 And I can address your concerns pretty easily.

5 The information you were talking about
6 isn't actually sensitive. The discussions with the
7 police aren't sensitive. It's the final document that
8 they arranged with the police which isn't public. The
9 actual way in which they are going to respond, that
10 information is not public.

11 The fact that they need to have an
12 arrangement with the police is a public fact. It's
13 just the actual document itself that is not public.
14 So that's all we would need to withhold. Any
15 conversations leading up to that would not be
16 sensitive.

17 JUDGE YOUNG: Okay. So then the fact that
18 the -- I think the order establishing the procedures
19 that there were to follow, that was marked sensitive.
20 Is that correct or not?

21 MS. BARKMAN: The order which was violated
22 was public. It was sent to a number of materials
23 licensees at the same time.

24 JUDGE YOUNG: Okay. So that was public.
25 So the fact of the discussions with law enforcement

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1 people is not sensitive. It's only -- had they
2 reached an agreement and it had been put in writing,
3 that would have been the sensitive information.

4 MS. BARKMAN: Yes. And they do have that
5 now. And the NRC has approved that.

6 JUDGE YOUNG: Okay. Well that does very
7 much clarify things. If that resolves it, then it
8 does seem like we could easily have an open hearing.
9 Okay. That answers a lot of questions right there.

10 Judge Abramson of --

11 JUDGE ABRAMSON: This is Judge Abramson.
12 Can I interject something here?

13 JUDGE YOUNG: I was just going to ask you
14 if you wanted to.

15 JUDGE ABRAMSON: I imagine that you get
16 that. Frankly, this all seems to me like it is ripe
17 for some kind of settlement discussions. And I know
18 Judge Young mentioned earlier that we, as a board,
19 were trying to figure out what -- how this ought to
20 proceed.

21 Let me ask the parties, is this -- is
22 resolution of this important enough that you want it
23 to be on a fast track for a hearing? Or would you be
24 -- would it be appropriate for us to ask the Chief
25 Judge to appoint a Settlement Judge to try to mediate

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1 this among -- between you -- and put the hearing in
2 abeyance while we await that?

3 The question is i.e., do we keep marching
4 ahead with the hearing process at the same time you
5 are trying to settle? Or not. And, of course, if you
6 don't want to try to settle, which I think I've heard
7 the accused say they'd like to settle this.

8 PARTICIPANT: Right.

9 JUDGE ABRAMSON: So it is a question of
10 whether the staff is willing to participate in that.
11 If you don't want to settle, then we're wasting time
12 even talking about it.

13 So two questions. A, do you want to try
14 to settle? B, if you want to try to settle, do you
15 want us to hold this hearing in abeyance while you
16 work on that? Or do you want to keep marching
17 forward?

18 JUDGE YOUNG: And I'll just add to that
19 and then Judge Matthews may also have something to add
20 but I'll just add to that, we definitely want to know
21 where you are on that. I think, Mr. Andersen, you
22 probably already understand this.

23 But just in case you haven't been involved
24 in NRC proceedings before, obviously it takes some
25 time to find a time when everyone can be available for

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1 a hearing. We don't know what kind of preparation
2 time you would need in terms of discovery and so
3 forth.

4 So I think if you do ask us to hold the
5 hearing in abeyance pending settlement negotiations,
6 your clients would need to understand that obviously
7 the ultimate resolution of these orders prohibiting
8 involvement in NRC-licensed activities would be
9 delayed to that extent.

10 So another option would be to have
11 parallel tracks going toward a hearing and towards
12 settlement. And then if settlement is not successful,
13 we can go to a hearing.

14 MR. ANDERSEN: Understood, Your Honor.
15 And --

16 JUDGE YOUNG: What we're willing to do --

17 MR. ANDERSEN: -- let me answer both
18 questions that were posed. First of all, yes, we want
19 it settled. And no, we don't want the hearing held in
20 abeyance.

21 I think that I'm prepared to meet next
22 week or any time thereafter, very quickly. I know
23 what my clients want in terms of settlement.

24 It's clearly something that I could
25 discuss with Ms. Barkman and quickly have her take it

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1 back to the rest of the NRC that are involved in that.
2 And see if that's a -- if it is a doable suggestion.
3 If not, then we want the hearing to proceed at pace.

