

99-27

Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

Title: Pacific Gas and Electric Company
Diablo Canyon Nuclear Power Plant

Docket Number: 50-275-LR and 50-323-LR
ASLBP Number: 10-890-01-LR-BD01

Location: (telephone conference)

Date: Tuesday, August 24, 2010

Work Order No.: NRC-408

Pages 371-451

ORIGINAL

DOCKETED
USNRC

August 24, 2010 (3:02p.m.)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

TEMPLATE = SECY -032

DS03

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

+ + + + +

ATOMIC SAFETY AND LICENSING BOARD PANEL

+ + + + +

HEARING

-----x

In the Matter of: : Docket Nos.
PACIFIC GAS & ELECTRIC : 50-275-LR 50-323-LR
COMPANY : ASLBP No.
 : 10-890-01-LR-BD01
(Diablo Canyon Nuclear :
Power Plant Units 1 and 2) :

-----x

Tuesday, August 24, 2010

Teleconference

BEFORE:
ALEX S. KARLIN, Chair
PAUL B. ABRAMSON, Administrative Judge
NICHOLAS G. TRIKOUROS, Administrative Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

On Behalf of Pacific Gas & Electric Company:

DAVID A. REPKA, ESQ.

of: Winston & Strawn LLP

1700 K Street, N.W.

Washington, D.C. 20006

202-282-5000

TYSON SMITH, ESQ.

of: Winston & Strawn LLP

101 California Street

San Francisco, California 94111-5802

415-591-1000

On Behalf of San Luis Obispo Mothers for Peace:

DIANE CURRAN, ESQ

of: Harmon, Curran, Spielberg and Eisenberg

1726 M Street, N.W., Suite 600

Washington, D.C. 20036

202-328-3500

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

On Behalf of the Nuclear Regulatory Commission

SUSAN UTTAL, ESQ.

MAXWELL SMITH, ESQ.

LLOYD SUBIN, ESQ.

of: Office of the General Counsel

Mail Stop - O-15 D21

U.S. Nuclear Regulatory Commission

Washington, D.C. 20555-0001

301-415-1582

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

P R O C E E D I N G S

(3:02 p.m.)

1
2
3 CHAIR KARLIN: We will now go on the
4 record, Mr. Reporter. I would like to welcome
5 everyone. As I understand it, there is a
6 representative from each of the parties, and all the
7 judges on the line, so we will start.

8 This is a conference call, initial
9 scheduling conference call in the matter of Pacific
10 Gas & Electric Company. It's a challenge to PG&E's
11 application to renew its license for two nuclear
12 reactors. For the record, the docket number is 50-
13 275-LR and 57-325-LR, and it's ASLBP number 10-890-01-
14 LR-DB01.

15 This conference call is being held
16 pursuant to an August 5th order by the Board, and
17 today's date is August 24th, 2010. We're conducting
18 this initial scheduling conference telephonically. We
19 have two separate sets of lines. One set of lines is
20 for the representatives of the parties and the judges,
21 those who can have speaking roles, as it were. And
22 the other is for a line set up for members of the
23 public, or any media who might have been interested in
24 listening in.

25 What I'll do now is introduce the Board,

NEAL R. GROSS

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

1 and I'll ask each of the parties to introduce
2 themselves, and their representatives, and their
3 clients who may be on the line.

4 With regard to the Board, again, I'm Alex
5 Karlin. I'm sitting here with Wen Bu, our lawyer and
6 law clerk, and we're in Rockville at the NRC
7 headquarters. Ashley Prange, our Administrative
8 Assistant is at her desk at the moment. And if anyone
9 has any problem during the course of this call, and
10 can't get back on to the conference call, first try to
11 call the conference operator. Second, if that doesn't
12 work, call Ms. Prange. Her telephone number is
13 (301)415-0110.

14 Now, Dr. Abramson, and Dr. Trikouros are
15 on the line, I think. Is that correct?

16 JUDGE TRIKOUROS: We are here.

17 JUDGE ABRAMSON: Yes.

18 CHAIR KARLIN: Okay. Great. Now,
19 Petitioners sent us this from Mothers for Peace. Ms.
20 Curran, could you introduce yourself and anyone else
21 from your group who is on the line.

22 MS. CURRAN: Yes, thank you, Judge Karlin.
23 I'm Diane Curran, and I represent the San Luis Obispo
24 Mothers for Peace. I don't believe that any of the
25 members of the Mothers for Peace are on the line.

NEAL R. GROSS

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

1 CHAIR KARLIN: All right. And the
2 Applicant is Pacific Gas & Electric Company. I
3 believe Mr. Repka and Mr. Smith are on the line.
4 Could you introduce yourselves, and any of your
5 clients who are on with you.

6 MR. REPKA: Yes. This David Repka, counsel
7 fo PG&E, and I'm in Washington, D.C. Separately on
8 the line from California is my colleague, Tyson Smith.
9 And I believe we are the only representatives of PG&E
10 on the call today.

11 CHAIR KARLIN: Okay. Great. Welcome. And
12 staff, Ms. Uttal, could you introduce the people from
13 the staff who are here?

14 MS. UTTAL: Yes. This is Susan Uttal, U-T-
15 T-A-L, counsel for the staff. With me is Maxwell
16 Smith, counsel for staff; Catherine Kanatas, also
17 counsel for staff; Lloyd Subin, counsel for staff; and
18 Tina Ghosh, staff.

19 CHAIR KARLIN: Okay. Great. Welcome. Is
20 there anyone else on the line? Okay. That's great.
21 Appreciate the introductions.

22 The purpose of this call is to conduct an
23 initial scheduling conference in accordance with the
24 regulations 2.332, and then to use this discussion and
25 the materials you've submitted as the basis for

NEAL R. GROSS

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

1 developing and issuing an initial scheduling order.
2 The regs call for us to do that, and the model
3 milestones indicate that we should try to have the
4 initial scheduling order out within 55 days of the
5 August 4th ruling. So, that's what we want to do.

6 The immediate background here is, of
7 course, on August 4th we ruled admitting four
8 contentions, and denying one. We then issued this
9 scheduling conference order on August 5th. On the
10 10th, the staff noticed that it was going to
11 participate as a party on all matters. Also on the
12 10th, Mr. Repka sent in a letter reflecting agreement
13 of all parties regarding certain matters, mandatory
14 disclosure and other, and that's helpful. And on the
15 18th, the staff, Mr. Subin sent in a letter indicating
16 its estimated schedule for the SER and the EIS. And
17 we recognize, of course, that there are some appeals
18 going on interlocutory with regard to some of our
19 rulings. And that is above our pay grade, and we will
20 not try to attempt to deal with any of that at the
21 moment, but we recognize that that, of course, exists.

22 The purpose, as I say, was to do a
23 scheduling order. The overview -- here's the agenda
24 I think I'd like to pursue, sort of major topics.
25 First, we would review the staff's schedule. And I

NEAL R. GROSS

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

1 have a question or two about that, but I think it's
2 pretty clear, so that's the first item, staff
3 schedule. Second item is to go down the 19 questions
4 that were posed in our August 5th order and talk about
5 that. The third major topic is to review Mr. Repka's
6 letter of August 10th, because that has answers to a
7 number of the items, and also covers a couple of other
8 things. And I think it's useful. The fourth item for
9 the agenda would be to review other items that arise
10 from the Progress Levy scheduling order. As we said
11 in our initial -- in our August 5th order, the Levy
12 would be, in a sense, an example of things that might
13 be covered, and we ask you to look at that, and to
14 stand ready to talk about, on a point-by-point basis,
15 some of those items. So, that would be the fourth
16 part of major topic of the agenda. Fifth, there may
17 be a couple of other things that the judges have maybe
18 to ask or to talk about. And that's about it.

19 Now, is there anything else that any of
20 the parties, staff, Applicant or Mothers for Peace
21 want to bring up at this conference call, or thinks
22 needs to be addressed now? Okay, hearing none, we
23 will go to the first significant topic. That is this
24 letter by the staff, Mr. Subin, giving us your
25 schedule, your best estimate at the schedule.

NEAL R. GROSS

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

1 Oh, and let me just ask before we proceed.
2 As I understand from the letter of Mr. Repka, you all
3 did have a chance to converse, and to discuss the
4 items we covered in our conference call. Is that
5 correct, Mr. Repka?

6 MR. REPKA: That is correct.

7 CHAIR KARLIN: Good. And have you been
8 able to figure out maybe lead spokespersons for
9 various topics? Are you just going to play it by ear,
10 and we'll have everyone talk as we go?

11 MR. REPKA: We didn't designate a lead
12 person. I did compile some notes based on our
13 conversations, which I've circulated to the parties.
14 I'm happy to describe that, and have everybody else
15 tell me where I'm off base.

16 MS. CURRAN: That sounds like a good plan
17 to me, Judge Karlin. This is Diane Curran.

18 CHAIR KARLIN: All right. We'll pretty
19 much allow everyone to speak, if they feel there's
20 something they need to say on any of these topics, but
21 we'll try to move along. I mean, the main point is to
22 try to manage this case properly, and actively so that
23 procedural difficulties and confusions are minimized,
24 if we can, and we can deal with the merits, as it
25 were, or any particular issue rather than worrying

NEAL R. GROSS

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

1 about procedural questions that we might have
2 resolved. I attempt, I think we all attempt to
3 resolve some of these things in this scheduling order.

4 So, on to the staff's estimated schedule,
5 I see, Mr. Subin, you're going to be -- anticipate the
6 Draft EIS coming out, and then the comment period
7 ending in January of 2011. Is that correct?

8 MS. UTTAL: Excuse me, Judge.

9 CHAIR KARLIN: Yes?

10 MS. UTTAL: This is the staff. We got
11 disconnected for about three minutes.

12 CHAIR KARLIN: Oh, okay. Sorry to hear
13 that. Well, I'm not sure where -- we're going to have
14 -- here's our agenda. One, we're going to review the
15 staff's schedule. Two, we're going to go through the
16 19 questions. Three, we're going to review the Repka
17 letter regarding the areas of agreement that you've
18 proposed. Four, we're going to look at the Progress
19 Levy initial scheduling order. Five, there may be
20 some questions that some of the judges have, and
21 that's it. Do you have anything else you want to add
22 to the agenda, or you think needs to be discussed
23 today?

24 MS. UTTAL: No, sir.

25 CHAIR KARLIN: Okay. All right. Then,

NEAL R. GROSS

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

1 we'll proceed. The first item being to review the
2 staff's schedule that you submitted on August 18th.
3 And I appreciate that you all gave us your best
4 estimate, and it's not in stone. It's just what your
5 best estimate is.

6 It's my understanding that you're going to
7 -- end of the Draft SEIS comment period is in January
8 of 2011. Is that correct?

9 MR. SUBIN: Correct.

10 CHAIR KARLIN: And the Advisory Committee
11 meets to discuss the Draft SER in February 2011.
12 Right?

13 MR. SUBIN: That's correct.

14 CHAIR KARLIN: Okay. One of the things we
15 have to do in our scheduling order is to figure out
16 what is the appropriate trigger date for commencing
17 the filings that will lead to the evidentiary hearing.
18 And it looks like under this schedule that trigger
19 date is the later of the SER and the EIS, and the
20 later of those is August 12th of 2011. If that holds
21 true, and we use that as a trigger date, and the Board
22 hasn't decided anything at this point. We're going to
23 discuss this afterwards, the likely filing schedule
24 would end up with 140-150 days later, maybe we
25 commence the evidentiary hearing. That ends up being

NEAL R. GROSS

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

1 January-February of 2012. I'm just thinking out loud,
2 basically, but that's a schedule we might be looking
3 at. We also have to set some deadlines for motions for
4 summary disposition, and your schedule, Mr. Subin, and
5 the staff's schedule would be important in that
6 respect.

