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## NUCLEAR REGULATORY COMMISSION

Title: Interview of Progress Energy Florida, Inc.  
Oral Arguments

DOCKETED  
USNRC

Docket Number: 52-029-COL and 52-030-COL

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ASLBP Number: 09-879-04-COL

Location: Rockville, Maryland

Date: Wednesday, November 17, 2010

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UNITED STATES OF AMERICA

U.S. NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of: : Docket Nos. 52-029-COL

PROGRESS ENERGY : and 52-030-COL

FLORIDA, INC. : ASLBP No. 09-879-04-COL

\_\_\_\_\_:

Wednesday,

November 17, 2010

Rockville, Maryland

BEFORE:

ALEX S. KARLIN, Chairman

ANTHONY J. BARATTA, Administrative Judge

WILLIAM M. MURPHY, Administrative Judge \*

\* via telephone

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## 1 APPEARANCES:

2 On Behalf of the U.S. Nuclear Regulatory

3 Commission:

4 SARA KIRKWOOD, ESQ.

5 JODY MARTIN, ESQ.

6 U.S. Nuclear Regulatory Commission

7 Office of General Counsel

8 Mail Stop - 0-15 D21

9 Washington, D.C. 20555

10

11 On Behalf of Progress Energy Florida, Inc.:

12 ROBERT B. HAEMER, ESQ.

13 JOHN H. O'NEILL, ESQ.

14 of: Pillsbury Winthrop Shaw Pittman, LLP

15 2300 N Street, N.W.

16 Washington, D.C. 20037

17

18 On Behalf of the Ecology Party of Florida:

19 CARA CAMPBELL

20 GARY HECKER

21 641 SW 6th Avenue

22 Fort Lauderdale, FL 33315

23

24

25

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

9:01 a.m.

1  
2  
3 CHAIRMAN KARLIN: Good morning. Please be  
4 seated.

5 Judge Murphy, are you on the telephone  
6 here?

7 JUDGE MURPHY: This is Judge Murphy. I'm  
8 here.

9 CHAIRMAN KARLIN: Great. Okay. Then we'd  
10 like to go on the record, Mr. Reporter. I would like  
11 to welcome everyone here this morning.

12 This is an oral argument that's going to  
13 be conducted in the matter of Progress Energy of  
14 Florida, application for COL, Combined Licenses for  
15 two proposed nuclear power plants in Levy County,  
16 Florida.

17 The docket number for the record in this  
18 case is 52-029-COL and 52-030-COL and the ASLBP is 09-  
19 879-04-COL.

20 This oral argument is being held pursuant  
21 to an order or notice actually that we issued on  
22 October 15 of this year and today's date is November  
23 17th and we're conducted this oral argument in the  
24 ASLBP Hearing Room in Rockville, Maryland.

25 As a matter of introductions, the Board

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1 consists of Dr. Anthony Baratta on my left; Dr.  
2 William Murphy, who is participating by phone from  
3 California, so it's 6 a.m. for him. He's an early  
4 riser, thankfully.

5 And we have two law clerks who are  
6 assisting us in this case, they are lawyers who will  
7 help with these matters. One of them is John Kirstein  
8 to my left and then Ann Hove, I believe, is sitting in  
9 the gallery here. Ann, if you'd raise your hand.  
10 Okay.

11 The parties have had interface, I think,  
12 with both of our law clerks and some of the logistics  
13 on this matter. Also, Sara Culler is the  
14 administrative support person for this and she's been  
15 in communication with all of you, I think, in terms of  
16 some of the logistical issues.

17 With that, I'd like the parties, if they  
18 would, to introduce themselves and the team that they  
19 have brought with them this morning, and perhaps we  
20 would start with the joint intervenors. So could you  
21 please introduce yourself, please?

22 MS. CAMPBELL: Cara Campbell from the  
23 Ecology Party. Do you want me to introduce them or do  
24 they introduce themselves?

25 CHAIRMAN KARLIN: Either way.

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1 MR. VOUGHT: I'm Kevin Vought with DHI  
2 Water and Environment.

3 MR. HECKER: Gary Hecker, Treasurer, from  
4 the Ecology Party of Florida.

5 CHAIRMAN KARLIN: Okay, welcome. Welcome.  
6 Progress Energy, please?

7 MR. O'NEILL: Good morning. John O'Neill  
8 with Pillsbury, counsel for Progress Energy. With me  
9 is Bud Haemer, who will be handling the argument  
10 today. We also have in the gallery behind us, Mr.  
11 Paul Snead, if there is any need for his testimony.