4 And I continue -- I'll remind you that
5 there is still the civil penalty issue pending versus
6 ETI where we have not heard back a final decision from
7 NRC. We would want all three matters consolidated
8 just for convenience to save money for the client.
9 And also because they are all related.

10 JUDGE ABRAMSON: Mr. Andersen, Judge
11 Abramson again, let me just mention, because I may be
12 the only member of the panel who has been a Settlement
13 Judge that settlement proceedings with the NRC almost
14 always need to involve the parties. As I understand,
15 you know what the parties -- what you think your
16 clients want. But you can't mediate, you can't settle
17 anything. And Ann -- Judge Young has a great deal of
18 experience mediating and settling things.

19 You can't do it just with the lawyers. It
20 is up to the parties to decide whether they are going
21 to settle.

22 JUDGE YOUNG: I think he probably
23 understands that.

24 MR. ANDERSEN: I fully understand that,
25 Judge, and perhaps what is not obvious is that this

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1 was taken all the way up to brink of settlement before
2 the issuance of the orders. And failed. I think that
3 it would behoove us -- my suggestion would be meeting
4 with counsel only first. For me to lay out the
5 proposal, to see if that's acceptable.

6 And if it is acceptable in principle or we
7 might get there, then to pull in everyone else that
8 needs to be involved in it. But I can assure you that
9 I've been involved in numerous settlements. I was the
10 General Counsel of the Defense Nuclear Facility Safety
11 Board. I have many NRC proceedings behind me. And
12 then involved in Yucca Mountain.

13 I believe that this focuses on a single
14 set of issues that if we can reach some kind of
15 agreement --

16 JUDGE YOUNG: Mr. Andersen?

17 MR. ANDERSEN: -- we can get a settlement.
18 And all I really want at this point is a chance to
19 meet with counsel for NRC to see if that's possible.

20 JUDGE YOUNG: Mr. Andersen, let me
21 interrupt you. And I want to try to sort of get us
22 back on track here because we've got several types of
23 issues that are dealing with several other things that
24 you've raised.

25 But I don't think we want to get into

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1 discussing the particulars of settlement here.

2 MR. ANDERSEN: That's fine.

3 JUDGE YOUNG: One question I want to ask
4 both you and the NRC staff, and I want to get a
5 response from the staff as well, is do you want us to
6 ask the Chief Judge to appoint a Settlement Judge? We
7 can do that and that may assist you in moving towards
8 settlement more effectively.

9 That would be on a separate track from us.
10 We would not get information about that other than the
11 mere fact of whether you successfully reach a
12 settlement or not. Normally, as you know, the types
13 of information that come out in settlement
14 negotiations would not be admissible in a hearing.
15 Although we don't follow the Rules of Evidence, we do
16 refer to them for guidance.

17 So I don't want to get into discussions
18 about the particulars of settlement. But can you --
19 the two of you answer the simple question would you
20 like to ask that a Settlement -- a separate Settlement
21 Judge be appointed?

22 MS. BARKMAN: This is Molly Barkman. I
23 don't think we would need a Settlement Judge.

24 MR. ANDERSEN: I concur with that. And I
25 guess what I would say, Judge, if there's some

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1 flexibility, that is Ms. Barkman and I can meet next
2 week --

3 JUDGE YOUNG: You can work out that with
4 each other. You can work out that with each other.

5 MR. ANDERSEN: If we can do that very
6 quickly, then I'd like to hold any request for a
7 Settlement Judge in abeyance until we've had that
8 meeting.

9 JUDGE YOUNG: We can work that out. Let's
10 put that aside for now. You can talk with the staff
11 separately. And at any time, if you want to come back
12 to us and ask that we request the Chief Judge to
13 appoint a Settlement Judge, we can do that.

14 MR. ANDERSEN: Perfect.

15 JUDGE YOUNG: So you're not giving that
16 up.

17 All right. Now just in terms of moving
18 forward, let's get back to these relationship issues
19 because they're, I guess, the second set of
20 fundamental issues that we're not altogether clear
21 about.

22 We had held off a little while in issuing
23 our initial order setting up this conference because
24 we had gotten some indication that the third case was
25 coming along and that there was some desire to

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1 consolidate that as well. And since we did not --
2 that case did not come in to us, we decided to go
3 ahead and get started on these two.

