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Title: Entergy Nuclear Operations, Inc.
Pilgrim Nuclear Power Station

Docket Number: 50-293-LR

Location: Rockville, Maryland

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1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

3 + + + + +

4 ATOMIC SAFETY AND LICENSING BOARD PANEL

5 + + + + +

6 HEARING

7 ----------x

8 In the Matter of: :

9 ENTERGY NUCLEAR GENERATION COMPANY : Docket No.

10 ENTERGY NUCLEAR OPERATIONS, INC. : 50-293-LR

11 (Pilgrim Nuclear Power Station) :

12 ----------x

13 Tuesday, May 4, 2010

14

15 Nuclear Regulatory Commission

16 ASLBP M/S T-3F23

17 11545 Rockville Pike

18 Rockville, Maryland

19

20 BEFORE:

21 ANN MARSHALL YOUNG, Chair

22 PAUL B. ABRAMSON, Administrative Judge

23 RICHARD F. COLE, Administrative Judge

24

25

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1 P-R-O-C-E-E-D-I-N-G-S

2 (1:06 p.m.)

3 CHAIR YOUNG: My name is Ann Marshall

4 Young. I'm the Chair of the Licensing Board. Judge

5 Cole --

6 ADMIN. JUDGE COLE: Present.

7 CHAIR YOUNG: Judge Richard Cole is also

8 present. And we have here in Rockville our law clerk,

9 Katie Tucker. And then, Judge, Abramson, do you want

10 to introduce yourself? Judge Abramson, are you still

11 on?

12 ADMIN. JUDGE ABRAMSON: I think everybody

13 knows who I am. Yes, I'm still on. Let me correct

14 something in Pilgrim Watch's request for information.

15 Judge Young is the Chair of this Board. She is not

16 the Chief Judge of this panel.

17 CHAIR YOUNG: Thank you for that

18 correction. I'm remember it. Thank you.

19 ADMIN. JUDGE COLE: By the way, just so

20 the court reporter can get everybody's name correctly,

21 before you start speaking, please identify yourself

22 just for the identification to the reporter.

23 CHAIR YOUNG: Thank you. All right. We

24 sent out this agenda --

25 COURT REPORTER: Much appreciated, but

1 could you identify yourself, as well, sir?

2 ADMIN. JUDGE COLE: Judge Cole.

3 COURT REPORTER: Thank you.

4 ADMIN. JUDGE COLE: Sorry about that.

5 CHAIR YOUNG: And I'm probably going to be

6 talking a lot, so this is Judge Young. If I don't do

7 it, remind me. But do you recognize my voice to some

8 extent, if there's a lot of back and forth?

9 COURT REPORTER: Yes, Judge.

10 CHAIR YOUNG: Okay, all right. Yesterday,

11 I provided you with an agenda for today's telephone

12 conference, which followed up on our April 1st and

13 April 7th orders. And the main thing that it added to

14 what we had previously said were reference to the EIE

15 System; reference to, well, we talked about the

16 experts earlier; a starting point for discussing the

17 definition of the issues for hearing; and a reference

18 to Pilgrim Watch's request for information.

19 Let's start with the simpler things first.

20 With regard to the EIE System, we started this case

21 before that system existed. And I had mentioned that

22 everyone, except Ms. Lampert, has probably used it.

23 It's a method for filing documents electronically and

24 then the service is done by the Office of the

25 Secretary. Do the parties have any views on whether

1 you'd like to switch to that or stay with this system?
2 If we did switch to that, there is a help desk, and I
3 understand, I think everyone knows how to reach the
4 Office of the Secretary to get any questions about how
5 to use the EIE, which stands for, I think, Electronic
6 Information Exchange.
7 Do the parties have any thoughts on that?
8 It's really up to you.
9 MS. LAMPERT: Mary Lampert, Pilgrim Watch.
10 Yes, I do have thoughts on it because you are correct
11 that I have not used it. So, therefore, without going
12 to the training session and seeing how user friendly
13 to me it will be, I find it difficult to commit one
14 way or another.
15 CHAIR YOUNG: Go ahead.
16 MR. LEWIS: This is David Lewis. We use
17 it and can use it, but if there's even a possibility
18 that it may create an additional procedural
19 requirement or great difficulties for Pilgrim Watch,
20 we'd rather avoid it because the system we're using
21 now works and I would really prefer to avoid anything
22 that might lead to further delays in filing the
23 pleadings.
24 MR. HARRIS: Judge Young, this is Brian
25 Harris for the staff. I mean, we're in favor of using

1 the EIE System. I mean, it has simplified, you know,
2 sending large documents through that would make it
3 much easier for all parties to get them, instead of
4 the way we're doing it right now. So we would be in
5 favor of it.
6 CHAIR YOUNG: Well, Ms. Hollis, do you
7 have any thoughts on it?
8 MS. HOLLIS: Just more of a question.
9 That is, if one party uses it, is there an obligation
10 the other parties have to buy into and use it?
11 CHAIR YOUNG: In order for it to work
12 well, there have been some cases in which certain
13 parties have been exempted from it because, at that
14 time, I think they may have used Macs and Macs were
15 not originally compatible with it. But I think it's
16 simpler if everyone does the same thing. I guess my
17 thought, if there are two parties who've expressed
18 concerns about it complicating things, it seems like
19 it might be better to avoid any complications and keep
20 doing what we've been doing because I know there have
21 been complications. And given that we're going to be
22 talking about computer codes and possible exhibits
23 that could be fairly large and the need to break those
24 up into parts, it might be simpler to just keep doing
25 what we're doing.

1 Any strong objection to that?

2 ADMIN. JUDGE ABRAMSON: Judge Young, this

3 is Judge Abramson. Can you hear me?

4 CHAIR YOUNG: Yes.

5 ADMIN. JUDGE ABRAMSON: To me, it's quite

6 simple. One party doesn't want to use it, we don't

7 use it. There's no mandatory requirement to. Let's

8 move on.

9 CHAIR YOUNG: Sounds like a good idea.

10 All right. Hearing no strong objection to it, I think

11 we'll just stay with the system we've been using.

12 Now, let's see. Another short issue. Ms. Lampert,

13 when we started this case, you were represented by

14 counsel, very good counsel, as I recall. Does anyone

15 need to get that phone?

16 I think she left to go to Africa to work

17 with the Clinton Foundation. Is there any chance that

18 she's come home?

19 MS. LAMPERT: Yes, she has come home.

20 However, she has remained working for the Bill Clinton

21 Foundation and spends a lot of time going back and

22 forth to Africa, so that dream that is shared by the

23 two of us never happened. I have put my money into

24 the Boston Bar Association for the pro bono search.

25 I've called everybody, and I've come up empty-handed.

1 It seems like lawyers want to go to the circuit court
2 but they don't want to jump in here.
3 CHAIR YOUNG: Okay.
4 MS. LAMPERT: It's unfortunate. You
5 cannot imagine.
6 CHAIR YOUNG: Well, it sounds as if you've
7 certainly made an effort, and I'm sorry you haven't
8 been able to --
9 MS. LAMPERT: A huge effort.
10 CHAIR YOUNG: Okay. Well, I think we'll
11 just move forward. One thing I would say, just sort
12 of arising out of that, if you have any questions, I
13 know you can call if you have any questions about
14 filing and they can answer any questions on that, and
15 I know in the past you have contacted a law clerk.
16 One thing I would ask you is if you want to contact a
17 law clerk to ask a question, unless there's absolutely
18 no question that it's a minor procedural thing about
19 how do I, what format on the page should I use for
20 printing or something like that, the best course of
21 action is to send an e-mail and copy all the other
22 parties just to be sure that there are no indirect ex
23 parte communications. And then whatever response, as
24 has been done in the past, whatever response is
25 provided will be copied to all the parties. And that,

1 obviously, applies to anybody.

2 MS. LAMPERT: Okay. Just one further

3 question. In sending an e-mail, will it also be

4 necessary to send a hard copy, or does the e-mail

5 suffice?

6 CHAIR YOUNG: No, I don't think you need

7 to send a hard copy.

8 MS. LAMPERT: Okay. I just want to be

9 sure.

10 CHAIR YOUNG: And then also, by doing

11 that, if any party wants the e-mail in the record,

12 then that can be sent, whether that be you or any

13 other party. Just so it's clear, any communications

14 that have been had between any parties and any board

15 members or law clerks who were, essentially,

16 representative of the Board.

17 Okay. On the request for information, I

18 guess the simplest thing to do would be to ask Entergy

19 if you have any objections to any of the requests that

20 Pilgrim Watch has made.

21 ADMIN. JUDGE ABRAMSON: Judge Young, this

22 is Judge Abramson. Can you hear me?

23 CHAIR YOUNG: Yes.

24 ADMIN. JUDGE ABRAMSON: Before we go down

25 that path, I think it's probably important to focus on

1 what the issue is that's going to be addressed in the
2 hearing because the request for information needs to
3 tie directly into that.
4 CHAIR YOUNG: I don't have any problem
5 with doing it that way. Are there any other short
6 issues that anyone sees that we could address before
7 moving into a discussion of the issue which could
8 become somewhat complex?
9 MR. HARRIS: Judge Young, this is Brian
10 Harris for the staff. I mean, we could probably
11 address somewhat the experts that are going to be
12 appearing for the various parties and, you know, could
13 possibly even address, you know, idea of schedule,
14 too.
15 ADMIN. JUDGE ABRAMSON: Judge Abramson,
16 again. Brian, although I appreciate that you've got
17 experts that you think you're going to use, until we
18 tie down what the issue is, that's probably not
19 appropriate and it's not evident that you'll use who
20 you think you're going to use or that you will not
21 need someone else. So let's focus on the issue and
22 come back to experts.
23 CHAIR YOUNG: Well, let me just back up
24 for a minute. I don't think, after we went on the
25 record, I actually had everyone introduce themselves

1 and their experts or whoever is with you, so it might
2 be good to do that at this point so that, as we move
3 into the discussion of the issues, if any of the
4 experts come into that discussion for any reason, we
5 will know who they are.
6 So let's start with the staff, then move
7 to the applicant, then the intervenor, and then Ms.
8 Hollis for the town of Plymouth and Duxbury.
9 MS. UTTAL: Judge, this is Susan Uttal
10 representing the staff. With me, I have Brian Harris,
11 as you know, and also Michael Dreher, who is also
12 counsel for the staff. As potential witnesses, we
13 have Dr. Tina Ghosh; Dr. Nathan Bixler; and Joe Jones,
14 who is calling in from another number.
15 CHAIR YOUNG: Okay. Moving to Entergy,
16 Mr. Lewis?
17 MR. LEWIS: Yes. This is David Lewis of
18 the law firm of Pillsbury Winthrop Shaw Pittman
19 representing Entergy. I have with me Paul Gaukler.
20 On another phone line is Jeanie Cho, legal counsel for
21 Entergy Nuclear. Witnesses are expected. Witnesses
22 are also on the phone on different lines. Dr. Kevin
23 O'Kula, who you may recall was the affiant in support
24 of our Motion for Summary Disposition; and Dr. Steven
25 Hanna, whose resume we provided in our disclosure that

1 we made at the end of the month. Additional folks
2 listening in on the phone are Steven Bethay, Joe
3 Lynch, Fred Mogolesko, and David Lock.
4 CHAIR YOUNG: And Ms. Lampert?
5 MS. LAMPERT: Yes. Mary Lampert, Pilgrim
6 Watch pro se. At present, we have Dr. Bruce Egan on
7 the line; Arnold Gundersen; and we may get David
8 Shannon, who will call in a little bit later. He had
9 a conference.
10 CHAIR YOUNG: Okay. And then Ms. Hollis?
11 MS. HOLLIS: Yes, Judge Young. Sheila
12 Hollis on behalf of the town of Plymouth. I am
13 accompanied here today by Charlize Silva, who is a
14 colleague in Dwight Morris; and Lee van Buten, our
15 legal assistant. We do not have any experts at this
16 time.
17 CHAIR YOUNG: All right. Thank you. And
18 I apologize for that thing in the beginning. Okay.
19 Let's move into the issues. We came up with this
20 language at the Board as a starting point for
21 discussion of the issues. And we have provided the
22 references to the Commission's order in CLI-10-11 for
23 the sources of our formulation of the issues.
24 Probably the simplest thing would be to ask if anyone
25 has any objections to how we have stated the issues.

1 MS. LAMPERT: I do. Mary Lampert, Pilgrim
2 Watch, disagrees with the Board's statement of issue.
3 CHAIR YOUNG: And do you want to --
4 MS. LAMPERT: And if I could, I'd like to
5 explain why and not interrupted because it will
6 interrupt the flow of thought, if that's possible.
7 CHAIR YOUNG: Go ahead.
8 MS. LAMPERT: Okay. First, we believe
9 that the Board failed to appreciate what the
10 Commission, in fact, said in the remand. It seems
11 that what the Board is saying is that we will focus on
12 meteorological modeling comparing the Gaussian
13 straight line plum to an alternative model and
14 determine from that, if there's something to it, then
15 we'll move forward and get into the hearing what the
16 results should be. That's the summary, defined and
17 limited by the Commission. That is found on the
18 indent at the top of page two on the main court order.
19 In contrast, we looked back to the remand
20 at 37, first sentence, first paragraph, the Commission
21 told us what the issue was all about. It said, and I
22 quote, "We conclude by emphasizing that the issue here
23 is whether the Pilgrim SAMA analysis resulted in
24 erroneous conclusions on the SAMA found cost
25 beneficial to implement." From that, it is clear to

1 us that the SAMA is all about a cost-benefit analysis,
2 and it is far less limited, according to the remand,
3 than the Board's order. And this is clearly
4 reinforced throughout the remand, particularly at page
5 39 in the remand. And the Commission's concluding
6 sentence, very concluding sentence, they made it very
7 clear that Pilgrim Watch may introduce a wide range of
8 evidence at the upcoming hearing. It says, and I
9 quote, "Unless it looks genuinely plausible that
10 inclusion of an additional factor by use of other
11 assumptions or models may change the cost-benefit
12 conclusions for the SAMA candidates evaluated, no
13 purpose would be served to further refine the SAMA
14 analysis, whose goal is only to determine what safety
15 enhancements are cost effective to implement."
16 Now, to us, this leaves the barn door wide
17 open and plainly does not limit Pilgrim Watch's
18 evidence. We can include all the additional factors,
19 assumptions, models that may change the cost-benefit
20 conclusions for the SAMA candidates evaluated. Quite
21 plainly then, the Board cannot make a determination
22 whether it, quote, "looks genuinely plausible" until
23 they've heard our evidence. Otherwise, to my mind,
24 we're right back to where we were when the decision on
25 summary disposition was made by the Board, which will

1 only result in prolonging this whole process to no
2 one's benefit by assuring another petition for review
3 and no doubt a step up to federal court.
4 The Board's May 4th order on page two
5 concluded further that the economic cost issues that's
6 defined and limited by the Commission in CLI-10-11.
7 What were the so-called definitions and limits? In
8 going to page 36 and 37, first on 36, it says, quote,
9 "No NEPA requirement to use the best scientific
10 methodology." Pilgrim Watch is not talking about
11 taking a trip to Mars, but models that are used by
12 other agencies and recommended in certain NRC
13 documents and complex sites and by DOE for clean-up
14 costs. Further down in 36, it says, "NEPA does not
15 require agencies to use technologies and methodologies
16 that are still emerging and under development or to
17 study phenomena for which there are not yet standard
18 methods of measurement or analysis."
19 CHAIR YOUNG: Excuse me, Ms. Lampert. I'm
20 sorry to interrupt you here, but I'm not seeing where
21 you're reading from.
22 MS. LAMPERT: I'm reading from the LI on
23 page 67 and 36, 36 turning over to 37. Okay, go to 37
24 and go to the first paragraph, the full paragraph.
25 "There's no NEPA requirement . . ." one, two, three,

