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NUCLEAR REGULATORY COMMISSION

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Title: Prairie Island Nuclear Station
Pre-hearing Conference

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Docket Number: 50-282-LR and 50-306-LR

ASLBP Number: 08-871-01-LR-BD01

Location: (telephone conference)

Date: Tuesday, September 21, 2010

Work Order No.: NRC-442

Pages 227-248

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

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PRE-HEARING CONFERENCE

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IN THE MATTER OF: :
NORTHERN STATES POWER : Docket Nos. 50-282-LR
CO. (formerly NUCLEAR : And 50-306-LR
MANAGEMENT COMPANY, LLC) :
(Prairie Island Nuclear : ASLBP No. 08-871-01-
Generating Plant, : LR-BD01
Units 1 and 2) :

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Tuesday, September 21, 2010

Via Teleconference

The above-entitled matter came on for
prehearing conference, pursuant to notice, at 11:00
a.m.

BEFORE:

WILLIAM J. FROEHLICH Chairman, Administrative Judge
DR. GARY S. ARNOLD Administrative Judge
DR. THOMAS J. HIRONS Administrative Judge

1 APPEARANCES:

2 On Behalf of ASLBP:

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4 MAXWELL SMITH, ESQ.

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On Behalf of Prairie Island Indian Community:

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P R E H E A R I N G C O N F E R E N C E

11:00 a.m.

JUDGE FROEHLICH: On the record. Good morning. It's 11:00 a.m. on Tuesday, September 21st. And this is prehearing teleconference related to the Prairie Island Nuclear Generating Plant and it's one and two their license renewal. Docket Nos. 50-282-LR and 50-306-LR. Notice of this teleconference was issued originally on September 8th and amended as to the time on September 9th.

Here with me in Rockville in chambers are Judges Hirons and Arnold and our law clerks, Kara Wenzel, Kirsten Stoddard and Ann Hove. I also have Andrew Welkie from our IT staff in case we have any IT questions as we go along.

Since we are just starting and I didn't hear all or count all the beeps and buzzes on who logged on, could the parties please identify themselves and any colleagues with them for the record at this point?

MR. LEWIS: This is David Lewis representing Northern States Power. With me is Mr. Matias Travieso-Diaz. We're from the law firm Pillsbury Winthrop Shaw Pittman.

JUDGE FROEHLICH: Thank you, Mr. Lewis.

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1 Are there any other people on the line who
2 let's say will not be speaking but are listening in on
3 behalf of the Applicant?

4 MR. ECKHOLT: Yes, this is Gene Eckholt.
5 I'm the License Renewal Project Manager for the
6 license renewal project.

7 JUDGE FROEHLICH: Thank you.

8 MR. GLASS: Yes, and this is Pete Glass.
9 And I'm an in-house attorney for Northern States
10 Power.

11 JUDGE FROEHLICH: Thank you, gentlemen.

12 And for the Prairie Island Indian
13 Community, Mr. Mahowald, are you with us?

14 MR. MAHOWALD: Yes, Your Honor. Phil
15 Mahowald on behalf of the Prairie Island Indian
16 Community.

17 JUDGE FROEHLICH: And are there any people
18 who will not be speaking necessarily but who are
19 participating in this call with you?

20 MR. MAHOWALD: Yes. Chip Cameron should
21 be joining in.

22 MR. CAMERON: And I'm on. Thank you.

23 JUDGE FROEHLICH: Okay. Welcome. And
24 last but not least the NRC staff.

25 MS. MIZUNO: Good morning, Your Honor.

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1 This is Beth Mizuno. I'm here for the NRC staff. I'm
2 accompanied by Mary Spencer, Emily Montes, Brian
3 Newell and Rick Spass who is our project manager for
4 Prairie Island license renewal. Max Smith should be
5 joining us shortly.

6 JUDGE FROEHLICH: Thank you, Ms. Mizuno.

7 This call is being transcribed by a court
8 reporter. Mr. Court Reporter, just confirm for me
9 that you're with us.

10 COURT REPORTER: This is Toby Walter, the
11 court reporter. I am with you.

12 JUDGE FROEHLICH: Thank you, sir. For
13 that reason, I'd ask the parties to please identify
14 yourself by name before you speak so that our court
15 reporter who is who as we go through this call.

16 The purpose of today's call is discuss the
17 October 12th evidentiary hearing and provide details
18 on the October 11th limited appearance statement
19 session to be held in Hastings, Minnesota. The Board
20 issued a notice of this prehearing conference as I had
21 mentioned on September 8th in which we listed topics
22 for discussion today.

