

**NUCLEAR REGULATORY COMMISSION**

Title: Mattingly Testing Service, Inc.  
Pre-hearing Conference

DOCKETED  
USNRC

October 26, 2010 12:30 pm

Docket Number: 30-20836EA

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

ASLBP Number: 10-905-02-EA-BD01

Location: (telephone conference)

Date: Wednesday, October 20, 2010

Work Order No.: NRC-488

Pages 1-40

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



1 On Behalf of Mattingly Testing Service, Inc.:

2 MARK FICEK

3 DAYNA THOMPSON

4 PO Box 30316

5 Billings, Montana 59107

6 (406) 839-2013

7

8 On Behalf of the Nuclear Regulatory Commission:

9 MOLLY BARKMAN MARSH, ESQ.

10 KIMBERLY ANN SEXTON, ESQ.

11 of: Office of the General Counsel

12 Mail Stop 015 D21

13 U.S. Nuclear Regulatory Commission

14 Washington, D.C. 20555-0001

15 (301) 415-1117

16 ALSO PRESENT:

17 HILLARY CAIN, Law Clerk

18

19

20

21

22

23

24

25

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

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

(1:02 a.m.)

JUDGE ROSENTHAL: Good afternoon. This telephone pre-hearing conference in the matter of Mattingly Testing Service, Incorporated is being held pursuant to an October 6, 2010 order of this Licensing Board. There's concern with the challenges of Dayna Thompson and Mark Ficek to two September 2, 2010 immediately effective enforcement orders that were entered by the NRC Staff. One of those orders revoked the NRC Materials license held by Mattingly. The other bars Mr. Ficek, the owner and President of Mattingly, from further involvement in NRC-licensed activities for a period of seven years.

I am Judge Rosenthal, the Chairman of this Licensing Board. Also participating in the conference are Judges Hawkens and Tsoulfanidis, the other members of the Board, as well as Hillary Cain, who is the assigned law clerk for the Board.

I will in a moment ask each of the participants to identify themselves formally for the record. Before doing so, I have this request. Given that this is a telephone conference, but is being recorded by a stenographic reporter, I would appreciate it for his benefit if each of you who spoke

**NEAL R. GROSS**

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

(202) 234-4433

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

1 identified yourself specifically so that the reporter  
2 would know who it was that was speaking at the time.  
3 So, I will now ask the participants to identify  
4 themselves formally, and I will start with Ms.  
5 Thompson.

6 MS. THOMPSON: I'm Dayna Thompson,  
7 Accounting Manager of MTS Industrial Testing.

8 JUDGE ROSENTHAL: Thank you. Mr. Ficek.

9 MR. FICEK: I'm Mark Ficek, President of  
10 Mattingly Testing.

11 JUDGE ROSENTHAL: All right. And Staff  
12 Counsel.

13 MS. MARSH: This is Molly Barkman Marsh,  
14 OGC.

15 MS. SEXTON: Kimberly Sexton with OGC.

16 JUDGE ROSENTHAL: Thank you. Ms. Barkman  
17 Marsh, are you identified as Ms. Barkman Marsh, or now  
18 Ms. Marsh, or how do you want to be referred to?

19 MS. MARSH: Whichever. I just changed my  
20 name a couple of weeks ago, so I'm still in the  
21 process of getting used to it.

22 JUDGE ROSENTHAL: So, how would you like to  
23 be addressed?

24 MS. MARSH: Molly Marsh is fine.

25 JUDGE ROSENTHAL: All right, Ms. Marsh.

**NEAL R. GROSS**

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

1 All right. Thank you very much.

2 All right. There are a substantial number  
3 of issues that we want to address this afternoon. I  
4 would like to start by asking Ms. Thompson once again  
5 to identify her status, or her relationship with the  
6 Mattingly company.

7 MS. THOMPSON: I'm the Accounting Manager.

8 JUDGE ROSENTHAL: Accounting Manager. Are  
9 you an officer of the company?

10 MS. THOMPSON: I am not. Mark is the sole  
11 officer of the company.

12 JUDGE ROSENTHAL: All right. Do you have  
13 any economic interest in the company?

14 MS. THOMPSON: I do not.

15 JUDGE ROSENTHAL: Well, in that  
16 circumstance, I think that there is substantial  
17 question as to your entitlement to participate in the  
18 proceeding. Under the Commission regulations, in  
19 order to be a participant, one must have either a  
20 personal interest, economic interest in the matter at  
21 hand, which you, apparently, do not possess, or,  
22 alternatively, you have to be an officer of the  
23 company specifically authorized to represent it in the  
24 particular matter. That is, if, as is apparently the  
25 case with you, Ms. Thompson, you're not an attorney.

**NEAL R. GROSS**

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

1 MS. THOMPSON: Correct.

2 JUDGE ROSENTHAL: There is, in my view, and  
3 I think I speak for the other Board Members, some  
4 question as to your standing to participate.

5 MS. THOMPSON: Okay. Well, I will just  
6 explain. Basically, it was quite the process getting  
7 set up to even request a hearing with the digital  
8 certificates. We have lots of technical issues. It  
9 actually came down to the final day to request a  
10 hearing, and I had received no guidance, nor had Mark,  
11 who was actually unavailable, and without cell  
12 coverage on what exactly needed to be done to request  
13 a hearing, because the majority of our time in that 20  
14 days had been spent on just getting set up so that we  
15 could even access the system. So, I talk to Emile,  
16 and I have an email from Rebecca Giiter. Then I spoke  
17 with Emile the day that I had to request a hearing.  
18 I had hours and said I don't even know what I need to  
19 do to request a hearing, but the order says that I  
20 have -- anyone adversely affected has 20 days. Mark  
21 personally had not requested a hearing. He was  
22 actually in the field unavailable. So, I do have  
23 email correspondence from them saying that I could  
24 either do it as a representative of Mattingly, or do  
25 it myself. I sent an email to Mark, Maureen forwarded

**NEAL R. GROSS**

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

(202) 234-4433

www.nealrgross.com

1 the email to him, said read this, let me know what you  
2 think. How should I proceed? I have an email back  
3 from Mark at 11:29 a.m. on September 22<sup>nd</sup> prior to  
4 requesting the hearing that said act as a  
5 representative of Mattingly.

