

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

Title:                   2.206 Petition Review Board  
                              Prairie Island Petition

Docket Number:       (n/a)

Location:                (telephone conference)

Date:                    Tuesday, October 13, 2009

Work Order No.:        NRC-3146

Pages 1-29

Edited by Terry A. Beltz, Petition Manager  
Office of Nuclear Reactor Regulation (NRR)

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

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  
26

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

+ + + + +

10 CFR 2.206 PETITION REVIEW BOARD (PRB)

CONFERENCE CALL

RE PRAIRIE ISLAND PETITION

+ + + + +

TUESDAY, OCTOBER 13, 2009

+ + + + +

The conference call was held, Thomas B. Blount, Chairman of the Petition Review Board, presiding.

PETITIONER: DAVID LEE SEBASTIAN

U.S. NUCLEAR REGULATORY COMMISSION PARTICIPANTS:

THOMAS B. BLOUNT, Chairman

THOMAS J. WENGERT, Petition Manager

TANYA M. MENSAH, NRC 2.206 Coordinator

ROBERT J. PASCARELLI, Branch Chief, NRR

BRADLEY S. BAXTER, NSIR

WAYNE A. CHALK, NSIR

JOHN "JACK" B. GIESSNER, Branch Chief,

Region III

PRAIRIE ISLAND PERSONNEL:

JOHN ANDERSON

**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

(3:01 p.m.)

1  
2  
3 MR. WENGERT: The purpose of today's  
4 meeting is for the Petitioner, David Sebastian, to  
5 address the Petition Review Board for the petition on  
6 the request for issuance of an order for compliance  
7 concerning the Prairie Island licensee's Access  
8 Authorization Fitness for Duty Program. And before I  
9 continue, is the court reporting service on the line,  
10 as well?

11 COURT REPORTER: Yes, I'm on the line.

12 MR. WENGERT: Okay. Thank you.

13 As far as an agenda, as I said, we'll do a  
14 welcome and introductions. The PRB Chairman will  
15 provide some opening remarks. The Petitioner, Mr.  
16 Sebastian, will have an opportunity to make a  
17 presentation. And, finally, the PRB Chairman will  
18 provide some closing remarks.

19 Again, I'd like to thank everyone for  
20 participating in this meeting. My name is Tom  
21 Wengert, and I am the NRC Project Manager for the  
22 Prairie Island Nuclear Generating Plant. We are here  
23 today to allow the Petitioner, David Sebastian, to  
24 address the Petition Review Board regarding the 2.206  
25 Petition dated September 4<sup>th</sup>, 2009. I am the Petition

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Manager for this petition. The Petition Review Board  
2 Chairman is Tom Blount.

3 As part of the Petition Review Board's  
4 review of this petition, David Sebastian has requested  
5 this opportunity to address the PRB.

6 This meeting today is scheduled from 3:00  
7 to 4:00 p.m. Eastern Time. The meeting is being  
8 recorded by the NRC Operations Center, and will be  
9 transcribed by a court reporter. The transcript will  
10 become a supplement to this petition. The transcript  
11 will also be made publicly available.

12 I'd like to open this meeting with  
13 introductions. As we go around the room, please be  
14 sure to clearly state your name, your position, and  
15 the office that you work for within the NRC for the  
16 record, and I'll start off. As I said, I'm Tom  
17 Wengert. I'm the NRC Project Manager for Prairie  
18 Island in the NRC's Office of Nuclear Reactor  
19 Regulation.

20 MR. PASCARELLI: My name is Robert  
21 Pascarelli. I'm the Branch Chief of Branch 3-1 in the  
22 Office of Nuclear Reactor Regulation.

23 MS. MENSAH: My name is Tanya Mensah. I'm  
24 the 2.206 Coordinator. I work in the Division of  
25 Policy and Rulemaking in the Office of Nuclear Reactor

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Regulation.

2 MR. BLOUNT: I'm Tom Blount. I'm the  
3 Deputy Director for the Division of Policy and  
4 Rulemaking in NRR. I'm also the PRB Chair.

5 MR. CHALK: I'm Wayne Chalk. I work in  
6 the Access Authority and Fitness for Duty programs,  
7 and I'm in the Office of Nuclear Security.