4 What you're telling us now is that you did
5 want -- you do want to have all three consolidated
6 unless the staff agrees with, I guess, what you have
7 proposed in your answer on behalf of the company, ETI.
8 Where -- without getting into the particulars of
9 whether and how that is going to be settled, can the
10 staff give us some indication of whether we're going
11 to get that third case? And whether the staff has any
12 objection to consolidating it?

13 I believe the staff has indicated that you
14 have no objection to consolidating the two cases of
15 the two brothers. What's the staff's position on
16 consolidating the third case? And do you have any
17 information on when or if we might -- that case might
18 be coming over to our office?

19 MS. BARKMAN: This is Molly Barkman. The
20 staff is aiming to have a final decision on the ETI
21 case by mid-May, hopefully May 15th. If it's adverse,
22 then ETI would have 20 days to request a hearing. The
23 staff wouldn't oppose that. And wouldn't oppose
24 consolidating.

25 JUDGE YOUNG: In terms of the timing of

1 that, Mr. Andersen, since your clients are the ones
2 who are without their -- you know, or who are under
3 this order prohibiting involvement in NRC-licensed
4 activities, what kind of timing were you thinking of
5 in terms of a hearing?

6 MR. ANDERSEN: Your Honor, we discussed
7 this at length with the clients. And they do not have
8 a source at their New Jersey facility at this time.

9 JUDGE YOUNG: Right. We picked up on
10 that.

11 MR. ANDERSEN: So the question would be if
12 they were to restart business, then the need for a
13 more expedited hearing would exist. And I recognize
14 that under the rules, I had the opportunity to file
15 something and ask for, you know, suspension pending
16 the hearing and for other relief.

17 We talked about it. They do not want to
18 do that. It is an expression of their good faith that
19 they simply want to move forward and see if this can
20 be settled.

21 If at such time it appears that the
22 hearing is going to be postponed much later or that we
23 can't settle all three matters, then I believe the
24 rules give me the opportunity to make some kind of a
25 motion regarding expedition.

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1 JUDGE YOUNG: What I'm asking now is what
2 kind of -- what date are you thinking of in terms of
3 when you would like to have a hearing? The reason I
4 ask this, again, is once the process is starting -- it
5 has started to setting a hearing, that involves
6 finding a time when all three Judges and all counsel
7 and parties will be available for a hearing.

8 We're getting to the summer months when it
9 is sometimes difficult to have everyone available at
10 the same time. So I caution you not to put this off
11 and then assume that once you request a hearing, you
12 can get it even in 30 days.

13 MR. ANDERSEN: Understood, Your Honor.
14 And my guess --

15 JUDGE YOUNG: We would obviously try to do
16 the best we can. But I'm trying to get some kind of
17 specific indication from you of what your expectation
18 or at least your wish would be on this.

19 MR. ANDERSEN: Well, my expectation would
20 be that we're going to do discovery if the attempts to
21 settle fail. And that will take some time as well.
22 So I have not discussed this with Ms. Barkman.

23 It might make some sense that when we have
24 our discussion next week, we also discuss how long we
25 think, if it has to go hearing, the discovery should

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1 be. Or unless Your Honor wants to impose some kind of
2 a discovery schedule today. That's fine with us also.

3 JUDGE YOUNG: Well, what I'm trying to do
4 is get input from you and from the staff on what kind
5 of timelines you would like to have.

6 MR. ANDERSEN: I'd like to have a tight
7 deadline assuming we don't settle. I can depose
8 and/or do any discovery that I need to within 30 days
9 of the failure of the settlement opportunity and have
10 hearing as quickly after that as possible.

11 JUDGE YOUNG: And how long do you
12 anticipate making an effort at settlement before that
13 30-day period would run?

14 MR. ANDERSEN: As I've said, I think the
15 issues are very clear and they are down to one or two.
16 And I think that after discussion with Ms. Barkman and
17 we find out if we need a Settlement Judge, we should
18 be able to come to a conclusion about that very
19 rapidly is my position.

20 JUDGE YOUNG: So by very rapidly, you mean
21 you talk to her next week and you expect to be able to
22 tell us the week after? Is that the kind of timeline
23 you're talking about?