6 Now, we read the affidavit saying that it  
7 couldn't be ratified, that I shouldn't be in that  
8 position, and that's fine. However, I could have  
9 requested it as a person adversely affected. I did  
10 not, because I chose to do it as a representative of  
11 Mattingly instead. Obviously, I have -- I am  
12 adversely affected. I'll be out of a job eventually.

13 JUDGE ROSENTHAL: You were receiving a  
14 paycheck, I take it, from Mattingly?

15 MS. THOMPSON: That is correct, yes. I'm on  
16 Staff, CPA.

17 JUDGE ROSENTHAL: All right. So, on that  
18 basis, you're claiming that you have a personal stake  
19 sufficient to --

20 MS. THOMPSON: I do.

21 JUDGE ROSENTHAL: All right. Well, we'll  
22 take that under advisement.

23 I want to move on now to Mr. Ficek. In  
24 the order that was entered on October 6, we suggested,  
25 I think, in the footnote that you might wish to

**NEAL R. GROSS**

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

1 consider retaining legal counsel to represent you in  
2 this matter given both, one, the obvious severity of  
3 the sanctions that have been imposed by the Staff.  
4 And, second, the possibility that the issues in this  
5 proceeding will turn out to be rather complex. Did  
6 you give any consideration to that suggestion? If so,  
7 with what result?

8 MR. FICEK: Well, the reason why I haven't  
9 obtained counsel for this particular proceeding is  
10 primarily because the order was effective immediately,  
11 and it took all my resources pretty much out from  
12 under me to be able to pursue that. I don't really  
13 have the means to retain counsel for this, so I would  
14 have if it wasn't effectively immediately, and I could  
15 have built a case, but the nature of the situation  
16 forced me to spend all my time minimizing financial  
17 damage, and I really haven't had a whole lot of time  
18 to even look into this.

19 JUDGE ROSENTHAL: Well, is that something -  
20 - again, as I think was indicated in that footnote,  
21 you're perfectly free to represent yourself in this  
22 proceeding. There's nothing in the Commission  
23 regulations that requires you to be represented by  
24 counsel. It was simply a matter of what seemed to the  
25 Board to be something that should be considered.

**NEAL R. GROSS**

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

1                   Now, if you decide to proceed on your own,  
2                   in other words, representing both yourself in the  
3                   license revocation matter of the company, you're going  
4                   to have to become familiar with a substantial number  
5                   of Commission regulations which pertain to this  
6                   proceeding. Now, these regulations are contained in  
7                   the Code of Federal Regulations Title 10. And if that  
8                   is your desire, Ms. Cain will at some time either  
9                   later today or tomorrow, will send you an email which  
10                  will give you both instructions as to how you can  
11                  access the Code of Federal Regulations on the  
12                  internet. And, also, will, I think, probably  
13                  highlight some of the sections of those regulations  
14                  that have particular applicability to this proceeding.  
15                  But the thing that I have to stress to you is that  
16                  while, again, you're authorized to represent yourself,  
17                  if that's your choice, that does not relieve you of  
18                  the obligation to both, one, become fully familiar  
19                  with the regulations that pertain to the proceeding.  
20                  And, two, to make certain that they're fully observed.

21                                 In that connection, I might note that the  
22                                 Board was a bit distressed by the fact that there was  
23                                 no compliance with the provision of the Board Order of  
24                                 October 6, which called upon you and Ms. Thompson to  
25                                 notify Ms. Cain by Monday of -- or to obtain from Ms.

**NEAL R. GROSS**

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

(202) 234-4433

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

1 Cain by Monday, the pass code that would allow you to  
2 access this telephone conference. Ms. Cain had to  
3 send you an email yesterday reminding you of that  
4 obligation. And I just mention this, because in  
5 addition to the matter of full compliance with the  
6 Commission regulations, there is also the matter of  
7 full compliance with all directives contained in Board  
8 orders. So, that's the way the situation is.

9 Do you want a further opportunity to  
10 consider the matter of obtaining a lawyer, or are you  
11 satisfied at this point that, for one reason or  
12 another, that's either not desirable, or not possible?

13 MR. FICEK: No, I do not wish to pursue  
14 legal counsel.

15 JUDGE ROSENTHAL: Very good. Well, we'll  
16 move forward then on that basis. And the first --  
17 again, Mr. Ficek, it's not clear to us from your  
18 hearing request precisely what issues are being raised  
19 by you. Specifically, it's not clear whether you're  
20 challenging the Staff's findings that violations had  
21 occurred. And, if so, which violations are being  
22 questioned, or whether, instead, you're simply  
23 challenging the Staff's determination that those  
24 violations that it did find were willful. So, I think  
25 for the benefit of the Board, and perhaps also for the

**NEAL R. GROSS**

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

1 benefit of the Staff, you might let us know precisely  
2 what it is that you're -- what issues are being raised  
3 by you with respect to both of the two orders.

4 MR. FICEK: Okay. I have a few issues that  
5 I'd like to make my case around, and they don't --  
6 first off, I'd like to possibly combine the two orders  
7 for ease, for the purpose of explaining myself here.  
8 The order against Mattingly Testing Services, I don't  
9 understand --- I guess the 14 months that it took for  
10 them to determine that the order needs to be effective  
11 immediately, I don't really --

12 JUDGE ROSENTHAL: Well, wait a moment. The  
13 immediate effectiveness is not currently before us.  
14 I mean, Ms. Thompson sought to have the immediate  
15 effectiveness aspect of the order removed. I might  
16 say, you did not make that request yourself. In any  
17 event, the Board considered that matter, and  
18 determined that there had not been a sufficient  
19 showing made for the removal of immediate  
20 effectiveness.