8 MR. BAXTER: I'm Brad Baxter. I'm the  
9 Access Authorization Program Manager with NSIR, which  
10 is Nuclear Security Incident Response.

11 MR. WENGERT: Okay. We've completed  
12 introductions here at NRC Headquarters. At this time,  
13 are there any NRC participants from the Regional  
14 office on the phone?

15 MR. GIESSNER: Yes. I'm Jack Giessner.  
16 I'm the Branch Chief in Division of Reactor  
17 Projections, Region III Office, Lisle, Illinois.

18 MR. WENGERT: Thanks, Jack. Are there any  
19 representatives for the Licensee on the phone?

20 MR. ANDERSON: Yes. This is John  
21 Anderson, Regulatory Affairs Manager, Prairie Island  
22 Nuclear Station.

23 MR. WENGERT: Mr. Sebastian, would you  
24 please introduce yourself for the record.

25 MR. SEBASTIAN: My name is David Lee

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Sebastian. I am here representing myself, as myself.

2 MR. WENGERT: Okay. Thank you. Are there  
3 any others, such as members of the public on the  
4 phone. No other members of the public? Okay. Thank  
5 you.

6 I'd like to emphasize, again, that we each  
7 need to speak clearly and loudly to make sure that the  
8 court reporter can accurately transcribe this meeting.

9 If you do have something that you'd like to say,  
10 please first state your name for the record.

11 At this time, I'll turn it over to the PRB  
12 Chairman, Tom Blount.

13 MR. BLOUNT: Good afternoon. Welcome to  
14 the meeting regarding the 2.206 petition submitted by  
15 Mr. Sebastian.

16 I'd like to first share some background on  
17 our process. Section 2.206, Title 10 of the Code of  
18 Federal Regulation describes the petition process, the  
19 primary mechanism of the public, for the public to  
20 request enforcement actions by the NRC in a public  
21 process.

22 This process permits anyone to petition  
23 NRC to take enforcement-type actions related to NRC  
24 licensees, or licensed activities. Depending upon the  
25 results of its evaluation, NRC could modify, suspend,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 or revoke an NRC-issued license, or take any other  
2 appropriate enforcement action to resolve a problem.

3 The NRC Staff guidance for the disposition of 2.206  
4 petition requests is in Management Directive 8.11,  
5 which is publicly available.

6 The purpose of today's meeting is to give  
7 the Petitioner an opportunity to provide any  
8 additional explanation or support for the petition  
9 before the Petition Review Board's initial  
10 consideration, and recommendation. The meeting is not  
11 a hearing, nor is it an opportunity for the Petitioner  
12 to question, or examine the PRB on the merits, or the  
13 issues presented in the petition request. No  
14 decisions regarding the merits of this petition will  
15 be made at this meeting. Following this meeting, the  
16 Petition Review Board will conduct its internal  
17 deliberations. The outcome of this internal meeting  
18 will be discussed with the Petitioner.

19 The Petition Review Board typically  
20 consists of a Chairman, usually a Manager at the  
21 Senior Executive Service level at the NRC. It has a  
22 Petition Manager, and a PRB Coordinator. Other  
23 members of the Board are determined by the NRC Staff  
24 based on the content of the information, and the  
25 petition request.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           At this time, I'd like to introduce the  
2 Board. I am Tom Blount, the Petition Review Board  
3 Chairman. Tom Wengert is the Petition Manager for the  
4 petition under discussion today. Tanya Mensah is the  
5 Office's PRB Coordinator. Our technical staff  
6 includes Bob Pascarelli from the Office of Nuclear  
7 Reactor Regulation, Division of Operating Reactor  
8 Licensing. Brad Baxter and Wayne Chalk from the  
9 Office of Nuclear Security and Incident Response,  
10 Division of Security Policy, and Jack Giessner from  
11 NRC's Region III Division of Reactor Projects.

12           As described in our process, the NRC Staff  
13 may ask clarifying questions in order to better  
14 understand the Petitioner's presentation, and to reach  
15 a reasoned decision whether to accept, or reject the  
16 Petitioner's request for review under the 2.206  
17 process.