24 MR. ANDERSEN: Well, that would depend on
25 how rapidly Ms. Barkman can get that team of people

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1 she's got --

2 JUDGE YOUNG: Okay.

3 MR. ANDERSEN: -- together and decide. My
4 clients have already decided what they need. And she
5 has to consult with her cadre of people there and
6 others to find out if it is acceptable.

7 JUDGE YOUNG: All right.

8 Ms. Barkman, what's the staff's view on
9 this? How long do you think it will take you? You've
10 said it is going to take until mid-May on the ETI
11 case. Are you thinking you are going to have to wait
12 until after that time to talk settlement of all three?
13 Are you looking at proceeding separately on each case
14 in terms of settlement?

15 What's your anticipated timeline for
16 getting to the point where, for example, discovery
17 would start? And would you agree that once discovery
18 starts, that would take about 30 days?

19 Because I'm serious with you here about
20 trying to get you to look at actual dates so that we
21 can get some ballpark view of what the expectations
22 are. We don't want to deprive anyone of a timely
23 hearing. And we realize that sometimes it takes a
24 little while to get everyone on the same page and on
25 the same calendar with regards to setting a hearing.

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1 MS. BARKMAN: This is Molly Barkman. I'm
2 a little concerned about the ETI proceeding and the
3 settlement in this one going at the same time. It
4 would be the same people working on each, trying to
5 figure them out.

6 So there would be the time -- 20 days after
7 the ETI, if it is an adverse order or civil penalty,
8 for discovery, you know, for trying to expedite
9 discovery in this one while the other one hasn't even
10 started yet. I'm a little concerned about that.

11 I think the staff would --

12 MR. ANDERSEN: Discovery would be nearly
13 identical for the ETI case as it for the two
14 individuals, Your Honor, in my opinion. And,
15 therefore --

16 JUDGE YOUNG: Right, right.

17 MR. ANDERSEN: -- if you want a hard and
18 fast date from us that takes into account all the
19 exigencies, I would say we would be ready for the
20 hearing in July if other efforts fail. And that
21 includes use of all of May to get a final decision in
22 the corporate matter, in the ETI matter.

23 JUDGE YOUNG: Okay. Let's go back to the
24 staff here and -- now you're having a problem with
25 talking about settlement of the individuals' cases

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1 before the settlement of the company case has been
2 worked out? Or of starting discovery with regard to
3 the two brothers' cases prior to the final resolution
4 of the -- the staff's final resolution of the
5 company's case? And then the request for hearing
6 after that?

7 What's your concern? And what's your
8 ballpark estimate of when you will be ready to talk
9 settlement I assume that's on all of these things? Or
10 are you thinking that they should be discussed
11 separately? Are you thinking that you want to hold
12 off and discuss them altogether? What kind of
13 timelines are you thinking about?

14 MS. BARKMAN: The staff would be amenable
15 to discussing settlement all at once after the ETI
16 decision is final. Or, I mean, we can do them
17 separately. It's just an issue that all of the people
18 involved are the same people.

19 So if we have them working on settlement
20 and discovery and then the other enforcement matter in
21 ETI, we're just concerned that we're not going to be
22 able to meet such tight deadlines.

23 JUDGE YOUNG: What about this? If you're
24 going to have a final decision from the staff on the
25 company's case by the middle of May, do you think that

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1 you could aim for the end of May to complete your
2 settlement discussions? And then start discovery in
3 June?

4 And we could aim for trying to find a
5 hearing date sometime in July? And, again, I'm not --
6 I think we'll have to look at everyone's calendars but
7 if we could at least sort of aim for sometime in July
8 to start, and that would be where we would start
9 trying to set a hearing date? How does that sound?

10 MR. ANDERSEN: That sounds good to me,
11 Your Honor. This is Rob Andersen. And the only thing
12 that I would have on my schedule would be another NRC
13 matter called the Yucca Mountain proceeding.

14 So as long as we can work around any
15 hearings that we'd have in that regard, I'd be fine
16 with any July date.

17 JUDGE YOUNG: I know that at least two of
18 us on the board are going to be unavailable during
19 certain portions of July. It seems like when we were
20 talking about this before, the third week in July was
21 a possibility. No, it's not. The week of the eighth
22 is -- hold on --

23 JUDGE ABRAMSON: The week of the eighth is
24 out and the week of the 13th is out.

25 JUDGE YOUNG: Let me just put you on mute

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1 for just a second and let us talk about this for just
2 a minute.