21 Now, that, at this point, is quite beside  
22 the discussion today. What we're trying to find out  
23 is the Staff determined that there were a number of  
24 violations. And as at least to some of those  
25 violations, the Staff concluded that they were

**NEAL R. GROSS**

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

(202) 234-4433

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

1 willful. Now, what we're trying to get at now is, are  
2 you challenging some of the findings of violations?  
3 And, if so, it's going to be a matter of which ones,  
4 or are you simply saying that the violations that were  
5 found should not have been determined to have been  
6 willful? And I raise this because under the  
7 regulations, and, again, this is a matter, of course,  
8 of you're not being, at this point, familiar with the  
9 regulations, but this will be something that you will  
10 have to undertake.

11 The regulations specifically required that  
12 in challenging the Staff's determination, you are  
13 obliged, and I'm quoting directly from the regulation.  
14 It happens to be 10 Code of Federal Regulations  
15 Section 2.202(b). "You are required to specifically  
16 admit or deny each allegation or charge made in the  
17 orders, and to set forth the matters of fact and law  
18 on which you relied." So, that was not done in this  
19 instance, and we understand, again, that this was  
20 because of a lack of familiarity with the regulations.  
21 But what I'd like to know now, I'll put the first  
22 question. Are there specific violations that were  
23 found that you are challenging?

24 MR. FICEK: I'm challenging all the  
25 allegations that I deliberately put Mattingly in

**NEAL R. GROSS**

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

1 violation of any -- not only the confirmatory order  
2 that was previously issued, but also new and existing  
3 violations that were found. I'm not saying that all  
4 the violations aren't sustained. I'm challenging all  
5 the deliberate and willful violation on my part.

6 JUDGE ROSENTHAL: Wait a moment. Is your -  
7 - I'm trying to get clear precisely what the ambit of  
8 your challenge is. Are you saying that these  
9 violations may have occurred, you're not challenging  
10 that they occurred, but you are challenging that there  
11 was any willful misconduct involved? Is that what it  
12 comes down to?

13 MR. FICEK: Yes.

14 JUDGE ROSENTHAL: All right.

15 MS. THOMPSON: May I speak? This is Dayna  
16 Thompson.

17 JUDGE ROSENTHAL: Yes.

18 MS. THOMPSON: For example, the camera that  
19 fell off the back of the truck. The order states that  
20 the President willfully caused the technician to  
21 violate the CFR that provides for immediate reporting  
22 of that, of the camera being lost. We're not saying  
23 the camera wasn't lost, and we're not saying that the  
24 technician did not immediately report it. We know  
25 that to be case, we know that the authorities reported

**NEAL R. GROSS**

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

1 it before we did. But what we're contesting is that  
2 Mark had anything to do with that.

3 I, specifically, asked the technician do  
4 we need to call the NRC? And he said, "I want to go  
5 see if I can find it first." I said, "Is it  
6 dangerous?" I didn't know too much about radioactive  
7 material at that time.

8 JUDGE ROSENTHAL: Let me get this clear.

9 MS. THOMPSON: Actually, the investigator  
10 and inspector, in their affidavit that they replied to  
11 in response to my letter with like regards to Rick  
12 Munoz, I said that -- I wish I could tell you the  
13 whole story of what happened.

14 JUDGE ROSENTHAL: I'm not interested in the  
15 whole story at this point.

16 JUDGE TSOULFANIDIS: Tom?

17 JUDGE ROSENTHAL: Yes.

18 JUDGE TSOULFANIDIS: This is Nicholas  
19 Tsoulfanidis. May I ask a question?

20 JUDGE ROSENTHAL: Certainly.

21 JUDGE TSOULFANIDIS: Who was the Radiation  
22 Safety Officer, the RSO, at the time of this incident?

23 MS. THOMPSON: Ray Sierra, the person who  
24 dropped -- who lost the camera.

25 JUDGE TSOULFANIDIS: So, the person who

**NEAL R. GROSS**

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

1 dropped it or lost it was the RSO for the company?

2 MS. THOMPSON: Correct.

3 JUDGE TSOULFANIDIS: And he didn't know  
4 that he had to report it immediately?

5 MS. THOMPSON: He, obviously, did know. I  
6 don't know what he knew. I know that he made a choice  
7 before Mark ever knew the camera was missing not to  
8 contact you. Both myself and his radiographer  
9 assistant asked him if he needed to call you, and he  
10 chose not to. And yet the order says that Mark caused  
11 him to willfully violate that. That's what we take  
12 issue with, all of the blame on Mark.

13 JUDGE ROSENTHAL: Wait a minute. Wait a  
14 minute. If I now understand you correctly, in  
15 addition to the matter of whether the violations were  
16 willful or not, there's a claim being made that some  
17 of these violations should not have been attributed to  
18 Mr. Ficek at all. Is that correct?

19 MS. THOMPSON: That's correct.

20 JUDGE ROSENTHAL: But this is the kind of  
21 thing, again, that should have been set forth just  
22 precisely what was being contended.

23 MS. THOMPSON: Honestly, we were down to  
24 the wire in requesting that hearing. I had 40  
25 minutes.

1 JUDGE ROSENTHAL: Well, wait a minute.

2 MS. THOMPSON: I got the letter. I mean,  
3 I realize it's a shabby request for a hearing. Trust  
4 me, I understand that, but we had no idea what we were  
5 supposed to do. I made calls, the people there -- I  
6 mean, it's actually -- I mean, I will tell you right  
7 now, Mark and I are to the point today where we don't  
8 even want to pursue this any more, because it's so  
9 difficult. The response from Rick Munoz and John  
10 Oglesby, like they say in their statements -- I have  
11 testimony from a former employee who was there when  
12 they made the statement, when Rick said, "You have to  
13 remember who we're talking about here." This is a guy  
14 who instructed his employees to hit a camera with a  
15 rock. He did not say you have to remember what we're  
16 talking about here. He said, "You have to remember  
17 who we're talking about here." This is a guy who  
18 instructed his employees to hit a camera with a rock.  
19 Both he and John Oglesby submitted sworn affidavits in  
20 response to that saying --