7 Is there anything else about the schedule
8 that Judge Abramson or Trikouros want to ask or talk
9 about? Hearing nothing, anyone from -- the parties
10 have anything of concern that is reflected out of the
11 staff's schedule, problems?

12 MR. REPKA: This is Mr. Repka.

13 CHAIR KARLIN: Yes.

14 MR. REPKA: No concerns with the staff's
15 schedule, just -- and I think we'll probably discuss
16 this more later in terms of what the trigger date is,
17 and I would just comment that I'm not sure we need to
18 assume that for both TC-1 and EC-1, the trigger date
19 needs to be the same. Certainly, TC-1 would not be
20 tied to the SEIS. That's the comment I would have
21 there.

22 CHAIR KARLIN: Okay.

23 MS. UTTAL: The staff agrees with that,
24 Your Honor.

25 CHAIR KARLIN: Right. Okay. Let's move to

NEAL R. GROSS

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

1 the second major topic, because I think that will
2 bring us right into that, Mr. Repka, and Ms. Uttal;
3 that is, the 19 questions that we have in our order
4 scheduling conference.

5 The first question is whether the hearings
6 on the safety contentions should be commenced before
7 publication of the staff's Safety Evaluation, as
8 permitted by the regs. Does anybody think that we
9 ought to consider doing that?

10 MR. REPKA: This is Mr. Repka. Now, this
11 is starting down the items that we did discuss amongst
12 ourselves. In our discussions, I think both PG&E and
13 the staff agreed that TC-1, at least in its current
14 form, would not depend upon the SER. I think the
15 Mothers for Peace had not taken a position on that
16 issue at the time. So, the SER, at least from the
17 staff and PG&E's perspective would not be required to
18 be the trigger date.

19 CHAIR KARLIN: Okay. Thank you, Mr. Repka.
20 Ms. Curran, do you have any thoughts on this?

21 MS. CURRAN: Well, it just seems premature
22 to cast it in stone. I don't know how Contention TC-1
23 is going to develop, but it may be that -- I could
24 imagine that it's possible that the Mothers for Peace
25 will have some concern that all the issues in the SER

NEAL R. GROSS

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

1 should be resolved, because it's kind of the overall
2 management issue, might affect a lot of things
3 addressed in the SER. I don't know, but I -- the
4 regulations clearly allow this. I think it says that
5 the Board can decide to expedite, that it's
6 appropriate to expedite the proceeding that way. And
7 it seems to me that that's the kind of decision that
8 should be made close to the hearing.

9 CHAIR KARLIN: Okay. Well, it's worth
10 listening to -- hearing you all out on that. I mean,
11 I think it's a rare event for the Safety Contention to
12 be litigated before the SER is substantially complete,
13 but I guess it's not unheard of, and it is possible
14 under the regs. So, I appreciate your input on that.

15 JUDGE TRIKOUROS: Judge Karlin.

16 CHAIR KARLIN: Yes?

17 JUDGE TRIKOUROS: I guess I'm not clear on
18 what the position of PG&E or the staff is on that.

19 CHAIR KARLIN: Okay. Well, that was Judge
20 Trikouros speaking. That's a good question. Are you
21 suggesting we should have the evidentiary hearing on
22 TC-1 now?

23 MR. REPKA: This is Mr. Repka, and I'll
24 speak only for PG&E on this, and let Ms. Uttal speak
25 for the staff. No, I'm not suggesting we have the --

NEAL R. GROSS

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

1 hold the hearing now. We have agreed amongst the
2 parties not to do disclosures pending appeal, so,
3 certainly, I see no reason to go forward before the
4 parties have even done disclosures.

5 I think that there can be a schedule on
6 TC-1 that's premised to a Commission ruling on the
7 appeal, plus time for disclosures, plus time -- some
8 time, I suppose, for summary disposition; although, I
9 have to say, I don't think TC-1 is a contention that,
10 at least at this instance, seems like it's likely to
11 be susceptible to summary disposition. It's also not
12 a contention that, based on the positions of the
13 staff, and PG&E, appears to be one that will be
14 addressed in any way in the SER, because it's -- the
15 issues don't really relate to Aging Management, or
16 other issues there.

17 So, I think that the trigger date there
18 would probably be at least to begin a process, would
19 begin with a Commission decision on the pending
20 appeals. And then we could move forward from there.
21 And I think as a practical matter, leaving time for
22 summary disposition, and approximately 60 days or so
23 for -- after that for written testimony, and other
24 things, you're probably going to get to some time
25 around that May 23rd Final SER date, anyway. But

NEAL R. GROSS

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

1 we're only speculating there, because we don't know
2 what the time for the Commission decision will be.

3 CHAIR KARLIN: Right.

4 MR. REPKA: But I think, again, if you
5 follow the model milestones using a Commission
6 decision as a trigger date, I think that would be an
7 appropriate approach to TC-1.

8 CHAIR KARLIN: Okay. Does that help you,
9 Judge Trikouros?

10 JUDGE TRIKOUROS: I guess the -- I'd like
11 to hear from the staff. Does the staff agree with
12 that?

13 MS. UTTAL: We do, because the subject of
14 TC-1 is not one that is discussed in the SER under
15 normal circumstances. And we do need a certain amount
16 of time for disclosures, and for preparing documents,
17 so it sounds like a reasonable amount of time.

18 JUDGE TRIKOUROS: Well, okay. That's
19 helpful. I would suggest that if the contention is
20 upheld by the Board, it may be something that the SER
21 will need to address. So, you may be presuming that
22 TC-1 will be thrown out, and if it's thrown out, well,
23 then of course, we won't have an evidentiary hearing
24 at all. So, it is a bit of question there as to how
25 the Commission will rule. If it rules -- affirms it,

NEAL R. GROSS

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

1 then maybe somebody working on the SER may want to
2 think about whether that needs to be addressed in the
3 SER, or not. But I understand that, at this point,
4 the staff is not contemplating incorporating anything
5 like that in the SER. So, that's part of the issue
6 there, is the ruling by the Commission either may
7 eliminate entirely the evidentiary hearing, or make
8 the staff -- the staff may want to rethink what it's
9 doing with the SER. The ACRS may want to ask some
10 questions related to that, that could be of interest
11 and valuable to this Board when we conduct our
12 evidentiary hearing.

13 CHAIR KARLIN: Let's move, if that's all
14 right, Judge Trikouros and Abramson, to Question 2 on
15 the August 5th order, which is the time limits problem
16 with regard to motions for summary disposition.

17 A little bit of an intro here. On motions
18 for summary disposition, as with many things, there
19 are really two types of time limits that apply. One
20 is a promptness time limit or deadline, and another is
21 sort of an ultimate deadline. Promptness meaning that
22 under the normal rules, motions need to be filed
23 within 10 days of the event or circumstance giving
24 rise to the motion. Promptness, need to be filed
25 promptly, within some relatively short time frame of

NEAL R. GROSS

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

1 the event. We don't want motions for summary
2 disposition, in particular, held up and postponed
3 until the end to create what I refer to sometimes as
4 a train wreck. So, there's a promptness deadline
5 issue. And then there's an ultimate deadline issue,
6 which is to say at some point we may need to, we think
7 it is appropriate to cut off all motions for summary
8 disposition, because we're in the midst -- you are in
9 the midst of preparing for the evidentiary hearing,
10 which is, essentially, a paper proceeding, anyway, for
11 the most part under Subpart L. And it becomes
12 counterproductive to have a motion for summary
13 disposition filed exactly at the same time everyone is
14 preparing all their filings for the evidentiary
15 hearing.

16 So, you may have seen how we handled this
17 in Progress Levy, and I'm interested in your thoughts.
18 One thing in particular is, if you look at, for
19 example, 2.1205, the time frame they say is you can
20 file motions for summary disposition as late as 45
21 days before the commencement of the evidentiary
22 hearing. Answers are filed 20 days later, and the
23 Board has to file its decision 15 days before the
24 commencement of the evidentiary hearing. That gives
25 us a 10-day window right before the Subpart L hearing

NEAL R. GROSS

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

1 when we're supposed to rule on motions for summary
2 disposition. Meanwhile, the only thing that happens
3 in a Subpart L hearing is the Board studies all the
4 materials, and asks questions.

5 I don't think that particular time frame
6 is going to work, so I think we're going to have to
7 modify those things. So, your thoughts. We'll start
8 with you, Mr. Repka.

9 MR. REPKA: Yes, we did discuss this
10 amongst ourselves, and I think we agreed, in
11 principle, that the time limits for sum -- what you
12 referred to as the final deadline for summary
13 disposition, we agree that that can be modified to
14 avoid conflicts with hearing preparation.

15 We talked amongst ourselves about a 60-day
16 prior to the testimony being due, would be -- as a
17 possible deadline for -- ultimate deadline for summary
18 disposition. We didn't reach any hard agreement on
19 that, but I think 60 days, obviously, would be a
20 little more than 45, so that does address the concern
21 you noted on that.

22 CHAIR KARLIN: Well, let me ask -- clarify.
23 Sixty days prior to what?

24 MR. REPKA: Sixty days prior to the due
25 date for written direct testimony.

NEAL R. GROSS

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

1 CHAIR KARLIN: Okay. Because the 45 days
2 is 45 days prior to the commencement of the
3 evidentiary hearing.

4 MR. REPKA: Right.

5 CHAIR KARLIN: Okay.

6 MR. REPKA: We talked about 60 prior to
7 testimony. And then, you assume testimony comes in
8 on, call that day 60, there would be another period
9 for -- that would be simultaneous written direct
10 testimony. There would be another period, two weeks,
11 whatever, three weeks, for simultaneous rebuttal
12 testimony. Then another two weeks, and then the
13 evidentiary hearing would start. So, overall, you're
14 talking there about probably 60 days, plus another
15 four weeks or so between summary disposition and the
16 hearing. Again, we talked about that. We didn't
17 memorialize any specific agreement.

18 CHAIR KARLIN: Okay. Yes. That still
19 seems to have, for me. I'm speaking just for myself
20 at this point, a case management problem, in that a
21 lot of -- a motion for summary disposition, to us,
22 looks very similar to the initial testimony, and the
23 rebuttal testimony. It's paper. And the one
24 difference is that if you've got the evidentiary
25 hearing, you can actually ask the witness some

NEAL R. GROSS

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

1 questions.

2 MR. REPKA: Yes. I think there's two kinds
3 of summary disposition. One would be, we might
4 contemplate, for example, for a contention like EC-1,
5 that's a Contention of Omission. And that's one that
6 certainly can be filed much earlier than the kind of
7 schedule that we're talking about now for the SEIS.
8 And maybe that's what the Levy order gets at when it
9 says 20 days after something that would trigger it.
10 A second kind of summary disposition motion would be
11 a motion that addresses the full-blown merits of a
12 case, and maybe that's what you might expect on a TC-
13 1.

14 Again, I don't know that -- I certainly
15 wouldn't want to rule out any options. But a
16 contention like TC-1 seems less amenable to summary
17 disposition than a Contention of Omission. So, I think
18 we may be arguing, or debating something that's, in
19 reality, not a real issue.

20 CHAIR KARLIN: Okay. Ms. Curran, did you
21 want to -- any thoughts here on this question?

22 MS. CURRAN: I think Dave summarized it
23 pretty well. We were worried about making sure
24 summary dispositions didn't happen too close to the
25 hearing. That's why we thought the 60-day time frame

NEAL R. GROSS

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

1 was workable.