1 four lines down. And then we get into that paragraph
2 there.
3 CHAIR YOUNG: I think you made a reference
4 to DOE, and I sort of lost you.
5 MS. LAMPERT: No, no, that was me. What
6 I gave was the quote which is on 37, "No NEPA
7 requirement to use the best scientific methodology,"
8 and what we have been arguing is not that we should
9 use brand new hot-off-the-press technology but models
10 that have been around and have been used by other
11 agencies such as recommended in NRC documents for
12 complex sites, the meteorological models. And as
13 another example that I gave, not what was in the
14 Commission's remand. Another example was a method
15 used by DOE to estimate clean-up costs. That was from
16 my examples, and I'm sorry for not making that clear.
17 The second example from the same
18 paragraph, page 37, talked about emerging and under-
19 development technologies, quote, "for which there are
20 not yet standard methods of measurement or analysis."
21 And now Pilgrim Watch says that what we suggested are
22 standard practices, not emerging technologies. We
23 know, for example, in talking about dealing with
24 meteorological input, that there had been a problem in
25 the past trying to make it simple because computers

1 would blow. Now, NRC and Entergy have high-speed
2 computers, have had them for quite a long time, and
3 can, as a result, plug in numerous different inputs to
4 get a better picture of reality.
5 And it further goes on to say, now this
6 is, again, from the Commission, quote, "NEPA allows
7 agencies to select their own methodology as long as
8 that methodology is reasonable." Again, Pilgrim Watch
9 responds to that and highlights that it's not
10 reasonable, however, which is not said in the remand,
11 to use assumptions and models that are 40 to 50 years
12 old and clearly outdated. I'm making progress here.
13 The Commission's broader scope, including
14 economic cost, as outlined so far at 39 and 37, is
15 reinforced twice on page 27. The Commission says that
16 Pilgrim Watch has the right to show the material
17 deficiencies in the meteorological modeling and
18 economic cost that warrant examination. The Board
19 clearly, to our mind and it seems the Commission's,
20 has to hear the economic cost so they can decide after
21 the hearing of evidence is presented how they're going
22 to decide. On page 27 is a continued paragraph
23 halfway down. It says, this is from the remand, "If
24 the Board on remand were to conclude that there is
25 material deficiency in meteorological patterns

1 modeling, the economic cost calculations also would
2 warrant re-examination. We, therefore, remand the
3 economic cost and evacuation time portions of
4 contention three to the Board, but only to the extent
5 that the Board merits conclusion on meteorological
6 patterns may materially call into question the
7 relevant cost and evacuation timing conclusions --
8 ADMIN. JUDGE ABRAMSON: Pardon me for a
9 moment, Ms. Lampert, but that, to me -- this is Judge
10 Abramson -- is the key of this remand. Only if we
11 decide that the meteorological modeling is an error to
12 such a degree that it would cause other SAMAs to
13 become cost effective do we then look at the economic
14 consequences.
15 MS. LAMPERT: Yes, I appreciate that
16 thought. But the issue becomes what the word "if"
17 means. And we believe that it does not exclude. It
18 may guide your decision, but it does not say that the
19 Board can exclude evidence before making a decision.
20 The Board can never get to "if" unless we're allowed
21 to produce evidence for you then to decide. The whole
22 point of this SAMA is economic cost, weighing costs
23 against benefit. And there is no way a rational human
24 being can give a discussion of whether or not
25 meteorological inputs or other inputs make a

1 difference without showing and discussing what the
2 economic difference would be. That is our opinion.
3 CHAIR YOUNG: I'd like to hear from you on
4 --
5 MS. LAMPERT: I haven't quite finished,
6 but that's all right.
7 CHAIR YOUNG: Go ahead. Go ahead finish.
8 MS. LAMPERT: I think it would help, in a
9 sense. And, again, economic costs are reinforced on
10 the bottom of page 36. Therefore, as earlier
11 outlined, we include as part of our remand the
12 economic cost issue, and it goes again to what Judge
13 Abramson was saying, but only to the extent the Board
14 merits findings on the adequacy of the modeling.
15 Again, we hold that the Commission recognizes that
16 meteorological modeling may have an effect on economic
17 cost. Therefore, the Commission says the Board will
18 have to listen to it, what the economic costs are, and
19 then make a decision.
20 Regarding evacuation speed and timing, we
21 feel that the Board lacked appreciation as to what the
22 Commission said. The Board's order at two says that
23 the Commission stated Pilgrim Watch's arguments on
24 evacuation speed and timing, etcetera, are not up for
25 further hearing. This is not an issue on remand, in

1 parens, not withstanding the general statement at 27.
2 However, we feel that the statement at 27 has to be
3 considered because that is precisely what they said at
4 27, quote, "If the Board, on remand, concludes that
5 there is no significant meteorological modeling, the
6 overall SAMA cost analysis conclusions, no dispute
7 concerning economic costs of evacuation timing inputs
8 will remain. Again, we make the same argument."
9 So it seems clear to us, particularly,
10 particularly when you read the conclusion on page 39
11 that the scope cannot properly be narrowed. It says,
12 again, "Unless it looks genuinely plausible that
13 inclusion of an additional factor, use of other
14 assumptions or models may change the cost-benefit
15 conclusions for the SAMA candidates evaluated, no
16 purpose would be served to further define the SAMA
17 analysis, whose goal is only to determine what safety
18 enhancements are cost effective." And that's where
19 we're coming from. I wish, probably as everybody else
20 did, that the remand events were written in a tighter
21 manner, but that's our position.
22 CHAIR YOUNG: Does that conclude your
23 argument?
24 MS. LAMPERT: That concludes the
25 introduction to the argument, yes.

1 CHAIR YOUNG: Would you like to make more
2 argument on it at this time?
3 MS. LAMPERT: Not at this time. Thank you
4 for asking.
5 CHAIR YOUNG: Okay. I want to hear from
6 all parties. One thing that does occur to me
7 listening to you is that we may need to consider the
8 use of the word "by virtue of having a material effect
9 on the economic cost issues." I think, to share with
10 you some of our thinking so that you can all respond
11 to it, our impression is that it would probably be
12 easier to have one hearing and not have it bifurcated
13 into a hearing on the modeling and then make a
14 determination whether to go forward with the hearing
15 on the economic costs but to do it all together
16 because all of these issues are tied to each other in
17 various logical ways and probably other ways
18 associated with the code that we have not expressed so
19 that the relationship that we express by using the
20 word "by virtue of having a material impact on the
21 economic cost issues" may be something that all
22 parties would want to address.
23 We would also, I think, at some point,
24 want to know more specifically what you, Pilgrim
25 Watch, would want to have considered that we have not

1 stated. If you could provide a specific statement or
2 list of the things that you think should be
3 considered. And probably, after this conference call,
4 it might be helpful to have all parties provide your
5 alternative statements of the issues and list the
6 things which you don't think we have included that
7 should be included or things that you think we have
8 included that should not be included.
9 With all that said, is there anything else
10 you want to say to quickly wrap up, Ms. Lampert,
11 before we move on to --
12 MS. LAMPERT: Yes.
13 ADMIN. JUDGE ABRAMSON: Judge Young, Judge
14 Abramson. Let me just ask Ms. Lampert a question.
15 Ms. Lampert, is it your view that Pilgrim Watch should
16 present information about the computation of economic
17 consequences separately from the impact of
18 meteorology, i.e. suppose the meteorology didn't
19 change at all? Does Pilgrim Watch believe that the
20 Commission's order provides that Pilgrim Watch should
21 be able to present evidence on the computation of
22 economic consequences as a separate matter?
23 MS. LAMPERT: Yes, you are correct. And,
24 again, I'll refer back to the concluding sentence at
25 39, and I also would refer those on the call to our

1 response to the remand, which I think was quite
2 explicit in charting the issues that we have
3 consistently --
4 ADMIN. JUDGE ABRAMSON: Ms. Lampert, I
5 understand your view now, and it may very well be that
6 there is a question that needs to be certified to the
7 Commission on the scope of this hearing before we go
8 much farther because I disagree completely with your
9 interpretation.
10 CHAIR YOUNG: All right. We'll hear all
11 arguments on this, and we'll make a determination.
12 But one thing -- this is Judge Young again. One thing
13 I do want to emphasize to you, Ms. Lampert, is that
14 you have filed, you referred to a response to the
15 remand. You have filed certain documents, in effect,
16 asking the Commission to reconsider parts of what it
17 determined in the remand, and all of those documents
18 are filed with the Commission and not us.
19 MS. LAMPERT: Yes, I understand.
20 CHAIR YOUNG: So anything that you want us
21 to consider you need to file with us and not assume
22 that we're going to be following everything that's
23 going on with the Commission. I didn't say earlier
24 but we did indicate in an earlier order that, unless
25 a stay is granted by the Commission, we're going to be

1 moving forward based on the remand that was issued.

2 In terms of clarifying what the issues

3 are, I think we will try to make a determination on

4 that after hearing all the arguments of the parties

5 and possibly getting written filings from the parties

6 on that.

7 MS. LAMPERT: Okay. Excuse me, Judge

8 Young. Did you ask a question by virtue of what

9 specifically we would like to talk about, or did I

10 misunderstand?

11 CHAIR YOUNG: I was referring to our

12 language on page two, at the end of the sixth line,

13 the relationship between the economic cost issues and

14 the meteorological monitoring, we used the word "by

15 virtue of," and it may be that we need to reconsider

16 exactly what words we want to use to express that

17 relationship. That was my reference to --

18 ADMIN. JUDGE ABRAMSON: Judge Young, Judge

19 Abramson again. I think Ms. Lampert's been quite

20 clear. She believes that the order requires us to

21 permit Pilgrim Watch to present separate evidence on

22 economic consequences, not in any way whatsoever to

23 the effects of meteorologic modeling. So "by virtue

24 of" language is irrelevant in Ms. Lampert's view.

25 What she's saying instead is in addition they should

1 be permitted to provide evidence on.

2 CHAIR YOUNG: We're not arguing about what

3 she means. All I was saying for the benefit of the

4 parties is that when you make, when the rest of the

5 parties make your arguments, if you have any thoughts

6 on that relationship and whether the words "by virtue

7 of" were the most precise language we could have used.

8 That would probably be helpful for the Board --

9 MS. LAMPERT: Excuse me. Could I clarify

10 what Judge Abramson just said?

11 CHAIR YOUNG: You may, except that I think

12 we want to try to avoid getting into argument here --

13 MS. LAMPERT: No, I didn't want to argue.

14 I just didn't want it on the record, if there is a

15 record being kept --

16 CHAIR YOUNG: It is.

17 MS. LAMPERT: -- that would be a

18 misunderstanding.

19 CHAIR YOUNG: It's clear who says what,

20 and so the transcript will indicate what you said --

21 MS. LAMPERT: Oh, okay. I'm sorry to

22 interrupt you.

23 CHAIR YOUNG: That's all right. All

24 right. Then let's move to Entergy. The information

25 is being requested -- well, I'm sorry, back up. We're

1 talking about the issues. Let's move to Entergy, and
2 then we can move to the staff and the towns on the
3 statement of the issues.
4 MR. LEWIS: Thank you, Judge Young. This
5 is David Lewis. Entergy disagrees adamantly with
6 Pilgrim Watch's position. The Commission clearly only
7 remanded the meteorological issues. The discussion on
8 pages 37 and 38 of the Commission's decision simply
9 indicate, with respect to those meteorological issues
10 that it remanded, a meteorological issue is only
11 material and worthy of litigation if it is one that
12 could affect the outcome of the SAMA analysis. The
13 purpose of the hearing is not to be litigating whether
14 there is, in the abstract, a different methodology
15 that could be used or if we could do a worst-case
16 analysis. The Commission was simply trying to clarify
17 and make it abundantly clear that we're looking at
18 mean consequences. This is a probabilistic analysis
19 at only those issues that have the ability to affect
20 the outcome of the SAMA analysis are properly before
21 the Board.
22 The Commission very, very clearly
23 indicated in its decision that it was the
24 meteorological issues that were being remanded. The
25 Commission specifically indicated that the issue

1 concerning David Shannon's criticism of the economic
2 model was beyond the scope of its original contention
3 and not within the scope of the proceeding. And I
4 think Ms. Young's Motion for Reconsideration clearly
5 indicates Pilgrim Watch's understanding and
6 recognition that the only issues that were remanded
7 were the meteorological issues.
8 CHAIR YOUNG: I think you meant to say
9 something other than Ms. Young's request to --
10 MR. LEWIS: I'm sorry. Ms. Lampert's. I
11 beg your pardon.
12 CHAIR YOUNG: And, Mr. Lewis, I don't want
13 to cut you off from responding to what Pilgrim Watch
14 said, but it would be helpful for us if you would
15 address our statement of the issues which was
16 intended, as we said, as a starting point for
17 discussion, and indicate where you may agree or
18 disagree with that, as well.
19 MR. LEWIS: Yes, Judge Young. I did not
20 have a concern with the issue until you highlighted
21 the reference to "by virtue of" having a material
22 impact on the economic cost issues and suggested that
23 might call for litigating both economic and
24 meteorological issues at the same time. That's a
25 tremendous concern to me. In our Motion for Summary

1 Disposition, Entergy's Motion for Summary Disposition,
2 we addressed the evacuation time estimate issues that
3 Pilgrim Watch has identified and we quantified the
4 maximum impact on risk that those issues might have,
5 and it was just a few percent.
6 We similarly addressed the economic issues
7 that Pilgrim Watch had raised, issues that had to go
8 with the effect on tourism, and we all, again, did
9 analyses that quantified the maximum impact that those
10 issues might have on off-site consequences.
11 CHAIR YOUNG: Mr. Lewis?
12 MR. LEWIS: We already identified and
13 those issues were resolved. There was no material
14 dispute with respect to those issues. We have
15 quantified --
16 CHAIR YOUNG: Mr. Lewis? Mr. Lewis? This
17 is Judge Young. I think it would be helpful, rather
18 than referring back to what you said in your Motion
19 for Summary Disposition to refer to what the
20 Commission had said and, to the extent that they
21 agreed with you, to make a specific reference to where
22 in their remand they agreed with you because I don't
23 think we're here to re-litigate the Motion for Summary
24 Disposition. Now, I think that your argument, in
25 effect, that the Commission indicated that the

1 evacuation issue was not an issue in the remand. I
2 think we tend to agree with you on that. But I would
3 encourage you not to reargue your Motion for Summary
4 Disposition. That's been resolved by the Commission
5 in its remand.
6 MR. LEWIS: Thank you, Judge Young. I was
7 not intending to reargue. I was trying to place the
8 Commission's ruling in context. With respect to the
9 economic costs, for example, on the Commission's
10 decision on pages 29 and 30, they clearly indicate
11 that the issues that Pilgrim Watch now wants to raise
12 with regard to economic costs were far beyond the
13 original bases and, therefore, outside the scope of
14 the proceeding. And, in particular, at the bottom of
15 page 30, they say Pilgrim Watch's new claims have
16 dramatically underestimated decontamination or clean-
17 up costs are also not reasonably inferable from the
18 economic cost challenges proffered in contention
19 three. The Commission, therefore, absolutely
20 unequivocably indicated this was beyond the scope of
21 the original contention and by no such of the
22 imagination can the Commission's decision now be
23 construed as expanding the original contention.
24 My point that I was making with respect to
25 what we did on summary disposition was that the