21 JUDGE ROSENTHAL: Ms. Thompson, I don't  
22 think we're interested at this point --

23 MS. THOMPSON: So, how are we supposed to  
24 fight that?

25 JUDGE ROSENTHAL: -- in discussing the

**NEAL R. GROSS**

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

1 merits of it. I'm just trying to get some concept as  
2 to what issues -- what the issues are here that are  
3 being raised. Now, when you tell me that this was all  
4 done at the last minute, that may be so, although, the  
5 orders that were entered provided a period of time, 30  
6 days --

7 MS. THOMPSON: Twenty days.

8 JUDGE ROSENTHAL: Twenty days, excuse me.  
9 And, apparently, you waited until the end of the 20-  
10 day period in which to --

11 MS. THOMPSON: Not because we didn't try to  
12 do it earlier, but because we had technical issues --

13 JUDGE ROSENTHAL: All right.

14 MS. THOMPSON: -- with the digital ID  
15 certificates. I mean, it came down to the wire.

16 JUDGE ROSENTHAL: Okay.

17 MS. THOMPSON: We're also -- you have to  
18 remember that you came in, shut us down. Mark was  
19 forced, as a result of that, to immediately go into  
20 the field, so I and our Administrative Assistant were  
21 left to field all the calls from our customers wanting  
22 to know what was happening. We had calls to make. We  
23 didn't have 20 days to concentrate on requesting a  
24 hearing. We had 20 days to concentrate on trying to  
25 maintain a semblance of a business, and at the same

**NEAL R. GROSS**

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

1 time pursuing this.

2 I mean, I was doing most of this in the  
3 evenings on my own personal time trying to -- I  
4 actually had to set the digital certificates on my  
5 personal computer first, because I could not get it.  
6 I worked with Josh is the technical person that I  
7 worked with. I had some error message. I sent him  
8 print screens of it. They couldn't figure out why I  
9 couldn't get it on my work computer. I mean, there  
10 were issues, so it was not I was waiting until the  
11 last minute. And, I mean, it took 14 months for the  
12 NRC to come to a conclusion, so I think, like you guys  
13 wouldn't understand that sometimes 20 days isn't  
14 enough.

15 JUDGE ROSENTHAL: Well, I suppose -- all  
16 right. That's fair enough. I suppose you could have  
17 asked for an extension, but that wasn't done, and so  
18 be it. We're -- all right.

19 MR. FICEK: This is Mark Ficek.

20 JUDGE ROSENTHAL: Yes.

21 MR. FICEK: Can I say something?

22 JUDGE ROSENTHAL: Yes, go ahead, Mr. Ficek.

23 MR. FICEK: Okay. So, backtracking a  
24 little bit. You kind of made a point that there's no  
25 way that we could move for the stay in the immediate

**NEAL R. GROSS**

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

1 effectiveness of this order, because Dayna had already  
2 requested that in her letter. Although, you're saying  
3 she doesn't qualify as a representative of Mattingly  
4 Testing, and since I did not request a stay in the  
5 order, you're saying the Board already met and decided  
6 that they're not going to consider that at the time.

7 JUDGE ROSENTHAL: Well, I think my  
8 recollection is, Ms. Cain can correct me if I'm wrong,  
9 that the regulations provided a time limit on applying  
10 for a removal of the immediate effectiveness.

11 MS. THOMPSON: The order said at the time -  
12 -

13 JUDGE ROSENTHAL: And at this time, a  
14 request, I think, would be out of time. And I'm  
15 trying to look at the regulation. Just hold on one  
16 moment while we--

17 JUDGE HAWKENS: This is Judge Hawkens. I  
18 believe the rules would have required you, if you wish  
19 to make a timely challenge to the immediate effective  
20 aspect of it, to challenge it either before or up to  
21 the limit of filing your challenge to the overall  
22 order, itself. And while Ms. Thompson did file her  
23 challenge within that time frame, and her challenge  
24 was denied, Mr. Ficek, you did not.

25 JUDGE ROSENTHAL: I think the answer is

1 that at this point, a request that the immediate  
2 effectiveness provision, or portion of the order be  
3 removed would be untimely.

4 MR. FICEK: Okay. So, what are you asking  
5 of me then? You want to know the basis of us  
6 continuing on with the hearing. Right?

7 JUDGE ROSENTHAL: No. You have a full  
8 entitlement to a hearing on the merits of the Staff's  
9 enforcement orders. You're entitled to that. What  
10 you are not entitled, at this point, is -- because it  
11 would not be timely, to seek to have the immediate  
12 effectiveness portion of those orders listed. And  
13 what we're endeavoring to do at this conference is to  
14 determine how this matter is to go forward.

15 And, of course, one of the things that we  
16 wanted to do was to obtain, again, some clarification  
17 on precisely what the issues are that you're seeking  
18 to raise. As I now understand them, you're  
19 questioning the determination that any of these  
20 violations were willful. And according to Ms.  
21 Thompson, there was also an issue with respect to Mr.  
22 Ficek's personal responsibility for some of the  
23 determined violations. Is that correct?

24 MS. THOMPSON: Yes. Can I just explain  
25 kind of how I -- why I went about requesting a hearing

1 in the first place?