3 MR. ANDERSEN: Of course.

4 (Whereupon, the foregoing
5 matter went off the record at
6 10:44 a.m. and went back on the
7 record at 10:45 a.m.)

8 JUDGE YOUNG: Hi, this is Judge Young
9 again. Thank you for waiting.

10 We've just conferred and here is our
11 situation. One or the other of us is going to be
12 unavailable until the very end of July, the 29th,
13 30th, 31st of July. And then it looks like it would
14 be sometime late during the third week of August
15 before we would be available.

16 So I guess the upshot of that is one, we
17 would strongly encourage you to work on settlement.
18 Two, it might be good for all the parties after this
19 conference to submit lists of dates when you and your
20 needed persons would be available for a hearing and
21 when you would not be available for a hearing. And
22 then we may have to get together again to hash that
23 out.

24 JUDGE ABRAMSON: Ann, excuse me, Judge
25 Young, why don't you also narrow that because we're

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1 only saying we, as a board --

2 JUDGE YOUNG: Right, right. The next
3 thing I was going to say is how long do you expect we
4 would need for a hearing? Any longer than one day?
5 It strikes us that probably one day would be
6 sufficient. Is that an incorrect assumption?

7 MR. ANDERSEN: I don't think that is
8 incorrect, Your Honor.

9 MS. BARKMAN: The staff feels that
10 probably a day is fine.

11 JUDGE YOUNG: Okay. And where would you
12 want to do the hearing?

13 MR. ANDERSEN: For the convenience of NRC
14 and everyone else involved and the witnesses on NRC's
15 side, I think it ought to be done here.

16 JUDGE YOUNG: In here --

17 MR. ANDERSEN: In D.C. or at your hearing
18 facilities.

19 JUDGE YOUNG: Okay. Well that definitely
20 makes it easier for the NRC people and for us. So I
21 assume the staff would have no objection to that?

22 MS. BARKMAN: No. We have -- I mean some
23 of the witnesses might be from the region. So it
24 doesn't really matter to us whether we do it up there
25 or here.

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1 Also there's been some conferring around
2 me and we think we might need two days for the
3 hearing. Sometimes getting into explaining the
4 enforcement procedures can take quite a while.

5 JUDGE YOUNG: Okay. Well, we've given you
6 the times that it looks like are remaining open after
7 various other responsibilities of the board members.
8 So maybe we can follow up by looking at those last
9 three days of July. And was it August 19th, 20th, I
10 think.

11 JUDGE ABRAMSON: The end of August, yes.

12 MR. ANDERSEN: Your Honor, this is Rob
13 Andersen. I've already checked my calendar and the
14 last three days of July are open as we speak.

15 And the only possible problem that I could
16 have since I could talk to the court for other issues
17 if I get involved in litigation would be the Yucca
18 Mountain proceeding, in the event that they schedule
19 some hearings for the last three days in July.

20 But I doubt it sincerely since we'll be in
21 discovery post-contentions. So the last three days of
22 July are open. And that would be what I would request
23 on behalf of my clients.

24 JUDGE YOUNG: Would the staff be able to
25 meet that if that's what we ultimately came up with?

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1 MS. BARKMAN: It looks like we're
2 available at this point.

3 JUDGE YOUNG: Okay. Well then maybe we
4 should tentatively set aside those three days and hold
5 them. And if anyone looks like something is going to
6 come up, Mr. Andersen primarily, I guess, you, at this
7 point, let us know right away so that we can try to
8 reschedule.

9 Meanwhile, let me just say one other
10 thing. And this sort of falls under the relationship
11 of the parties aspect of this. And I'm sure you've
12 probably talked to your client about this, Mr.
13 Andersen.

14 But I just want to make sure that you have
15 made clear to them that, you know, that if there were
16 to develop any possibility of a conflict between the
17 two of them on, you know, what their testimony might
18 be, what their positions might be, it doesn't look
19 like there would be but I feel like I need to at least
20 say something cautionary about that we can feel
21 confident that there's no chance that anything like
22 that would develop along the way that would sort of
23 derail us.