23 I would propose that we go through these
24 items in the order they were listed in the notice.
25 And then if there are any remaining questions or

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1 concerns that any of the parties have as to the
2 limited appearance statement or the upcoming hearing
3 that we take them at the end.

4 The first item that we had in our notice
5 was the filing or pre-filing or re-filing should I say
6 of the testimony and exhibits in this case. I checked
7 on this end with our IT folks and it appears that
8 everything that was originally filed has been refiled
9 and properly numbered and placed into the electronic
10 system. Are there any concerns that any of the
11 parties have with their EIE filings or re-filings?

12 MR. LEWIS: No, Judge Froehlich.

13 JUDGE FROEHLICH: And --

14 MR. MAHOWALD: No, Your Honor.

15 JUDGE FROEHLICH: Okay. Let me just say
16 that as we move towards the hearing if there is some
17 reason that you need to revise a portion of the
18 prefiled testimony the day before or during the
19 evidentiary hearing please refer to the procedures we
20 had outlined in Section C1 of our August 17th order
21 and to the extent possible please try to minimize any
22 changes to the prefiled testimony so that we can move
23 it into the record fairly quickly when we're out in
24 Hastings and move forward with the hearing.

25 In the hearing, we all agreed to take the

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1 big plunge and try the DDMS system. This is an
2 electronic digital data management system and we'll be
3 able to track and view the exhibits as they're
4 introduced. And as the Board has questions on them,
5 we'll be able to project them in the hearing room.
6 And in order for you to maximize your views or
7 benefits of the DDMS, you'll have to connect your
8 personal laptop computers to our system
9 electronically.

10 What I was going to suggest is that we
11 have a session on Monday, the 11th, in the courtroom
12 at the Dakota County Judicial Center, Courtroom 2E, at
13 about 1:00 p.m. And there I would have our IT folks
14 go through the authentication and password matters
15 that are necessary in order for you to participate and
16 hook into the DDMS system. So if you do wish to avail
17 yourself of the opportunity to connect to the DDMS
18 system you'll have to bring your laptops to the
19 courthouse on Monday at 1:00 p.m. and we'll have
20 people available to sort of make sure that everything
21 electronic works the way it should for the hearing on
22 Tuesday morning.

23 Is that acceptable to the parties? Is
24 that something you think you will avail yourselves of?

25 MR. LEWIS: Yes, Judge. This is David

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1 Lewis. That's acceptable to us.

2 MR. MAHOWALD: Phil Mahowald and, yes,
3 that is acceptable.

4 JUDGE FROEHLICH: And the staff?

5 MS. MIZUNO: Yes, Your Honor. This is
6 Beth Mizuno. We would ask because our travel plans
7 are somewhat we're going to be really pressed to make
8 it there for a 1:00 p.m. prep session. What we would
9 like to know if it is at all possible for us to do it
10 online or here in the building somehow.

11 JUDGE FROEHLICH: Fortunately, that is
12 possible and we'll arrange for you to do that almost
13 any time between now and the hearing date. So you'll
14 be able to do that here in Rockville for any and all
15 the people and any and all the laptops that will be
16 necessary. Each laptop, it's necessary to have its
17 own or each person?

18 MR. WELKIE: They just need to have their
19 digital --

20 JUDGE FROEHLICH: Identify you.

21 MR. WELKIE: Sorry. Andy Welkie with
22 ASLBP. The one thing you will need to have is your
23 EIE digital certificate on your laptop. And that
24 really is the only prerequisite.

25 MS. MIZUNO: All right. Thank you very

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1 much. We'll be in contact with you, Andy. Is that
2 possible?

3 MR. WELKIE: Yes, and we could schedule
4 that again any time between now and that week in
5 October.

6 MS. MIZUNO: Great. Thank you.

7 JUDGE FROEHLICH: And for the Applicant
8 and the Petitioner, we'll bring all of the digital
9 certificates and things that are necessary in order to
10 hook your laptop out to the session at 1:00 p.m. on
11 October 11th. So you need not do anything in advance.
12 We'll have it all ready to go when we arrive.

13 I also wanted to note to the parties that
14 per our September 13th notice the Board will conduct
15 oral limited appearance statement sessions for the
16 public on Monday, the 11th, in an attempt to make it
17 as convenient as possible for as many as possible.
18 We've scheduled two sessions and publicly noticed
19 them, one going from 3:00 p.m. to 5:00 p.m. and the
20 other from 7:00 p.m. to 9:00 p.m. on Monday. The
21 purpose of the limited appearance statement is to help
22 the Board understand the public's perception of the
23 sole contention that remains at issue.