2 JUDGE ROSENTHAL: Well, I don't know that  
3 that's germane at this point.

4 MS. THOMPSON: Well, I mean, I think it is,  
5 because --

6 JUDGE ROSENTHAL: All right. Go ahead.

7 MS. THOMPSON: When the NRC came here Labor  
8 Day weekend to just insure that the sources had been  
9 secured in our facility, at that time, I actually  
10 asked Vivian Campbell, I told her -- I mean, I guess  
11 there were other people here, but I would like to  
12 either answer the order, or request a hearing. And  
13 I'll tell you, I mean, my issue is with the statements  
14 that were made in the order that defame Mark, that say  
15 he's a personal of questionable integrity, that he, as  
16 I said, willfully, deliberately caused these  
17 violations to occur. And I said, "I either want to  
18 answer the order, or request a hearing," not really  
19 understanding either, which Vivian told me that a  
20 hearing would be -- I mean, I guess I don't fully  
21 understand what your position is, Judge, or the three  
22 of your positions as Judges, but I thought it was  
23 going to go before a Federal Judge totally unrelated  
24 to the NRC, first of all. But I didn't think either  
25 of those things, me answering, or requesting a hearing

**NEAL R. GROSS**

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

(202) 234-4433

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

1 would change anything. I said, "Neither one changes  
2 anything. Correct?" And she said, "Well, it could."  
3 But, I mean, I guess I don't expect any -- like you  
4 guys to override the fact of the revocation of the  
5 license, but I would like -- my goal in all of this is  
6 for a statement -- retracting just some of the  
7 statements about Mark's character in that he willfully  
8 -- one of the things that they are stating, that he  
9 chose to deliberately ignore the things ordered in the  
10 confirmatory order, so I wanted to submit evidence  
11 that showed all of the things that we did to comply  
12 with the confirmatory order. We did above and beyond  
13 what was required of us, and I do understand that  
14 there was a deadline missed early on. Mark was  
15 actually out of the country for several weeks, and the  
16 day that he got notification that the consultant had  
17 been approved, I don't believe it was willful at all.  
18 He didn't know about -- I mean, he was -- the  
19 notification to me that the consultant was approved  
20 the day he left for 23 days, or didn't receive it  
21 until he got back. But other than that, he got Ray,  
22 Danny, me, all on board -- we've got to get this done.  
23 You have to insure that all of this gets done. I  
24 wanted to submit that evidence.

25 I just don't think it's fair.

**NEAL R. GROSS**

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

1 Unfortunately, the confirmatory order gave him until  
2 2009 to complete all of the stuff. Unfortunately,  
3 because the camera fell off the back of Ray's truck,  
4 an investigation was conducted prior to all of those  
5 things being implemented, but they were implemented.  
6 We spent thousands -- or I shouldn't say we, Mark  
7 spent thousands of dollars implementing all these  
8 things, and more. And nobody ever came in and looked  
9 at those things after. And I realize, and that's what  
10 I told Vivian, and then the other U.S. NRC people,  
11 maybe it's too late, but it's very disheartening for  
12 me to see that they say Mark willfully chose to ignore  
13 it, when that's just not the case.

14 JUDGE ROSENTHAL: All right. I understand  
15 that. Let me say --

16 MS. THOMPSON: So, I mean, I guess my  
17 question is, is it fruitless to be pursuing a hearing?  
18 Should I just have with the order and made my  
19 statements, and been done with it, rather than  
20 pursuing --

21 JUDGE ROSENTHAL: First of all, this  
22 Licensing Board consists of judges who are entirely  
23 independent of the NRC Staff. Our role is, in the  
24 context of this case, will be if the case moves  
25 forward to entertain your challenges, Mr. Ficek's

**NEAL R. GROSS**

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

(202) 234-4433

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

1 challenges to the two orders, and the Staff's response  
2 to those challenges, and to make an independent  
3 judgment on the merits of the challenge, and the  
4 merits of the responses thereto. We're not an  
5 instrumentality of the NRC Staff. Again, we're  
6 entirely independent.

7 It's up, obviously, to Mr. Ficek and to  
8 you, if we determine that you have the requisite  
9 standing, to decide for yourselves as to whether you  
10 wish to go forward with this. You can be assured that  
11 you will get, if you do go forward with it, a  
12 dispassionate consideration of your presentation, and  
13 the Staff's response. And we act in this fashion in  
14 the same way as a court does when it has matters  
15 placed before it for adjudication.

16 So, it's really your decision. I  
17 understand what your concern is, and that leads me to  
18 another question before we get into any specifics.  
19 And that is, and I will ask that also of the Staff  
20 Counsel. Is there any possibility, Staff Counsel now  
21 has heard the concerns that are being advanced, the  
22 particular concerns that are being advanced,  
23 principally by Ms. Thompson, but on behalf, as well,  
24 of course, of Mr. Ficek, is there any possibility that  
25 the employment of a settlement judge might be useful?

**NEAL R. GROSS**

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

1 MS. MARSH: This is Molly Marsh. At this  
2 time, we don't really see that as being helpful.

3 JUDGE ROSENTHAL: And that's why?

4 MS. MARSH: Well, we hadn't really  
5 considered settlement. Mr. Ficek hadn't approached  
6 us.

7 JUDGE ROSENTHAL: So, you're telling me you  
8 don't think a settlement judge would be helpful, and  
9 I'm asking you why not.

10 MS. MARSH: Could I have one second,  
11 please? We could deal directly with Mr. Ficek, if he  
12 was interested in pursuing settlement negotiations.

13 JUDGE ROSENTHAL: You mean without the  
14 intervention of a settlement judge.

15 MS. MARSH: Yes.

16 JUDGE ROSENTHAL: Well, Mr. Ficek, would  
17 that be of some interest to you?

18 MR. FICEK: No.

19 JUDGE ROSENTHAL: Oh. And why not?

20 MR. FICEK: I really -- I'm really  
21 disheartened by the NRC, and some of their  
22 conclusions, and how they've handled this whole  
23 situation, and I have no desire to be outnumbered by  
24 their army of lawyers in this case. I'd rather deal  
25 with independent people.

**NEAL R. GROSS**

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

1 JUDGE ROSENTHAL: All right. I guess that  
2 that deals with that.

3 JUDGE HAWKENS: This is Judge Hawkens. I  
4 have a question for both Mr. Ficek and Ms. Thompson.  
5 It sounds like both of you are limiting your challenge  
6 to the willful or deliberate aspect of the claims that  
7 exist here, the alleged violations. Now, I know that  
8 -- I believe, and NRC Staff, if I'm misstating  
9 something, please chime in, but I believe the order  
10 against Mattingly involved seven violations, two of  
11 which did not include a deliberate or willful  
12 component. Is that correct, NRC Staff?