1 Commission did say that if the Licensing Board finds
2 that the meteorological issues have a big enough
3 effect on risk, then maybe what added to the effect on
4 risk from the economic issues and the evacuation time
5 estimates, all three of those effects might change the
6 SAMAs. I don't think the Commission intended at any
7 point to say that they were going to reopen the issues
8 that were decided on summary disposition concerning
9 our maximum bounding analysis of the evacuation time
10 estimate and the economic impact.
11 CHAIR YOUNG: Could you maybe repeat or
12 address specifically your views on the relationship
13 between determining the adequacy of the original
14 meteorological modeling in comparison to any
15 alternative modeling and the relationship of that to
16 whether there's a material impact on the economic cost
17 issues? I think we were tending to see it as
18 something that would have connections such that it
19 would be much more efficient to do the hearing on
20 those issues all together.
21 ADMIN. JUDGE ABRAMSON: This is Judge
22 Abramson. Mr. Lewis, before you go down that path,
23 let me interject a couple of things. First of all, I
24 trust that Entergy will make relevant and appropriate
25 arguments to the Commission regarding Pilgrim Watch's

1 appeal to the Commission for reconsideration so that
2 you'll deal with all those issues there and right now
3 we can focus on what we believe the order says is in
4 front of us. Is that fair?
5 MR. LEWIS: Yes, that's correct. And we
6 already have responded.
7 ADMIN. JUDGE ABRAMSON: Okay. Now, as to
8 the meteorologic modeling, assuming that Judge Cole
9 and I and Judge Young are properly reading the
10 Commission's order, it seems to me what the order is
11 saying is you've got to go back, we the Board have to
12 go back and look at whether or not the meteorologic
13 modeling is so flawed for the reasons of lack of time-
14 dependent modeling, frankly, is so flawed that if it
15 had been modeled more accurately it would have led to
16 other SAMAs becoming cost effective. I think that's
17 the way, certainly it's the way I see it, and I think
18 it's fair to say it's the way the rest of the Board
19 sees it. So the economics comes in indirectly as a
20 result of meteorologic modeling.
21 So from my perspective, there's a sort of
22 an underlying challenge here to the applicant and the
23 staff, and that is can you make the Gaussian modeling,
24 straight-line Gaussian plume modeling in the MACCS
25 code dance so that it encompasses all the effects that

1 are postulated to be excluded by Pilgrim Watch? And
2 from that, can we get a handle on through some sort of
3 bounding analysis whether or not the meteorologic
4 modeling is so flawed that it might make other SAMAs
5 cost effective?
6 MR. LEWIS: Judge Abramson, the model
7 does, in the end, produce an economic value which is
8 used, but I don't think that the portion of the model
9 that calculates that economic value is at issue.
10 ADMIN. JUDGE ABRAMSON: I agree.
11 MR. LEWIS: The upmost portion of the
12 model calculates the property's contamination levels
13 or the level of contamination on property and the
14 doses that individuals in the 50-mile area receive.
15 And the issue about whether the Gaussian plume model
16 is accurate goes to whether that predicted level of
17 contamination and that predicted level of public dose
18 is accurate.
19 The model then does additional things. It
20 uses an economic model to take the level of
21 contamination and translate that into clean-up costs
22 and loss of business and other values.
23 ADMIN. JUDGE ABRAMSON: If I understand
24 correctly, the Commission has been clear that that
25 portion of the calculation is not at issue.

1 MR. LEWIS: Yes. So that portion of the
2 methodology we submit should not be at issue.
3 Similarly, the model takes the radiological exposure
4 of individuals and that radiological exposure is also
5 turned into a monetary value. How that is done is
6 also not at issue. So our belief of what is at issue
7 is how the plume is modeled and how the level of
8 contamination and off-site exposure are calculated.
9 ADMIN. JUDGE ABRAMSON: Right. And that's
10 the way I see it. And if you were to change the input
11 that's used to select Gaussian plumes in a way that it
12 bounded every possible wind pattern, frequency of wind
13 patterns, etcetera, that are proposed by Pilgrim
14 Watch, we could then get a handle, it seems to me, on
15 whether or not the overall SAMA calculation can be at
16 error to a degree that it would cause other SAMAs to
17 be cost effective.
18 MS. LAMPERT: May I interject something?
19 CHAIR YOUNG: I want to try to keep all --
20 this is Judge Young -- keep each party --
21 MS. LAMPERT: That was Mary Lampert. I'm
22 sorry.
23 CHAIR YOUNG: Right.
24 ADMIN. JUDGE ABRAMSON: Can I hear from
25 Mr. O'Kula? Is this something that could be done?

1 CHAIR YOUNG: Hold on, please. Hold on,
2 please. Let me finish what I was saying. Ms.
3 Lampert, we didn't interrupt you when you were making
4 your argument, but I think we want to avoid the
5 parties interrupting each other unless there's
6 something really critical that you think we'll miss
7 unless you say it quickly right now.
8 MS. LAMPERT: No, I would just like the
9 opportunity to come back.
10 CHAIR YOUNG: Okay. Everyone is going to
11 have a full opportunity to argue. And I think what we
12 need to do is we need to hear from the parties through
13 their counsel right now briefly how you view our
14 statements of the issues, how you think it might be
15 changed to more accurately reflect what the Commission
16 said in their remand order, and then, to the extent we
17 need to get into fine-tuning the issues from a
18 technical standpoint, we might come back to the
19 experts later. Now, if it would be helpful to do it
20 in the course of each party's argument, that's fine.
21 But I think what we need to remember is what we're
22 arguing about now is how to frame the issues, how to
23 state the issues, not how to resolve them. Does that
24 make sense to you, Judge Abramson?
25 ADMIN. JUDGE ABRAMSON: Well, I think my

1 question is very pertinent to how we frame the issue
2 because our job in the end is to resolve the question
3 that Pilgrim Watch has raised as the Commission has
4 remanded it to us. So I'd like to hear the answer to
5 my question.
6 CHAIR YOUNG: What was your question?
7 ADMIN. JUDGE ABRAMSON: My question, I
8 think Mr. Lewis and Mr. O'Kule would understand it,
9 and I'd like to have a response from them.
10 CHAIR YOUNG: What was your question?
11 ADMIN. JUDGE ABRAMSON: My question was
12 can we get a handle on the answer to the remanded
13 question by modifying the input modeling regarding the
14 plume, i.e. its shape, its speed, and the frequency of
15 various wind patterns such that it encompasses
16 everything that Pilgrim Watch has raised as an error
17 in the meteorological modeling and using that to find
18 out whether or not other SAMAs may be cost effective?
19 MR. LEWIS: Judge, this is David Lewis.
20 We are developing our testimony right now. There were
21 additional issues that Pilgrim Watch raised for the
22 first time in their response to summary disposition
23 that we are still working on. I don't think that we
24 could do a worst-case analysis and show it would never
25 affect the outcome of the SAMA analysis. If we

1 assumed that every wind always blew to the worst
2 sector --
3 ADMIN. JUDGE ABRAMSON: But, Mr. Lewis,
4 that's not what I'm suggesting. What I'm suggesting
5 is you have data on the wind and so does Pilgrim
6 Watch's expert have data on the wind. Now, surely
7 objectivity must control what statistics are put in
8 for wind frequency and wind direction, etcetera, so
9 that nobody is suggesting that you have an off-shore
10 wind 365 days a year, and I don't think we heard that
11 from Pilgrim Watch's expert either. This is, as the
12 Commission was quite clear, a computation of the mean
13 value. And the question in my mind then is only what
14 distribution function is used in the input?
15 CHAIR YOUNG: Mr. Lewis, one, can you
16 provide a brief answer to that? And, two, can you
17 relate that to the statement of the issues? And,
18 obviously, anything that any of the experts say today
19 is just in support of arguments, and we won't consider
20 that as evidence. Obviously, the parties, at some
21 point, are going to need to get together and share
22 information and talk to each other perhaps about how
23 you plan to present your evidence on this modeling
24 question. Mr. Lewis, can you address what I'm saying
25 here?

1 MR. LEWIS: Judge, we are currently
2 looking at the wind distributions, both the data set
3 that we used and comparative data sets to look at the
4 spread and the effect, so that's the analysis that's
5 underway and I don't think we're prepared today to say
6 what the results are. But we're working that issue
7 currently.
8 CHAIR YOUNG: Okay. So then on the
9 statement of the issues, why don't you, you may have
10 had other things you wanted to say to finish your
11 argument, but why don't you also address where you
12 think our statement of the issues may, in your view,
13 need revision and where you agree.
14 MR. LEWIS: Judge, with respect to the
15 phrase at the end, "by virtue of having a material
16 impact," if that statement simply means we're going to
17 look at the effect of the meteorological issues and
18 determine how much of an effect that would have on the
19 bottom line, I have no problem with the state of
20 issue. If that statement suggests that we would be
21 litigating the economic model that's part of MACCS, I
22 would have a serious objection and be very concerned
23 about that because I think that issue was explicitly
24 eliminated by the Commission's decision.
25 CHAIR YOUNG: Let me, as a lawyer, non-

1 technical person, ask a question here and sort of
2 state what my understanding is, and then all the
3 parties can respond to it, keep continuing the order
4 that we started and coming back to you, Ms. Lampert.
5 And that is that, in terms of the economic cost
6 issues, my understanding of how those come in is that
7 if, well, first a comparison of the modeling using the
8 straight-line Gaussian plume model with alternative
9 modeling suggested and put forward by the intervenor,
10 if that would lead to significantly different results
11 or results that -- well, here's where it gets a little
12 complicated. If that would lead to different results,
13 and then what we ultimately look at is whether there
14 would be any additional cost-beneficial SAMAs that
15 might be considered by Entergy, and how we determine
16 that is by looking at what benefits would come from
17 the different modeling and compare it to the cost, and
18 the costs that would be different in the analysis that
19 are open for litigation are those costs that we
20 discussed in admitting the contention and not
21 including those types of costs that the Commission
22 said were not relevant, so that it sort of seems to me
23 that, in doing that analysis of whether different
24 modeling would lead to the addition of new cost-
25 beneficial SAMAs, you can't completely ignore the cost

1 issue, and where the economic cost issue comes in is
2 in making that cost-benefit analysis and in including
3 any additional costs that were raised in the initial
4 contention admitted by us and not excluded by the
5 Commission in CLI-10-11.
6 Does that make any sense? And let's start
7 with you, Mr. Lewis, and you can consult with your
8 experts, as necessary. Does that make sense? And if
9 not, tell me where you don't see it making sense.
10 MR. LEWIS: I don't think it makes sense.
11 The model has a method for taking the radiological
12 consequences that are produced by the meteorological
13 model and translating those into an off-site economic
14 risk. The portion of the model that translates the
15 levels of contamination into an off-site economic risk
16 should not be at issue. We would use that model and
17 Pilgrim Watch can use that model to translate the
18 levels of contamination from the different
19 meteorological models that are being discussed into
20 the off-site economic consequences and, by that,
21 virtually, you can see what the impact is on the
22 SAMAs.
23 CHAIR YOUNG: Well, then where do you see
24 the economic cost issues that we admitted relating to
25 lost of tourism, business? I think those were the

1 types of costs that we were talking about, if I recall
2 that right. Where do you see those coming into play,
3 if not in adding to the economic risk figure that they
4 do and doing the cost-benefit analysis?
5 MR. LEWIS: I can't remember the precise
6 figures, but I'm going to point out some surrogate
7 figures from the top of my head. I think that the
8 effect of evacuation time estimates on off-site
9 consequences was maybe three percent or six percent.
10 CHAIR YOUNG: Hold on, hold on, hold on.
11 This is Judge Young again. We're not talking about
12 evacuation costs.
13 MR. LEWIS: I'm trying to explain the
14 answer to your question, Judge Young. I think that we
15 established in summary disposition that the maximum
16 impact of the evacuation time estimates was, let's
17 say, five percent. And I think we established in
18 summary disposition the maximum effect of the tourism
19 economic issues, let's say, was ten percent. And we
20 established in summary disposition that there had to
21 be at least 100-percent impact for the next closest
22 SAMA to become cost beneficial. So evacuation time
23 estimates could contribute an additional five percent.
24 The off-site consequences and the economic issues
25 could contribute an additional ten percent. Then as

1 long as the meteorological issues don't contribute 85
2 percent, an 85 percent increase, there's no issue. I
3 think that's how it's considered, you sum all three
4 together. And this is a three-legged stool. We've
5 already measured the length of two of the legs.
6 CHAIR YOUNG: What I'm trying to say, let
7 me just try to finish this train of thought. What I'm
8 trying to say -- this is Judge Young again -- is the
9 economic issues are, the Commission says, I think,
10 they are up for litigation, assuming that the
11 meteorological -- let's see. How did they put it?
12 MR. LEWIS: Only to the extent that the
13 Board merits conclusion on meteorological patterns may
14 materially call into question the relevant economic
15 and evacuation timing conclusions.
16 CHAIR YOUNG: Right.
17 MR. LEWIS: So that means, again, let's
18 say that the evacuation time conclusions would
19 increase risk by five percent and the tourism issue
20 could increase risk by ten percent, then those issues
21 would only come back into play if the Board concluded
22 that the meteorological patterns could increase the
23 risk by a further 85 percent.
24 ADMIN. JUDGE ABRAMSON: Judge Young, Mr.
25 Lewis, this is Judge Abramson. Can I just interject

1 for just 30 seconds? Mr. Lewis, when we're finished
2 with this conference call, I presume that the Board
3 will ask the parties to provide something in writing
4 to help us understand your views. It would be very
5 helpful to me if you would, in that response, outline
6 how the code does these computations, as you did
7 earlier when you were discussing where the
8 meteorologic stuff goes and where the consequences
9 modeling takes off from there. And please advise us
10 while you're doing that which parts of the code model
11 input you believe the Commission has remanded and why
12 and which parts you believe the Commission has not
13 remanded and why.
14 MR. LEWIS: It got into that, Judge
15 Abramson.
16 CHAIR YOUNG: Okay. If I could just sort
17 of finish up on this little line of questioning that
18 I have. You're saying that unless the comparison of
19 the modeling would show that the meteorological
20 effects would be greater than 85 percent you don't go
21 to considering whether there might be any additional
22 economic costs. But --
23 MR. LEWIS: Judge, that's correct. Just
24 remember my 85 percent is a surrogate number because
25 I can't recall the exact numbers off the top of my

1 head.

2 CHAIR YOUNG: You and me both. Right. I

3 understood that. I'm using your same surrogate

4 numbers.

5 MR. LEWIS: Yes.

6 CHAIR YOUNG: But the point I was trying

7 to make is if the result that you come up with is made

8 up of, let's say, these three numbers and probably

9 others and one of the numbers comes from economic

10 costs, it's hard for me to see how the issue of coming

11 up with an accurate assessment of economic costs is

12 not something that's tied in with that because if

13 there were evidence to show that the economic cost

14 should be instead of 15 percent, if that's the

15 surrogate figure you used, 50 percent, then that would

16 relate to the percentage impact that the difference in

17 the modeling would make. So I don't see how you can

18 separate those out and make a determination on one

19 without including the other if all three go into the

20 cost-benefit analysis. The point I'm trying to make,

21 to me, doesn't seem that complicated. Well, I've

22 asked it. Why don't you try to respond to that.