2 I think the 20-day -- running a 20-day
3 clock after the event is a good idea. I don't think
4 everybody was in agreement about that.

5 CHAIR KARLIN: Ms. Uttal?

6 MS. UTTAL: I have no argument with what
7 either Dave or Diane said.

8 CHAIR KARLIN: Okay. One of the things
9 that does, I'm thinking out loud here, is right now,
10 at least if you look at the Levy order, we have
11 addressed, and I think they addressed some issues.
12 And one of them was once the trigger date occurs, the
13 initial testimony is due 45 days thereafter, let's
14 say, or 60 days thereafter the initial testimony. So,
15 trigger date, 60 days thereafter initial testimony.
16 Now, you're saying well, 60 days before the initial
17 testimony you have to have the motion for summary
18 disposition ultimate deadline. Well, that's the same
19 as the trigger date. You follow me? Well, how do you
20 solve that problem? You solve that problem by moving
21 trigger dates having the initial testimony filed 120
22 days later, so you can build in enough time for the
23 process of these motions for summary, so you delay the
24 evidentiary hearing. You'd have to have built in more
25 time for the filing of the initial testimony if you're

NEAL R. GROSS

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

1 going to have the motions for summary disposition
2 precede the initial testimony by 60 days. So, that's
3 a problem, a concern there.

4 Question Three.

5 MS. CURRAN: Judge Karlin, this is Diane
6 Curran.

7 CHAIR KARLIN: Yes?

8 MS. CURRAN: Maybe it has -- I know I've
9 seen a lot of orders, maybe this Levy order, too, says
10 the Board will look with disfavor on motions for
11 summary disposition. Maybe as a practical matter, if
12 we stick with that 60-day rule, then if one had to
13 wait for say the EIS to come out to do a summary
14 judgment motion, then it's just too late. The summary
15 judgment motions are best for things like Contentions
16 of Omission, where some information comes in, and it
17 resolves the issue, rather than, basically, doing it
18 as a dress rehearsal for the hearing.

19 CHAIR KARLIN: Okay. Well, we'll take that
20 into account. The Levy order handled it quite
21 differently, and set relatively hard dates that were
22 considerably earlier than anything you all are talking
23 about. So, let's move to Question Three.

24 The time limits for new or amended
25 contentions, and this is, again, a promptness time

NEAL R. GROSS

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

1 limit, not a ultimate time limit, or deadline. And I
2 think we've usually used 30 days for filing of new or
3 amended contentions. And did you all talk about that?

4 MR. REPKA: This is Mr. Repka. We did, and
5 we agree that 30 days was the normal and reasonable
6 time for defining timeliness in the context of good
7 cause for new or amended contentions. So, 30 days, I
8 think, was appropriate.

9 CHAIR KARLIN: And everyone is pretty much
10 on board with that? Ms. Curran?

11 MS. CURRAN: Yes.

12 CHAIR KARLIN: Ms. Uttal?

13 MS. UTTAL: Yes.

14 CHAIR KARLIN: Okay. Good. All right.
15 Item Four. And, again, Judge Abramson, or Judge
16 Trikouros, if you want to jump in here, have any
17 issues, certainly, we're not all in the same room, so
18 it makes it a little more difficult to do that, but
19 certainly.

20 Four, pleading rules. What this question
21 or issue really deals with is the -- what I see as a
22 problematic -- sometimes causes confusion regarding
23 well, do I file a motion for leave to file a new
24 contention? And then does the Board -- they file an
25 answer to the motion for leave to file a new

NEAL R. GROSS

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

1 contention, and then does the Board rule on the motion
2 for leave to file a new contention? And then do they
3 file the new contention? And then do they have an
4 answer, and then they have a reply, and then the Board
5 rules. It's a seven-step process, and we think that
6 can be consolidated. And you may see how we did that
7 in Levy. Do you have any comments on that?

8 MR. REPKA: Mr. Repka, again. I don't know
9 that we broke it down into seven steps, but we did
10 address two different issues. One is just the sheer,
11 if you get a proposed new or amended contention,
12 what's the time frame for responses and replies? And
13 there is some ambiguity in the regulations there. We
14 suggested, as in other cases, that the response time
15 would be the 25 days, plus the 7 days for reply, is
16 typical for a timely proposed contention. The same as
17 in 2.309(h), rather than the general motion response
18 deadline in 2.323. So, that was one issue, and that's
19 the responses.

20 With respect to -- the other embedded
21 question in here is the question as to whether or not
22 new or amended contentions need to meet both the
23 2.309(f)(2) and 2.309(c)(1) criteria. We didn't agree
24 on that. That's been a subject that's been -- there's
25 been some divergence of opinion amongst the licensing

NEAL R. GROSS

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

1 boards that have looked at it. And we did not come to
2 a resolution on that. Certainly, it's PG&E's position
3 that a new or amended contention needs to address both
4 2.309(f)(2) and 2.309(c)(1).

5 And I think the third thing I'd say is
6 something we didn't talk about, but in terms of the
7 steps, I don't think I focused on, Judge Karlin, the
8 way you're describing the seven steps, but I think
9 that we just see a motion to add a new contention just
10 being one step, and include the required showing for
11 a new or amended contention, include the contention,
12 and address all of that in one reply with respect to
13 both the timeliness, and the initial contention
14 admissibility criteria in one response. So, it would
15 become filing of new and amended contention, replies
16 25 days -- answers 25 days later on all issues, and
17 replies seven days after that. So, three steps.

18 CHAIR KARLIN: Okay. That's helpful. The
19 concern, you've put your finger on it, is among other
20 things, in 2.309(f)(2), it contemplates that
21 contentions may be amended or filed after the initial
22 filing only with leave of the presiding officer. So,
23 what happens is, there's a motion for leave to file a
24 new contention, let's say by the Intervener,
25 obviously. And well, it's a motion to file for leave

NEAL R. GROSS

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

1 to file a new contention. You're the Applicant. How
2 much time do you have to respond to a motion? Well,
3 you've got 10 days, so you file a response in 10 days.
4 So, no, leave should not be granted to file a new
5 contention, 10 days. And, oh, by the way, you filed
6 your answer. There is no reply available against a
7 motion under the normal rule, so you have the motion
8 and 10 days later an answer, and that's it. And then
9 the Board rules on the motion for leave to file a new
10 contention. And if we grant it, then we start the
11 okay, now you've got 25 days to file your -- now you
12 file your new contention, and then you've got 25 days
13 to answer, and then you've got seven days to reply.
14 And we are trying to avoid that problem, which has
15 occurred, and confusion that has occurred. And I
16 think if you see the way it was handled on page 9 of
17 the Levy scheduling order, what's called "Consolidated
18 Briefing," is the way most boards have been handling
19 it recently.

20 Ms. Curran, any comments from you on this
21 one?

22 MS. CURRAN: I just think it would be
23 simplest to -- oh, well, the approach of file the
24 contention, and address the late filed criteria in the
25 pleading. And if we get to the question of -- I

NEAL R. GROSS

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

1 suppose knowing that the other parties are going to
2 oppose a contention that doesn't address all the
3 factors, that's what we'll end up doing.

4 CHAIR KARLIN: Okay. I think that we -- I
5 don't use the term "late filed" in my parlance. It is
6 not a term that appears in any of the regs. I think
7 there are timely new contentions, and there are
8 untimely new contentions. And the vast majority of
9 the boards that have addressed this issue have said
10 it's an either/or 309(c) or 309(f)(2). But, in any
11 event, we understand your point, I do, anyway, your
12 point, Mr. Repka. Staff?

13 MS. UTTAL: Your Honor, I think that the
14 Levy order has it right, and that would be the
15 position that the staff would put forward, that we
16 file everything together, get the 25 days to answer,
17 and if it's timely new contention, you address the
18 factors under 309(f)(2). And if it's untimely,
19 309(c).

20 CHAIR KARLIN: Okay. All right. We'll
21 move to Question Five. And that one, I believe,
22 you've already answered, which is to say the updates
23 would occur on the 15th of the month, monthly, every
24 30 days, and on the 15th. So, that's from your letter
25 of the 10th of August. So, I think you've covered

NEAL R. GROSS

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

1 that. Any comments there from anyone on the updating
2 issue? We'll deal with the delay, the postponement of
3 the mandatory disclosures when we get to your letter,
4 I suspect.

5 MR. REPKA: Nothing further here.

6 CHAIR KARLIN: Okay. Number Six, agreement
7 concerning electronically stored information
8 considered reasonably accessible. I don't know -- did
9 you address that in your letter, Mr. Repka? I don't
10 think that particular topic was addressed, or was it?

11 MR. REPKA: It was not, and we did discuss
12 the issue. And we're aware that there's an issue as
13 to the scope of electronic disclosures. But I think
14 we basically agreed amongst ourselves that we would
15 proceed, and we would discuss further specifics as we
16 got into the process. And if we were aware of any
17 problems or disagreements, we would come to the Board
18 to resolve those, if we couldn't work it out amongst
19 ourselves. We didn't get beyond that at this point.
20 Recognizing that under our agreement, only EC-1 is
21 currently scheduled for October 15th.

22 CHAIR KARLIN: Okay. Well, we addressed
23 that in the Levy -- that was addressed in the Levy
24 scheduling order on page 6, "Reasonable Search
25 Electronically Stored Information." Did you all talk

NEAL R. GROSS

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

1 about that? I mean, because we may end up issuing
2 something which addresses that one way, or the other.

3 MR. REPKA: Well, we, certainly, speaking
4 for PG&E, have no objection to conducting reasonable
5 searches for electronic information. We have no
6 problem with including an affidavit attesting that
7 we've conducted such a search. And I think, really,
8 the only question in our mind was defining
9 "reasonable." And I think that's where we needed to
10 talk amongst ourselves about how do you search for
11 information, what kind of word searches we might
12 contemplate, and issues of that nature. So, the
13 concept of "reasonable," I don't think we have an
14 disagreement about.

15 CHAIR KARLIN: Right. Ms. Curran?

16 MS. CURRAN: Yes, I agree with Mr. Repka.
17 Really, it's a question, when we get into the details
18 of things like how far back the records go, or what
19 word searches, that sort of thing, I think we're going
20 to need to work out on a case-by-case basis.

21 CHAIR KARLIN: Okay. Ms. Uttal?

22 MS. UTTAL: I agree with both parties.

23 CHAIR KARLIN: Thank you. Thank you.
24 Okay. Well, as in the Federal Rules of Civil
25 Procedure that were recently, what, 2006 amended, I

NEAL R. GROSS

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

1 believe it was, to deal with this issue, they instruct
2 judges to instruct parties to discuss and confront
3 this issue, the ESI, Electronically Stored Information
4 issue, so that people can think about it ahead of
5 time, and try to reach agreement. And I appreciate
6 that you all were trying to follow something like that
7 model, and ask you to focus on it. And I appreciate
8 that you have focused on it.

9 Turning to Question Seven, I guess, if
10 that's okay. And I believe you did address this, and
11 resolve this issue on Electronically Stored
12 Information, how to produce it, the format for
13 production, in your letter, paragraph 4. Mr. Repka,
14 anything you want to say about that?

15 MR. REPKA: No, we believe that's correct.
16 Paragraph 4 addresses this issue.

17 CHAIR KARLIN: Right. Yes. It seems to
18 handle it reasonably. I think what we contemplate, or
19 what I contemplate was that our order will,
20 ultimately, incorporate or reflect most of these
21 things. And this instance may very well just simply
22 adopt what you've suggested, what you've agreed to on
23 this issue.

24 Anyone else want to talk about the format
25 of production? It's not a major issue. I'm glad you

NEAL R. GROSS

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

1 all talked about it.