18           I would like to summarize the scope of the  
19 petition under consideration, and the NRC's activities  
20 to-date. On September 4<sup>th</sup>, 2009, Mr. Sebastian  
21 submitted to the NRC a request for enforcement action  
22 pursuant to 10 CFR 2.2, and its subsequent parts,  
23 concerning the Prairie Island Licensee's use of their  
24 Access Authorization Fitness for Duty Program. This  
25 request was subsequently forwarded for NRC Staff

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 review in the 2.206 petition process.

2 In this petition request, Mr. Sebastian  
3 identified the following areas of concern. Mr.  
4 Sebastian requests, one, that the NRC exhaust any and  
5 all administrative remedy which may be available to  
6 him, and to institute a proceeding to order the  
7 Personnel Security Manager and Access Authorization  
8 Fitness for Duty Manager, or the licensee in their  
9 Prairie Island Nuclear facility to cease and desist  
10 from their current arbitrary and capricious practices  
11 using the Access Authorization / Fitness for Duty  
12 program for purposes other than their created intent,  
13 as they are being applied against Mr. Sebastian.

14 Two, that the NRC order compliance with 10  
15 CFR 73.56, identified in 56 FR 18997, NEI 03-01, and  
16 other applicable regulations and directives. Three,  
17 that Mr. Sebastian be granted Access Authorization  
18 without further delay to perform his accepted job  
19 task, with all record of said denial from any and all  
20 records, wherever found. Four, that any other order  
21 be issued, or other relief be granted to which he may  
22 have shown himself entitled.

23 As the basis for this request, Mr.  
24 Sebastian states that he was denied unescorted access  
25 to the Prairie Island Nuclear facility by the licensee

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 using the Access Authorization Program / Fitness for  
2 Duty Program, solely based upon the existence of a  
3 Federal Tax lien. Mr. Sebastian states that the  
4 licensee is applying a disproportionately harsh  
5 penalty for having a lien filed, or owing back taxes,  
6 and should be considered a cruel and unusual  
7 punishment because it brands [him] with the stigma of  
8 untrustworthiness, and unreliability, having been  
9 denied unescorted access at a nuclear facility.

10 Mr. Sebastian further states that in  
11 failing to base the decision to grant, deny, revoke,  
12 or continue an unescorted Access Authorization, a  
13 review and evaluation of all pertinent information  
14 developed, the licensee has violated 10 CFR 73.56, as  
15 applied against him.

16 In addition, Mr. Sebastian states that by  
17 denying his Access Authorization, the licensee failed  
18 to satisfy all three elements of the Unescorted Access  
19 Authorization program, in violation of 56 Federal  
20 Register 18997, as applied against him.

21 Allow me to discuss the NRC activities to-  
22 date. On October 5<sup>th</sup>, Mr. Sebastian agreed to have  
23 this request reviewed under NRC's 2.206 process, and  
24 requested to address the Petition Review Board prior  
25 to its initial meeting.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 As a reminder for the phone participants,  
2 please identify yourself if you make any remarks, as  
3 this will help us in the preparation of the meeting  
4 transcript that will be made publicly available.  
5 Thank you.

6 Mr. Sebastian, I'll turn it over to you,  
7 to allow you to provide any information you believe  
8 the PRB should consider as part of this petition.

9 MR. SEBASTIAN: Thank you, sir.

10 I'd like to start by saying that anything  
11 that I say here does not take away from anything that  
12 is already stated within the notice of request for  
13 issuance of an order of compliance. This is to help  
14 to further support my position, and to give better  
15 understanding of anything that might have been vague  
16 within that petition, which was submitted September  
17 4<sup>th</sup>, 2009. And I would like to go ahead and  
18 incorporate that document within this discussion in  
19 its entirety, if there's no objection to that.

20 MR. BLOUNT: This is Tom Blount, the PRB  
21 Chair. We see no reason not to include it. It is  
22 included as part of this review.