23 MR. LEWIS: Again, I think in summary

24 disposition, we established the maximum bounding

25 increase.

1 CHAIR YOUNG: Let me interrupt you there.
2 In summary disposition, you submitted what you
3 submitted. By remanding the case, the Commission did
4 say we were not going to reconsider evacuation issues
5 because you used a no-evacuation alternative or
6 whatever the correct term is that would show that,
7 that would provide such a conservative figure that
8 there's no way that you could make that have a greater
9 effect than it does. But in terms of anything else,
10 we are starting from scratch. We haven't had a
11 hearing. You have not established anything in summary
12 disposition other than what the Commission has said is
13 not admissible in the hearing on remand, which would
14 be the evacuation times or the evacuation figures and
15 those potential cost figures that the Commission has
16 excluded because it said that the intervenors did not
17 raise those in their original contention and we did
18 not admit those. So nothing else has been
19 established, and I think the Commission does want
20 there to be whatever evidence there is on redoing the
21 modeling using alternative input and also on the
22 economic cost figures.
23 The relationship there, though, is not, to
24 me, as straightforward because if the economic costs
25 are part of cost-benefit analysis, I'm still having a

1 hard time seeing how, and I don't want you to respond
2 by saying we've established X in summary disposition.
3 I want you to talk about it from the same sort of
4 theoretical standpoint I'm talking about it that just,
5 conceptually, it doesn't make sense to not include, if
6 the economic costs are included in the cost-benefit
7 analysis in the first place, why wouldn't any changes
8 to those be included? And I know what the Commission
9 said. I'm just not following, and I think, in
10 discussing this before, the Board felt that all these
11 things were related to each other such that it would
12 not make a whole lot of sense to have two separate
13 hearings or to have a bifurcated hearing.
14 MR. LEWIS: I think they're distinct
15 modeling steps and, therefore, they don't need to be
16 considered. The Commission very explicitly said, it's
17 on page 26, we reverse the majority summary dismissal
18 of the meteorological patterns issue. That is what
19 the Commission remanded. They remanded the
20 meteorological and they did not remand any further
21 issue.
22 ADMIN. JUDGE ABRAMSON: Judge Young and
23 Mr. Lewis, this is Judge Abramson. Let me just
24 interject something because I think it will clarify
25 what everybody is saying. The fact is if you change

1 the meteorologic modeling, you will change the effect,
2 you will change the distribution of dose and you'll
3 change it not just during evacuation period but you
4 would change it in the rest of the period. And that
5 will affect the computation of consequences.
6 Therefore, that will affect the dollar figures. I
7 think what the Commission is saying is we are not
8 going to muck with the computation of the dollar
9 figures, per se; but if the meteorologic dispersion
10 patterns change, it will change the economics by
11 virtue of depositing radiation at different times and
12 in different locations.
13 MR. LEWIS: I agree completely, Judge
14 Abramson. And we would use the established
15 methodology to look at what that effect is on the
16 economic impact.
17 ADMIN. JUDGE ABRAMSON: Right. And so
18 Judge Young is right in the sense that the economic
19 impact is still on the table but only as a consequence
20 of changing the meteorology.
21 MR. LEWIS: That's correct. I completely
22 agree with that, Judge Abramson.
23 ADMIN. JUDGE COLE: Yes. This is Dr.
24 Cole, and I agree with that also. I think, in my
25 view, I think the most important thing that we can do

1 is make sure that the meteorology that we input into
2 these models is reflective of a sea coast location and
3 reflects the actual meteorology of the site over a
4 reasonable period of time. And if we do that, the
5 economic consequences will come out as a result of
6 that.
7 MR. LEWIS: We're prepared to explain
8 that.
9 CHAIR YOUNG: I think one thing that you
10 said -- this is Judge Young again. Just continuing,
11 I think one thing that you said that might be helpful
12 here in defining what the issues are is you referred
13 to modeling steps. Could you explain more of what yo
14 mean by that? Because I think the question is what
15 you said before was that, at some point anyway, the
16 cost-benefit analysis would include economic costs.
17 What did you mean by modeling steps, and are you
18 suggesting that there are certain steps before you get
19 to the cost-benefit analysis that includes the
20 economic costs that a judgment could be made on the
21 impact of the meteorological monitoring? Is that what
22 you were saying?
23 MR. LEWIS: MACCS2 Code has several
24 modules, several subroutines in the code. One
25 subroutine is called the ATMOS model. That subroutine

1 models the plume dispersion and determines where the
2 radioactivity goes and, from that, it determines where
3 the radioactivity goes. There are two other modules.
4 One is called CHRONC, and one is called EARLY, I
5 think. They then take, you know, the radiological
6 levels that are determined by the ATMOS model and turn
7 them into consequences, including off-site economic
8 consequences.
9 CHAIR YOUNG: What were the names of those
10 two additional steps?
11 MR. LEWIS: I believe they're EARLY and
12 CHRONC.
13 CHAIR YOUNG: EARLY and CHRONC, not C-R-O-
14 N-C. Chronic you meant?
15 MR. LEWIS: CHRONC, yes. C-H-R-O-N-I-C.
16 C-H-R-O-N-I-C. No "I?" All right. No "I" at the
17 end. Sorry.
18 CHAIR YOUNG: Is that an acronym, or what
19 does that mean?
20 MR. LEWIS: It's the name of the module.
21 I don't know what the origin is, other than it's the
22 long-term phase of the consequences and early
23 consequences.
24 CHAIR YOUNG: And so you're saying that,
25 am I correct in understanding you to be saying that

1 the ATMOS model, that's where the different inputs
2 based on seacoast and so forth, would be considered
3 and then a determination would be made after getting
4 the results from that computation whether there could
5 be a significant impact on the consequences? Is that
6 what you're saying?
7 MR. LEWIS: I'm just saying the model has
8 several subroutines. The Gaussian plume model is in
9 the module called ATMOS, and it determines the
10 distribution, the dispersion of radioactivity from the
11 release. Other modules --
12 ADMIN. JUDGE ABRAMSON: Judge Abramson.
13 Let me interject something once more, and maybe I can
14 help move this along. As I understand this code, and
15 I trust the experts will tell me if I've got it wrong,
16 we do thousands of calculations and then try to find
17 the mean. And for each calculation, we take a wind
18 pattern and that wind pattern is partly input into
19 ATMOS. ATMOS then computes where the radiation is
20 deposited. Then other subroutines for that particular
21 event calculate the economic consequences. Then that
22 calculation is repeated thousands of times with
23 different wind patterns, sampled such that they
24 represent what we think is the reality. From those is
25 calculated a mean, and from that mean is calculated

1 the economic consequence that is used in the cost-
2 benefit analysis. Have I got that right?
3 MR. LEWIS: I believe so, Judge Abramson.
4 CHAIR YOUNG: Okay. And the reason I'm
5 trying to understand this is because the Commission
6 seems to indicate that we need to look at this, at
7 least conceptually, in two steps. One, we look at the
8 meteorological monitoring, and second, if anyone can
9 help with the page numbers where the Commission says
10 only if -- let's see. I think it's --
11 MR. LEWIS: Page 27, Judge Young.
12 CHAIR YOUNG: The economic cost, later
13 they take out the evacuation reference, but I think
14 there's also a later reference to that.
15 MR. LEWIS: I think on the bottom of page
16 36.
17 CHAIR YOUNG: Yes.
18 MR. LEWIS: Several places.
19 CHAIR YOUNG: Right. I think 36 is the
20 closest to the end. The economic cost issue but only
21 to the extent that the Board's merit findings on
22 adequacy of the meteorological monitoring may have a
23 material impact on the economic cost matters raised
24 and admitted as part of contention three. Now, I
25 think we need to define the issues in such a way that

1 it's clear what the relationship is between these
2 economic cost matters and the adequacy of the
3 meteorological monitoring because what I just heard
4 was that the meteorological monitoring produces the
5 economic consequences. What I'm not clear on and I
6 can only assume that I'm not the only one that's not
7 clear on it based on the conversations we've had
8 today, what I'm not clear on is if the meteorological
9 monitoring, the ATMOS steps, produces economic
10 consequences, does it do that by virtue of economic
11 cost inputs that are put into that code, along with
12 the meteorological inputs? Or what is the nature of
13 those consequences such that they do not already at
14 that step include whatever the costs are, including
15 those loss of tourism business costs?
16 MS. LAMPERT: You've got it.
17 MR. LEWIS: Judge Young, ATMOS doesn't
18 determine economic consequences. ATMOS determines the
19 dispersion of the plume and the radiological
20 deposition.
21 CHAIR YOUNG: Okay. But you agreed with
22 Judge Abramson when he said that it did determine
23 economic consequences.
24 MR. LEWIS: Obviously, the level of the
25 deposition and where it is has an affect on the off-

1 site economic consequences. After the ATMOS module
2 determines what is the average deposition from a
3 severe event, the MACCS2 code then looks at a whole
4 sweep of economic impacts. It looks at the clean-up
5 costs and the condemnation costs, the loss of business
6 value, and it also calculates the radiological dose,
7 which is then turned into a monetary value.
8 CHAIR YOUNG: Okay, okay, understood.
9 Now, here's the question. You're saying that at the
10 ATMOS step you don't get into economic consequences.
11 At a subsequent step, whether that's the EARLY step or
12 the CHRONC, C-H-R-O-N-C, step, at those stages, the
13 economic consequences come into play. Now, the
14 question is what are your arguments on how the Board
15 would make a finding on the adequacy of the
16 meteorological monitoring without getting into
17 economic costs? How do we determine that? What's
18 your argument on that?
19 ADMIN. JUDGE ABRAMSON: Judge Young, it's
20 Judge Abramson again. First of all, what we're
21 looking at is meteorological modeling, not monitoring.
22 The monitoring generates data which is used as input
23 for the model.
24 CHAIR YOUNG: If I said monitoring, I
25 meant modeling, okay?

1 ADMIN. JUDGE ABRAMSON: Yes, I'm sure you
2 did. Okay. But let me just say this one more time
3 because I think we're getting bound up in something
4 that there isn't really disagreement on.
5 CHAIR YOUNG: Okay. I think, Judge
6 Abramson, I'd really like to get an answer from Mr.
7 Lewis because I think, unless we all understand how
8 the Board would make a determination on the adequacy
9 of the meteorological modeling, then we don't
10 understand how to define the issues. So my question
11 is very simple: how does the Board make a finding on
12 the adequacy of the meteorological modeling, Mr.
13 Lewis, without getting into the economic consequences?
14 And I'm asking to be educated here, and I'll hear from
15 all parties.
16 MR. LEWIS: Judge Young, you look at the
17 meteorological impacts. You could vary the
18 meteorological impacts. You could see what would be
19 the change on the output of the entire model in terms
20 of economic costs, and you could determine whether it
21 makes a difference.
22 CHAIR YOUNG: Hold on.
23 MR. LEWIS: It doesn't mean that the
24 methodology for translating the levels of radioactive
25 contamination into off-site consequences are an issue.

1 CHAIR YOUNG: Hold on, hold on. You just
2 said that in determining that we would look at
3 economic consequences. You included that in what you
4 said. That's what doesn't make sense to me. If we
5 have to look at that in determining the adequacy of
6 the meteorological monitoring --
7 MR. LEWIS: Judge Young, I think the only
8 thing that is at issue under the Commission's explicit
9 language are the meteorological inputs and the
10 meteorological modeling. And the question is if you
11 change those inputs or the ATMOS model, would it
12 significantly affect the conclusions of the SAMA
13 analysis.
14 CHAIR YOUNG: And the conclusions of the
15 SAMA analysis are cost-benefit conclusions. So my
16 question again is how do we determine, what is your
17 argument on how the Board should make findings on the
18 adequacy of the meteorological modeling without taking
19 into account economic cost issues? Because cost
20 consequences and looking at the end results of the
21 SAMA analysis, which SAMAs might be cost beneficial,
22 both of those include cost issues in them. So, again,
23 how, without looking at the cost issues, are you
24 arguing that the Board should make findings on the
25 adequacy of the meteorological modeling?

1 ADMIN. JUDGE ABRAMSON: Judge Young, it's
2 Judge Abramson again. Now, please let me get
3 something in here. What is being, what is at issue
4 here is not how the code translates radiation into
5 cost. In other words, if the code currently
6 calculates that one debt is valued at a million
7 dollars, that number is not at issue. What clearly
8 will happen from the computation is when you change
9 the meteorology you will change the way radiation is
10 deposited and, therefore, you will change the number
11 of curies that is deposited on people, the number
12 that's deposited on land at various places, and that
13 will impact the dollar computation, the computed
14 dollars. What is not at issue is the way dollars are
15 computed.
16 CHAIR YOUNG: Okay. Mr. Lewis, hearing my
17 question and what Judge Abramson just said, can you
18 answer my question? That's what I'm trying to get
19 from you.
20 MR. LEWIS: I really think I have. I
21 think you do it by taking the existing model and
22 looking at how changes to the input, the
23 meteorological inputs or changing the Gaussian plume
24 model might change the results.
25 CHAIR YOUNG: The results being the

1 results on the deposition and the --

2 MR. LEWIS: No, the output of the code.

3 CHAIR YOUNG: The output of the code

4 being?

5 MR. LEWIS: Off-site economic

6 consequences.

7 CHAIR YOUNG: All right. Then how is the

8 economic consequences that are the output of the code

9 and comparing those, how are those different? How do

10 those not already take into account various economic

11 costs that are the inputs to the code?

12 MR. LEWIS: I'm sorry. Could you repeat

13 that question, Judge Young?

14 CHAIR YOUNG: You say that we determine

15 the adequacy of the meteorological modeling by

16 comparing the Gaussian plume input with alternate

17 inputs and then we look at the outputs which are the

18 economic consequences, correct?

19 MR. LEWIS: Yes.

20 CHAIR YOUNG: All right. My question, the

21 same question I've been trying to get at for quite a

22 while now, is the output takes into account additional

23 things besides just the meteorological monitoring.