24 MR. ANDERSEN: Understood, Your Honor.
25 And I've discharged my responsibility for them for

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1 telling that since they've both been accused of
2 intentional misconduct, that they could end up having
3 point fingers at each other if they were in dispute,
4 et cetera. Things happen at trial. So it is similar
5 to defending two criminal defendants in a court
6 action.

7 And they understand that and have waived
8 any conflicts. So we're clear.

9 JUDGE YOUNG: Okay. I know that in some
10 states now that there are some conflicts that are non-
11 waivable. But I'm going to take your word as an
12 officer of the court unless something comes up to
13 raise a question about that. I know that's an area
14 where there's some changes going on. But I don't know
15 what New Jersey's situation is and I don't know --

16 MR. ANDERSEN: Oh, it would be governed,
17 I believe, Your Honor, by at least NRC rules on
18 conflicts. So I've read what I could on these types
19 of proceedings and did not discern that there would be
20 a conflict.

21 And I have discussed the potentialities of
22 what could occur at hearing with my clients. And I
23 will do that again.

24 JUDGE YOUNG: Okay. Thank you.

25 All right. Let's see. I just want to

1 check over my list here. One of the questions I had
2 in looking at the documents in this case had to do
3 with part of Mr. Dhiraj Soni's answer. In, let's see,
4 paragraph 34 of his March 10th answer, he says while
5 he disputes the findings of fact and conclusions of
6 law contained in the order as detailed in paragraph
7 133 of his answer, I hereby consent to the remedial
8 measures imposed in Section 4 of the order as they
9 relate to direct NRC jurisdiction and license
10 activities for a period of one year.

11 That sounds like he consents to the one-
12 year order -- or the order prohibiting involvement in
13 NRC-licensed activities for one year. And that all he
14 is disputing is the facts so that what he wants is a
15 finding that he was not -- that he did not wilfully
16 violate any requirements.

17 MR. ANDERSEN: Correct, Your Honor.

18 JUDGE YOUNG: Okay. So then that narrows
19 the issues with regard to him. With regard to Mr.
20 Himat Soni, he, on the other hand, is contesting the
21 facts as well as the order itself because he remains -

22 -

23 MR. ANDERSEN: Correct, Your Honor.

24 JUDGE YOUNG: Okay. And with regard to
25 the company, assuming -- or if that arrives with us at

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1 any point, the dispute there is over the facts and
2 over the monetary penalty and the extent of that,
3 correct?

4 MR. ANDERSEN: Correct, Your Honor, again.

5 JUDGE YOUNG: Okay. Now I don't think we
6 got a response from the staff about your position on
7 consolidating -- first of all, you did agree to -- you
8 did say that you have no objection to consolidating
9 the two individual cases involving Himat and Dhiraj
10 Soni, correct?

11 MS. BARKMAN: Correct. And we don't have
12 an objection if Mr. Andersen wanted to consolidate ETI
13 as well.

14 MR. ANDERSEN: I've already requested
15 consolidation of all three.

16 JUDGE YOUNG: Well, actually the request
17 for consolidation we got looked like the company's
18 name had been whited out. So --

19 MR. ANDERSEN: I didn't white it out.

20 JUDGE YOUNG: Oh, okay. Well, then we
21 don't know how that got done. But you've clarified
22 that at this point.

23 MR. ANDERSEN: Was that somehow considered
24 sensitive and not wanting to put it on the -- the only
25 reason I could think for it being removed was they

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1 didn't want to put it on the public file.

2 JUDGE YOUNG: I don't know. It also says
3 in the text of the request you just make the reference
4 to the two brothers. But there is a blank space in
5 the matters of Himat Soni, Dhiraj Soni, and blank. So
6 in any event, it looks as though if that case is not
7 resolved by settlement and once it gets to us, all
8 parties are in agreement that that would be
9 consolidated with the other two. And that they would
10 all be heard together.

11 In terms of discovery, do the parties
12 anticipate any disputes? Or have you discussed that
13 at all? Do you know what you are planning? What you
14 would like to do? Have you thought about that?
15 Discussed that with each other?