23 MR. SEBASTIAN: Okay. Thank you.

24 The reason give [given] by Prairie Island  
25 or Excel [Xcel] for denial of Access Authorization,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 which would be in Exhibit I, page 4 of 33. It says,  
2 "Case facts supporting denial. You disclosed a  
3 pending IRS tax lien in the amount of \$108,000 on your  
4 NSPM Initial Personal History Questionnaire completed  
5 April 6<sup>th</sup>, 2009 in support of your request for access  
6 at the Prairie Island Nuclear Plant. When the tax  
7 lien has been resolved, you may resubmit your request  
8 for access."

9 To me, based on the documentation that was  
10 provided me, which was, there is nothing to give  
11 authority for having made this determination. The NRC  
12 rules and regulations, which are the law that should  
13 be followed by the plant, require that according to 56  
14 Federal Register 18997, which is Access Authorization  
15 Program for Nuclear Power Plants, contained within my  
16 notice, page 5 under Bullet 23. They have certain  
17 rules and requirements they have to meet, even though  
18 that they have a plan in force to grant or deny Access  
19 Authorization.

20 According to the Exelon Generation Company  
21 versus Local 15 IBEW, which is also referenced in my  
22 petition at Bullet 20 on page 4, the District Court  
23 for the Northern District of Illinois stated, "The  
24 central purpose for the Access Authorization Program  
25 requirement is to provide high assurance that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 individuals granted unescorted access are trustworthy  
2 and reliable, and do not constitute an unreasonable  
3 risk to the health and safety of the public, including  
4 a potential to commit radiological sabotage. The  
5 regulations set out specific elements that each  
6 licensee's Access Authorization Program must include,  
7 including a background investigation, a psychological  
8 assessment, and a behavioral observation. The  
9 regulations further direct the licensee to base its  
10 decision to grant, deny, revoke, or continue an  
11 unescorted access authorization on review and  
12 evaluation of all pertinent information developed."

13           Whether or not Excel [Xcel] had a policy  
14 or program in place that allowed for them to deny  
15 access based [solely on] having a tax lien filed  
16 against you, or a judgment, or any other single issue  
17 as that, they are in violation of NRC rules and  
18 regulations. If they are installing their own policy,  
19 the purpose of this is for public interest, and public  
20 policy.

21           The court in the case of Local 97,  
22 International Brotherhood of Electrical Workers versus  
23 Niagra Mohawk Power Corporation, which is also  
24 included in my brief, page 4, under Bullet 18, it  
25 states -- the court went ahead and stated that, "As in

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Niagra Mohawk I, the NRC regulations comprise the  
2 prime source and the most persuasive evidence of  
3 public policy in this case." Although that court case  
4 is not directly on point, it deals with arbitration, I  
5 believe that some of the statements made within are  
6 pertinent to this case at hand.

7 The court went on to say, "Public policy  
8 in this context is to be ascertained by reference to  
9 the laws and legal precedents, and not from general  
10 considerations of supposed public interest." The  
11 court went on to say, "In this context, however, we  
12 must fulfill our duty to ascertain public policy as a  
13 matter of law by reference to laws and legal  
14 precedents. Noting that the question of public policy  
15 is ultimately one for resolution by the courts'." The  
16 court went on to say, "We must look to more specific  
17 NRC regulations and enforcement actions to discern  
18 what public policy requires in the nuclear safety  
19 context, looking, as we must, to laws and legal  
20 precedents, rather than general considerations of  
21 supposed public interest."

22 The question here is, Excel [Xcel] has  
23 implemented a policy that is private to them, not one  
24 that complies with the NRC regulations, which are set  
25 out in my notice, in my petition. They are using

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 their policy inappropriately to -- and out of the  
2 context of what the purpose of the Fitness for Duty  
3 and Access Authorization Program was designed for.

4 The position offered to me was an  
5 employment at-will. If they had a policy that says we  
6 don't want to hire somebody who has a tax lien against  
7 them, they could have well said we will not hire you  
8 until you resolve your tax issue. They did not do  
9 that. They used the Fitness for Duty program, and the  
10 Access Authorization program, which is a severe action  
11 for anybody who works within the nuclear industry, to  
12 deny me Access Authorization.