24 There are certain inputs, as I understand it, relating

25 to economic costs that go into the output that you say

1 we should look at to determine whether it would be a
2 significant difference in the outputs based on the
3 Gaussian plume meteorological monitoring, and any
4 alternate meteorological monitoring.
5 MR. LEWIS: That's correct.
6 CHAIR YOUNG: All right. So, again,
7 getting back to my earlier statement that, in
8 discussing this, it was our impression that there was
9 no way you could separate out the economic costs.
10 What I think I understand you to be saying is at the
11 first step of changing the meteorological modeling
12 inputs, in looking at whether that would make a
13 significant difference, we don't take into account any
14 differences in the economic cost input, that we do a
15 two-step process. I'm not understanding why that
16 would be true. I'm not understanding how the adequacy
17 of the meteorological modeling would have a material
18 impact on economic cost matters raised and admitted as
19 part of contention three when they are in the same
20 category as other inputs, economic inputs, that would
21 lead to the outputs that you're saying we should
22 compare.
23 MR. LEWIS: Judge Young, for example,
24 let's say that the sea breeze phenomena went from
25 right, and it's not, but let's say if you took those

1 winds into effect and they doubled the amount of
2 contamination on property, then in all likelihood, the
3 MACCS2 code would say that the off-site economic
4 consequences are doubled. So you can double the
5 meteorological input and get double the economic
6 consequences. You don't have to change other economic
7 impacts, like the cost of decontaminating the
8 property, the property values, of how --
9 CHAIR YOUNG: I understand. I understand
10 that. I understand that. What I'm saying is I don't
11 know that we have any guidance and I don't know
12 whether there are any standards, I'm trying to
13 understand that, on how to determine the adequacy of
14 the meteorological monitoring without at the same time
15 considering economic costs. Now, what I think you're
16 saying is we should consider in that step of the
17 analysis only those economic costs that are already
18 built into the model and not the additional loss of
19 tourism business economic costs that the intervenors
20 are arguing. So that, for example, if the evacuation
21 had 10-percent impact, economic cost had 15 percent,
22 I'm trying to remember the surrogate numbers that you
23 gave before, and the meteorological modeling had 80
24 percent, and then there's some other 5 percent
25 somewhere, and the modeling changed it to make it,

1 well, let's say it had 80 percent and then it changed
2 it to make it 85 percent. But had you considered
3 those economic cost differences, it would have made a
4 difference, it would have changed that figure from 15
5 percent to 20 percent, which would make it more
6 significant. It doesn't seem to be a difficult
7 concept here, and I'm trying to get an answer to why
8 you're arguing that you don't take into account the
9 economic cost figures when you're looking at the
10 adequacy of the meteorological modeling. And then I
11 guess the next question to follow-up on that, then how
12 would you determine whether the meteorological
13 monitoring would have a material impact on the
14 economic cost matters?
15 MR. LEWIS: I'll say this as clearly as I
16 can. A very common way of looking at how different
17 parameters affect a calculation is you vary that
18 parameter that you're interested in and you hold all
19 others constant. So here we're interested in knowing
20 whether the meteorological input, including the
21 Gaussian plume model, would affect the outcome. You
22 look at those inputs and you vary them and you see how
23 would a change in those inputs change the results,
24 holding everything else constant. I think that's what
25 the Commission intended. So what our understanding of

1 the issue is is that we should be looking at how the
2 meteorological inputs and the Gaussian plume model
3 might change the ultimate results, holding everything
4 else constant.
5 CHAIR YOUNG: All right. That I
6 understand. Are there standards on how much of a
7 difference would be a material difference, or a
8 significant difference I guess would be the better
9 word, such that it would affect our determination on
10 the adequacy of the meteorological monitoring?
11 MR. LEWIS: Judge Young, we already
12 established and would present again the fact that the
13 next cost-beneficial SAMA would require a doubling of
14 the off-site economic consequences before it becomes
15 cost beneficial.
16 CHAIR YOUNG: Okay. But are there
17 standards is the question.
18 ADMIN. JUDGE ABRAMSON: Judge Young, it's
19 Judge Abramson. I'm a little confused with what
20 you're asking because it seems to me what the
21 Commission asked us to do to look at the impact of the
22 meteorological modeling and see whether it alone could
23 make another SAMA cost beneficial. That is the
24 standard that the Commission has directed we use.
25 CHAIR YOUNG: So you're saying that when

1 the Commission says that we include as part of our
2 remand the economic costs but only to the extent that
3 the Board's merit findings on the adequacy of the
4 meteorological modeling may have a material impact on
5 the economic cost matters, you're saying that when
6 they say that what they're actually saying is perform
7 the single-factor analysis that Mr. Lewis referred to
8 and then just see how much you'd have to change the
9 economic cost figures? Mr. Lewis, can you answer
10 that? I'm trying to understand what we need to be
11 determining.
12 MR. LEWIS: Again, Judge Young, I'm not
13 sure I can say it clearer. I think we should be
14 determining whether the meteorological input data and
15 the Gaussian plume model has the ability to affect the
16 outcome of the SAMA analysis, holding everything else
17 constant.
18 CHAIR YOUNG: To the extent that what?
19 MR. LEWIS: To the extent that the next
20 SAMA becomes cost beneficial.
21 DR. EGAN: Judge Young, this is Bruce
22 Egan. Can I enter a comment in here?
23 CHAIR YOUNG: Sure. Go ahead and say
24 something briefly.
25 DR. EGAN: Well, it's just I see the

1 discussion narrowing to changing to ATMOS or MACCS2,
2 and my belief is that we're really talking about, in
3 terms of sea breeze phenomena, a different model and
4 this can't simply be resolved by changing inputs to
5 the existing model, which, as you know, the Gaussian
6 plume would have been critical of. So I just want to
7 clarify. I hear the conversation slowly narrowing
8 this argument down to looking at simply changing
9 inputs to the ATMOS model.
10 CHAIR YOUNG: Thank you. That does
11 actually clarify something. I think that we probably
12 should be saying in determining the adequacy of the
13 meteorological monitoring, whatever else we do in
14 terms of looking at the impact on economic cost, we
15 need to compare the meteorological monitoring that the
16 applicant has done to whatever meteorological
17 monitoring, alternative meteorological monitoring the
18 intervenors propose based on the sea breeze phenomena
19 and other things that were raised in the contention.
20 DR. EGAN: Yes. And, again, I think that
21 the word modeling describes this a little bit better.
22 It's more than simply measurements of meteorology,
23 it's also the use of the meteorological model which,
24 in fact, goes into dispersing into another model, a
25 dispersion model.

1 CHAIR YOUNG: Okay.

2 ADMIN. JUDGE COLE: Yes, this is Dr. Cole.
3 Are there other models available for estimating
4 atmospheric dispersion in a seacoast location? That
5 will be a question we would pose. If there are other
6 models that might better represent the meteorological
7 conditions or accept the results for a seacoast
8 location that it seems to me that that ought to be a
9 question that we would raise. And that if other
10 models are available, why don't we use them?

11 DR. EGAN: Is that a question for me, or
12 is this a question you're going to ask?

13 ADMIN. JUDGE COLE: That's a general
14 question. You can answer it, if you wish, sir.

15 DR. EGAN: Well, I do think there are
16 other modeling methods that could be used, yes.

17 ADMIN. JUDGE COLE: Thank you.

18 MR. LEWIS: Judge Young, may I point to
19 one more? On page 36 of the Commission's decision,
20 the Commission says we agree with the majority
21 conclusion that Pilgrim Watch will present
22 significantly probative evidence countering the
23 Entergy expert evidence and supplemental analysis on
24 economic costs. The other Commission is indicating
25 that it was affirming the portion of the majority's

1 decision that indicated there was no material dispute
2 with respect to the economic inputs, at least the ones
3 that were raised as a basis for Pilgrim Watch's
4 contention and were not outside the scope of the
5 proceeding.
6 CHAIR YOUNG: I know I've been asking you
7 a lot of questions and I appreciate your indulgence
8 and everybody else's to help me understand these
9 issues because, obviously, we do have to understand,
10 we have to have a common understanding of what issues
11 we're trying. But to follow-up on what you just said,
12 Mr. Lewis -- this is Judge Young again -- what is your
13 interpretation of what the Commission meant in their
14 reference to, at the bottom of page 36 and the top of
15 page 37, to the Board making merit findings on the
16 adequacy of the meteorological modeling and to what
17 extent those findings may, quote, "have a material
18 impact on the economic cost matters raised and
19 admitted as part of contention three?" What's your
20 understanding and proposal as to how that comes into
21 play in defining what the issues are for us to
22 consider, whether step-by-step issues, or what's your
23 understanding of that? How do you propose we consider
24 that?
25 MR. LEWIS: I propose that we examine the

1 meteorological inputs and the meteorological modeling,
2 determine how, holding everything else constant in the
3 MACCS code, it affects the off-site economic
4 consequences. I think you'd have to read that
5 statement in the Commission's decision in conjunction
6 with the earlier statements on page 36 where they
7 clearly indicate that they are supporting the
8 majority's decision that resolves economic issues of
9 loss of tourism and value of property in our favor,
10 and you also have to read that in conjunction with the
11 Commission's decision that says the additional issues
12 that Pilgrim Watch tried to raise concerning clean-up
13 costs were never within the proper scope of the
14 contention.
15 CHAIR YOUNG: Well, then what did the
16 Commission mean when they say, "We include, as part of
17 our remand, the economic cost issue but only to the
18 extent that the Board's merit findings on the adequacy
19 of the meteorological modeling may have a material
20 impact on the economic cost matters raised and
21 admitted as part of contention three?" Do you mean
22 that when a comparison is made between the results of
23 the two or more meteorological modeling analyses,
24 looking at how much the economic consequences would
25 have to be changed in order to lead to a conclusion

1 that another SAMA would be cost beneficial? Did that
2 make sense, and is that an accurate statement, in your
3 view?
4 MR. LEWIS: I wouldn't say it quite that
5 way, Judge Young. I would say we're looking at the
6 meteorological inputs and the Gaussian plume model to
7 see if we change just those inputs it could change the
8 outputs enough to make the next SAMA cost beneficial.
9 CHAIR YOUNG: Okay. Then where does the
10 economic cost matters raised and admitted as part of
11 contention three, where would they come in?
12 ADMIN. JUDGE ABRAMSON: This is Judge
13 Abramson. Let me interject one more time. It seems
14 to me, Judge Young and Mr. Lewis and the rest of you,
15 that we're going to have two possibilities here.
16 Somebody is going to do computations with revised
17 meteorological inputs in an effort to try to
18 incorporate the sea breeze effect and the other
19 meteorological issues that are raised by Mr. Egan and
20 his colleagues, and that is going to lead to a
21 different deposition of radiation and it's going to
22 lead to a different economic impact; and, therefore,
23 it's going to lead to a different estimate of costs
24 and that will enable the parties to determine whether
25 or not it is likely that the next costly SAMA would be

1 cost beneficial. And there are going to be two
2 possible results. One possibility is that computation
3 will indicate that the mean cost goes up by 20
4 percent, in which case it will raise the possibility
5 of the next cost-effective SAMA or the next SAMA
6 becoming cost effective. The other possibility is it
7 could go up by, say, 70 percent, enough to make it
8 possible that the next costly SAMA might become cost
9 effective. And at that point, the parties will have
10 to address whether or not there are other parameters
11 in the analysis that might cause other SAMAs to be
12 cost effective, but you can't tell until you do the
13 first piece of the computation. And, frankly, this
14 whole issue, in my mind, is going to revolve around
15 Mr. Egan and the experts from the applicant and the
16 staff, trying to find a way to use the MACCS code so
17 that it incorporates the effects of the sea breeze
18 that Mr. Egan thinks need to be incorporated.
19 CHAIR YOUNG: Thank you, Judge Abramson.
20 That, I think, was very helpful, and I'd like to get
21 the parties' responses to that. And also I'd like to
22 get a better understanding from the parties of when we
23 look at whether the results would make it possible for
24 additional cost information to make another SAMA cost
25 beneficial. I guess that's a matter of judgment that

1 the experts would speak to, or is there some other way
2 we should look at that? Mr. Lewis, we're still on
3 you, so if you want to respond.
4 MR. LEWIS: Judge Young, I think you look
5 at it in light of the issues that were resolved in
6 summary disposition, in particular what is the maximum
7 possible effect of evacuation time estimates and
8 economic inputs on the SAMA analysis that have already
9 been established in summary disposition. It wasn't
10 adequately disputed by Pilgrim Watch, and the
11 Commission has already resolved the Licensing Board's
12 determination on those factors. So we already have
13 them quantified.
14 CHAIR YOUNG: Have you got any other
15 argument to make, Mr. Lewis?
16 MR. LEWIS: No, Judge Young.
17 CHAIR YOUNG: All right. Let's move to
18 the staff. Who's going to argue for the staff?
19 MS. UTTAL: Mr. Harris will, if you just
20 give us one second, Judge.
21 CHAIR YOUNG: All right.
22 COURT REPORTER: This is Ben, the court
23 reporter. Who was that?
24 CHAIR YOUNG: That was Susan Uttal, I
25 believe.

1 MS. UTTAL: Yes, that was me. Okay.
2 Here's Mr. Harris.
3 CHAIR YOUNG: And that was Judge Young who
4 referred to Susan Uttal. Go ahead, Mr. Harris.
5 MR. HARRIS: This is Brian Harris for the
6 staff. I'm sorry that I had to step out for just a
7 quick second. But in terms of the staff's position on
8 what the scope of the contention should be on remand
9 is that it's really a two-step process in terms of
10 doing this calculation, that it's looking at the
11 meteorological modeling and the meteorological inputs
12 and seeing what effect that would do in terms of
13 identifying new SAMAs. So the standard is to look at
14 whether or not a new SAMA would be identified by
15 altering the meteorological modeling, so you end up
16 going through economic costs, but you're not actually
17 changing the economic costs to determine how much more
18 economic costs would be needed to identify a new SAMA.
19 It's only solely whether or not the meteorological
20 model would identify a new SAMA.
21 CHAIR YOUNG: Well, let me ask you this.
22 Were you there when Judge Abramson said the last thing
23 he said? Basically, and correct me if I'm wrong,
24 Judge Abramson, but I'm going to try to summarize it.
25 First, we look at -- this is Judge Young. First, we

1 look at the meteorological modeling, and we compare
2 the results using the Gaussian plume model and the
3 results of modeling using the additional factors that
4 Pilgrim Watch has proposed of sea breeze and other
5 phenomena and then, by comparing those, we see whether
6 using the alternative modeling would make it possible,
7 would raise the economic cost figures enough that it
8 would make it possible that adding in the economic
9 cost information on loss of tourism and business would
10 lead to another SAMA being cost beneficial. I think
11 you just said that you don't go that last step. You
12 look only to whether the different modeling would lead
13 to a new cost beneficial SAMA. But in your statement
14 of it, I'm not really seeing where the Commission's
15 reference to whether the Board's findings on the
16 adequacy of the meteorological modeling could ever
17 have a material impact on the economic cost matters
18 raised and admitted as part of contention three. I
19 think, from my understanding, the way Judge Abramson
20 stated it a moment ago, made sense. Where do you see
21 those economic cost matters raised as part of
22 contention three ever coming into play?
23 MR. HARRIS: The economic cost figures for
24 loss of tourism, you know, that were previously part
25 of the contention would get accounted for when you're

1 running it through that last part of the MACCS code to
2 produce the cost of the particular severe accident.
3 So, I mean, I believe when they did it originally they
4 were doing it as part of their sensitivity studies to
5 account for it, you know, so, again, it would be
6 accounted for, you know, in that way in terms of
7 adjusting the inputs to account, as they did
8 previously before in the Washington report.
9 CHAIR YOUNG: All right, all right. Let
10 me interject here. That's what I understood initially
11 and that's why I said that it seemed to us, based on
12 our understandings to date, that you can't really
13 separate the meteorological modeling from the economic
14 cost analysis. And I think that you've just stated
15 why at least I thought that was the case because of
16 the fact that where those come into play is seeing
17 whether they, in addition to changes in the
18 meteorological modeling, would lead to different
19 conclusions on whether there could be additional cost
20 beneficial SAMAs. Does that make sense to you?
21 MR. LEWIS: Judge Young, that makes sense
22 in terms of what you said, but I wouldn't agree with
23 it because what I think we're almost talking a little
24 bit across purposes is that those changes in terms of
25 accounting for lost tourism aren't a change to the

1 economic model, you know, that the MACCS2 is
2 calculating. It's a little bit of change to the
3 input, but I can run an alternative meteorological
4 model and run it through those same economic
5 calculations. It's going to identify the cost of a
6 severe accident using the Gaussian plume. I put an
7 alternative model running it through, you know, that
8 produces a different pattern for the contamination on
9 the ground. The economic portion of the MACCS2 with
10 those inputs is going to identify different costs for
11 that severe accident, and then we'd be able to compare
12 whether or not it identifies a new cost beneficial
13 mitigating measure. So you don't have to change the
14 economic cost to be able to evaluate the
15 meteorological model.
16 CHAIR YOUNG: What I'm trying to
17 understand is what is your position on where the
18 economic cost matters raised and admitted as part of
19 contention three come into play? And what I
20 understood you to say a minute ago was that it comes
21 into play as being part of the input to the analysis.
22 I thought that's what you said, and what I'm not
23 understanding is you're saying, no, that's not what
24 you said. What are you saying? Where does it come
25 into play?