16 MR. ANDERSEN: We haven't discussed them,
17 Your Honor, but I know what I'd like to do.

18 JUDGE YOUNG: What would you like to do?

19 MR. ANDERSEN: I'd like to depose anybody
20 that had any -- other than the attorneys, obviously,
21 I'd like to depose anybody that had anything to do
22 with the decision that the actions taken were
23 intentional or wilful. That would include the
24 inspector.

25 JUDGE YOUNG: Ms. Barkman, are we going to

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1 have any objection from you on that? And are you --
2 do you all anticipate that you would be able to
3 schedule all those in June?

4 MS. BARKMAN: The staff thinks we probably
5 -- we'd set forth a fact witness. I believe Mr.
6 Andersen wanted to depose the inspector. And we'd
7 designate one person from the Enforcement Office to
8 speak for the staff on the decision that was made
9 rather than several people who were involved.

10 JUDGE YOUNG: So you would object to
11 deposing any other than just one? What about the --
12 I think you indicated there has been some reference
13 somewhere to the some law enforcement officers. I
14 believe there's some reference to their testimony or
15 their statements or something to that effect. Would
16 they be included in who we're talking about here?

17 MR. ANDERSEN: They would be, Your Honor.
18 But they're not NRC witnesses. But it would be among
19 those, depending on what would happen with both the
20 deposition of the inspector and the "designated fact
21 witness." We might want to also depose some people
22 from the local law enforcement.

23 JUDGE YOUNG: It seems like it might be a
24 good idea for the parties to get together and in
25 addition to discussing possible settlement, get

1 together and try to work out a schedule for discovery.
2 And let's set a deadline for bringing to us any
3 disputes about that -- at least any disputes about
4 whether to depose X person or Y person or Z person.

5 In terms of any disputes that arise during
6 depositions, obviously you can raise those. And if
7 we're not available to resolve them at the time, you
8 can just preserve those for later resolution.

9 But you are going to be talking probably
10 in the last half of May about settlement. Do you
11 think you could let us know by the end of May in
12 addition to whether you think you're going to be able
13 to settle, whether you have any disputes about who
14 will be deposed? And that sounds like all that you
15 want to do in terms of discovery is the depositions?

16 MR. ANDERSEN: I think Ms. Barkman
17 mentioned earlier that we might want to just do some
18 admissions to make your job easier if we go to
19 hearing. But it would be routine things along that
20 line.

21 The thing that is most important to my
22 client is that the inspector and the people who were
23 involved in deciding that it was a wilful misconduct
24 be deposed. So I think that schedule is fine with me,
25 Your Honor. I don't see any reason why we can't know

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1 by the end of May whether or not we have a dispute
2 regarding that.

3 JUDGE YOUNG: Okay. And then I didn't ask
4 the staff -- what would the staff want to do in terms
5 -- are you going to want to depose the Soni brothers?
6 Or do any other discovery?

7 MS. BARKMAN: Yes, we'd like to depose
8 both Himat and Dhiraj Soni. And we might want to do -
9 - well, we'd want to do some document production
10 probably. Maybe some interrogatories. But probably
11 the depositions and the document production will be
12 the most important.

13 We'd also like to be clear on this while
14 we're talking about discovery. That the staff's
15 obligation to prepare a hearing file doesn't start to
16 run until after we've had some settlement negotiations
17 and worked out a schedule.

18 JUDGE YOUNG: Well, that's fine. I mean
19 in terms of our requirements, what we will need to do
20 at some point is set a deadline for witness lists, for
21 proposed exhibits. I don't know whether the parties
22 want to do any prefiled testimony in this. Since it
23 is an enforcement proceeding, I'm not sure that that
24 is all that is necessary. If the parties think that
25 it would be helpful, that's something that could be

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1 done.

2 Let me suggest this. By the end of May,
3 let's hear from parties on whether you have settled or
4 anticipate settling in the near future such that you
5 want some additional time for that, which, you know,
6 might or might not cause any delay -- we would expect
7 you to address that -- whether you've reached an
8 agreement and the -- actually maybe you could give us
9 a schedule for depositions so that we would see that
10 you had worked that all out and for any document
11 exchanges and admissions or anything else that you
12 want to do on either side.

13 And a proposed schedule for submission of
14 witness lists and any other prehearing documents that
15 the parties agree you would like to file as well as
16 designating anything on which the parties are in
17 dispute related to any of the preceding. Does that
18 make sense to both of you?