13 MS. MARSH: Yes, that's correct.

14 JUDGE HAWKENS: This question then is for  
15 Mr. Ficek and Ms. Thompson. Since it appears to us  
16 that your challenge is limited to the deliberate or  
17 willful component of an alleged violation, then it  
18 seems to me that Violations Five and Six, you,  
19 essentially, concede them. You do not challenge them.

20 MR. FICEK: That is correct. Mark Ficek  
21 here. We do not challenge the violations that  
22 occurred. We're challenging only the deliberate and  
23 willful violation, misconduct, I guess.

24 JUDGE HAWKENS: All right. Which means that  
25 Violation Five and Six that were directed toward

**NEAL R. GROSS**

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

1 Mattingly, in any event, remains unchallenged, because  
2 it does not contain that willful component, or that  
3 deliberate component. And those two violations alone  
4 may serve as a basis for some, I would think,  
5 disciplinary action by the NRC Staff.

6 MS. THOMPSON: We agree to that, yes.

7 MR. FICEK: Yes, we agree.

8 JUDGE HAWKENS: All right. I'm just trying  
9 to understand the scope of your challenge. And, NRC  
10 Staff, please help me out here. The alleged  
11 violations directed toward Mr. Ficek, are all of them  
12 -- do all of them have a willful or deliberate  
13 component to them?

14 MS. MARSH: The majority were considered  
15 deliberate, but then there was, additionally, the  
16 violation of the individual confirmatory order.

17 JUDGE HAWKENS: I saw that, and I was  
18 wondering -- I think the four that were not involved  
19 in the violation of the confirmatory order all had a  
20 deliberate component to them. How about the violation  
21 of the confirmatory order?

22 MS. MARSH: The Staff did not determine  
23 that that was deliberate --

24 JUDGE HAWKENS: Those were not. Okay.

25 MS. MARSH: -- direct violation of the

**NEAL R. GROSS**

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

1 order.

2 JUDGE HAWKENS: All right. So, Mr. Ficek -

3 -

4 MR. FICEK: Actually, the Staff did  
5 determine that the violation of the confirmatory order  
6 was deliberate.

7 MS. THOMPSON: Are you speaking about  
8 Violation One?

9 MR. FICEK: Yes.

10 MS. MARSH: This is Molly Marsh. The  
11 violation of the enforcement action, or the  
12 confirmatory order against Mattingly was determined to  
13 be deliberate. The individual confirmatory order  
14 against Mr. Ficek was not determined to be deliberate.

15 JUDGE HAWKENS: All right. Do you  
16 understand that, Mr. Ficek?

17 MS. THOMPSON: Can we look at the order  
18 really quick?

19 JUDGE HAWKENS: Yes.

20 MS. THOMPSON: It says, "Mr. Ficek  
21 deliberately put Mattingly in violation of  
22 confirmatory order EA08271, when he admitted to  
23 Mattingly," I'm sorry, I'm reading this upside down.  
24 "Admitted Mattingly meeting strict deadlines in the  
25 order knew what those deadlines were, put himself in

**NEAL R. GROSS**

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

1 charge of insuring compliance with the order, but let  
2 the order's deadlines pass, knowing that he was  
3 causing Mattingly to violate the order." Page 4.

4 JUDGE HAWKENS: Actually, I'm looking at  
5 the Federal Register Notice. And I'm looking at the  
6 paragraph, "In addition to the above violation to be  
7 deliberate misconduct rule, the NRC found Mr. Ficek  
8 violated provisions of his confirmatory order." Are  
9 you with me?

10 MS. THOMPSON: Yes. Well, we know what  
11 you're talking about. We're not on the same page as  
12 you.

13 JUDGE HAWKENS: All right. I'm just trying  
14 to find where you were reading from the order.

15 MR. FICEK: It would be page 4 of the order  
16 against me.

17 JUDGE HAWKENS: I do not see it, but I will  
18 accept both parties' representation that the alleged  
19 violation of the confirmatory order also had a  
20 deliberate or willful component to it. Is that  
21 correct, NRC Staff?

22 MS. MARSH: Well, the order against Mr.  
23 Ficek says that there several violations of the  
24 deliberate misconduct rule that set Mattingly in  
25 violation. And then, in addition to that, he violated

**NEAL R. GROSS**

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

1 his individual confirmatory order. The Staff didn't  
2 make a call that that was deliberate. It was just a  
3 direct violation of the order against him.

4 JUDGE HAWKENS: Okay. That's what I  
5 thought, and I'm just trying to say, so it would be  
6 violation of the confirmatory order directed toward  
7 Mr. Ficek, if that does not have a deliberate or  
8 willful aspect to it, is that beyond the scope of his  
9 challenge? It seems to me that it is, if it doesn't  
10 have a deliberate or willful component.

11 MS. MARSH: Currently, yes.

12 JUDGE HAWKENS: Is that the NRC's position,  
13 that there is no deliberate or willful aspect?

14 MS. MARSH: Yes. The Staff didn't make  
15 that determination.

16 MR. FICEK: May I ask a question? Mark  
17 Ficek here.

18 JUDGE HAWKENS: First, before you do, Mr.  
19 Ficek, I didn't hear the Staff's last comment.

20 MS. MARSH: Just that the Staff didn't  
21 determine that it was deliberate, no.

22 JUDGE HAWKENS: All right. Go ahead, Mr.  
23 Ficek.

24 MR. FICEK: Yes, Mark Ficek. I would like  
25 to ask the judge -- how do I address the Judge? Your

**NEAL R. GROSS**

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

1 Honor, Judge Rosenthal?

2 JUDGE ROSENTHAL: Yes. Go ahead.

3 MR. FICEK: The Staff is saying that there  
4 wasn't a deliberate component to that. I would like to  
5 ask the justification for the statement that Mark  
6 Ficek is a person of questionable integrity, knowing  
7 full well that that is going to go onto the web, and  
8 that would hurt me more than anything else. I care  
9 about that. I care about my reputation more than this  
10 entire proceeding, more than this business, more than  
11 anything. And they defamed me in a great way. I'd  
12 like to know what right do they have to do that?