1 MR. LEWIS: Those economic inputs are a
2 completely separate input from the meteorological
3 model. So what you have to do to be able to evaluate
4 the meteorological model is you can't be changing, you
5 know, all the inputs all at the same time because then
6 you can't identify what caused the change in the cost
7 of the severe accident. And so whether you decide to
8 run it in their sensitivity studies accounting for the
9 increased cost of the loss of tourism, you know, you
10 still want to run a Gaussian plume model and then the
11 alternative models to see what effect that would have
12 in terms of identifying the cost of a particularly
13 severe accident and then comparing it to the cost to
14 implement the mitigation measure.
15 CHAIR YOUNG: Right. And so when we -- I
16 understood what you just said, I think. So when we
17 make that comparison, we look to see whether that
18 would make any difference. You're saying, as I
19 understand it, that what we look at is whether the
20 results would lead to the addition of a new SAMA as
21 being cost beneficial; is that right?
22 MR. LEWIS: That's correct.
23 CHAIR YOUNG: Okay. If that's the case,
24 when and how do we consider the loss of tourism
25 economic cost matters raised in contention three?

1 Only after it's already been determined that another
2 SAMA would be cost beneficial? What if we get in a
3 situation sort of described by Judge Abramson? What
4 if we get results indicating that it doesn't quite
5 bring us to the point of adding a new SAMA, but that
6 it would make it possible that if new economic costs
7 were input or put into the modeling that that would
8 lead to a cost-beneficial SAMA?
9 MR. LEWIS: A lot of that is taken care of
10 in terms of the uncertainty and when you're predicting
11 these costs. So you end up with a baseline, you know,
12 cost for a particular accident, and then you try to
13 account for the uncertainty in your numbers. That
14 gives you a different, you know, normally a higher
15 cost for that accident. And so a lot of that sort of
16 noise in terms of a slight change in economic inputs
17 is captured by looking at that uncertainty number to
18 compare whether that uncertainty number would identify
19 it as being cost beneficial.
20 CHAIR YOUNG: Okay. So what I'm trying to
21 understand is how do we treat it in the context of
22 this proceeding and the hearing? When and how would
23 they come into our consideration in this proceeding,
24 and what would be the standards that would determine
25 whether they would come into play?

1 MR. LEWIS: Well, the standards in terms
2 of when they would come into play is, you know, when
3 we run this analysis and run it with the alternative
4 models, is this going to identify certain SAMAs as
5 being cost beneficial or not. If it identifies a new
6 one under the baseline then, you know, then we'll have
7 to address that in terms of what effect that would
8 have. If it doesn't identify a new one, of course
9 you're going to have to account for the uncertainty
10 and the additional economics, you know, identified in
11 terms of loss of tourism. But the thing is that we
12 have a good idea of what those costs are going to be,
13 and we can compare those in terms of where the
14 contamination is going to be deposed to see what
15 effect that would have in terms of increasing the
16 costs or decreasing the costs because, you know, for
17 some reason, it goes and it sits on the beach, you
18 know, where the contamination is or it tends to go out
19 to sea.
20 CHAIR YOUNG: How would we determine
21 whether to take that step? The Commission says the
22 economic costs are up for litigation but only to the
23 extent that the Board's merit findings on the adequacy
24 of the meteorological modeling may have a material
25 impact on the economic cost matters raised and

1 admitted as part of contention three. So you're
2 talking sort of theoretically about how the model
3 should work. What I'm trying to get you to do is look
4 at it in how they should be considered in this
5 adjudication.
6 MR. LEWIS: Well, I mean, I think the
7 Board said it or the Commission said it, it's on page
8 27, is that if you conclude that there's no
9 significant meteorological modeling deficiency calling
10 in the SAMA cost-benefit analysis, we don't have to go
11 any further.
12 ADMIN. JUDGE ABRAMSON: This is Judge
13 Abramson. Let me interject because that's exactly the
14 point. The question is going to devolve initially to
15 whether or not our applicant can demonstrate that
16 changing the meteorological modeling does not increase
17 the cost enough so that it's possible another SAMA
18 would become cost beneficial. So that's step one.
19 And if that is demonstrated, end of story. If it is
20 not demonstrated, and the example I gave is what
21 happens if you get 70 percent there or 80 percent
22 there, now there's a question. It's possible that
23 another SAMA might be cost effective, and now you've
24 got to go farther. To me, it's quite clear the
25 Commission is saying just get the meteorological

1 modeling redone so that it encompasses the sea breeze
2 effect and whatever else Mr. Egan thinks needs to be
3 incorporated and wasn't properly done and see what it
4 does. And if what it does is immaterial, i.e. it
5 increases the cost 5 percent, you're done. If it's
6 not immaterial, i.e. if you now need to make a
7 decision about whether it is material, that opens the
8 gate for other issues.
9 CHAIR YOUNG: Just to restate what you
10 said a slightly different way, and I think that makes
11 sense to me. This is Judge Young again. Basically,
12 you're saying we look to see whether, in considering
13 all the different meteorological modeling and
14 conditions, whether, since the applicant has the
15 burden of persuasion, whether the applicant can show
16 it's really, that it's really impossible that the
17 economic cost, any additional economic cost based on
18 loss of tourism, that it's impossible that that would
19 have a material effect such that there would be a new
20 additional cost-beneficial SAMA, then we go no
21 further. If the applicant fails to show that that's
22 impossible, then we move to the next step. Does that
23 make sense?
24 MS. HOLLIS: Your Honor, this is Sheila
25 Hollis on behalf of the town of Plymouth. A

1 clarifying question to yourself and Judge Abramson and
2 perhaps Mr. Lewis, as well, and that is with respect
3 to the materiality, at what point between 5 percent
4 and the 70 percent does the materiality of the new
5 meteorological outcomes in the modeling, when does
6 something become material on this scale between --
7 ADMIN. JUDGE ABRAMSON: Therein lies the
8 rub.
9 CHAIR YOUNG: Right. And that's what I
10 was trying to get to earlier -- this is Judge Young --
11 in asking about standards. Before we get to that
12 level of precision, just my re-framing of how Judge
13 Abramson framed it. Judge Abramson, does that make
14 sense to you?
15 ADMIN. JUDGE ABRAMSON: Yes, I think we're
16 on the same page, and I agree that, as an attorney,
17 putting on my attorney hat for a moment and taking off
18 my techie hat, that the question ultimately has to be
19 what's material, and that will only be determinable
20 once we have the first computation. And by the way,
21 while I'm on my preaching mode, it would certainly aid
22 expeditious resolution of this if the staff's experts
23 and the applicant's experts would get together with
24 Pilgrim Watch's meteorological experts and try to
25 determine a way to construct input to the code that

1 would encompass what it is that Mr. Egan thinks is
2 relevant. And when I say encompasses, I do not mean
3 worst case. I mean encompassed in a realistic way so
4 that we can compute or the parties can compute, as the
5 Commission has said, a re-computation so that that can
6 be used for the SAMA analysis. And once the parties'
7 experts tackle that, the first-level computation can
8 be done, and then you'll see whether there's an issue
9 or not.
10 CHAIR YOUNG: I think also, just to
11 follow-up, I think the question that Ms. Hollis
12 raised, if there are, in fact, some standards
13 somewhere, then that would be part of the evidence.
14 I haven't heard anyone respond to my earlier questions
15 on that. If anyone knows the answer, you can give it
16 now. But it would seem, based on what I've heard so
17 far, that we look to see whether the applicant has
18 shown that it would be impossible to change the
19 economic cost figures enough to lead to a new cost-
20 beneficial SAMA; and, in determining that level of
21 impossibility or possibility, it's a matter of
22 weighing the evidence and hearing the arguments of the
23 parties.
24 ADMIN. JUDGE ABRAMSON: I think you're
25 right, Judge Young, except that I wouldn't use the

1 term "impossibility." Being a lawyer, I'd try to put
2 more likely than less or highly unlikely because, in
3 the end, we have to translate that into materiality.
4 CHAIR YOUNG: Exactly, exactly.
5 MR. LEWIS: Judge Young, this is David
6 Lewis. I agree, too, because remember what we're
7 talking about here is mean consequences, you know,
8 long-term averages. If you start looking at
9 scenarios, you know, we can't make that showing the
10 impossibility under those circumstances.
11 MS. LAMPERT: Mary Lampert, please.
12 CHAIR YOUNG: Just one second. Just hold
13 on just a second. The reason I used the word
14 "impossibility" was because Judge Abramson had used
15 the word "possibility" earlier. Whatever word is most
16 appropriate, what we're looking at is clearly
17 materiality. But in getting to that point, I found it
18 helpful to hear Judge Abramson's formulation using the
19 word whether it's possible that the economic cost
20 figures would lead to another SAMA that would be cost
21 beneficial. Whatever words we use, obviously we're
22 talking about determining possibility, impossibility,
23 materiality, immateriality, by looking at the mean of
24 the calculations and whether it would make a
25 difference, and what words should be used is something

1 that the parties can make proposals on. Now, Ms.
2 Lampert, go ahead.
3 MS. LAMPERT: Yes. On this question that
4 Ms. Hollis asked, I think there's a differentiation to
5 be made by all parties of whether there is NRC policy
6 or whether there are, in fact, rules. I think that
7 makes quite a difference, number one. Number two, if
8 everyone is talking about mean, which David Shannon
9 says is meaningless, instead I noted at two in the
10 order the phrase was used "median."
11 CHAIR YOUNG: Right. And that --
12 MS. LAMPERT: It's a very different
13 terminology. It gets a little more towards reality,
14 perhaps. So I think it's important that there be a
15 definition of appropriate average and support for it.
16 CHAIR YOUNG: You're right. And if we use
17 the wrong term -- what we want to come out of this
18 afterwards, I think we're getting to, is we are going
19 to want to have written filings from the parties on
20 how you would define the issues, what words you would
21 use, proceeding from our discussion today and our
22 understanding today. Then we will take those into
23 account, along with any arguments you have.
24 MS. LAMPERT: And I just want it on the
25 record that I do not agree in any manner to the

1 interpretation by Judge Abramson, the staff, or
2 Entergy. And I think it will become clear once you
3 read our response to the CLI because I think the
4 Commission made the precise same mistake as the
5 majority of the Board did in that they went to
6 judgment after absent evidence. So, therefore, we're
7 repeating history.
8 CHAIR YOUNG: Ms. Lampert, I'm just going
9 to repeat don't expect us to go look at your responses
10 to the --
11 MS. LAMPERT: No, no, I'm going to send it
12 to you.
13 CHAIR YOUNG: Okay. Don't just send us a
14 copy of it.
15 MS. LAMPERT: No, exactly.
16 CHAIR YOUNG: What we're going to be
17 asking for afterwards are all the parties' proposed
18 formulations of the issues, along with any supporting
19 argument for your formulations. So nothing is final
20 at this point, but I, personally anyway, appreciate
21 everyone participating and sort of struggling with
22 this because, as a non-technical member of the Board,
23 I need to understand what the issues are before I can
24 participate in determining those issues. So I think
25 it's helpful to have taken this time to do this.

1 We were with the staff. Does the staff
2 have anything else to say to conclude your argument?
3 And then we'll end up with you, Ms. Hollis, and then
4 if anyone else has any other things to add, we'll hear
5 those, as well. And then we need to go on and try to
6 deal with some of these other things on the agenda, to
7 the extent we can today.
8 MR. HARRIS: This is Brian Harris for the
9 staff. The only thing to really come up is, you know,
10 as Judge Abramson sort of described, I mean, that is
11 really the right way to be doing this is to, you know,
12 look at whether or not there would be a material, if
13 by changing the meteorological inputs of the modeling,
14 would that identify a new SAMA as being cost
15 beneficial? And to clarify, also, I would say that
16 impossible is not the standard for Entergy to be
17 showing. If we get to hearing, it's really going to
18 be a preponderance of the evidence, you know, type of
19 standard and that whether or not a SAMA would become
20 cost beneficial, you know, under the baseline or
21 possibly under the uncertainty analysis.
22 CHAIR YOUNG: Thank you. Ms. Hollis, you
23 asked your question before. I don't know how well
24 anyone answered that, but what would you like to add
25 at this point?