13 They have no authority by NRC rules and  
14 regulations, to have done this action. This action is  
15 severe, and it's very prejudicial to me, now having to  
16 go to any place within the nuclear industry saying I  
17 have been denied Access Authorization. They had no  
18 authority. They submitted no authority in the record  
19 for the decision. And it is not indicated that they  
20 went to the NRC to notice the NRC that I had a tax  
21 lien to get further justification, or clearance, or  
22 guidance to support having denied me Access  
23 Authorization based on a tax lien. There is nothing  
24 in the record evidencing any of this.

25 So, not to take away from the petition,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 but it appears the question reduces to whether having  
2 a tax lien renders me an inherently untrustworthy  
3 person within the meaning of the NRC regulations, when  
4 read as a whole. So, I believe I've supported my  
5 position with the petition submitted. It was asked to  
6 be reviewed by the Reviewing Committee of Northern  
7 States Power Company. Their reply was you may reapply  
8 for a NSPM Nuclear Access Authorization upon  
9 satisfaction of the tax lien, or providing  
10 documentation of an established payment plan. They  
11 widened the field at that time, saying that oh, not  
12 only is it that you satisfy the tax lien, or prove to  
13 us that you have a payment plan.

14           Within my documentation, I showed my  
15 attempts to establish a payment plan, which I cannot  
16 do so until I have gainful employment. So, they  
17 created an impossibility in law, meaning that I can't  
18 comply with what they want me to do, until I'm  
19 employed. And they denied me employment based on the  
20 fact that I can't comply.

21           The last issue that I want to state here  
22 is the fact that the question for this Board, for this  
23 body is, will you find that they're lacking the  
24 requisite reasonable assurance that licensed  
25 activities can be conducted in compliance with the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Commission's requirements, and that the health and  
2 safety of the public would be protected if I, having a  
3 tax lien filed against me, were permitted, at this  
4 time, to be involved in NRC licensed activities. Is  
5 there cause that having a tax lien filed against a  
6 person is reason for that person to be untrustworthy,  
7 and unreliable?

8 I believe those procedures as they are  
9 being applied now, no matter if it's just against me  
10 with Excel [Xcel], or any other power corporation who  
11 is applying this in this manner, is in direct  
12 violation of NRC rules and regulations; and,  
13 therefore, in violation of the law. I believe that's  
14 all I have to say at the moment.

15 MR. BLOUNT: This is Tom Blount, the PRB  
16 Chair. Thank you, Mr. Sebastian. I believe we have  
17 heard your additional insight. Let me ask the folks  
18 here at Headquarters, anyone have a question for Mr.  
19 Sebastian?

20 MR. WENGERT: Yes. This is Tom Wengert,  
21 Mr. Sebastian. I just wanted to get a clarification  
22 on your comment about the attachments to your  
23 petition. As we spoke, when we described the process  
24 to you, some of the attachments, many of them contain  
25 what we consider personally identifiable information,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and perhaps Privacy Act information. Is it your  
2 request that these documents be made publicly  
3 available in some redacted form, or just that the  
4 Board consider these attachments in rendering our  
5 review -- in our review of your petition request? Do  
6 you understand my question?

7 MR. SEBASTIAN: I believe I do. I would  
8 prefer that these documents are only for the Board's  
9 determination. But if the Board believes that these  
10 documents would be best made public record, then I  
11 would appreciate if they were redacted to the best  
12 possible ability, removing all Privacy Act data, and  
13 meeting those requirements.

14 MR. WENGERT: I understand. I want to be  
15 clear, if our process demands that these documents be  
16 made publicly available, and they're material to your  
17 petition, we will do whatever we -- whatever it takes  
18 within our process to do the proper redaction. I just  
19 wanted to understand what your position was on the  
20 public availability of the documents, versus making  
21 sure that they're considered as part of your petition  
22 request by the PRB.

23 MR. SEBASTIAN: I submitted them, because  
24 I wanted to give the Board as much information as  
25 possible to be able to make a logical and proper

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 decision in this instant case. I did not hold  
2 anything back, because I wanted them to see what I  
3 saw. And that's why I submitted as much documentation  
4 as I possibly could.

5 Now, having said that, considering that  
6 yes, there is quite a bit of personal information in  
7 there, if the Board feels that it can make its  
8 determination without making these documents public,  
9 then I would appreciate that. But if the Board feels  
10 that it is in the public's best interest that these  
11 documents be made public, then I request that the  
12 proper information is redacted from them.