2 Eight and nine, items eight and nine from
3 our August 5th order kind of go together, which is to
4 say we're in a Subpart L hearing for the four
5 contentions that have been admitted. One of the
6 determining factors into whether or not someone gets
7 a G hearing is whether or not the credibility of an
8 eyewitness is part of the resolution of that issue.
9 I have no good reason to think that that is a --
10 credibility of witnesses is a key issue here, but we
11 don't even know who the witnesses are. Certainly, the
12 intervener doesn't know who the witnesses are, and
13 unless and until you know who the witnesses are, you
14 might not be able to raise a 2.310(d) motion.

15 So, normally, the time limit for filing of
16 potential witnesses would be sometime, maybe the
17 initial filing, which almost ends up being kind of
18 late in the game to switch to a G hearing. Any
19 suggestions on that front, Mr. Repka?

20 MR. REPKA: No, we didn't reach any
21 particular agreement on this issue. It also didn't
22 appear to be explicitly addressed in Levy, from what
23 I could tell, anyway. But I think that, at least on
24 the one hand, witnesses could be identified very late,
25 maybe even in rebuttal testimony, if there's some new

NEAL R. GROSS

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

1 issue comes up in direct testimony. So, I think it
2 would be difficult to say that you can't identify a
3 new witness as late as the statement of positions and
4 filing the testimony, because that may just be the
5 reality of it.

6 CHAIR KARLIN: Well, under the Reg 2.336,
7 each party -- well, each party, the staff, not
8 necessarily, is obliged to identify witnesses, opinion
9 witnesses I might note, and that is one mechanism for
10 smoking each other out. You've got to do that at your
11 first disclosure, and you've got to update it every
12 month or so, who the witnesses are, those witnesses,
13 anyway. And if someone lists one of those witnesses,
14 then a motion for a G hearing ought to be, if it's
15 going to be prompt, would need to be filed, I don't
16 know, within 10 days, 20 days, 30 of the listing of
17 that witness, if that witness is a credibility
18 problem. But if you spring new witnesses on the
19 opposing party at the last minute, then the opposing
20 party may have reason to raise a problem with the
21 credibility of those witnesses, and we end up delaying
22 the evidentiary hearing because of this kerfuffle at
23 the end. And I want to try to avoid that, if we
24 could, by getting all the witnesses on the table as
25 early as possible, at least potential witnesses.

NEAL R. GROSS

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

1 MR. REPKA: Well, in concept, I have no
2 opposition to that. I think that it needs to be a
3 date that's later than the first initial disclosures,
4 but at an appropriate point prior to the testimony.
5 And then with some -- perhaps the onus then would be
6 for good cause shown, or for some good reason to add
7 a witness after that point. I think that would be
8 fine. I would have no objection to that.

9 CHAIR KARLIN: I see. Yes.

10 JUDGE ABRAMSON: This is Judge Abramson.
11 I've been in cases, and I think that this can
12 certainly happen in any case, where testimony that
13 shows up in the initial filing of expert testimony
14 requires somebody else to be brought forward as a
15 rebuttal witness. So, you really can't identify
16 everybody up front.

17 CHAIR KARLIN: Yes. No, I agree with that.
18 I agree with that. I guess -- and I agree entirely.
19 I think it would be best if the parties could identify
20 as many of the potential witnesses, as possible, and
21 then select from that group. And if someone has to be
22 added for good cause, or whatever, absolutely. We're
23 not going to prevent that from happening. I just
24 don't want to delay the proceeding, if we can help it.

25 Ms. Curran, any thoughts here?

NEAL R. GROSS

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

1 MS. CURRAN: Thanks, Judge Karlin. I guess
2 my thought is that from the intervener's perspective,
3 setting too early a date for conclusively identifying
4 witnesses is just burdensome for us, just because we
5 have limited resources. And my thought about the
6 issue of Subpart G is, there's really two aspects of
7 that. Right? One is, there's more discovery in
8 Subpart G. You get interrogatories and depositions,
9 and then there's the right of cross-examination.

10 I think that if the issue of credibility
11 of a witness came up in the case, it would be pretty
12 serious, and warranting that kind of delay. It
13 wouldn't be the kind of run of the mill thing, I don't
14 think. It would be unusual. I think it would be worth
15 it to take the time, if that came up, but I also think
16 that, say for an intervener with limited resources,
17 doing things like taking depositions or
18 interrogatories at such a late date wouldn't really
19 make a whole lot of sense. It would probably be that
20 one would want to get cross-examination. And I don't
21 see how that would delay the hearing.

22 CHAIR KARLIN: Yes, particularly under the
23 CAN ruling, whereby cross-examination is available
24 under L, as well.

25 MS. CURRAN: Yes. So, to me, it doesn't

NEAL R. GROSS

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

1 seem like this particular rule has that big of
2 potential to delay the hearing. But what would have
3 a potential to really, I think, impinge on the
4 interveners would be to set too early a date for
5 identifying witnesses in order to accommodate this.

6 CHAIR KARLIN: Right. Well, okay. I think
7 that's the right spirit on the thing. I just have
8 seen or concerned about -- and I don't think it's
9 going to happen here, someone who might want to delay
10 the proceeding at the last minute by virtue of
11 throwing in a motion for a Subpart G hearing just
12 simply for delay purposes, or something like that. I
13 don't think that's going to happen here. We have
14 experienced counsel on all sides of this case, so
15 that's helpful. Maybe the question -- we don't need-
16 to focus any more on that question, unless, Ms. Uttal,
17 you have anything from the staff, perhaps?

18 MS. UTTAL: No, I have nothing to add.

19 CHAIR KARLIN: Okay. Anyone else? Judge
20 Abramson or Trikouros?

21 JUDGE TRIKOUROS: No.

22 CHAIR KARLIN: Okay. Ten, I have to ask
23 this question. Does anybody want to use Subpart N
24 here?

25 MR. REPKA: In our discussions, nobody

NEAL R. GROSS

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

1 stepped up to that. We would not be opposed.

2 CHAIR KARLIN: Okay. I don't think anyone
3 has ever used it before, but it's out there, just have
4 everyone remember, just in case. Of course, there
5 also is the opportunity to use the Subpart L written
6 hearing, but that requires unanimous consent of all
7 the parties. And, again, that may not be in the cards
8 either.

9 MS. CURRAN: That doesn't seem likely from
10 the interveners' point of view.

11 CHAIR KARLIN: Okay. Yes. Eleven,
12 opportunities for clarification. Again, this is a
13 listing, 11, 12, 13 of items that I think are
14 appropriate to at least identify clarify of the
15 issues. Anything that can be done here on this, and I
16 might ask Ms. Curran to address 11, 12, 13, anything
17 you see in those, clarification of the issues, other
18 than the normal course of motions for summary
19 disposition, or motions to add new contentions, that
20 sort of thing. Anything along those three, 11, 12, or
21 13?

22 MS. CURRAN: Well, we talked about number
23 11, and decided that we will work together to see if
24 we can accomplish clarification, or simplification, or
25 specification in the future. We're all open to that.

NEAL R. GROSS

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

1 The interveners are interested in getting to the
2 merits of these issues, and really focusing, so
3 anything like that, we're open to.

4 CHAIR KARLIN: Okay.

5 MS. CURRAN: So, I think we're -- we've all
6 worked together a long time, and that we are -- we
7 work together well, and if opportunities come up to
8 narrow the issues with stipulations or admissions, or
9 that sort of thing, we'd all be open to doing that.
10 But it seems until we're going to get into the process
11 of developing the contentions that we can't really say
12 anything too specific about that yet.

13 MR. REPKA: Yes, this is Mr. Repka. Me,
14 too, everything that Ms. Curran said. And I think we
15 all agree that with 11, 12, 13, and 14, that the Levy
16 order was fine and appropriate.

17 CHAIR KARLIN: Okay.

18 MR. REPKA: I think it was Paragraph I
19 addresses all of these items.

20 CHAIR KARLIN: Yes. Okay. And I think one
21 of the things -- despite the fact that under Subpart
22 L there is no discovery, but for the mandatory
23 disclosures, I think there are still remaining
24 opportunities for stipulations, or admissions of fact
25 that you all might consider. I have -- it helps

NEAL R. GROSS

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

1 simplify some of the issues as we come -- when we get
2 closer to, perhaps, an evidentiary hearing, and some
3 of the facts can be stipulated to.

4 I have seen parties use motions for
5 summary disposition as a vehicle for obtaining
6 stipulations or admissions of fact. I think that's a
7 misuse of a motion for summary disposition. But, as
8 you know, motion for summary disposition must be
9 accompanied by a list of facts that the movant
10 believes are unassailable, and there's no genuine
11 dispute about. And the answer to a motion for summary
12 disposition must include answers to each of those
13 proposed facts, admitting or denying, or whatever.
14 So, this is, in effect, a way of getting stipulations
15 on at least some of the facts. I'd rather you all
16 develop that as simply stipulations of fact, than to
17 file a motion for summary disposition, in part, just
18 to get these freebie stipulations. What I'm saying
19 is, I think stipulations of fact are available without
20 going to a motion for summary disposition.

21 MS. CURRAN: Judge Karlin, this is Diane
22 Curran. If I'm remembering Levy correctly, isn't the
23 paragraph on summary disposition, doesn't it say that
24 we're supposed to consult the other side before
25 submitting a summary disposition motion?

NEAL R. GROSS

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

1 CHAIR KARLIN: Yes.

2 MS. CURRAN: Well, that seems like maybe
3 something that could be said to see if any of the
4 issues could be resolved through stipulations, without
5 going through that process.

6 CHAIR KARLIN: Right.

7 MS. CURRAN: That's a way of doing it.

8 CHAIR KARLIN: Yes. I think that would be.
9 I mean, the duty to consult is required under the
10 regs, but we amplified some of it under -- in the Levy
11 order and said, in addition to a duty of the movant to
12 attempt a good faith consultation with the other
13 parties, the other parties have a duty we imposed to
14 respond in some good faith way to try to talk with
15 them, rather than just sort of saying well, I'll see
16 you in court.

17 MS. CURRAN: Yes.

18 CHAIR KARLIN: And that would be one of the
19 things you all might talk about, is well, what can we
20 agree to here, or there may be some facts you can
21 stipulate to.

22 Anyway, Mr. Repka, any thoughts here?

23 MR. REPKA: No, I really don't have
24 anything further to add. I mean, it's certainly
25 something that -- set the goal that the parties will

NEAL R. GROSS

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

1 consult even in the context of prior to filing a
2 summary disposition motion, is acceptable to us.

3 CHAIR KARLIN: Okay. Especially in the
4 context of a motion for summary disposition.

5 MR. REPKA: Right.

6 CHAIR KARLIN: And, staff, Ms. Uttal, Mr.
7 Subin, anything?

8 MS. UTTAL: I have nothing further to add,
9 Your Honor.

10 CHAIR KARLIN: Item 14 from this order,
11 Settlement Judge. Just a reminder, we have that
12 opportunity to ask the Chief Judge to appoint a
13 Settlement Judge. Is there any interest in any of
14 that right now?

15 MR. REPKA: I think that's probably
16 premature at this point.

17 CHAIR KARLIN: Premature. Okay.

18 The fifteenth item is the Privilege,
19 Protected Status information, and procedures for time
20 limits for challenges to assertions of privilege and
21 protected status, development of a protective order,
22 and a non-disclosure agreement.

23 You dealt with some of that in the letter
24 in Paragraph 5 of your letter, Mr. Repka. Maybe you
25 can respond to this one first.