1 MS. HOLLIS: Well, your Honor, thank you
2 for taking the question, perhaps out of order. I was
3 just trying to get to the heart of the matter, which
4 I presume we'll come back to as we continue the
5 dialogue. And I have a, hopefully, non-controversial
6 request as to whether we could take a five-minute
7 break.
8 CHAIR YOUNG: If no one has any objection,
9 I think that would be a good idea. Let's come back in
10 five minutes. 3:15, would that be five --
11 ADMIN. JUDGE ABRAMSON: 3:16.
12 CHAIR YOUNG: 3:16. All right. Thank
13 you.
14 (Whereupon, the foregoing matter went off
15 the record at 3:11 p.m. and went back on
16 the record at 3:20 p.m.)
17 CHAIR YOUNG: Okay. Let's go ahead, and
18 if we get to anything that you need to have Mr.
19 Gundersen for, maybe you can contact him on his cell
20 phone or something and get him back on if he doesn't
21 come on right away. In discussing the issues, I think
22 it will be helpful to us to have filings from all
23 parties proposing your definitions of the issue,
24 submitting arguments in favor of those things. I want
25 to caution intervenor that we don't want to have

1 arguments made to us that the Commission was wrong
2 because that's not before us. What's before us is
3 what the Commission did say and what the Commission
4 meant. And so your arguments to us should be based on
5 the Commission's decision as it is, not as you would
6 like it to be.
7 MS. LAMPERT: Well, I have a problem with
8 that because there are, to our minds and we can
9 demonstrate that, clear errors in their decision.
10 These errors are being reflected by the Board and,
11 hence, are unfairly prejudicing us at this point.
12 ADMIN. JUDGE ABRAMSON: But that is not a
13 matter for us. That's something for you to take up
14 with the Commission.
15 MS. LAMPERT: I know, but you're taking up
16 and taking what they say on face value. And so I
17 don't understand the logic.
18 CHAIR YOUNG: Ms. Lampert, unfortunately,
19 this is one of those places where having an attorney
20 would help you. But let me just give a short
21 explanation. Basically, we're under the rule of law.
22 We are required to follow the law, whatever it says,
23 whether we agree or disagree, without fear or favor to
24 any party. The law consists of statutes, rules, and
25 case law. The Commission's decision, CLI-10-11, is

1 law that we are required to follow. We do not have
2 the jurisdiction or the authority to find any parts of
3 it to be wrong or incorrect or to change any parts of
4 it. That's how the law works, and it's how the law
5 assures that we treat all parties equally. Your
6 method for getting the Commission to change its order
7 is, as you've done, to appeal to the Commission or ask
8 them to reconsider. If the Commission does that and
9 directs us to do something differently, we will do
10 that. But, otherwise, we are bound by what the
11 Commission says, and so you need to make your
12 arguments based on what the Commission says. You can
13 provide your interpretations of what the Commission
14 says but not of what you would like the Commission to
15 have said.
16 Okay. Does any party see any need to
17 discuss the issues further? I do think we need to
18 finalize what the issues are before we go much
19 farther. However, in the interim, the parties should
20 be exchanging information, and it would probably be
21 helpful to consider Pilgrim Watch's request for
22 information and any other issues relating to the
23 sharing of information prior to the hearing.
24 Once we determine a statement of the
25 issues, then I think it would be appropriate at that

1 time to set a schedule for the hearing. I don't know
2 how long that may take, given that we're going to be
3 getting arguments from the parties. Judge Abramson
4 also raised the possibility of seeking more guidance
5 from the Commission, and we obviously haven't had a
6 chance to talk about that. But it seems to me that it
7 would make sense to get input, get the parties'
8 filings, and then if we feel we need more argument on
9 that we can set another telephone conference and, at
10 that or a future telephone conference, we can finalize
11 the schedule for this. Meanwhile, we might hear from
12 the parties on what your thoughts are on when you
13 think you'll be ready based on what you need to do
14 between now and then, but I think probably we're going
15 to take all arguments under advisement at the
16 conclusion of this conference today.
17 ADMIN. JUDGE ABRAMSON: Judge Young, can
18 I interject something, please?
19 CHAIR YOUNG: Yes.
20 ADMIN. JUDGE ABRAMSON: I'd like to just
21 pursue for a moment a line of discussion that I
22 started earlier, and that is I'd like to ask the
23 applicant and the staff and Mr. Egan whether you
24 believe it's feasible for the technical people to get
25 together and try to address or to determine manners in

1 which the input to the MACCS code might be suitably
2 modified to accommodate the wind patterns,
3 meteorological patterns, that Mr. Egan wants to raise
4 because maybe that would be an expeditious way to move
5 this along.
6 CHAIR YOUNG: I think he said that that's
7 not possible and that it's a different modeling that
8 he would propose.
9 MS. LAMPERT: May I also add that we would
10 want to include expert David Shannon, who, after all,
11 wrote the code.
12 CHAIR YOUNG: Let me just ask --
13 MS. LAMPERT: That was Mary Lampert,
14 Pilgrim Watch.
15 CHAIR YOUNG: Right. And this was Judge
16 Young before and this is Judge Young again. Let me
17 just ask Mr. Egan, do you --
18 DR. EGAN: I'm on. I'm sorry.
19 MS. LAMPERT: Oh, Egan. I thought
20 Shannon. I was getting everybody confused. I'm
21 sorry.
22 CHAIR YOUNG: Mr. Egan, I thought I
23 understood you to say before that it would require the
24 use of another model.
25 DR. EGAN: The straight-line Gaussian

1 model is not the appropriate model for this because a
2 sea breeze is a very much a three-dimensional
3 phenomena.
4 CHAIR YOUNG: Well, Dr. Egan, Judge
5 Abramson had asked whether it would be possible for
6 you to get together with staff and the applicant and
7 see whether the MACCS code could be adapted or
8 adjusted to account for the effects that you're
9 talking about. Do you think that that would possibly
10 lead to some better understanding and possibly
11 narrowing of the issues?
12 DR. EGAN: Well, of course, I'd be happy
13 to accommodate a meeting with the other folks. I
14 don't know whether it will be able to come to a
15 resolution. It seems like they're very much
16 constrained to using the straight-line Gaussian model.
17 CHAIR YOUNG: That's something that you
18 might consider.
19 MR. LEWIS: Judge Abramson, this is David
20 Lewis. I think your question presupposed that there
21 is a need to adjust the model to take into account
22 these scenarios, and that may not be the case.
23 CHAIR YOUNG: You're talking about Judge
24 Abramson's suggestion? Judge Abramson, do you want to
25 say anything more on that, or should we move on to the

1 request for information and the sharing of information
2 prior to the hearing, which would include the
3 mandatory disclosures and possibly a meeting like
4 you're talking about, but that would be up to the
5 parties obviously.
6 ADMIN. JUDGE ABRAMSON: No, I have nothing
7 further to say. If the parties are going to dig in
8 their heels about their positions, we'll wind up
9 having a lengthy hearing on the merits of their
10 arguments. I just think we could eliminate a lot of
11 that if the parties would take an objective look at
12 what can be done and cannot be done.
13 CHAIR YOUNG: Let's move on to Pilgrim
14 Watch's request for information. The first thing that
15 they're asking for is to have the CDs that have been
16 provided, to have Entergy index those so that they are
17 more usable. Mr. Lewis, do you have any objection to
18 doing that?
19 MR. LEWIS: Yes, Judge Young. I mean, we
20 produced our additional disclosure in November 2006,
21 three years ago. And I think it's very late for
22 Pilgrim Watch to now apparently be looking at for the
23 first time and deciding that they would like an index.
24 There aren't an extraordinary number of documents.
25 Pilgrim Watch said that the CDs include contentions

1 one and contentions three. Well, they do, but all the
2 documents on contention one are first and all the
3 documents on contention three follow. Therefore,
4 Pilgrim Watch has to flip between documents, and I
5 think at this very late date that request is
6 unwarranted. We are willing to address the other
7 issues that Pilgrim Watch has asked for, but going
8 back and then producing indexes at this time is just
9 diverting the resources that Pilgrim Watch, as a
10 litigant, should be able to handle.
11 CHAIR YOUNG: Mr. Lewis, you indicated
12 that there aren't a great number of documents, and I
13 know from experience that often, when there are
14 attachments and parts of documents, that sometimes
15 makes it difficult to see where one document starts
16 and ends and another document starts. You say that
17 there aren't that many documents. Would it really
18 take that much on your part to provide an index so
19 that it would be clear what documents you're talking
20 about?
21 MR. LEWIS: Remember, Judge Young, I mean,
22 what are we up to?
23 CHAIR YOUNG: Could you just answer my
24 question, Mr. Lewis?
25 MR. LEWIS: I think it would be an undue

1 burden on us, Judge Young. If Pilgrim Watch was
2 unhappy with the format of our initial disclosure,
3 they should have raised the matter in 2006, not as
4 we're preparing for testimony.
5 CHAIR YOUNG: All right. With regard to
6 paragraph one -- we'll make rulings on this
7 afterwards. With regard to paragraph one on page two
8 of the request, what's your response to that, Mr.
9 Lewis?
10 MR. LEWIS: We will provide the machine-
11 readable input files. We did provide the input files
12 for both the base case and the sensitivity runs. They
13 were put in a PDF format so they were readable, but
14 I've already requested them and we will provide the
15 machine-readable versions which have a different
16 extension. Hopefully, I can get those to Ms. Lampert
17 this week.
18 CHAIR YOUNG: Okay.
19 MS. LAMPERT: What about the outputs?
20 MR. LEWIS: Yes, both.
21 CHAIR YOUNG: So are there any parts of
22 either paragraph one that you will not provide, or are
23 you agreeing to provide everything that's listed
24 there?
25 MR. LEWIS: We'll provide what's under

1 paragraph one. We already have. We just haven't done
2 it in machine-readable format.
3 CHAIR YOUNG: Okay. And then number two,
4 you just indicated that you would provide those, as
5 well?
6 MR. LEWIS: Yes.
7 CHAIR YOUNG: All right.
8 MR. LEWIS: And we have, but we'll do it
9 in machine-readable format.
10 CHAIR YOUNG: Okay. And when you do that,
11 it would be probably helpful for you to identify those
12 in some index or other manner that makes them easier
13 to use. On number three, what about that one? What's
14 your response to that one?
15 MR. LEWIS: We already have. There's a
16 calculation that indicates how all the input
17 parameters were determined. We will respond by
18 identifying the CD and the base number where that file
19 is located. It was produced in the very initial
20 disclosure.
21 CHAIR YOUNG: Okay. And then as to number
22 four?
23 MR. LEWIS: I think we should provide,
24 we'll provide a written response. The request is
25 assuming certain things which aren't correct. The

1 MACCS2 code used an archived hourly set of data. We
2 did not take 15-minute data and do averaging in order
3 to produce a MACCS input. There is data that's
4 recorded at 15-minute intervals for emergency-planning
5 purposes, and this report is on the control room
6 panel. But every hour there is an hourly value that
7 is recorded and archived and is used for this purpose,
8 and that is what's used in the MACCS2 code.
9 CHAIR YOUNG: So you will respond to that?
10 MR. LEWIS: We'll provide a response
11 explaining that.
12 CHAIR YOUNG: Okay. And are there any
13 other documents or previously-existing written
14 descriptions that you have?
15 MR. LEWIS: I'm sorry? Any other
16 documents?
17 CHAIR YOUNG: Or previous --
18 MR. LEWIS: We did not do a conversion of
19 15-minute data into 60-minute data, so, no, there's no
20 documents that describe that because we didn't do it.
21 It's not how the input data was derived.
22 CHAIR YOUNG: Okay. Ms. Lampert, based on
23 his response, what's your reply?
24 MS. LAMPERT: I think the second part is
25 fully satisfactory. I have the list, I have the disks

1 in front of me, and it's incorrect some of which he
2 said because I've scribbled on them as best I could
3 what was relevant for contention one, etcetera. Yes,
4 I tried to read through them all, and there are
5 thousands, and I think it is not acceptable to not
6 provide an index. They didn't do it then, and I don't
7 know why they can't do it now because we're preparing
8 for a hearing. For summary disposition, we're
9 required just to put enough forward to establish a
10 dispute of material fact. We did not have to prove
11 our case; so, therefore, it was not necessary to read
12 every single document in full. At this point, it is
13 required. And as you very pointedly made note, if
14 they say there's not that much there, it should not
15 trouble them to comply with what you had instructed
16 regarding providing information and that it be done in
17 a user-friendly form so we don't have to play who can
18 find the needle in the haystack.
19 MR. LEWIS: Judge Young, just to respond
20 to that, there was no instructions in this proceeding
21 that we provide an index. There was no request by the
22 parties when we were discussing how these disclosures
23 should be provided at the outset when Pilgrim Watch
24 was represented by counsel to prepare an index, and
25 there is no requirement of the rules that we prepare

1 an index. I guess my main complaint is that if
2 Pilgrim Watch wanted an index, it would have been very
3 helpful when we were initially collecting and
4 screening and putting the documents together to have
5 that request when it could have been done without
6 requiring extra work rather than requesting this three
7 and a half years later when we are trying to focus our
8 efforts on getting ready for hearing. It's just not
9 reasonable at this point in time.
10 CHAIR YOUNG: Thank you. We'll take your
11 arguments under advisement on the first request there.
12 On other discovery issues, obviously I think the
13 mandatory disclosures, I can't remember how often we
14 set those, it might be helpful to, the normal time is
15 every 30 days, at least early on, but it might be
16 helpful to make that a little bit more frequent, say
17 every two weeks. It would also, we encourage you to
18 get together, if you can, to have your experts get
19 together, if that's possible, to see whether you can
20 narrow the issues. That would be helpful. That's up
21 to you.
22 Are there any other experts besides those
23 who have been present today and Dr. Shannon that any
24 party expects to have?
25 MS. LAMPERT: Yes. But, of course, it is

1 hard to come up precisely until we know what the scope
2 is. At present, those contacted that agree, as long
3 as the issue is going to be discussed, allowed, will
4 be David Shannon, who is the author of the code and
5 other codes. Number one, David Shannon. Number two,
6 in alphabetical order, Dr. Richard Klapp. We believe
7 that his expertise in health costs will be relevant at
8 some point down the road. We also have, obviously,
9 Dr. Egan; Gundersen; then we have Edwin Lyman, Dr.
10 Edwin Lyman; and, last, Dr. Gordon Thompson.
11 CHAIR YOUNG: Not Mr. Bayeh or Dr. Bayeh?
12 MS. LAMPERT: No, it's going to be Dr.
13 Thompson and Dr. Klapp who will discuss these issues.
14 ADMIN. JUDGE ABRAMSON: This is Judge
15 Abramson. I'd like to ask all the parties to submit
16 full credentials on their experts, please, because I
17 want to look at them.
18 MS. LAMPERT: Fine. When do you want
19 that?
20 ADMIN. JUDGE ABRAMSON: I'll let Judge
21 Young decide that.
22 CHAIR YOUNG: We'll work that out and
23 issue an order a little bit down the line. What about
24 the other parties? Who do you expect to call as your
25 experts, starting with Entergy?

1 MR. LEWIS: Yes, Judge Young, this is
2 David Lewis. Dr. Kevin O'Kula and Dr. Steven Hanna.
3 Dr. Hanna just had to leave for a plane, so he's no
4 longer on the line. We have provided their
5 credentials. We identified Dr. Hanna in our most
6 recent disclosure, I think last Friday, along with his
7 credentials; and Dr. O'Kula's credentials were
8 previously provided. It's also attached to our most
9 recent disclosure of last Friday.
10 CHAIR YOUNG: Anybody else?
11 MR. LEWIS: No, just those two witnesses
12 currently.
13 CHAIR YOUNG: And the staff?
14 MR. HARRIS: The staff right now
15 anticipates calling Dr. Bixler, Joe Jones, and Dr.
16 Tina Ghosh.
17 MS. LAMPERT: Who was the last one?
18 MR. HARRIS: Ghosh, G-H-O-S-H.
19 CHAIR YOUNG: What was the first name?
20 MR. HARRIS: Tina.
21 CHAIR YOUNG: Tina?
22 MR. HARRIS: Tina.
23 CHAIR YOUNG: T-I-N-A?
24 MR. HARRIS: Yes.
25 CHAIR YOUNG: And, Ms. Hollis, I presume

1 you don't have any experts specifically; is that
2 correct?
3 MS. HOLLIS: That's correct, your Honor.
4 CHAIR YOUNG: Okay. Could we hear from
5 the parties on how much time you expect you'll need
6 for the discovery? And I guess this is directed
7 primarily at the intervenors and, well, in terms of
8 information on the modeling, receiving and providing
9 information on the various types of modeling, how much
10 time you'll need? And I'd like to hear from all
11 parties on that, as well as on how frequently it would
12 be reasonable to exchange information. It seems that
13 perhaps two weeks might make more sense since we're
14 moving towards a hearing after the conclusion. I take
15 that back. We're not going to actually conclude
16 discovery. The requirement to disclose information
17 will continue up to and through the hearing with
18 regard to anything that you become aware of at a late
19 date or any new information that might be relevant.
20 Let's hear from the staff. Do you have an
21 opinion as to how frequently and how much time would
22 be required for discovery?
23 MR. HARRIS: I think, in terms of the
24 updates, I think 30 days would be much better because
25 it takes away a lot to do it every two weeks in terms