19 MR. ANDERSEN: It does, Your Honor, to me.
20 Thank you.

21 MS. BARKMAN: Yes.

22 JUDGE YOUNG: Okay. So that would be May
23 31st. And what day does May 31st fall on? Is that a
24 weekday? Oh, here --

25 MR. ANDERSEN: It's a Sunday, Your Honor.

1 JUDGE YOUNG: Okay. Well, then let's say
2 Friday, May 29th.

3 MR. ANDERSEN: I have no problem with
4 that, Your Honor.

5 JUDGE YOUNG: Okay. Again, let me just --
6 and we are -- back to the security issues for just a
7 moment. We're going to count on the parties to take
8 the responsibility for designating any documents that
9 need to be treated as sensitive in any way. And for
10 notifying us of any requirements related to that, any
11 new requirements that may arise, anything related to
12 that that may have an impact on this proceeding.

13 Let's see, I guess at this point, you did
14 make a reference to this, Mr. Andersen, that at this
15 point, there is no radioactive sources at the site.
16 And so a lot of the timing of this depends on -- or at
17 least from a practical aspect for Mr. Himat Soni, when
18 he might want to resume doing work that would involve
19 having those sources, right?

20 MR. ANDERSEN: Correct, Your Honor.

21 JUDGE YOUNG: Okay. All right.

22 MR. ANDERSEN: Obviously, we want it
23 resolved as quickly as possible so that his business
24 planning need not be delayed by that if it can be
25 resolved. But you've stated it accurately.

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1 JUDGE YOUNG: Okay. I just wanted to make
2 -- I thought that that was what you had said. I just
3 wanted to clarify it, not to indicate any change in
4 the schedule.

5 Is there anything that any of the parties
6 would like to raise before we conclude for today?

7 MS. BARKMAN: The staff doesn't have
8 anything further.

9 MR. ANDERSEN: Your Honor, I have nothing
10 further.

11 JUDGE YOUNG: Judge Matthews or Judge
12 Abramson, can you think of anything?

13 JUDGE ABRAMSON: I think you did it fine.

14 JUDGE YOUNG: Okay. Well, I will issue an
15 order in the next few days confirming what we have
16 addressed and decided here today. I think we asked
17 for three-day turnaround on this so I'll probably wait
18 until I get the transcript to make sure I get all the
19 timelines and so forth correct.

20 And we will look forward to hearing from
21 you. And meanwhile, if you do change your mind and
22 decide that you might benefit from having a Settlement
23 Judge appointed, feel free to contact me at any time
24 and I will take that directly to the Chief Judge. And
25 we should be able to have that done relatively

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1 quickly. And, again, they would be completely
2 separate from us.

3 MR. ANDERSEN: I appreciate that offer,
4 Your Honor, very much.

5 JUDGE YOUNG: And if anything else arises
6 such that we need to have another telephone
7 conference, bring that to my attention at least as
8 soon as possible so that we can arrange scheduling
9 because we're -- the three of us are not all in the
10 same place most of the time.

11 So our scheduling does involve some sort
12 of coordination and planning on our part as well. You
13 might not realize that.

14 So I think with that said, that pretty
15 much covers everything for the moment. And we look
16 forward to working with you although we, as well, wish
17 you luck in your settlement and would be happy for you
18 if you told us you did settle.

19 Before we leave, does the Court Reporter
20 need to have anything spelled?

21 COURT REPORTER: I don't have any
22 questions as far as that goes. I have some names that
23 I will probably need to have spelled but I have
24 numbers that I can call over if it turns out that I
25 do. Or if there's anything.

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1 JUDGE YOUNG: Okay.

2 COURT REPORTER: But thank you very much.

3 JUDGE YOUNG: All right. Thank you all.

4 And that would conclude this telephone conference.

5 (Whereupon, the above-entitled
6 teleconference was concluded at 11:07 a.m.)

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CERTIFICATE

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

Name of Proceeding: Pre-hearing Conference

Docket Number: IA-08-022-EA, IA-08-23-EA

Location: Augusta, Georgia

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.



Jennifer Stello
Official Reporter
Neal R. Gross & Co., Inc.