NEAL R. GROSS

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

1 MR. REPKA: Correct. We did talk about
2 this, and in our agreement we addressed privilege
3 logs, and we agreed to waive privilege logs on
4 attorney/client privilege, attorney work product, and
5 deliberative process. But we also agreed that with
6 respect to any proprietary and sensitive information,
7 that would be identified in a disclosure log. And
8 then if any proprietary or security sensitive
9 information is identified, and a party wants to have
10 access to that, we agreed we would work together and
11 develop a protective order to provide for the
12 disclosure, if that was the appropriate thing to do.

13 I think we all felt like we have
14 protective orders we've used in other matters, and
15 that would not be a particularly contentious issue, at
16 least the scope of the protective order, itself. So,
17 we would work together, and submit that at an
18 appropriate time.

19 CHAIR KARLIN: Okay. Any comments, Ms.
20 Curran?

21 MS. CURRAN: Well, I see that the one thing
22 that we didn't address was time limits for challenging
23 claims of privilege, or other things.

24 CHAIR KARLIN: Right.

25 MS. CURRAN: And from experience, I know

NEAL R. GROSS

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

1 that there's often a huge amount of material to go
2 through, and it's really at a time when one is
3 developing the testimony that you really start to
4 focus, sift through it all, and read things in detail,
5 and see oh, there's such and such a memo that wasn't
6 produced, or something like that. So, I guess I'd
7 like to propose that whatever time limit is set on
8 that, is set to be close to the time of preparing the
9 testimony.

10 CHAIR KARLIN: Well, that's exactly what
11 we're trying to avoid, which is to avoid -- move these
12 discovery dispute issues up further in the process, so
13 that they don't arise at the very eve of the
14 evidentiary hearing.

15 MS. CURRAN: Yes.

16 CHAIR KARLIN: We will all have,
17 presumably, enough to do at the evidentiary hearing
18 stage. And one of the differences is, in a Subpart L
19 hearing, as you know, the parties submit their piles
20 of information, and we get these tall piles sitting in
21 front of the three judges, and we read the stuff, and
22 we study it, and we think about it, and we develop --
23 we analyze it, try to -- do we have any questions?
24 So, the burden is upon us, the judges, to prepare for
25 the evidentiary hearing. The lawyers sit there and

NEAL R. GROSS

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

1 don't have anything to do. You've already done all
2 your work by submitting the material, essentially.
3 So, in the last three weeks, six weeks, four weeks
4 before the evidentiary hearing, the judges are busy
5 preparing their questions and the issues for the
6 evidentiary hearing. And we do not want, at that
7 point, to in addition to anything else, be having to
8 deal with unnecessarily late motions for discovery
9 disputes.

10 In fact, if there is a discovery dispute
11 at that late juncture, we end up with problems about
12 well, you did your initial filings, and now you want
13 to file some additional initial filings because you
14 just moved a motion to compel, because somebody's
15 withholding a document that you didn't think they
16 should withhold.

17 So, I think there is a requirement, let's
18 say 10 days. A motion needs to be filed within 10
19 days of the event or circumstances upon which it
20 arises. And if someone claims the privilege status of
21 Document X, then should that motion to compel -- if
22 you think that's not really privileged, shouldn't that
23 be due 10 days later?

24 MS. CURRAN: Well, Judge Karlin, this is
25 Diane Curran again. My concern about that is that,

NEAL R. GROSS

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

1 generally, the first disclosure is enormous, and it
2 comes very early in the case.

3 CHAIR KARLIN: Right.

4 MS. CURRAN: So, that's really the problem
5 there, that one is, perhaps, still looking for
6 witnesses at that point. And you can't even make a
7 judgment about well, is this one important, is that
8 one important until you have your witness. So, I
9 understand what you're saying about not moving all
10 this to right at the point of submitting the
11 testimony, and I think that's really reasonable.

12 What I'm worried about is, right in the
13 first -- the case has basically just begun, and if you
14 don't do a motion to compel within 10 days, you're out
15 of luck for maybe two years. It could be a couple of
16 years before you go to a hearing. That's just -- I
17 just wish there was -- I'd like to see some way to
18 deal with that, that takes into account the Board's
19 concerns, but also allows the parties a reasonable
20 chance to get witnesses and prepare their case.

21 CHAIR KARLIN: Okay. Well, I think -- I
22 understand that problem, and that issue. Mr. Repka,
23 did you have any thoughts on this?

24 MR. REPKA: Well, I'll just say, number
25 one, and I recognize the Board's concern about back-

NEAL R. GROSS

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

1 loading the process, and I think that's a legitimate
2 concern, particularly where the disclosure process
3 could go on for many months while we're waiting to
4 present a case. So, getting those disputes addressed
5 during the time when only disclosures are going on I
6 think is very appropriate.

7 Having said that, I'm sensitive to Ms.
8 Curran's concern, and I think a 10-day requirement at
9 the front end based on initial disclosures, in
10 context, seems very harsh, so I think that some
11 reasonable accommodation can certainly be allowed
12 there.

13 CHAIR KARLIN: All right. Because it would
14 seem that under the regs, as they stand, 10 days is
15 the time frame. Motions have to be filed within 10
16 days, 2.232(a), I guess it is. And that is a little
17 short with regard, at least, to the initial mandatory
18 disclosure, which is usually quite large.

19 MR. REPKA: Correct. I mean, that may be
20 very appropriate at the end of the process, but less
21 so at the beginning.

22 CHAIR KARLIN: Right. Ms. Uttal, do you
23 have any solution to this, or ideas?

24 MS. UTTAL: Well, I agree that at the front
25 end that there should be a longer period of time to

NEAL R. GROSS

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

1 file the motion, perhaps 30 days or something like
2 that, but at the tail end, the 10 days should kick in.

3 CHAIR KARLIN: Right. Exactly.

4 MS. CURRAN: Well, for instance -- this is
5 Diane Curran, again. It could be a deadline about
6 something to go along with the Draft EIS, because at
7 that point, that's when things start to gel, and most
8 of the issues in this case are environmental. And
9 you've got the landscape pretty well set. You,
10 hopefully, have a witness, so if it could be set to
11 some reasonable period after that, and that's
12 significantly in advance of the Final EIS, but still
13 late enough in the process that -- for instance, the
14 Mothers for Peace has very limited resources. To
15 retain somebody for a period of years to be reviewing
16 documents, first of all, if you could find somebody
17 who's going to review documents and be able to digest
18 everything over a long period of time is, for us --
19 that would be extremely difficult. We don't have
20 that kind of resources.

21 What we do have is the resources to --
22 when the case -- when things -- the Government has
23 basically developed, finished its review, or at least
24 got the draft to be able to look at everything and say
25 okay, this is what we have to say here. But it's --

NEAL R. GROSS

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

1 we have to really focus our resources.

2 CHAIR KARLIN: Well, I hear you, and I
3 think that we'll discuss this with the other judges,
4 but you all filed this case, and there will be
5 mandatory disclosures being made by all parties at
6 some point. And it is incumbent upon the parties to
7 read those mandatory disclosures, and to read the
8 privilege logs, such as they are being submitted. And
9 whether or not some document, which is claimed to be
10 privileged, really is privileged or not is not going
11 to be determined by some witness. It's going to be
12 determined by you, or, at least, ultimately, by the
13 Board, I guess. But if you have a problem with
14 someone over claiming proprietary stuff on their
15 privilege log, that ought to be brought up earlier
16 rather than waiting for some subject matter expert to
17 start delving into it.

18 MS. CURRAN: But, Judge Karlin --

19 CHAIR KARLIN: Yes.

20 MS. CURRAN: -- let me just give an
21 example. Well, I don't have a concrete example, but,
22 for instance, there's technical studies that are going
23 on right now, and that are going to be, I would think,
24 pieces of them becoming available. And when a new
25 study becomes available, sometimes it makes an earlier

NEAL R. GROSS

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

1 study suddenly relevant. A lot of it is what is
2 important, what are the important documents, what are
3 the important facts? And one sees that as the case
4 develops, and you don't always know right at the point
5 some document is identified how it fits into the
6 picture.

7 I'm just asking for some flexibility so
8 that it's really like putting together a puzzle. As
9 one puts -- and I'm not suggesting that we are going
10 to sleep on our rights or anything, but it is an
11 iterative process of putting things together, and the
12 pieces really start falling together at the point when
13 the staff prepares the EIS. I guess I'll leave it at
14 that.

15 CHAIR KARLIN: Okay. Well, let me --
16 before we leave this topic entirely, I have some
17 concern and difficulty, questions, really about your
18 Paragraph 5, Mr. Repka, of your letter. And I think
19 it helps clarify by your explanation. Let me see if
20 I've got this right. I'm reading Paragraph 5.

21 "The parties agree to waive the
22 requirements to produce privilege logs with regard" --
23 and you have an e.g. down there. I think what you
24 mean is an i.e., or you are waiving privilege logs for
25 attorney/client, attorney work product, and

NEAL R. GROSS

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

1 deliberative process. However, you are not waiving
2 privilege logs with regard to proprietary, SUNSI or
3 SGI. Is that right?

4 MR. REPKA: That's correct.

5 CHAIR KARLIN: Okay. Does everyone agree
6 with that?

7 MS. CURRAN: Yes.

8 MS. UTTAL: Yes.

9 CHAIR KARLIN: Okay. Is there any other
10 categories we need to consider, or does that cover the
11 universe? It's probably good enough for now, but
12 there are other privileges that exist somewhere in the
13 world, I guess.

14 MR. REPKA: Yes, I suppose there are, which
15 is probably why I put e.g., but I think those are the
16 big players we were thinking of.

17 CHAIR KARLIN: Okay. Was the general rule,
18 you waive all privilege logs, exception proprietary,
19 SUNSI, and SGI?

20 MR. REPKA: Correct.

21 CHAIR KARLIN: Okay.

22 MR. REPKA: So, any disputes would be
23 surrounding those, and any issue of access under a
24 protective order would relate to proprietary, SUNSI,
25 or SGI.

NEAL R. GROSS

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

1 CHAIR KARLIN: Okay. That's helpful. Do
2 you agree with that, Ms. Curran?

3 MS. CURRAN: Yes.

4 CHAIR KARLIN: Okay. And Ms. Uttal?

5 MS. UTTAL: Yes.

6 CHAIR KARLIN: Okay. Now, let's focus on
7 the ones that you will produce. I understand
8 proprietary. There is a legal category. It's Freedom
9 of Information Act, Exemption 4 that we all know as
10 proprietary. I understand SGI. There is a section of
11 the statute 147, and there is a section of the regs
12 that tell us what SGI is, and what it isn't.

13 As you might suspect, I do not understand
14 SUNSI in that there's no legal definition of SUNSI.
15 There's no case law, regulation that tells me what
16 that is, and/or why it might be protected, so what do
17 you mean by SUNSI, Mr. Repka?

18 MR. REPKA: Well, I use SUNSI in the way
19 that the NRC staff uses SUNSI. And I do believe the
20 staff has a position that's documented on the FOIA,
21 and where SUNSI fits under the exemptions. I would
22 defer to Ms. Uttal on that off the top of my head, but
23 I'm not sure that I agree that it's not subject to a
24 FOIA exemption. I believe the staff position is that
25 it is.

NEAL R. GROSS

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

1 CHAIR KARLIN: All right. What exemption
2 is it, Mr. Repka?

3 MR. REPKA: I don't have that off the tip
4 of my tongue. I'll just add that Mr. Smith, Tyson
5 Smith is on the line separately. He may know, and I'd
6 ask him that.