24 Are there any questions or concerns about
25 the limited appearance statements that are scheduled

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1 for Monday?

2 MS. MIZUNO: Your Honor, this is Beth
3 Mizuno. I just have a quick logistical question.

4 JUDGE FROEHLICH: Sure.

5 MS. MIZUNO: When would the doors of the
6 courthouse be open for the 3:00 p.m. session?

7 JUDGE FROEHLICH: I believe -- Well, the
8 courthouse is a secure facility and it is open all
9 day. It's a business-as-usual day on Monday, the
10 11th. Our particular courtroom I guess we can either
11 secure it or keep it open as necessary for the
12 convenience of the parties and members of the public
13 who wish to observe.

14 MS. MIZUNO: So, Your Honor, when would
15 the courtroom be available?

16 JUDGE FROEHLICH: Ms. Mizuno, I'm informed
17 that because we're scheduling training for the parties
18 to begin at 1:00 p.m. I would expect that members of
19 the ASLBP staff will be there from 12:00 noon onward.

20 MS. MIZUNO: Great. Thanks very much,
21 Your Honor.

22 JUDGE FROEHLICH: Okay. I would note for
23 the purposes of the limited appearance statements that
24 as to the regulations dealing with limited appearance
25 statements I note that Section 2.315 states that

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1 people affiliated with the parties are not permitted
2 generally to make limited appearance statements. This
3 Board has no problems with people affiliated with the
4 Applicant or the Intervenor speaking at either of the
5 limited appearance statement sessions that we've
6 scheduled.

7 MR. LEWIS: Judge Froehlich, just a
8 complication on that.

9 JUDGE FROEHLICH: Yes.

10 MR. LEWIS: Does that mean that persons
11 who are related with the party may speak at the
12 session and actually speak on the contested issue?

13 JUDGE FROEHLICH: All I meant was that we
14 weren't going to strictly adhere to the people who
15 were affiliated with. I wouldn't expect the limited
16 appearance statement sessions to be sort of a
17 precursor or a coming attractions opportunity for
18 either the Applicant or the Intervenor. However, if
19 there were members of the public who were somehow
20 affiliated with the facility or affiliated with the
21 tribe who weren't going to be appearing the next day
22 at the hearing that they would have an opportunity to
23 make a limited appearance statement, you know, limited
24 to five minutes as spelled out in our notice.

25 MR. LEWIS: Judge Froehlich, this is David

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1 Lewis. NSP has no objection to that. Our only
2 concern would be if representatives or parties are
3 actually providing --

4 JUDGE FROEHLICH: Right.

5 MR. LEWIS: -- further discussion of the
6 contention. That could be a concern to us.

7 JUDGE FROEHLICH: Understood. Understood,
8 Counsel.

9 As to the logistics on the hearing day as
10 we noted in our August 17th order, the order of
11 witnesses that we plan to question the Applicant's
12 witnesses first followed by the NRC staff witnesses
13 and then concluding with our questioning of
14 Intervenors' witnesses.

15 At this point, I'd just like to alert the
16 parties that there's a possibility that we may not
17 have questions of all the witnesses who filed,
18 prefiled, testimony and that as we narrow down and
19 sort of get our questions straight among members of
20 the Board we'll issue a notice alerting you to which
21 witnesses need not appear personally at the hearing.

22 Let's see. Anything else that any of the
23 other Board members have any concerns or questions?

24 (No verbal response.)

25 Are there any concerns or questions among

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1 the parties that you'd like to address to the Board at
2 this point?

3 MS. MIZUNO: Your Honor --

4 MR. LEWIS: Only, Judge Froehlich, if
5 witnesses don't need to appear how logistically will
6 we introduce their testimony?

7 JUDGE FROEHLICH: Their counsel will stand
8 up and identify. We'll have marked their prefiled
9 testimony. We'll have it moved into the record as if
10 testified, as if they had testified, along with their
11 affidavit that accompanied their prefiled testimony.

12 MR. LEWIS: Okay. It won't be necessary
13 for a verbal affirmation as to the accuracy of their
14 testimony.

15 JUDGE FROEHLICH: No. We will rely on the
16 written affidavit that was attached to the prefiled
17 testimony.

18 MR. LEWIS: Thank you.

19 JUDGE FROEHLICH: Okay. Any other
20 concerns of any of the parties at this point?

21 MS. MIZUNO: Your Honor, this is Beth
22 Mizuno. Max Smith just joined us.

23 JUDGE FROEHLICH: Oh good.

24 MS. MIZUNO: We wanted to make sure the
25 record reflected that.

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1 JUDGE FROEHLICH: I should also note that
2 at this point that I know the parties have been
3 dealing with our law clerk, Kara Wenzel, who is
4 unfortunately leaving us very shortly. From this
5 point forward, Ann Hove will be the law clerk of
6 record or our point of contact with the parties. And
7 she'll be assisted by Kirsten Stoddard, a new law
8 clerk to the Board.

