

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

Title: South Texas Project Units 3 & 4

Docket Number: 52-012/013-COL  
ASLBP Number: 09-885-08-COL-BD01

DOCKETED  
USNRC

Location: (telephone conference)

October 13, 2009 (8:00am)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Date: Tuesday, October 6, 2009

Work Order No.: NRC-3125

Pages 509-522

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

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

+ + + + +

ATOMIC SAFETY AND LICENSING BOARD PANEL

+ + + + +

PRE-HEARING TELECONFERENCE

-----x

In the Matter of: :

SOUTH TEXAS PROJECT : Docket Nos. 52-012-COL

NUCLEAR OPERATING COMPANY : 52-013-COL

(South Texas Project Units : ASLBP No.

3 and 4) : 09-885-08-COL-BD01

-----x

Tuesday, October 6, 2009

Nuclear Regulatory Commission

BEFORE:

MICHAEL GIBSON, Chair

GARY ARNOLD, Administrative Judge

RANDALL CHARBENEAU, Administrative 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](http://www.nealrgross.com)

## 1 APPEARANCES:

2 On Behalf of South Texas Project Nuclear Operating  
3 Company:

4 STEVEN P. FRANTZ, ESQ.

5 STEPHEN J. BURDICK, ESQ.

6 ALVIN H. GUTTERMAN, ESQ.

7 of: Morgan, Lewis & Bockius LLP  
8 1111 Pennsylvania Avenue, N.W.  
9 Washington, DC 20004  
10 202-739-5460  
11

12 On Behalf of the Intervenors:

13 ROBERT V. EYE, ESQ.

14 of: Kauffman & Eye  
15 112 SW 6th Avenue  
16 Suite 202  
17 Topeka, KS 66603  
18 785-234-4040  
19  
20  
21  
22  
23  
24  
25

**NEAL R. GROSS**

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

## 1 APPEARANCES (CONT.)

2 On Behalf of the Nuclear Regulatory Commission:

3 MICHAEL SPENCER, ESQ.

4 JESSICA BIELECKI, ESQ.

5 SARA KIRKWOOD, ESQ.

6 of: Office of the General Counsel

7 Mail Stop - O-15 D21

8 U.S. Nuclear Regulatory Commission

9 Washington, D.C. 20555-0001

10 301-415-4073 (Michael Spencer)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

**NEAL R. GROSS**

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

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

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

(11:00:36 a.m.)

CHAIR GIBSON: This is Judge Gibson. I'm here with Judge Arnold, Judge Charbeneau is joining us by conference call from Austin. So, I thought we might get started here.

Could I get announcements of counsel, please?

MR. FRANTZ: This is Steve Frantz from Morgan Lewis, counsel for STP Nuclear Operating Company.

MR. SPENCER: This is Michael Spencer, Sara Kirkwood, Jessica Bielecki, counsel for the NRC Staff.

MR. EYE: This is Robert Eye, counsel for Intervenors.

MR. GUTTERMAN: This is Al Gutterman, and Steven Burdick. Steve Frantz is going to take the lead, but Steve Burdick and I are listening in, and will be available for any questions.

CHAIR GIBSON: Thank you. Well, this will be a relatively -- is our court reporter on the line?

COURT REPORTER: Yes, I'm here.

CHAIR GIBSON: Okay. Fantastic. Okay. Let me -- this, I think, can be a relatively short

**NEAL R. GROSS**

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

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 call. I got your -- we got the joint proposal for  
2 hearing schedule that you all submitted, and  
3 appreciate your work together to put something along  
4 these lines. You all seem to have done a great job  
5 working together, and I really appreciate that on the  
6 protective order, as well.

7 I know that you all followed the model  
8 milestones, and that's certainly understandable. What  
9 we're envisioning is something a little more expansive  
10 than that, for purposes of the scheduling order. And  
11 I have, basically, been working with the other judges  
12 here, and we'll have something, hopefully, that  
13 reflects, I think, generally your agreement here, but  
14 is, again, a little more detailed. And we'll try to  
15 get that out to you as a draft soon. And then you all  
16 can let us know if it's acceptable, or if there's any  
17 further changes. If there are, we can have another  
18 call to discuss that. But, basically, I think what  
19 you've got here is, I think, a good start for what we  
20 needed.

21 I have a couple of questions, first of  
22 all, for the NRC Staff. I'm wondering if you'll have  
23 an estimate of your projected schedule for the  
24 completion of the Safety and Environmental reports?

25 MR. SPENCER: I think we have a projected

**NEAL R. GROSS**

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

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 schedule for -

2 COURT REPORTER: I'm sorry. This is the  
3 court reporter. Could you please identify yourself  
4 before you speak?

5 MR. SPENCER: Oh, sorry. Michael Spencer,  
6 NRC Staff. I believe we have a schedule for both.  
7 With respect to the Environmental Impact Statement,  
8 the schedule, as of now, would be we plan to issue the  
9 draft Environmental Impact Statement in March of 2010,  
10 and the final Environmental Impact Statement in March  
11 of 2011.