13 MR. WENGERT: I understand. Thank you  
14 very much.

15 MR. BLOUNT: Mr. Sebastian, this is Tom  
16 Blount, the PRB Chair, again. For my clarity, and my  
17 understanding, based on your petition, is it your  
18 understanding that the only reason that you have been  
19 denied Access Authorization under the licensee's  
20 program is because of the financial lien?

21 MR. SEBASTIAN: If you -- having read the  
22 initial reason for being denied access, and then the  
23 Review Board's statement for being denied access, they  
24 referenced no other issue. Hey, we -- in congruence  
25 with the psychological evaluation, and the tax lien,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 we feel that you are not able to have unescorted  
2 access, or because of this event in the past, and this  
3 event in the past, and the tax lien, we feel that you  
4 are not able to have unescorted access. They have not  
5 provided any other documentation. If they had, and  
6 made the decision based on other issues, they would  
7 have stated so in their documentation, I believe.

8 If they have made that determination based  
9 on other issues, and have not revealed that, then  
10 they've denied me due process by not providing me the  
11 issues that are being used against me. They have only  
12 stated the tax lien. And they have said it in a way  
13 that you resolve the tax issue, you can apply again.  
14 In other words, the tax issue has nothing to do with  
15 whether or not I'm a trustworthy, or untrustworthy  
16 person. It has to do with their private policy of not  
17 granting unescorted access to somebody who has a  
18 judgment, a tax lien, or something in that manner  
19 against them, because they don't want to deal with  
20 that type of an issue. So, it's more of a personal,  
21 rather than a public policy issue.

22 MR. BLOUNT: Okay. This is Tom Blount,  
23 again. So, for my clarity, because I think I heard  
24 you say there was a tax issue, and something else.  
25 But you didn't mention the something else in your

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 petition.

2 MR. SEBASTIAN: No, no, no, no. I'm  
3 saying that they -- if there was something else, they  
4 did not state it. In other words, they're not  
5 disclosing. If they did not disclose all the reasons  
6 which they were supposed to look at as a whole, as to  
7 why I'm being denied unescorted access. They stated  
8 the only reason I was being denied unescorted access  
9 is because I had a tax lien, and if I resolve the tax  
10 lien, I can reapply.

11 MR. BLOUNT: Okay. And let me continue  
12 the thread of that thought. Did, in any of their  
13 dialogue with you, indicate that upon reapplying, you  
14 would be granted unescorted access?

15 MR. SEBASTIAN: I believe with my  
16 communication with -- one second, please.

17 MR. WENGERT [NRC OPERATIONS OFFICER]: The  
18 Petitioner was temporarily disconnected from the  
19 bridge. He should be coming back up momentarily.

20 MR. BLOUNT: Thank you.

21 MR. SEBASTIAN: I'm sorry, I was  
22 disconnected.

23 MR. BLOUNT: Understand. Welcome back.

24 MR. SEBASTIAN: Okay. Based on Wednesday,  
25 29 April 2009, the -- I believe you have it as

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Attachment H, one of three, the email with Grace P.  
2 Suffka [Sufka], the only issue that I had that they  
3 requested was more information on the tax lien. In  
4 the conversation I had with her, that was the only  
5 issue that was being questioned, was the tax lien,  
6 itself. And I provided that documentation as  
7 referenced in that email. So, in answer to your  
8 question, it was implied to me that the only issue at  
9 hand was the tax lien.

10 MR. BLOUNT: Understand. Just to follow-  
11 up for my clarity, if I might. This is Tom Blount,  
12 again.

13 MR. SEBASTIAN: Yes, sir.

14 MR. BLOUNT: Are you pursuing, and I'm  
15 trying to understand what other processes you may be  
16 in. Are you pursuing any other legal remedy to this  
17 issue?