9 MS. MIZUNO: Judge Froehlich.

10 JUDGE FROEHLICH: Yes.

11 MS. MIZUNO: I have a question. I wasn't
12 quite able to hear. So maybe I missed it. Did you
13 say when you were going to let us know when the
14 witness -- if certain witnesses might not be needed?
15 And when can we be expecting to hear?

16 JUDGE FROEHLICH: At this point, let me
17 assure you that the Board is working diligently to
18 narrow its questions and only require those witnesses
19 of whom we have questions to appear. I would hope
20 that we would be able to get out our notice to the
21 parties of those witnesses that need not appear in
22 person at least a week or ten days before the hearing
23 itself.

24 MS. MIZUNO: Thank you, Your Honor. This
25 is Beth Mizuno again. I have an issue I'd like to

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1 raise about one of our witnesses and so I appreciate
2 the Board's willingness to let us know and give us
3 advanced warning as to their need for their
4 appearance.

5 One of our witnesses is a nursing mother
6 and we'd like to try to -- We want to make her
7 available. She is a witness in this proceeding. And
8 we've arranged to have a video teleconference room
9 available for that. And we wanted to know if she
10 turns out to be one of the witnesses that you require
11 here, would it be possible for us to use the video
12 teleconference facility to do that or, if not, if we
13 could arrange time wise so that she is not away from
14 home any longer than absolutely necessary.

15 JUDGE FROEHLICH: Yes. Counsel, that
16 would be perfectly acceptable with the Board. I think
17 that would be a good way to proceed if necessary. At
18 this point, I can only speak for myself and not for
19 other members of the Board. I know that Dr. Barnes
20 from the staff is a witness that we would like to have
21 and will probably have questions for. Would she
22 happen to be the nursing mother to whom you refer?

23 MS. MIZUNO: No, sir. She's not.

24 JUDGE FROEHLICH: Good. All right. Then
25 we'll take it as it goes along. I think Dr. Barnes

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1 should go ahead and make her travel arrangements and
2 we'll get back to you on the other staff witnesses as
3 we conclude our deliberations.

4 JUDGE ARNOLD: This is Judge Arnold.
5 Would this nursing mother be one of the other safety
6 culture experts that testified with her?

7 MS. MIZUNO: Yes, Your Honor. That would
8 be June Kai.

9 JUDGE ARNOLD: Okay. We've done some
10 discussions about witnesses of the safety culture
11 witnesses. It seemed that we have the most interest
12 in talking to Dr. Barnes. So at this moment I think
13 it's unlikely that we would require her.

14 MS. MIZUNO: Thank you for that
15 information, Your Honor.

16 JUDGE FROELICH: Okay. Just to conclude
17 this matter, we will issue a notice a week to ten days
18 beforehand listing those witnesses that need not
19 attend in person and also if it is necessary to give
20 you advanced notice so we can set up the
21 telecommunications link for Witness Kai.

22 Are there any other matters that any of
23 the other parties wish to raise with the Board?

24 MR. LEWIS: Yes, Judge Froehlich. This is
25 David Lewis. If this is the same courtroom that we

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1 had the prehearing conference room in, there were two
2 small counsel chambers outside the court. I wondered
3 if we would have access to those again or whether
4 there's any arrangements for a third room somewhere.
5 And, in particular, I was wondering if there was
6 someplace we could set up a printer. I believe your
7 August 17th order suggested that we should be
8 logistically prepared if we needed to generate some
9 further questions and we were hoping to have some
10 place where we could put a printer if there was
11 actually a need for us to print something out.

12 JUDGE FROEHLICH: Okay. Thank you for
13 raising that. At this point, we haven't finalized the
14 logistics as to those two small counsel rooms that we
15 used before. We will be using the same hearing room
16 we did for the oral arguments back in 2008.

17 I will make sure that we contact the court
18 official and see if we can get those two rooms at
19 least and perhaps a third room for counsel. And I'll
20 also get back with the parties through a notice or
21 order as to a printer. It may be that the Board will
22 make one available as part of the logistical support.
23 But those are good points and I will follow up with
24 that to make sure that we have a printer and the
25 ability for the parties to provide additional

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1 questions after hearing the questions that the Board
2 has asked of the witnesses.