12 The SER, I have some -- I mean, I have  
13 access to some information, but I haven't checked with  
14 the Staff on that, just because -- hold on a second.  
15 Because the contentions, so far, all involve the  
16 environmental report, the safety report.

17 CHAIR GIBSON: Okay. All right. That's  
18 fine. If you could give us -- confer with the Staff  
19 and give us some idea, we'd appreciate that. You can  
20 just submit a short notice, or letter is fine. We  
21 just would appreciate that.

22 MR. SPENCER: Okay. We'll do that.

23 CHAIR GIBSON: Thank you.

24 One of the things that I think would --  
25 we're envisioning is having disclosures being updated

**NEAL R. GROSS**

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

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 on a monthly basis. And to the extent that there are  
2 documents that were -- that come up through the end of  
3 a prior month, we can have some period of time after  
4 that within which there's going to need to be some  
5 kind of updating. And I'm curious, if you all have  
6 any -- have you all talked about that, if you all want  
7 to pick a date. You don't have to pick a date now,  
8 but you might be thinking about it. But we can -- I  
9 think something like the second Wednesday, or the  
10 third Thursday, or something like that of the  
11 following month would probably be a good idea.

12 MR. FRANTZ: Judge Gibson, this is Steve  
13 Frantz. We did have an agreement among the parties  
14 that we sent to you on September 10<sup>th</sup>, that deals with  
15 document production, that essentially does that.  
16 Paragraph 8 of the agreement says that the document  
17 production -- disclosures should be updated on a  
18 monthly basis, basically, on the first of each month.  
19 And that that update should reflect any documents  
20 collected, or obtained by the 15<sup>th</sup> of the prior month.

21 CHAIR GIBSON: Okay. We'll incorporate  
22 that in what we send back out. Thank you for pointing  
23 that out to me. I appreciate that.

24 With respect to the protective order that  
25 you all have already put together, do you all envision

**NEAL R. GROSS**

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

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 expanding that protective order at all to address any  
2 other privilege claims at this time, or do you think  
3 you've covered everything with that protective order?

4 MR. FRANTZ: This is Steve Frantz. For  
5 right now, I think it just pertains to the SUNSI  
6 documents that relate to the Mitigative Strategies  
7 Report, and associated SUNSI documents, like various  
8 guidance documents that we've sent to the Intervenors.

9 CHAIR GIBSON: Counsel for the  
10 Intervenors.

11 MR. EYE: Yes?

12 CHAIR GIBSON: You pretty much feel the  
13 same way?

14 MR. EYE: Your Honor, I don't think  
15 there's any need to expand it beyond what it is. I  
16 don't know that there are any other documents that  
17 would fall into a sensitive category, classified  
18 category, at this point.

19 CHAIR GIBSON: Okay.

20 COURT REPORTER: I'm sorry. Who is  
21 speaking?

22 MR. EYE: I'm sorry. I beg your pardon.  
23 This is Bob Eye.

24 CHAIR GIBSON: NRC Staff?

25 MR. SPENCER: We would agree with 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](http://www.nealrgross.com)

1 other parties on that.

2 CHAIR GIBSON: All right. Well, I will --  
3 what I will -- what we will probably do is put some  
4 kind of a privilege log provision in there that will  
5 address this protective order question. And that will  
6 give you all something to react to. And, perhaps, you  
7 all may conclude that there's nothing more that needs  
8 to be done. It may be that we need to have some  
9 additional protective order of some kind in place.  
10 But, in any event, just be on the lookout for that  
11 when it comes back to you.

12 The last item that I had, I wanted -- or  
13 last two items, I wanted to know if, at this point,  
14 you all -- I know it's quite early in the game, if you  
15 all have talked any about stipulations, or admissions.  
16 If you all made any efforts to settle, or anything  
17 like that, at this point in time?

18 MR. FRANTZ: This is Steve Frantz. We've  
19 not discussed stipulations or settlement. We do have  
20 one issue we've discussed with the other parties  
21 regarding Contention 16, based upon the document we  
22 sent to the Board and parties last week, which we  
23 think may, eventually, moot the Contention. The  
24 Intervenors are currently looking at that to see  
25 whether or not they agree, but, beyond that, we have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 not discussed anything else.