12 CHAIRMAN KARLIN: Thank you. Thank you.  
13 NRC staff, please?

14 MR. MARTIN: Good morning, I'm Jody  
15 Martin, counsel for NRC staff. With me, I have Sara  
16 Kirkwood, who is also counsel for NRC staff. To my  
17 left is Doug Bruner, who is the Staff Environmental  
18 Project Manager. And then in the audience was have  
19 Vince Vermuel and Mr. Lance Vail who are from the  
20 Pacific Northwest National Laboratory, and they're  
21 here as potential witnesses, if we need to take any  
22 testimony regarding the hydraulic pump.

23 CHAIRMAN KARLIN: Okay, thank you.  
24 Welcome to all of you. Thank you for coming. Before  
25 we start a couple of words, logistics. Please turn

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1 off your cell phones. Any cell phone conversations,  
2 obviously, should be conducted outside in the hall.  
3 Since Judge Murphy is participating via telephone,  
4 please -- we're going to have everyone sit at the  
5 counsel tables pretty much and if witnesses come in,  
6 we'll have them sit in the witness box, but please  
7 speak into the microphones as clearly as you can.

8 And Judge Murphy, please let us know if at  
9 any point you're not able to hear what people are  
10 saying.

11 JUDGE MURPHY: So far, everything is  
12 clear.

13 CHAIRMAN KARLIN: Good. Okay. Now in our  
14 notice for this matter, we asked that the lead lawyer  
15 or representative be designated. As I understand it,  
16 Ms. Campbell, you will be the lead representative for  
17 the intervenors. And Mr. Haemer will be the lead  
18 attorney for the Applicant?

19 MR. HAEMER: Yes, Your Honor.

20 CHAIRMAN KARLIN: Okay. And Mr. Martin,  
21 you will be the lead lawyer for the staff. Good.

22 A little background and then we'll talk a  
23 little bit about procedure because sometimes we issue  
24 an order in advance and say okay, you'll have an oral  
25 argument and you'll have ten minutes to do this and 20

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1 minutes allocated for that and we didn't do that here.  
2 We did issue this notice and it had a list of  
3 questions that we thought were troubling us and things  
4 we thought would be helpful to try to get some answers  
5 to. So that's an interesting and I think valuable  
6 guidepost, those nine questions we posed.

7 But we haven't issued specific time frames  
8 for argument, so I'm going to talk about that briefly.

9 The first background, generally, I think  
10 all the parties, we admitted several contentions, one  
11 of them being Contention 4 or C4 which dealt with some  
12 alleged groundwater and environmental impacts  
13 associated, that had not been accurately or adequately  
14 discussed, allegedly, in the Applicant's Environmental  
15 Report. So that contention was admitted.

16 And on September 1, of '09, the parties  
17 began the mandatory disclosures of documents that were  
18 relevant to those contentions including that  
19 contentions. And that's in accordance with the  
20 regulations.

21 Then in August 5 of this year, the staff  
22 issued a Draft Environmental Impact Statement and  
23 referred in several instances, several discussions to  
24 the groundwater impacts and the groundwater models  
25 that had been developed by the Applicant and its team.

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1 And then soon thereafter, the intervenors filed a  
2 Motion to Compel the production of the groundwater  
3 model or models that had been developed apparently by,  
4 allegedly by the Applicant. And briefs were filed and  
5 we issued a notice. So we're conducting this hearing  
6 to try to determine or rule on, ultimately, perhaps  
7 not today from the bench, the Motion to Compel, the  
8 joint intervenors' Motion to Compel the Applicant to  
9 disclose certain aspects of these groundwater models.

10 The way we're going to proceed today is  
11 we're going to hear oral argument. Oral argument is  
12 argument by the lawyers and/or representatives. It's  
13 not testimony. It's not factually contested. It's  
14 mostly arguments about legal points and the  
15 interpretation and meaning of the law as applied to  
16 the facts.

17 If we conclude that there are material  
18 factual disputes that the parties are arguing about  
19 some fact, whether it's true or not, we may need to  
20 take testimony, but at this point the witnesses that  
21 you have brought with you are not going to be arguing  
22 or testifying or speaking at the oral argument stage.  
23 They will only have any opportunity to talk, if and  
24 when we need to take witness testimony.

25 So we're going to have the oral argument.

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1 We may take testimony. That's a second step. Then we  
2 also would like to talk, perhaps briefly at the end of  
3 the session about scheduling further activities,  
4 perhaps related to a site visit, limited appearance  
5 statement session, that sort of thing. So that's  
6 generally how we're going to proceed. Any moment,  
7 I'll give you the order actually and the time frames  
8 for the oral argument. But in the mean time are there  
9 any other urgent matters or motions that parties think  
10 we need to be aware of before we proceed? Is there  
11 anything else that you think needs to be discussed  
12 here today?