1 of just a lot of time gathering it and reviewing it
2 and then getting it produced. It could be better
3 spent, you know, doing the actual analysis. In terms
4 of how much time for discovery, I don't --
5 MS. UTTAL: Can you hold on a minute,
6 Judge, please?
7 COURT REPORTER: Who was that?
8 CHAIR YOUNG: That was Ms. Uttal, I
9 believe. She asked us to hold on a minute.
10 COURT REPORTER: Thank you.
11 CHAIR YOUNG: Ms. Hollis, obviously, we've
12 gone over my estimate. I apologize for that, but
13 hopefully it's not too much of an inconvenience.
14 MS. HOLLIS: No, no.
15 MR. HARRIS:: We consulted a little bit,
16 and we think 90 days is probably, you know, enough to
17 do the discovery. But it's hard to say until you get
18 there.
19 CHAIR YOUNG: Entergy?
20 MR. LEWIS: Yes, Judge Young. I don't
21 like disagreeing with the staff, but I think that's
22 much too long a period for disclosure. We've already
23 produced our supplemental disclosure. We did so on
24 Friday. The Commission's order came out over a month
25 ago, and I would have been hoping the other parties

1 would be working on their supplemental disclosures.
2 What we would like very much is to have a schedule
3 established now and not wait for further briefing on
4 what the scope of the issues are and have a schedule
5 that is in line with what we proposed in our April 7th
6 opposition to Pilgrim Watch's Motion to Reschedule, in
7 essence one that reaches the filing of testimony by
8 mid-June. The main disclosure I think is by Entergy,
9 and we have already done the initial disclosure. We
10 will have to provide some supplemental disclosure, as
11 Dr. Hanna's testimony. We're prepared to do that. We
12 proposed every 15 days.
13 Judge Young, your prior order with the
14 scheduling order earlier in the proceeding that said
15 after summary disposition disclosures would be updated
16 every 14 days. I would suggest, just for convenience,
17 it be the 15th and the 30th of each month or the next
18 business day, so it stays bimonthly. But we would
19 suggest that the parties should have already updated
20 their disclosure, and I would suggest that an initial
21 disclosure should be performed by each party by mid-
22 May with 15-day supplements thereafter, leading to
23 filing of testimony by mid-June. And I will ask for
24 a very aggressive schedule on briefing what the scope
25 of issues are. I think the parties have a pretty good

1 idea of what the scope of issues are, and I would
2 suggest that any comments on that should be submitted
3 by Friday and the establishment of a schedule not wait
4 for a ruling. I think that, hopefully, the Board will
5 be able to provide a proper action to the parties'
6 filings and we can proceed on schedule with our
7 disclosures and hearing.
8 This proceeding really is starting to have
9 harm on Entergy. It's preventing business decisions.
10 It's preventing an impediment to investment decisions.
11 It makes it very hard to market your power for an
12 emergent plant when you don't know if you're going to
13 remain operating. It's having an affect on employees
14 who don't know whether the plant will continue to
15 operate. And I would ask the Board, I understand that
16 the Board could not have anticipated the Commission's
17 remand after the amount of time it took, but I would
18 ask the Board for indulgence and for the establishment
19 of a schedule that completes this remanded proceeding
20 in an expeditious manner consistent with the
21 Commission's policy statement which points out that
22 applicants really are entitled to a timely resolution
23 of disputes concerning their application. The
24 proceeding now has been going on for four years, and
25 we'd sure like to get to hearing.

1 CHAIR YOUNG: Mr. Lewis, obviously, we're
2 going to move as expeditiously as possible on this.
3 Given that our rulings on summary disposition were in
4 October of 2007 and we received the remand a little
5 over a month ago, we are going to proceed as
6 expeditiously as possible in the interest of all
7 parties and the Board. Intervenors, what's your view
8 on how much time you will need to prepare and to
9 engage in these disclosures, continuing disclosures,
10 and how frequently you think that the disclosures
11 should be made?
12 MS. LAMPERT: I have maybe three or four
13 points to make. One, I think we view ourselves in
14 this situation that, absent a specific order by the
15 Board of what, in fact, we are specifically going to
16 talk about, it is unrealistic to ask us to hire, pay
17 for, extend resources for experts who may or may not
18 be talking about something. I know that, of the list
19 of experts I gave you, two are unable to start work
20 until the beginning of September. Unlike NRC staff
21 and unlike Entergy, we do not have deep pockets, but
22 that doesn't mean we should not be allowed to play.
23 However, our experts cannot sit around since we filed
24 the petition for review, as required, early November
25 '08 and not take a client that puts food on their

1 tables and pay full freight. We cannot pay full
2 freight. That doesn't mean we shouldn't be allowed to
3 fairly participate and, therefore, provide the quality
4 of evidence so you feel good about the decision you
5 make.
6 So two cannot start until the beginning of
7 September to seriously prepare their testimony, if
8 they understand by then what it's all about. The
9 other three can start this summer.
10 CHAIR YOUNG: Now, why is it that two of
11 them cannot --
12 MS. LAMPERT: Because they have other
13 clients. We didn't hear until the end of March. The
14 Motion for Reconsideration, we expected, we understand
15 that the NRC Commission has been tied up with high-
16 level waste, but we understand that's done and they
17 can get at their backlog. My last point, and I think
18 it's an important one, is we heard Entergy's concerns,
19 okay, about being economically harmed by the slowness
20 of the proceeding. But let me point out from the get-
21 go in this proceeding I have made it publically known
22 at public NRC meetings, in the press, that I'm more
23 than willing to settle and for not much, for decent
24 ground water monitoring on-site, contention one; and
25 for some off-site monitoring. Now, what that tells me

1 is if they will not agree to settlement, A, they're
2 either not in that much of a hurry or burdened; or, B,
3 they don't want the Commonwealth and citizens to know
4 what's being admitted. That's not acceptable.
5 So if they want to settle, I'm more than
6 willing to settle. And it's reasonable and it costs
7 a heck of a lot less than they're spending now.
8 CHAIR YOUNG: As to the frequency of
9 disclosures, did you have a view that you want to
10 express?
11 MS. LAMPERT: No, I'd have to talk and put
12 that in writing to my experts.
13 ADMIN. JUDGE ABRAMSON: Judge Young, Judge
14 Abramson here. Let me say that I'm sympathetic to the
15 inability, particularly of Pilgrim Watch, to figure
16 out which experts it will need until we issue an order
17 laying out exactly what's going to be heard. And I
18 think that the Board will try to do that rapidly; is
19 that right?
20 CHAIR YOUNG: I think that's right. I
21 guess what I would say also at this point is obviously
22 we always encourage parties to attempt to settle
23 cases. And if there is any possibility of that, we
24 encourage you to talk with each other and work towards
25 that. We can, if you wish, we can ask the Chief Judge

1 to appoint a settlement judge to assist in mediating
2 and we would not be having any discussions with that
3 settlement judge. That would be a totally separate
4 track. But if you think that it would be helpful and
5 you'd like to make a joint request, we can pass that
6 on to the Chief Judge who will make the decision on
7 whom to appoint to be the settlement judge. And,
8 again, that would be a totally separate process from
9 this adjudication.
10 MR. LEWIS: Judge Young, this is David
11 Lewis. I will talk to my client and get their
12 reactions to this. We did try and have settlement
13 discussions with Pilgrim Watch two or three years ago,
14 I guess two years ago. And we were willing to talk
15 and, at that point, you may recall, some of the
16 discussions broke down over our view of breach of
17 confidentiality. And there have been no --
18 MS. LAMPERT: No, no, no.
19 MR. LEWIS: -- either way since then. But
20 I will take it on to discuss with my client and see if
21 it's worth having any further discussions. And I'm
22 also willing to, after this call, still talk with my
23 client to see if it makes sense having the experts
24 talk to each other. I'm not adamantly opposed to
25 that. I just need to make sure that it makes sense,

1 so we are willing to engage in those kind of
2 activities if it makes sense.
3 CHAIR YOUNG: I would point out that a
4 trained mediator acting as a settlement judge can
5 often help parties get beyond roadblocks by speaking
6 with the parties separately, assisting the parties in
7 looking at what possible common interests they might
8 have. So if there's any chance, I guess I would
9 encourage you to request the appointment of a
10 settlement judge and I could pass that on to --
11 MS. LAMPERT: Could you explain what that
12 process is? Because, quite simply, Pilgrim Watch is
13 not, our goal is not to stop this proceeding. We are
14 looking for enhanced safety measures just going
15 forward. That's it. And if they're obeying
16 regulations on what, perhaps, could be leaking off-
17 site or admitted into the air, then what's the
18 problem? So I'm more than willing. I was willing
19 four years ago if something is reasonable. It wasn't
20 a matter, as described, on confidentiality. It was a
21 matter of the offer. It was not acceptable in our
22 opinion.
23 CHAIR YOUNG: It sounds as though you're
24 both willing, and I don't know the extent to which the
25 other parties would want to take part in that. But it

1 sounds as though you might want me to ask Judge
2 Hawkens to appoint a settlement judge at this point.
3 Would that be a correct reading of what you're both
4 saying?
5 MR. LEWIS: Judge Young, I can't consult
6 my client because we're in a remote location, so I
7 need to have a discussion before I made that request.
8 CHAIR YOUNG: Okay.
9 MS. UTTAL: Judge Young, this is Susan
10 Uttal from the staff. The staff thinks that it's a
11 good idea to have a settlement judge appointed.
12 CHAIR YOUNG: Okay. Are there any other
13 relevant matters that we have not talked about today
14 that anyone would like to raise?
15 MR. LEWIS: Judge Young, if the Board is
16 not going to establish a schedule for the proceeding,
17 I would ask for a very expedited schedule for the
18 submission on the scope of the proceeding and leading
19 to a Board ruling so that the parties can proceed.
20 And in particular, Pilgrim Watch has indicated that
21 the number of its experts might not be available until
22 September. Because some of its experts relate to
23 issues that may well be beyond the proceeding, such as
24 Dr. Klapp on health effects and I presume Dr. Lyman
25 and Dr. Gordon go to spent-fuel fires, I presume Dr.

1 Shannon goes to site restoration costs.

2 MS. LAMPERT: Well, no. Shannon,

3 remember, he wrote the code, so I think he goes to

4 quite a few things.

5 MR. LEWIS: Okay.

6 MS. LAMPERT: And Lyman and a couple of

7 the others can --

8 ADMIN. JUDGE ABRAMSON: Let me ask you to

9 submit Shannon's resume because I don't believe he

10 wrote the code. I was involved with a lot of that

11 personally.

12 MS. LAMPERT: Okay. I'd be more than

13 happy to.

14 CHAIR YOUNG: Let me just ask --

15 COURT REPORTER: Who was that?

16 CHAIR YOUNG: That was Judge Abramson and

17 Ms. Lampert. Ms. Lampert, which of your experts are

18 not going to be available until September again?

19 MS. LAMPERT: The two on the telephone.

20 CHAIR YOUNG: Oh, Egan and Gundersen?

21 MS. LAMPERT: Correct.

22 CHAIR YOUNG: Okay, all right. Correct me

23 if I'm wrong, but I think that what we need to get

24 from the parties at this point are, first, indications

25 whether you would like to have a settlement judge

1 appointed. We already know the staff's view on that.
2 And then we need to have your proposed statements of
3 the issues with any brief supporting arguments on
4 those with citations to the Commission's order in CLI-
5 10-11. Then, third, we would like to get from you
6 your proposed schedules, including discovery,
7 mandatory disclosure schedules. Did I leave out
8 anything that we should expect to receive from you?
9 MS. LAMPERT: Are you going to put that
10 out in an order? I'd prefer things in orders. I'm
11 not trying to put work on you but . . .
12 CHAIR YOUNG: Right. We'll try to do
13 that. But first let me ask is there anything else
14 that needs to be on that list?
15 (No response.)
16 CHAIR YOUNG: Okay. Now, let's see if we
17 can hear from the parties on how soon you can
18 reasonably provide that information, and that goes to
19 how quickly you'll get an order. Let me just let you
20 know, we had asked for a week turnaround on this
21 transcript because of certain other duties and absence
22 from the office of members of the Board. So your
23 proposed schedules on how soon you can get this
24 information to us may play into how we move forward
25 from this point forward. Would next week be too early

1 for any parties, say a week from today?

2 MR. LEWIS: Judge Young, this is David

3 Lewis. We can certainly do it by then. I would

4 suggest by Friday. It's clear Pilgrim Watch has

5 thought a lot about the hearing scope and written a

6 statement already, which I think we've heard a lot of.

7 We can certainly present our position on the scope by

8 Friday. We already have a proposed schedule, and I

9 think we can indicate whether we'd be interested in a

10 settlement judge. But settlement should proceed in

11 parallel. Nothing should be held up based on

12 discussions among the parties, and so to have those

13 discussions should not be an indication that the

14 schedule should be more relaxed. I would really --

15 CHAIR YOUNG: Mr. Lewis? Mr. Lewis? As

16 I said before, any settlement discussions take place

17 totally separate from this and have nothing to do with

18 it. There's no discussion between a settlement judge

19 and the Board, except for one thing: if the settlement

20 judge comes to the Board and says the parties are

21 settling and we should expect an order within X days.

22 MR. LEWIS: Entergy's position, though, is

23 that we should establish the scope of the proceeding

24 as expeditiously as possible, and I would urge both

25 parties to have positions. I would think Friday is

1 very reasonable.

2 CHAIR YOUNG: Okay. Other parties, how

3 soon can you respond?

4 MS. LAMPERT: Is he talking about the 7th

5 in a couple of days?

6 CHAIR YOUNG: Right.

7 MS. LAMPERT: I mean --

8 CHAIR YOUNG: Just tell us how soon you

9 can respond.

10 MS. LAMPERT: Okay. I think anything

11 under 10 days is not reasonable. I think we've gone

12 on schedules of 10 days, 20 days, what have you.

13 CHAIR YOUNG: You could not make it on the

14 11th? That would give you the weekend.

15 MS. LAMPERT: And believe it or not,

16 sometimes we do have other things that we're doing.

17 No, I couldn't do it. I'm looking at --

18 CHAIR YOUNG: Okay. Staff?

19 MS. LAMPERT: -- other commitments.

20 CHAIR YOUNG: Staff, how soon could you

21 get these things to us?

22 MR. HARRIS: This is Brian Harris, and we

23 could get it to on the 11th.

24 CHAIR YOUNG: All right. We will issue an

25 order tomorrow setting deadlines and deadlines for

1 responses. After we receive that, we will address the
2 issues first and then proceed from that to talk about
3 the schedule. So, again, what we would like from you
4 is anything regarding requests for the appointment of
5 a settlement judge; your proposed formulations of the
6 issues for hearing and whether that should take place
7 in one stage or two and how those issues should be
8 separated out if you are arguing for separate stages;
9 any arguments, brief arguments, in support of your
10 statements of the issues; and then proposed schedules
11 from all parties. You should hear from us by tomorrow
12 on that.
13 MS. LAMPERT: Okay. And, again, I'm
14 asking for ten days.
15 CHAIR YOUNG: Anything further from any
16 party?
17 (No response.)
18 CHAIR YOUNG: Okay. Then let's go off the
19 record, and if everyone could stay on just long enough
20 of the court reporter to ask for spellings of any
21 words.
22 (Whereupon, the foregoing matter was
23 concluded at 4:03 p.m.)
1
2

CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of: Entergy Nuclear Operations

Pilgrim Nuclear Power Station

Name of Proceeding: Hearing

Docket Number: 20-293-LR

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.

Benjamin Crane

Benjamin Crane
Official Reporter
Neal R. Gross & Co., Inc.