2 CHAIR GIBSON: Okay. That's fine. The  
3 last item that I had, you all may have some other  
4 issues that you need to bring to our attention, but  
5 the last item that I think we had, has to do with the  
6 possibility, and it is only a possibility, that we may  
7 need to have oral argument on the new contentions that  
8 have been raised. And what I would appreciate you all  
9 doing is looking at your calendars in November, and  
10 let us know if there are any days that are going to be  
11 bad for you all, so that we can -- you can give those  
12 to Ericka. And I know you all will be in contact with  
13 Ericka about like setting up this conference, and all,  
14 so you'll know how to get a hold of her. But, if you  
15 would, please, get a hold of her, and just let her  
16 know if there's any days that are bad in November;  
17 obviously, we've got Thanksgiving week is going to be  
18 pretty tough, so it would probably have to be sometime  
19 in the first 20 days. But if you all would think  
20 about that, and then let us know, we'd appreciate  
21 that.

22 And, again, I'm not suggesting that there  
23 is any necessity of oral argument. Frankly, we have  
24 not had an opportunity to review those in detail and  
25 discuss them among the Judges, so we don't even know,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 at this point, if we need to. But if we're going to  
2 do that, we would like to go ahead and try to get  
3 something scheduled, so I would urge that you all let  
4 us know that.

5 MR. SPENCER: Your Honor?

6 CHAIR GIBSON: Yes?

7 MR. SPENCER: This is Michael Spencer for  
8 the NRC Staff.

9 CHAIR GIBSON: Yes.

10 MR. SPENCER: Would you -- if there will  
11 be oral argument, would you anticipate having that in  
12 Texas, or at NRC Headquarters?

13 CHAIR GIBSON: Well, certainly, we are  
14 open to anything. It's my understanding from Judge  
15 Arnold that the Comanche Peak case is going to be -

16 JUDGE ARNOLD: We're leaning towards oral  
17 arguments -- this is Judge Arnold, and that we're  
18 looking for availability here at the NRC. So, that's  
19 -- I don't know that -- I've been on vacation, so I'm  
20 a little fuzzy on some of these details.

21 CHAIR GIBSON: Okay. In any event,  
22 certainly, realize that you all are largely the same  
23 players, other than the individual Intervenors. If  
24 you all are going to be doing that, perhaps it might  
25 be possible to schedule those close to the same time

**NEAL R. GROSS**

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

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 to avoid inconvenience to you all, if you all want to  
2 do that. But, I think there's a clear preference to  
3 hold hearings in the vicinity of the facility. In  
4 this case, we have already done that. We do -- I  
5 think these new issues are largely focused on things  
6 that we've already talked about, to some extent, at  
7 least, with respect to the oral argument we had on, I  
8 believe, Contention 2 it was. So, I think that we may  
9 well -- it may well be acceptable to do that here.  
10 But, again, that -- we would want to hear from you all  
11 about that, as well. So, I guess not only timing, but  
12 also locale, and perhaps you all might want to discuss  
13 that among yourselves before you get back with Ericka.

14 MR. FRANTZ: Judge Gibson, this is Steve  
15 Frantz.

16 CHAIR GIBSON: Yes.

17 MR. FRANTZ: One of the possibilities that  
18 just occurred to me, is if the Board does want oral  
19 argument, maybe to have a joint session with the  
20 Comanche Peak Board on basically the same contentions,  
21 with essentially the same parties. That might be more  
22 efficient for everybody.

23 CHAIR GIBSON: It's, certainly, a  
24 possibility, and, certainly, nothing I would dismiss  
25 out of hand. I will say, there are some unique

**NEAL R. GROSS**

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

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 issues, and we, obviously, have some different judges  
2 involved. But, certainly, even if we didn't do it as  
3 a joint one, we could do it one day after the other.  
4 But it's -- all of those are possibilities. Thank you  
5 for your suggestion, counsel, and we will -- again,  
6 you all discuss that among yourselves, we can  
7 certainly broach the subject with Judge Young, as  
8 well, if that's what you all decide your preference  
9 would be.

10 Is there anything else? Judge Charbeneau?

11 JUDGE CHARBENEAU: No.

12 CHAIR GIBSON: Okay. Counsel, is there  
13 anything you all need to bring to our attention?

14 MR. EYE: For the Intervenors, this is Bob  
15 Eye. No, sir.

16 CHAIR GIBSON: Okay.

17 MR. SPENCER: For the NRC Staff, Michael  
18 Spencer, no.

19 MR. FRANTZ: Steve Frantz for the  
20 Applicant. We have nothing.

21 CHAIR GIBSON: Okay. Well, thank you for  
22 your time. We will try to get something out to your  
23 shortly that you all can look at. Again, I think it's  
24 largely consistent with what you've put here together,  
25 but it, I think, is a little more detailed. And I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 would like for you all to look at it, and see if it's  
2 acceptable before we issue it. So, we will get that  
3 out to you, hopefully, soon. Okay?

4 With that, we stand adjourned. Thank you.

5 (Whereupon, the proceedings went off the  
6 record at 11:15:21 a.m.)  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
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: South Texas Project

Units 3 & 4


Name of Proceeding: Pre-hearing Conference

Docket Number: 52-012/013-COL

ASLBP No. 09-885-08-COL-BD01

Location: (teleconference)

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.