13 JUDGE ROSENTHAL: Well, I don't think that  
14 that's a question that you can direct today to Staff  
15 Counsel. I mean, if you're challenging, and I can  
16 understand why you would wish to challenge, that  
17 determination, that's the kind of thing that would be  
18 heard at an evidentiary hearing where the Staff  
19 members, that's not the Staff lawyers, but the  
20 individuals, and, presumably, the Office of  
21 Enforcement who reached that conclusion would be  
22 called upon to justify it. And it's at that stage  
23 that the finding that you find, understandably,  
24 offensive, would be put up for justification. That's  
25 not something that this afternoon, or, indeed, at any

**NEAL R. GROSS**

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

(202) 234-4433

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

1 other time, the Staff Counsel, who are representing  
2 the individuals who made that determination, they  
3 didn't make the determination themselves. It's not  
4 appropriate for them to be called upon to justify it.  
5 The justification has to come from the people who made  
6 the determination.

7 So, the matter at hand now is whether, and  
8 under what procedures this case is going to move  
9 forward. And you'll get, as the saying goes, your day  
10 in court on whether that characterization which you  
11 find both wrong and offensive, was warranted, or not.  
12 Do you understand that?

13 MR. FICEK: I do. I thank you for the  
14 explanation. I would definitely like to challenge  
15 that statement.

16 JUDGE ROSENTHAL: Okay. The next question  
17 that we get to, and I think we can deal with this  
18 fairly quickly. The Staff raised some question as to  
19 whether these two orders should be considered  
20 together. And I'm frank to state, I can see no reason  
21 why they should be considered separately. It seems to  
22 me that the both orders rest upon, essentially, the  
23 same findings. So, Ms. Marsh, would you explain to me  
24 why the Staff thought there might be a problem in that  
25 regard?

**NEAL R. GROSS**

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

1 MS. MARSH: Well, we just wanted to be  
2 clear, we weren't -- I mean, going into this, we  
3 weren't exactly clear whether Ms. Thompson was  
4 representing the company, and Mr. Ficek was  
5 representing himself, and how things were going to go.  
6 We just wanted to make sure that there was no conflict  
7 involved. And we wouldn't object to consolidating  
8 them.

9 JUDGE ROSENTHAL: I think that's right. I  
10 mean, if Ms. Thompson participates, she's going to be  
11 participating on the basis of her own economic  
12 interest in the order that revoked the license of  
13 Mattingly. She has no standing insofar as I can see  
14 with regard to the order which precludes Mr. Ficek  
15 from participating in NRC-licensed activities for  
16 seven years. All right. Well, I think probably we'll  
17 proceed on the basis that they'll be consolidated.

18 Now, there are, as the Staff, of course,  
19 is aware, but this will come, I suppose, as news to  
20 Mr. Ficek and Ms. Thompson, there are two separate  
21 procedural tracts that this matter could proceed on.  
22 One of them is under the provisions of Subsection G of  
23 10 CFR, the Commission's Rules of Practice, and the  
24 other one is a procedure which is a much more  
25 informal, and in a sense faster procedure, which is

**NEAL R. GROSS**

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

1 under Subpart N. Now, it seems to the Board -- now,  
2 again, we appreciate the fact that this is all new to  
3 Mr. Ficek and Ms. Thompson. I'm assuming that the  
4 Staff is fully aware of the respective provisions of  
5 the two procedures.

6 It seems to the Board that a -- well,  
7 there is, obviously, an interest in expediting this  
8 matter and reaching a conclusion on the merits of the  
9 challenged portions of the orders as quickly as  
10 possible. It seems to the Board, offhand, that the  
11 Subpart G procedures would be better if conducted on  
12 a relatively expeditious schedule. The problem with  
13 Subpart N is that under the Commission's regulations,  
14 for example, by November 15<sup>th</sup> there would have to be,  
15 and the regulations require this, this isn't just a  
16 milestone. This is a requirement, that by November  
17 15<sup>th</sup> there would have to be a pre-hearing conference  
18 at which there would have to be by both parties a full  
19 disclosure of the witnesses and a summary of both  
20 written and oral testimony. And that seems, to us, to  
21 be on a little too expedited a schedule.

22 The Subsection G, on the other hand, while  
23 it allows for a fairly leisurely procedure, there's  
24 also a provision in the regulations which calls for  
25 expedition. And in Subpart G proceedings, the

**NEAL R. GROSS**

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

1 circumstances of this particular case, what we would  
2 suggest is the following. That is, that the parties,  
3 that is Mr. Ficek and Ms. Thompson on the one side, if  
4 we determine, and we'll make a determination on this  
5 very quickly, determine that she is, in fact, entitled  
6 to status as a party, Mr. Ficek and Ms. Thompson on  
7 the one side, Staff counsel on the other side, get  
8 together and within the space of one week come up with  
9 a proposed Subpart G expedited schedule. See if they  
10 can agree on it.

11 Now, obviously, at this point, again, Mr.  
12 Ficek and Ms. Thompson are not aware of what the  
13 various steps under Subpart G are. Staff Counsel,  
14 however, can be presumed to be fully aware of them, so  
15 that it would seem -- it seems to us that that would  
16 be a very good step, initially, for the parties to see  
17 if they can come to some agreement on a schedule.  
18 With in mind, of course, getting this matter to  
19 hearing, and getting it resolved at as early a date as  
20 is possible, recognizing that the parties will need  
21 some time in order to formulate their cases.

22 So, first let me ask the Staff, how does  
23 that sound to you?

24 MS. MARSH: That sounds fine to us.

25 JUDGE ROSENTHAL: All right. Mr. Ficek and

1 Ms. Thompson, how does it sound to you?

2 MR. FICEK: Yes, it sounds good.

3 JUDGE ROSENTHAL: Ms. Thompson?

4 MS. THOMPSON: Yes, that's agreeable.

5 JUDGE ROSENTHAL: Okay. With that, Judge  
6 Hawkens, do you have anything that you might want to  
7 say on that score?