7 MR. T. SMITH: Sir, this is Tyson Smith.
8 As I understand it, the staff considers, and Ms. Uttal
9 can, perhaps, expand on this, they consider SUNSI
10 information to be protectable under FOIA. There may
11 be -- as you know, there have not been any specific
12 challenges to it, but I believe it falls under
13 Exemption 4, or under Exemption 2, the High 2.

14 CHAIR KARLIN: All right. You're
15 suggesting it's Exemption 4, that's proprietary
16 information?

17 MR. T. SMITH: For confidential financial
18 information.

19 CHAIR KARLIN: Yes. Confidential.

20 MR. T. SMITH: Yes.

21 CHAIR KARLIN: Financial information.

22 MR. T. SMITH: Commercial or financial
23 information that -- I don't have the statute in front
24 of me.

25 CHAIR KARLIN: Well, maybe Ms. Uttal can

NEAL R. GROSS

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

1 help us. What I'm suggesting, I'm not trying to play
2 games here. I mean, if we're going to have something
3 in this order, we need -- I think we ought to have a
4 definition of the word, so that if somebody says this
5 is SUNSI or this isn't SUNSI, we all have some friggin
6 idea what the word means. So, sensitive, it's not
7 classified, and it's not safeguards, but it's
8 sensitive. Now, Ms. Uttal, what's the -- is there a
9 legal definition, that is, a case law or regulation
10 that is binding upon this Board that defines SUNSI?

11 MS. UTTAL: We're kind of in a quandary
12 here. I don't know the definition right off the top
13 of my head, but I don't believe that it's Exemption 4,
14 because that would be proprietary information, trade
15 secrets, commercial or financial information obtained
16 from a person, and privileged or confidential. So, I
17 don't think that's SUNSI. I think more on the
18 information that might affect security, but doesn't
19 rise to the level of safeguards.

20 MR. T. SMITH: Well, perhaps I can expand
21 on this. This is Tyson Smith, again. SUNSI means,
22 and I'm looking at the NRC's policy on treatment of
23 Sensitive Unclassified Non-Safeguards Information,
24 which is the acronym for SUNSI. It says, "The
25 categories have been organized into the following

NEAL R. GROSS

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

1 seven groups, allegation information, investigation,
2 security-related information, proprietary information,
3 and sensitive internal information." So, I think the
4 category of SUNSI would encompass, and it is a broad
5 category, encompass both Exemption 4 material that's
6 some proprietary information. It might also encompass
7 some information that could be withheld from public
8 disclosure under the Exemption High 2, which is
9 internal agency procedures that might lead to a risk
10 of, the term, some violation of statutory or
11 regulatory requirement. So, perhaps it is a catchall
12 that's not defined very clearly.

13 CHAIR KARLIN: Right. Is there any
14 regulation or case law that defines SUNSI in a binding
15 way here?

16 MS. UTTAL: Not that I'm aware of.

17 CHAIR KARLIN: Right. There is none, I
18 would submit to you. And SUNSI appears, according to
19 what Mr. Smith just indicated, to be a label which is
20 used to comprehend as an umbrella label for, I don't
21 know, seven other categories. And I think the way to
22 look at that is to say well, let's not ask whether it
23 qualifies as SUNSI, let's ask whether it qualifies as
24 High 2, or Exemption 4, or investigative. So, I think
25 the correct analytical approach is not to use the

NEAL R. GROSS

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

1 label SUNSI, but to look at the underlying legitimate
2 legal protection which is available, or not, for the
3 document claimed to be privileged.

4 I don't know what we do here. One option
5 would be, and I have to consult other Board members,
6 is to ask you all to come back with a better -- a
7 clarification of what you want to cover or not cover
8 by this acronym undefined SUNSI, and we could consider
9 it. Or the other is, we already know what's said in
10 the NRC policy, and we could attempt to clarify it, as
11 we see fit. But we do -- we need, essentially, some
12 clarity.

13 There's another option, which is 2.390(d),
14 talks about security-related material, but it never
15 uses the term SUNSI. I'm not sure that's what you
16 mean.

17 So, are the parties interested in coming
18 back to us with a better definition of what you will
19 cover in your privilege logs? Proprietary -- and
20 here's where the -- proprietary, including documents
21 that are SUNSI. Does that imply that SUNSI is a
22 subset of proprietary?

23 MR. REPKA: Yes, I believe that's written
24 that way because I thought that was the case, but that
25 may or may not be the case. It's Mr. Repka speaking

NEAL R. GROSS

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

1 again. I defer to the staff, to some extent, but I
2 think we would be happy to look further into the
3 issue, and provide further background.

4 MS. UTTAL: The staff would like the
5 opportunity to address this further.

6 CHAIR KARLIN: And Ms. Curran?

7 MS. CURRAN: Well; I'd certainly like to
8 see what PG&E and the staff have to say. I guess,
9 from a practical perspective, maybe what would help is
10 to put something in the agreement about that the
11 privilege log should have some detail about when
12 something is claimed to be SUNSI, exactly what legal
13 protection is claimed, so that -- my understanding,
14 as was just discussed, is that it could be any one of
15 a number of FOIA exemptions. So, if there could be
16 some information in the privilege log as to what it
17 is, and what exemption is claimed, that would
18 certainly be helpful.

19 CHAIR KARLIN: Maybe I'll ask Judge
20 Abramson and Judge Trikouros just off the cuff if you
21 have any - and I'm sorry we didn't really discuss
22 this. Any objection to us sort of asking the parties
23 to submit something to us, say within a week or 10
24 days, providing their -- whether they have an
25 agreement of what SUNSI is, or isn't, and that sort of

NEAL R. GROSS

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

1 thing. Would that be all right with you, Judge
2 Abramson? Give them five or ten days to do that,
3 seven days?

4 JUDGE ABRAMSON: Yes, I don't care. It
5 seems to me like we're making a mountain out of a
6 molehill at this point. We'll know what they're
7 claiming when they have to claim it.

8 CHAIR KARLIN: Okay.

9 JUDGE TRIKOUROS: Yes. I think it would be
10 a good idea to try and clarify this in perhaps 10
11 days. But it's clear to me in listening to the
12 conversation that the use of the term "SUNSI" is
13 probably not a good idea. That SUNSI is a large
14 enough umbrella that is probably not very useful to
15 us. The term "proprietary" certainly is. The term
16 "security" certainly is, and there may be one or two
17 others that might be fine.

18 CHAIR KARLIN: Yes. Okay. Well, I think -
19 - I agree, and maybe we could ask the parties to -
20 give you - what's the date today? Until next Friday
21 to submit something either jointly, or separately. I
22 mean, Paragraph 5 is, ostensibly, your agreement, what
23 you've agreed to. And I'm not sure whether I
24 understand what you've agreed to, or I'm not sure
25 whether you agree to what you've agreed to vis a vis

NEAL R. GROSS

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

1 the label of SUNSI, but I agree. So, by next Friday,
2 COB Friday, please submit to us whatever you wish to
3 with regard to clarifying Paragraph 5, particularly
4 the second sentence, and particularly the term "SUNSI"
5 here.

6 I think it's probably much more productive
7 not to use that label, because it's meaningless as far
8 as the law is concerned. And instead, to use the
9 underlying seven labels that Mr. Smith just rattled
10 off, if that's what you mean when you say you will
11 produce privilege logs with regard to proprietary,
12 safeguards, and all seven of those underlying
13 categories.

14 MS. CURRAN: Judge Karlin, this is Diane
15 Curran. I'd like to make a request. Could the
16 Mothers for Peace be allowed to respond if we need to,
17 to the other's pleadings, because we don't -- this is
18 not our information, so it's not --

19 CHAIR KARLIN: Well, I don't know if that's
20 really quite fair. It's not your information, but
21 you're the one who's interested in getting the
22 information.

23 MS. CURRAN: Yes, and --

24 CHAIR KARLIN: So, you're the one who
25 they're going to be disclosing it to, so you,

NEAL R. GROSS

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

1 obviously, have an interest in what you're going to
2 waive, and what you're not going to waive, and what
3 you want them to produce in a privilege log, and what
4 you don't. And if you have a label SUNSI that you
5 don't know what it means, and you agree they do or do
6 not have to cover it, no one knows what that covers.
7 I think you need to take a position, and it wouldn't
8 be fair to really give you a rebuttal opportunity. I
9 mean, everyone just gives us what they think.

10 MS. CURRAN: Well, then I just want to ask
11 for clarification that -- I guess the Mothers for
12 Peace would be prepared to address how -- what would
13 be the most helpful way for claims of protection of
14 information to be described. I think you raised a good
15 point, that when somebody says something is SUNSI,
16 it's a little hard to know what's the basis for the
17 claim that this information doesn't need to be
18 disclosed.

19 I just -- I don't feel in a position to
20 give you a big briefing on how information ought to be
21 categorized as SUNSI, or not SUNSI, just because it's
22 so complicated. And for purposes of just figuring out
23 whether -- you know, from our perspective, it's just
24 getting enough information to evaluate a claim that
25 something is protected, and whether you try to get the

NEAL R. GROSS

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

1 information. That's our perspective.

2 In terms of the whole debate about whether
3 the classifications are legitimate, what exemptions
4 certain information falls under, or shouldn't fall
5 under, I just don't feel prepared to address that.

6 CHAIR KARLIN: Do the other parties have
7 any position or concern on this? Mr. Repka, perhaps?

8 MR. REPKA: I think that it's a staff term.
9 I think that it does have a definition in internal
10 agency documents, and I think we can certainly lay
11 that out. I don't think it's a term that -- I do not
12 believe it's a term that PG&E invokes unilaterally.
13 If a document is labeled by the NRC staff that way,
14 PG&E may carry forward that label, but --

15 CHAIR KARLIN: No, my question was more on
16 this point. First, Ms. Curran, we have to issue
17 initial scheduling order within 55 days, and we're
18 trying to do that, so we don't want to delay this,
19 particularly. But you've asked for a process whereby
20 let the staff and the applicant submit what they wish
21 to with regard to the meaning of Paragraph 5, and then
22 give you opportunity to react or respond, and file
23 something a bit later. Do you have any problem with
24 that approach, Mr. Repka and Ms. Uttal, that maybe you
25 file first, and then give Ms. Curran an extra three or

NEAL R. GROSS

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

1 four days, five days to say yeah or nay to that? I
2 mean, is there any problem?

3 MR. REPKA: I do not believe it's an issue
4 that's amenable to debate. I think it's a -- the term
5 is defined. I don't know the definition offhand, or
6 where that is, but that's what I believe that we can
7 get back to you with. I don't think that the
8 definition is subject to debate. The application of
9 it some day may be, but not the term, itself.

10 CHAIR KARLIN: Well --

11 MR. REPKA: I'm not sure why we would have
12 filings and counter-filings.

13 MS. CURRAN: Judge Karlin --

14 CHAIR KARLIN: The point -- well, let me --
15 the point is, what are you agreeing to? You can
16 agree to waive the list logs for X files, and I don't
17 know what X files means. If you give me a definition
18 of X files, then we can go move forward. But I don't
19 know whether you know what you -- whether you've
20 reached an agreement here. That's all I'm trying to
21 figure out.

22 JUDGE ABRAMSON: Judge Karlin, this is
23 Judge Abramson. This will be much easier to resolve
24 in the specific when things come up. I think what we
25 can expect reasonably to get from the staff and the

NEAL R. GROSS

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

1 applicant at this point, if there is, in fact, a
2 staff's definition, is we're going to get the staff's
3 definition back. And we're not going to know how it
4 applies in the specific until a specific instance
5 comes up. And we can't expect an infinite list of
6 specific examples at this point.