3 Since you raised that, Mr. Lewis, let me
4 just probably explain to the parties that the way we
5 intend to proceed is that the Board will ask questions
6 of the witnesses either individually or when they sit
7 in a panel. At the conclusion of our questioning of
8 the witnesses, there will be a break and an
9 opportunity for counsels for the parties to prepare
10 any follow-up questions they wish to submit to the
11 Board for us to ask those witnesses.

12 And so I think a printer would be useful
13 to all the parties. And we'll make sure that there is
14 some sort of way for us to do that at the hearing.

15 Were there any other concerns, logistic or
16 otherwise, that we can address at this point?

17 MS. MIZUNO: Yes, Your Honor. This is
18 Beth Mizuno. With respect to our discovery
19 obligations and the hearing file and mandatory
20 disclosure, would it be possible for the Board to
21 determine at this time or shortly hereafter that we
22 can terminate our mandatory disclosure and hearing
23 file obligations at some time like soon possibly?

24 JUDGE FROEHLICH: Let me take that under
25 advisement and we'll issue an order that will address

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1 all the items that were raised in this teleconference
2 as well as the logistic matters and the witnesses in
3 the next few days or a week.

4 MS. MIZUNO: Well -- This is Beth Mizuno
5 again with respect to another issue.

6 JUDGE FROEHLICH: Okay.

7 MS. MIZUNO: On the transcript, I
8 understand we'll be filing transcript corrections.
9 That was mentioned earlier in the conference. Could
10 we have a date by which you'd like us to do that so
11 that we can organize ourselves and our schedules?

12 JUDGE FROEHLICH: Oh, the transcript
13 corrections of the session that we're holding now, is
14 that the one to which you refer?

15 MS. MIZUNO: No, actually, Your Honor, I
16 was more interested in the actual hearing transcripts.

17 JUDGE FROEHLICH: After the hearing.

18 MS. MIZUNO: Either is great.

19 JUDGE FROEHLICH: Oh.

20 MS. MIZUNO: That would be fine.

21 JUDGE FROEHLICH: Surely. I think since
22 this is going to be a relatively short transcript why
23 don't we do transcript corrections to this
24 teleconference within a week, five days or so after
25 the conclusion after you get the transcript. And

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1 we'll also make arrangements for a transcript
2 correction date after the hearing concludes when we're
3 in Hastings. Okay?

4 MS. MIZUNO: Thank you, Your Honor. And
5 I have one more question.

6 JUDGE FROEHLICH: Okay.

7 MS. MIZUNO: As to the computer use in the
8 courtroom. Is the courtroom wi-fi? Is it set up for
9 wi-fi service or should we bring cords and other
10 pieces of equipment such that we can access the
11 Internet via wire? I don't quite remember what was
12 available last time we were there.

13 JUDGE FROEHLICH: Let me check into that
14 for you and we'll put out a notice on what the
15 capabilities are, whether you have to use your
16 telephone cards or whether it's wi-fi enabled.

17 MS. MIZUNO: Thank you, Your Honor.

18 JUDGE FROEHLICH: Okay. Thank you for
19 raising those issues.

20 Judge Hirons?

21 (Off the record discussion.)

22 We're back. Are there any questions or
23 any matters that any of the parties wish to raise at
24 this point or are we free to conclude?

25 (No verbal response.)

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1 We'll issue an order that will address as
2 many of the issues that were raised as possible within
3 a week or so of this conference. And I appreciate all
4 the comments and issues that were raised by the
5 parties and look forward to seeing everyone in three
6 weeks in Minnesota. We'll stand adjourned. Off the
7 record.

8 (Whereupon, at 11:24 a.m., the above-
9 entitled matter was closed.)

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CERTIFICATE

This is to certify that the attached proceedings
before the United States Nuclear Regulatory Commission
in the matter of: Prairie Island Station

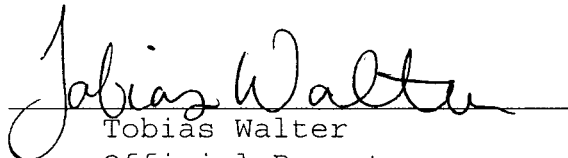
Name of Proceeding: Pre-Hearing Conference

Docket Number: 50-282-LR and 50-306-LR

ASLBP Number: 08-871-01-LR-BD01

Location: (teleconference)

were held as herein appears, and that this is the
original transcript thereof for the file of the United
States Nuclear Regulatory Commission taken by me and,
thereafter reduced to typewriting by me or under the
direction of the court reporting company, and that the
transcript is a true and accurate record of the
foregoing proceedings.


Tobias Walter
Official Reporter
Neal R. Gross & Co., Inc.