18 MR. SEBASTIAN: I am in opposition to the  
19 lien being there. It was done not in accordance with  
20 law. However, because I cannot fight it in court, or  
21 I cannot make arrangements to pay it off, or negotiate  
22 it down, as I supplied also in the attachments, that  
23 most of the legal counsel, they want an up front  
24 payment of anywhere from six to seven thousand dollars  
25 before they will begin to negotiate, or begin their

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 argument with the IRS about the tax lien. Okay? So,  
2 I can't do anything until I get gainful employment to  
3 be able to pay this down, or to acquire legal help, or  
4 counsel. So, I'm kind of in a -- they're created an  
5 impossibility in law. They've created an  
6 impossibility for me to be able to do anything.

7 MR. BLOUNT: Understand. Thank you. Any  
8 other questions here at Headquarters?

9 MR. BAXTER: Mr. Sebastian, this is Brad  
10 Baxter from NSIR. Would you mind if I ask you a few  
11 questions about your previous access?

12 MR. SEBASTIAN: Sure. Go ahead.

13 MR. BAXTER: Okay. What was the first  
14 time -- when was the first time you had access?

15 MR. SEBASTIAN: We're not talking  
16 military. We're talking commercial. Correct?

17 MR. BAXTER: Commercial nuclear power  
18 plants.

19 MR. SEBASTIAN: Commercial nuclear power  
20 would have been Turkey Point, 1987.

21 MR. BAXTER: 1987 to?

22 MR. SEBASTIAN: It was 1987 through 1996.  
23 I also transferred to Port Saint Lucie, and worked at  
24 that station from '96 to '97.

25 MR. BAXTER: Okay. And from there, were

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you -

2 MR. SEBASTIAN: No, no, I need to take  
3 that back.

4 MR. BAXTER: Okay.

5 MR. SEBASTIAN: I did contract work for  
6 Bartlett on Indian Point for an outage, and that would  
7 have been in 1986, just prior to going to Florida  
8 Power & Light.

9 MR. BAXTER: Okay. And if you just mind  
10 me asking, when did you first learn of this tax lien?

11 MR. SEBASTIAN: I learned of it in  
12 November of this past year, actually, was the first  
13 time that I learned of it.

14 MR. BAXTER: And the lien is for property  
15 taxes, or -

16 MR. SEBASTIAN: No. It's a lien against a  
17 claim that I believe was made unjustly from 1997, I  
18 believe. They did it in excess of the three-year  
19 Statute of Limitations, and I provided all that  
20 documentation to the NRC, and to the District Court in  
21 Washington, D.C. And the NRC went ahead and filed  
22 their lien, anyway, even though it was shown to them  
23 that they were in violation of the law.

24 MR. BAXTER: Was that an IRS lien, or NRC?

25 MR. SEBASTIAN: That was an IRS lien.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. BAXTER: Okay. Are you employed  
2 anywhere today?

3 MR. SEBASTIAN: No, I am not.

4 MR. BAXTER: What about since the last  
5 time you held unescorted access?

6 MR. SEBASTIAN: The last time would have  
7 been in '97.

8 MR. BAXTER: So, you haven't been employed  
9 since 1997?

10 MR. SEBASTIAN: Not in nuclear power. No,  
11 sir.

12 MR. BAXTER: And what you have provided  
13 here today is, essentially, all the information you  
14 obtained, is that from the licensee?

15 MR. SEBASTIAN: That's correct. Which, in  
16 effect, is nothing. They've given me no documentation  
17 or support for their position. They're provided me  
18 nothing that says this is what we based our decision  
19 on. This is what gives us the authority to base our  
20 decision in this manner.

21 MR. BAXTER: Okay. And from here, you  
22 pointed out quite extensively in your submittals here  
23 that there's three areas of accumulation of  
24 information that needs to be processed in order to  
25 make a determination being trustworthy and reliable.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Correct?

2 MR. SEBASTIAN: Yes, sir.

3 MR. BAXTER: Such as a background check,  
4 psychologicals, and behavioral observation, and this  
5 all compiled to make a worthwhile decision of your  
6 trustworthiness and reliability. Correct?

7 MR. SEBASTIAN: Yes, sir.

8 MR. BAXTER: So, what you provided here  
9 today is, essentially, one component of the holistic  
10 program.

11 MR. SEBASTIAN: Are you telling me this?

12 MR. BAXTER: I'm asking you.

13 MR. SEBASTIAN: I'm not sure what all is  
14 there. I'm not able to see behind your closed doors.

15 I'm not sure what's there. This is the research that  
16 I've done to be able to say wait a minute, there's an  
17 action being done against me, which has damaged me.  
18 It has caused me severe damage, because the phone  
19 calls I get now, the first question out of somebody's  
20 mouth who's interested in employing me is, have you  
21 ever been denied unescorted access at a nuclear  
22 station? I now have to answer yes. Okay?