7 CHAIR KARLIN: Right. I agree with that.
8 We don't want specific examples, at all. Agreed.

9 MS. CURRAN: Judge Karlin, this is Diane
10 Curran. Maybe the best thing to do would be for the
11 three parties to get together and give a more detailed
12 explanation of the meaning of Paragraph 5. And if we
13 can't come up with it together, then the Mothers will
14 make some separate statement. Does that make sense?

15 CHAIR KARLIN: Right. By next Friday, let
16 us ask you to submit, I think we've discussed this
17 enough, whatever you wish to submit with regard to
18 Paragraph 5, particularly the second sentence of
19 Paragraph 5, what you think you're agreed to, and what
20 you haven't. And then we'll take it under
21 consideration. And if you reach agreement, you can
22 file some agreed position. If you don't reach
23 agreement, you can file separation positions, and all
24 the filings will be due next Friday.

25 Now, I might add that we may or may not

NEAL R. GROSS

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

1 adopt, are not bound by something if it doesn't seem
2 to be meaningful, or we don't understand what we're
3 doing, we're not going to put it in an order when we
4 don't know what that word means, or at least I'm not.
5 We'll think about it. We'll talk about it, the Board,
6 and we'll debate it.

7 All right. Let me raise one other thing
8 in the SUNSI context. We could either do it now, or
9 later, so we might as well do it now, which is, if you
10 look at the issue of SUNSI, in our -- in the Levy
11 order, and in the normal course of events the way
12 boards handle discovery disputes, or, in this case,
13 not so much discovery, as motions to compel. Okay.
14 What happens if someone makes a mandatory disclosure,
15 and somehow they've omitted relevant documents? Then
16 the other -- from the mandatory disclosure. Then the
17 other side has the opportunity to file a motion to
18 compel the production of those documents.

19 If someone makes a mandatory disclosure
20 and they claim something to be privileged in a
21 privilege log, and the other side believes that it
22 really doesn't qualify for that privilege, then the
23 other side can file a motion to compel the production
24 of that document, or to challenge the claimed
25 privilege.

NEAL R. GROSS

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

1 Now, with regard -- this is how we're
2 going to handle -- this is how we handle, this is how
3 boards handle discovery disputes, disclosure disputes.
4 And this also applies to SUNSI; that is to say, if
5 someone claims something as "SUNSI," and the other
6 side says that it's not SUNSI, what the process is, is
7 the normal discovery dispute process under the
8 adjudicatory proceeding, whereby you file a motion to
9 compel, and the other side files an answer. And then
10 the Board resolves that issue.

11 And what is correct here is that if you go
12 back -- I want to avoid confusion, because if you go
13 back to the initial Federal Register notice here on
14 January 21st, 2010, there was a process laid out
15 dealing with SUNSI. And that dealt with potential
16 parties who needed information in order to obtain the
17 information, in order to file contentions. And that
18 process does not apply here any more, because now
19 there is an actual party. The actual contentions are
20 filed, so the guiding process for discovery disputes
21 will be the normal discovery dispute process of
22 boards. And it will not be the process laid out in
23 the Federal Register notice, because that is moot. If
24 you look at 2.307(c), it gives SECY the authority to
25 issue such orders dealing with potential parties who

NEAL R. GROSS

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

1 need information to file contentions. That is now
2 past, and as that order says, now the normal process
3 applies, and the normal process is motions to compel
4 in front of a board. And I think that just needs to
5 be clarified, because it could be the source of
6 confusion.

7 So, why don't we move on to Question
8 Sixteen, Site Visit. I think -- I believe,
9 personally, that a site visit might be helpful. And
10 I'm not sure whether the parties think that would be
11 appropriate. I mean, it is somewhat of a burden on
12 PG&E to have all of us trouping around on your
13 facility. And all of us, of course, would have to
14 spend some money to get there, so I ask -- I'll start
15 with Mr. Repka, if you think that would be an issue or
16 a problem for your client if we have a site visit?

17 MR. REPKA: It would not be an issue or a
18 problem. I think we would defer to the Board's view
19 as to whether that's helpful. So, we're neither for
20 it, nor against it, but we would support it. In our
21 discussions, I believe the staff was of a similar
22 view, and I believe the Mothers for Peace felt the
23 issue is premature. But speaking for PG&E, I think we
24 would support it, if the Board desired.

25 CHAIR KARLIN: All right. I appreciate

NEAL R. GROSS

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

1 that, because it is a burden of some degree on the
2 applicant. Ms. Curran, any thoughts here?

3 MS. CURRAN: Well, if the Board wants to
4 have a site visit, the Mothers for Peace would
5 certainly be supportive of that. At this point, we
6 would like to wait and see when we have our witnesses
7 whether they would think it was useful to tour the
8 site.

9 CHAIR KARLIN: Well, okay. A site visit is
10 not an opportunity for all of your experts to
11 accompany you on the visit. It's not discovery for
12 you, it's information for us, but okay. And, staff,
13 you're neutral on this, basically?

14 MS. UTTAL: Basically, yes.

15 CHAIR KARLIN: Okay.

16 JUDGE ABRAMSON: This is Judge Abramson.
17 I'm not so neutral on this. We can talk about it
18 later.

19 CHAIR KARLIN: Okay. Item 17, Simultaneous
20 Filing or Sequential Filing of the initial written
21 statements. Does anyone have any thoughts on that?
22 I mean, if you don't, it's okay.

23 MR. REPKA: Well, Mr. Repka, again. I
24 think we agreed that simultaneous written direct
25 positions and testimony, followed by simultaneous

NEAL R. GROSS

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

1 written rebuttal would be what we would think would be
2 appropriate.

3 CHAIR KARLIN: Okay. Good. Everyone is
4 okay with that then? That is the way the regs are
5 laid out, and it has some sense to it.

6 Eighteen, Time limits for filing motions
7 for cross-examination. Probably not a major issue to
8 discuss, but at some point, there is an opportunity to
9 do that, and we need to lay off -- have a time frame
10 for that.

11 We handled it in the -- the Levy Board
12 handled it in page 18, and sort of after all the
13 initial and rebuttal filings have been made. That
14 seems to be about the right time frame, unless you all
15 have some objections or concerns.

16 MR. REPKA: This is Mr. Repka. I think it's
17 just a matter of working it into the schedule timed
18 with the testimony coming in and the start of the
19 hearing date. I think 30 days prior may be a lot --
20 might end up resulting in too much extra time being
21 put into the schedule. But I think, obviously, some
22 allowance can be made for it in the schedule, and we
23 have no objection to that.

24 CHAIR KARLIN: Okay. Nineteen, any other
25 procedural matters. We'll move -- I think we're

NEAL R. GROSS

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

1 pretty much done with the August 5th order. Now,
2 we're going to go to the Repka letter of August 10th.
3 Okay? And I think we've pretty much covered that one,
4 too.

5 We dealt with the issue of privilege log,
6 Paragraph 5 issues. Let me ask an easy one. You have
7 proposed deferral of disclosures, initial disclosures.
8 Does that include deferral of the hearing file with
9 regard to those contentions, as well, Ms. Uttal? Is
10 that the intent?

11 MS. UTTAL: That was my understanding.

12 CHAIR KARLIN: Was that everyone else's
13 understanding? It wasn't clear to me in the way the
14 letter was written.

15 MR. REPKA: That would have been my
16 understanding, as well.

17 MS. CURRAN: Yes. This is Diane Curran,
18 same here.

19 CHAIR KARLIN: Okay. Because it said
20 "initial disclosures," and it didn't say hearing file,
21 so I had a question about that.

22 EC-1 you've got delayed until -- proposed
23 until October 15th. That seems just a short delay.
24 The other one, TC-1, you've delayed indefinitely. And
25 I have to say, personally, I am somewhat troubled by

NEAL R. GROSS

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

1 that, in that if we have admitted TC-1, we, of course,
2 are waiting for the Commission's decision on its
3 appeal. Meanwhile, the FSER is being issued, and it
4 may -- you're talking about having the safety hearing
5 even before the FSER is issued. And, yet, there will
6 be no disclosures made until the Commission rules.
7 And the Commission -- the last time they appealed
8 something I was working on, it took them 18 months to
9 decide it. Let's hope it doesn't take that long, but
10 I would think six months is not unreasonable. Then
11 that puts us into February.

12 MR. REPKA: This is Mr. Repka. I was
13 assuming about six months. I think that's a logical
14 assumption. I wasn't assuming going forward to
15 hearing prior to making any disclosures, so I think
16 what we were contemplating was a Commission decision.
17 Obviously, TC-1 is a contention that will require some
18 significant effort on the part of all of the parties,
19 both in the disclosure, and in the preparation
20 process. But we were looking at a schedule that would
21 have a Commission decision, some appropriate time for
22 disclosures, and then appropriate time periods for
23 preparation of cases, and summary disposition motions
24 in there, as necessary. Again, not keyed to the SER.
25 That doesn't mean it won't show up, that the schedule

NEAL R. GROSS

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

1 wouldn't push it, go back and look at the issue that
2 a Safety Evaluation Report with open items in
3 December, final SER in May. If it turned out that the
4 schedule -- a appropriate schedule triggered by a
5 Commission decision on the appeal, and subsequent
6 disclosures could extend past that SER date, I
7 recognize that, and I don't have any problem with
8 that. So, if it turned out that it could be earlier
9 than the SER date, that's fine, too. But we're not
10 looking, and we're not advocating for a hearing prior
11 to disclosures, just to be very clear there.

12 CHAIR KARLIN: Yes, right, right. I'm just
13 suggesting that this could delay, if we wait until the
14 -- whatever. Ms. Curran, again, you are agreeing --
15 you were suggesting you would agree to delay this
16 indefinitely. Do you see a -- what happens if we get
17 pushed up against other deadlines that are occurring
18 here?

19 MS. CURRAN: Well, I -- to me, this seems
20 like a reasonable approach. There's a lot of issues
21 have been admitted, and it's a way of managing it a
22 little bit for me, so I think it's -- from my
23 perspective, it's reasonable.

24 MR. REPKA: Judge Karlin, this is Dave
25 Repka, again. I'd say that, again, we're contemplating

NEAL R. GROSS

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

1 separate tracks for EC-1 and TC-1. And, obviously, if
2 any of the contentions that are subject to some
3 further process, if we end up moving forward to, they
4 would be on separate tracks, as well. And the
5 prospect of a long-term Commission delay, say beyond
6 our assumption of about six months, perhaps if we find
7 ourselves in that space, we can and should revisit the
8 issue. But a working assumption of six months I think
9 would allow us to proceed on different things, on
10 different schedules, on appropriate schedules.

11 CHAIR KARLIN: Ms. Uttal?

12 MS. UTTAL: Judge, the effort that would be
13 put forth on TC-1 would be, I think, enormous for the
14 staff. We think that it's a good idea to wait and see
15 what happens with the appeal.

16 CHAIR KARLIN: Okay. Well, okay. There's
17 a couple of things here. One is, we have admitted, or
18 found admissible four contentions here. One of them
19 is subject to a prima facie review, of course,
20 determination, or the waiver decision by the
21 Commission. But there are four admissible contentions
22 here, and I don't see this being quadruplicated into
23 four different hearings. We're going to have a
24 hearing probably on -- that covers all of them that
25 survive. And, by now, I think we did the right thing,

NEAL R. GROSS

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

1 and we admitted what we think is right. And it could
2 be reversed, and might not, but I think the proper
3 presumption is they're in. And they are in at the
4 moment.