8 JUDGE HAWKENS: This is Judge Hawkens. The  
9 Board is going to go off line for a few minutes while  
10 we have an internal discussion. Okay, Mr. Court  
11 Reporter?

12 COURT REPORTER: Yes, sir.

13 JUDGE HAWKENS: All right. Thank you.  
14 We'll be back in a moment.

15 (Whereupon, the proceedings went off the  
16 record at 1:57:30 p.m., and went back on the record at  
17 2:01:39 p.m.)

18 JUDGE ROSENTHAL: All right. We're back  
19 on, parties. All right. I have a question for the  
20 Staff. In view of Ms. Thompson's representation that  
21 she was an employee of Mattingly, and derived income  
22 from Mattingly, do you have any objection to a Board  
23 determination that she has adequate standing to  
24 participate? Ms. Marsh?

25 MS. MARSH: Yes, I'm sorry. Could I just

**NEAL R. GROSS**

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

1 have one second?

2 JUDGE ROSENTHAL: Right.

3 MS. MARSH: I guess our -- we wouldn't,  
4 necessarily, object to her having standing. We're  
5 just not clear that she actually is injured here. As  
6 far as we know, Mattingly is still operating as a  
7 business. It has work other than what the NRC does,  
8 and she's not a radiographer, someone who conducts  
9 NRC-licensed activities, she's the Accounting Manager,  
10 so it's just not clear to us that she actually is  
11 losing a job here if Mattingly is continuing to do  
12 other business.

13 MS. THOMPSON: Mattingly will not be  
14 continuing to do business as usual. I mean, it's --  
15 radiography was 90 percent of our business. So, yes,  
16 I will be, ultimately, out of a job. I'll try to find  
17 another job, but I will be adversely affected.

18 MS. MARSH: If that's the case, then the  
19 Staff would not object.

20 JUDGE ROSENTHAL: Thank you. I would say  
21 that in this regard, that as we proceed to an  
22 evidentiary hearing, we will expect that there'll be  
23 no duplication of the efforts of presentations of Mr.  
24 Ficek and Ms. Thompson. I think that what they should  
25 do is to designate one of the two of them as being the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

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

1 lead, because we don't want to be hearing the same  
2 thing one after another from the two of them.

3 MS. THOMPSON: And that was our goal with  
4 me requesting as a representative, would be just to  
5 have one hearing together.

6 JUDGE ROSENTHAL: That's good. All right.  
7 Well, I think that the way we're going to leave it,  
8 and there'll be a very brief confirmatory order on  
9 this aspect of it issued tomorrow, we will ask the  
10 Staff and Mr. Ficek and/or Ms. Thompson, whoever is  
11 going to represent them on this matter, maybe both, to  
12 consult promptly with respect to a proposed schedule  
13 for the various steps on a Subpart G proceeding,  
14 bearing in mind that expedition in the circumstances  
15 is in order, and that the Staff is to report back to  
16 the Board in writing by the conclusion of business one  
17 week from today, the 27<sup>th</sup> of October, 2010, as to what  
18 has been agreed upon. So, I think that's the next  
19 step. The Board will give immediate consideration to  
20 that, and will be quickly back to the parties.

21 Is there any other matter that, Judge  
22 Hawkens, Judge Tsoulfanidis, do you have anything you  
23 wish to add?

24 JUDGE TSOULFANIDIS: Not at this time.

25 JUDGE ROSENTHAL: Thank you. The parties,

**NEAL R. GROSS**

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

1 I'll go around. Anything further, Mr. Ficek?

2 MR. FICEK: No, nothing from Mark here.

3 JUDGE ROSENTHAL: And Ms. Thompson?

4 MS. THOMPSON: Actually, I do want to  
5 apologize to Hillary Cain. I have been getting so  
6 many emails from the Hearing docket, and I have been  
7 getting CC'd on Mark's emails because he wasn't signed  
8 up with the digital ID, that I, obviously, did not  
9 look on that and see that. I did not know about this  
10 teleconference until yesterday morning. So,  
11 apparently, I was supposed to respond to you by  
12 Monday, but I had not seen that document.

13 JUDGE ROSENTHAL: All right.

14 MS. CAIN: It's fine.

15 MS. THOMPSON: So, I'm sorry about that.

16 MS. CAIN: I'm just glad that it all worked  
17 out in the end.

18 MS. THOMPSON: Yes. Mark told me that he  
19 had gotten something, and I said, "I didn't." And  
20 then I went back through my emails, and saw it  
21 yesterday, and then I called you immediately. So, I  
22 apologize.

23 JUDGE ROSENTHAL: Very good. Thank you.  
24 Ms. Marsh, is there anything else that you wish to --

25 MS. MARSH: The Staff doesn't have anything

**NEAL R. GROSS**

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

1 else, no.

2 JUDGE ROSENTHAL: All right. Okay. Well,  
3 I thank all of the participants, and we look forward  
4 then by the close of business a week from today to  
5 getting the -- a report from the Staff with respect to  
6 a proposed schedule. And this will be, again, a  
7 Subpart G schedule, recognizing the obvious  
8 desirability for as much expedition as is possible,  
9 consistent with, obviously, the parties have  
10 sufficient time to prepare for a hearing.

11 If there's nothing further, the telephone  
12 conference is hereby terminated.

13 (Whereupon, the proceedings went off the  
14 record at 2:08 p.m.)

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE

This is to certify that the attached proceedings  
before the United States Nuclear Regulatory Commission  
in the matter of:           Mattingly Testing Service

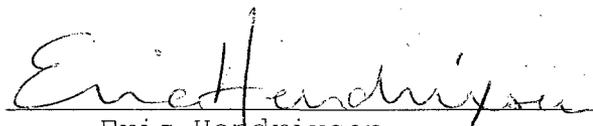
Name of Proceeding: Pre-Hearing Conference

Docket Number:           30-20836EA

ASLBP Number:           10-905-02-EA-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.



Eric Hendrixson  
Official Reporter  
Neal R. Gross & Co., Inc.