23 I can find no other supporting  
24 documentation to support the power station's decision  
25 for denying unescorted access based on the single

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 event of a tax lien. If there were more things  
2 considered, there were not more things listed. The  
3 only thing listed was resolve your tax issue, and  
4 apply again.

5 MR. BAXTER: Okay.

6 MR. SEBASTIAN: Well, that's misuse of the  
7 Fitness for Duty and Access Authorization programs, as  
8 the NRC rules and regulations define it. There is a  
9 reason for that program, and that's the health and  
10 safety of the public, and the station equipment. And  
11 it has to do with trustworthiness, and reliability of  
12 the personnel.

13 MR. BAXTER: Okay. This is Brad Baxter,  
14 again. We do have everything that you submitted to  
15 us. If you don't mind me asking, were there any other  
16 things that we should consider that would cause us to  
17 rule in your favor? I mean, we just have what you  
18 provided.

19 MR. SEBASTIAN: I requested any and all  
20 documentation, procedures, anything that could be  
21 provided that was used in the determination, so that I  
22 could see maybe I'm wrong here. Maybe there is other  
23 documentation which gave them the authorization to do  
24 what they did. I did the research that I could, to be  
25 able to say wait a minute here. If there is other

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 issues, I'm not finding it. You have not disclosed  
2 it, so based on my research, and the rules and  
3 regulations that I have found, you're not in  
4 compliance with that. You're using the program for  
5 something other than what it was designed for, unless  
6 there's something else there that you have not  
7 disclosed. If you've not disclosed it, then you  
8 violated my due process, because it says I have a  
9 right to provide other documentation to support my  
10 position.

11 Well, if they made a determination based  
12 on something else, but they haven't disclosed what  
13 that is, then they've denied me the ability to provide  
14 other documentation to support my position. So, if  
15 there is something there, and they haven't disclosed  
16 it, they violated the procedure. If there isn't,  
17 they're in violation of the procedure. And as public  
18 policy is determined by the rules and regulations of  
19 the NRC, that's what they have to comply with, not  
20 personal policy. If they had a personal policy, and  
21 said we don't want to hire you because you have a tax  
22 lien, I would have no recourse. But they used the  
23 Fitness for Duty and Access Authorization program to  
24 say we don't want to hire you, because you have a tax  
25 lien, so we're denying you unescorted access, which

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 affects me throughout the nuclear industry.

2 MR. BAXTER: Okay. I have no further  
3 questions.

4 MR. BLOUNT: Anyone else here at  
5 Headquarters? Okay. Anyone at the Region?

6 MR. CHALK [MR. GIESSNER]: No, sir, no  
7 questions.

8 MR. BLOUNT: No questions. Thank you.  
9 And because we have the licensee on the line, does the  
10 licensee have any questions for Mr. Sebastian?

11 MR. ANDERSON: No questions.

12 MR. BLOUNT: Understand. The purpose of  
13 the meeting is to provide an opportunity for the  
14 Petitioner, or the public to question or examine, to  
15 seek clarifying information prior to the PRB meeting  
16 to discuss this issue, and the merits of the position  
17 further.

18 Mr. Sebastian, thank you for taking the  
19 time to provide the NRC Staff with clarifying  
20 information on the petition you submitted.

21 Before we close, does the court reporter  
22 have any questions, or need any additional information  
23 for the meeting transcript?

24 COURT REPORTER: I have no questions.

25 MR. BLOUNT: Very good. With that, then

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 this meeting is concluded, and we will be terminating  
2 the phone connection.

3 Thank you very much for your time and  
4 attention. Mr. Sebastian, thank you very much for  
5 bringing this issue to our attention.

6 MR. SEBASTIAN: Thank you all.

7 (Whereupon, the proceedings went off the  
8 record at 3:44 p.m.)  
9  
10  
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