5 Perhaps what we might do is, normally --
6 and, again, I'll talk with my colleagues on the Board
7 about this, but what I think is a good case management
8 mechanism is to have case management conferences about
9 every six months, even if there's no specific burning
10 oral argument that has to be held on anything. And
11 that at a six months from now juncture, let's say
12 February, we would have another case management
13 conference, and we could revisit this. It might even
14 be a presumption that the mandatory disclosure is
15 delayed seven months, subject to further extension if
16 at the six month conference call we decide, and you
17 ask that it be extended again. Because inertia, I am
18 concerned with inertia, and I think I'd rather have
19 some date out there for the disclosures to commence,
20 than to have inertia just simply delay indefinitely
21 until something -- until the Commission rules. And it
22 could be a long time. But, I guess we just -- the
23 Board will have to -- we'll talk about that, and I
24 appreciate your input on that.

25 Other than that, I don't have any

NEAL R. GROSS

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

1 questions about the letter, unless either of my
2 colleagues do. We've already gone over the privilege
3 log issue.

4 Okay. Next point, which is review of
5 other points from the Progress Levy initial scheduling
6 order. As you note at the very -- on page 4 of our
7 August 5th order, we said that you should be prepared
8 to explain on a point-by-point basis why a similar
9 order should not be issued here. I don't think,
10 unless my -- at the risk of my colleagues, we need to
11 go through that on a point-by-point basis, but do you
12 have any issues that you want to talk about that are
13 problems, or that you have difficulty with in the
14 approach that was used in that other order? Mr.
15 Repka?

16 MR. REPKA: No, we had no other issues that
17 we wanted to take up on that.

18 CHAIR KARLIN: Okay. Ms. Curran?

19 MS. CURRAN: Neither did the Mothers for
20 Peace.

21 CHAIR KARLIN: Staff, Ms. Uttal?

22 MS. UTTAL: Staff has nothing else to add.

23 CHAIR KARLIN: Okay. I think that's about
24 it. Let me just -- I have a couple of final items.
25 One is, in your discovery, mandatory disclosures I

NEAL R. GROSS

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

1 might say, when you do the mandatory disclosures,
2 don't send them to us. We don't want to see them.
3 They are discovery that goes inter se between the
4 parties, and we don't need to read -- we don't want to
5 see it. It mucks up the record. We're not going to
6 read it, and we don't need to read it, so just
7 exchange it amongst yourselves, if you would.

8 We also -- I, personally, are not
9 particularly interested in getting a lot of
10 notifications sent to the Board. I've seen some
11 parties sometimes send what I call FYI filings. For
12 your information, Board, such and such just occurred,
13 or we just did this. I don't really want to see that,
14 personally. If you've got something you want us to
15 take action on, then file a motion. Otherwise, just
16 don't file FYI filings with us and expect us to pay
17 any attention. We don't want them. I don't want them.

18 MS. UTTAL: Judge Karlin.

19 CHAIR KARLIN: Yes.

20 MS. UTTAL: This is Susan Uttal. When we
21 file documents with the EIE, they automatically go to
22 the Board, so do you want us to remove you from the
23 service list for certain documents on the EIE, if that
24 is possible? I don't know if it's possible.

25 CHAIR KARLIN: Yes. It is with other

NEAL R. GROSS

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

1 cases, yes. I mean, we -- if you're going to use the
2 EIE as a vehicle for making your mandatory
3 disclosures, you don't have to, but if you're going to
4 use it, you don't need to put us on the list of
5 getting these thousands of documents that are being
6 exchanged.

7 MS. UTTAL: Okay. Well, normally we just
8 send a list with the ML numbers.

9 CHAIR KARLIN: Well, we don't need that
10 either.

11 MS. UTTAL: Okay.

12 CHAIR KARLIN: Now, with the hearing file,
13 that's something different. I think there's a
14 different regime with that, and under the regs for
15 hearing file 2.1203 or whatever it is, I think you do
16 need to notify us that you've updated the hearing
17 file. But we don't need to see the hearing file, no
18 need to be provided the hearing file, because that's
19 the next point. What you're exchanging, and what's
20 the hearing file, that's not the record. The record
21 we're going to decide this case upon is the evidence
22 that you submit when you do your initial filings, and
23 your rebuttal filings. That's the record, that's the
24 evidence, that's what we'll decide this case on, not
25 what's in ADAMS, and not what you exchange in your

NEAL R. GROSS

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

1 mandatory disclosures. That's not the record, as far
2 as I'm concerned, in terms of what we're going to
3 read. We're not going to read that stuff. We can
4 only read a certain amount, and be responsible for it.

5 MS. CURRAN: Judge Karlin.

6 CHAIR KARLIN: Yes.

7 MS. CURRAN: This is Diane Curran. I'd
8 like to go back for a minute to the point you were
9 making about FYI filings.

10 CHAIR KARLIN: Yes.

11 MS. CURRAN: And just to say that the
12 interveners tend to depend on Board notification. I
13 think there's a Commission policy that if the
14 applicant, or say the staff generates a document that
15 has a bearing on an admitted contention, that they're
16 obligated to notify the Board and the parties that
17 that document exists. It's helpful to us. It gives
18 us a head's up that there's something we should be
19 focusing on, so I just wanted to mention that that is
20 something important to us.

21 CHAIR KARLIN: Well, I think that that's
22 somewhat -- I think that notification policy that
23 you're referring to has been displaced by the fact,
24 essentially, that there's mandatory disclosures. That
25 if there's any relevant document of any kind that's

NEAL R. GROSS

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

1 relevant to contentions, that has to be exchanged or
2 disclosed. Likewise, the staff has a hearing file
3 obligation, so all of those things will be smoked out
4 and produced in that context. And you guys exchange
5 it to your heart's content, but we don't need to be
6 notified every time the staff does something, because
7 you've got mandatory disclosures that will achieve
8 that -- provide you with that information.

9 So, I mean, if there's something really
10 burning that we need to be -- you think that needs to
11 be notified, okay, staff, or anyone else, but I don't
12 want to get a copy of the notification that the staff
13 had a meeting with regard to scoping of an EIS
14 somewhere, as if -- what are we supposed to do about
15 that? It may be relevant to some contention, but
16 you'll find that -- so, I think, Ms. Curran, you --
17 Mandatory Disclosure 2.336, and the evidentiary
18 hearing files under Subpart L achieve the disclosure
19 to you that you're seeking.

20 MR. T. SMITH: Judge Karlin, this is Tyson
21 Smith for PG&E. I just have a quick clarification on
22 the disclosures. The way it typically works is we
23 would not provide the Board with the actual documents
24 that we are disclosing, but we would file a
25 notification to the EIE on a monthly basis saying

1 here's the list of documents that we filed. And am I
2 correct in understanding that you do not want to see
3 that? It's sufficient if we just provide that to the
4 other parties?

5 CHAIR KARLIN: That's my take on it, yes.

6 MR. T. SMITH: Okay.

7 CHAIR KARLIN: And you can set up your EIE
8 filings as to who you disclose things to, and who you
9 don't. And I think that's -- I have other boards, and
10 that's exactly what they do. We don't see that stuff,
11 nor do we need to, or want to.

12 Okay. Corrective filings are discouraged.
13 Obviously, we don't want someone -- if you've got a
14 deadline to file something, to file a corrected
15 filing. That's -- we've got all experienced counsel
16 here. That isn't going to happen.

17 And, finally, I just would note that
18 sometime in the next month or so, maybe we will be
19 issuing a Notice of Hearing. It's sort of a thing
20 that's required under 2.105(e)(2), so we'll be doing
21 that. So, it will, ultimately, appear in the Federal
22 Register. And it just says now that the Notice of
23 Opportunity for Hearing was issued, and the hearing
24 has been granted, and, therefore, we have to issue a
25 Notice of Hearing. And it has to appear in the

NEAL R. GROSS

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

1 Federal Register, and it will.

2 Do we have anything else, Judge Abramson?
3 Anything you want to add, or mention here?

4 JUDGE ABRAMSON: Just I'm still awake.

5 CHAIR KARLIN: Good man. Judge Trikouros?

6 JUDGE TRIKOUROS: No, I think we covered
7 everything.

8 CHAIR KARLIN: Anything from the parties,
9 questions?

10 MS. UTTAL: Nothing from the staff.

11 MS. CURRAN: Judge Karlin, this is Diane
12 Curran. I did not understand that the Board
13 notification policy has been, basically, superseded.
14 And I am going to go do some reading about it. And if
15 I find some other information about it, I'd like an
16 opportunity to write to the Board.

17 MS. UTTAL: If I might say something, Your
18 Honor, this is Susan Uttal. We still do Board
19 notifications on matters that are not directly related
20 to the litigation, but may somehow affect something
21 having to do with the litigation. That's a separate
22 policy on the part of the NRR staff. And those, we
23 would still be sending. So, Diane, I wouldn't worry
24 about that.

25 MS. CURRAN: Okay. Thank you.

NEAL R. GROSS

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

1 CHAIR KARLIN: Okay. Well, a couple of
2 points, Ms. Curran. If you've got an issue, when you
3 say "write to the Board," well -- if you want to file
4 a motion for clarification, or a motion of some kind,
5 file a motion, but don't write to the Board like we're
6 going to have a dialogue here. Anything you want to
7 file with us, you file in a motion.

8 MS. CURRAN: Okay.

9 CHAIR KARLIN: Staff, we don't want to be
10 inundated with a bunch of notifications. You've got
11 something urgent that you've got to tell us, then tell
12 us. I've seen some boards get a lot of stuff that
13 really isn't very helpful, and I think that 2.336 has
14 utterly displaced any duty to file the notifications.
15 But if you feel the urge, I don't think we'll -- we'll
16 just have to deal with it, and we'll get them. Just
17 let's be reasonable here. We just don't want to get
18 a bunch of stuff, FYI stuff from people. If you've
19 got something you want us to take an action on, file
20 something. Otherwise, just do your own thing.

21 Mr. Repka, any final questions or issues?

22 MR. REPKA: No.

23 CHAIR KARLIN: Okay. All right. Well, I
24 appreciate everyone's attention and patience. It's
25 gone a little -- it's about two hours. We have set

NEAL R. GROSS

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

1 next Friday, I don't know what the date on that is
2 exactly, as the deadline, September 3rd, for you all
3 to file anything you want to with regard to Paragraph
4 5 of the letter of August 10th. Otherwise, as I see
5 it from the call, there's no other deliverables or
6 submissions due from any of you. And once we get your
7 filing on next Friday, we will proceed to work on a
8 scheduling order, and issue it, hopefully, within the
9 55-day time frame.

10 Oh, we might also add, and the Board has
11 agreed, we talked about this ahead of time, that we
12 agree that your initial disclosures are not due on
13 September 3rd, as you have suggested, as the regs
14 require. We're not, necessarily -- we haven't issued
15 the order, so we haven't adopted your date of October
16 15th yet, but until you hear further from us, you can
17 assume that the date for filing the mandatory
18 disclosures under Contention EC-1 and TC-1 is in
19 abeyance until you see the order from us. All right?

20 I appreciate everyone who's on the call.
21 This meeting is adjourned. Thank you.

22 MS. CURRAN: Thank you.

23 MR. REPKA: Thank you.

24 (Whereupon, the proceeding went off the
25 record at 4:55 p.m.)

NEAL R. GROSS

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

CERTIFICATE

This is to certify that the attached proceedings
before the United States Nuclear Regulatory Commission
in the matter of: Diablo Canyon Nuclear Plant

Name of Proceeding: Hearing

Docket Number: 50-275-LR and 50-323-LR

ASLBP Number: 10-890-01-LR-BD01

Location: (phone conference)

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.


John Mongoven
Official Reporter
Neal R. Gross & Co., Inc.

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

(202) 234-4433

www.nealrgross.com