13 MR. HAEMER: Your Honor, Bud Haemer for  
14 the Applicant. The order scheduling this hearing said  
15 that they expected to wrap up by noon today and I was  
16 wondering if we're still going to meet that. The  
17 reason I ask is that Mr. Snead has an appearance  
18 before the Army in Panama City tomorrow morning and  
19 therefore needs to catch a flight some time this  
20 afternoon. And Mr. O'Neill has an oral argument in  
21 Miami and he's here pinch hitting because Stephanie  
22 George is sick. So I'm sort of arguing for Mr.  
23 O'Neill and Mr. O'Neill is second seating me on  
24 Stephanie's behalf. But he also needs to get out by  
25 noon.

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1 CHAIRMAN KARLIN: Yes. I think to answer  
2 your question, we expect to be completed, done by  
3 noon. If we go over a few minutes, that's a  
4 possibility, but certainly are not going to go past  
5 lunch time, whatever that is.

6 MR. HAEMER: I would also just add, Your  
7 Honor, that Mr. Snead is the environmental supervisor  
8 for Progress and would be the individual most  
9 knowledgeable about coordinating a site visit. So  
10 that if we want to get to that, if we run into  
11 schedule problems, if we can wrap his parts up  
12 earlier, that would be most beneficial. Thank you,  
13 Your Honor.

14 CHAIRMAN KARLIN: Very good. And if we  
15 get close to the hour when he needs to run or either  
16 Mr. Snead or Mr. O'Neill need to run for a plane, let  
17 me know and we'll try to elicit whatever we need from  
18 them before we -- they have to leave. But I'm pretty  
19 sure we'll get done by noon.

20 MS. CAMPBELL: Your Honor?

21 CHAIRMAN KARLIN: Yes.

22 MS. CAMPBELL: As far as further  
23 scheduling, I do not have Ms. Olson's schedule. She  
24 is our lead intervenor. So it might be difficult for  
25 me to speak on her behalf today because I just don't

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1 know what her schedule is. So --

2 CHAIRMAN KARLIN: Okay, that's understood.  
3 I don't know that we'll actually get down to specific  
4 dates today. We might talk about weeks or general  
5 time frames and that sort of thing, but I don't think  
6 we're going to nail down any specific dates today.

7 MS. CAMPBELL: Yes, sir.

8 CHAIRMAN KARLIN: Anything else? All  
9 right. Procedures for the oral argument, what we  
10 thought is we've read the pleadings. They're not that  
11 long, but we are puzzled by a number of issues, things  
12 that were said there. So we listed these nine  
13 questions, as I say in our notice of October 15th.

14 We thought it would be opportune to have,  
15 give each of the parties an initial opportunity to  
16 make an opening statement. We'd like relatively  
17 short, five minutes, because we've read the pleadings  
18 and so you can have an opening statement of five  
19 minutes. And we'll proceed in this order. I will  
20 refer to it as the intervenors, rather than the joint  
21 intervenors just for ease of reference. The  
22 intervenors will go first with an opening statement of  
23 five minutes. The Applicant, Progress, will go  
24 second, and the staff, third.

25 Then as a next step, we will get into what

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1 I would say is really the oral argument where the  
2 Board will pretty much be asking questions of the  
3 lawyers about the pleadings and questions we have and  
4 for the pro se representative. If I say lawyer -- Ms.  
5 Campbell, and in that case, we will go in the order of  
6 starting with Progress, the Applicant. We feel it  
7 would be most productive to ask Progress some  
8 questions first; then the NRC staff second; and then  
9 intervenor third. So in the questioning time frame of  
10 both lawyers and representatives, Progress, staff, and  
11 intervenors.

12 At that point we may end up taking a  
13 break. The Board may need to consider and confer as  
14 to whether we think we -- or want to or need to have  
15 witnesses testify. I mean I understand that the  
16 witnesses came here with the willingness and ability  
17 to testify. We may or may not need your help in  
18 actual testimony. It's been a logistical effort for  
19 you, but please don't be insulted if we end up  
20 concluding that we actually don't need you to testify  
21 and that the parties have agreed here that some matter  
22 that appeared to be in conflict to us is actually not  
23 in factual dispute and everyone sort of reaches an  
24 agreement.

25 And if we do have witness testimony, then

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1 what it will be is basically we're going to ask  
2 questions. It's not going to really be the parties  
3 asking questions. It's going to be something like a  
4 sub part L evidentiary process where the Board asks  
5 the questions. And if there are questions that you  
6 think we should propound during that session, we will  
7 ask -- I'll try to remember to ask you if you think  
8 we've missed some question that would be very helpful  
9 or helpful in this matter. So that would be the plan  
10 if we get to witness testimony.

11 And then we'll just have a session at the  
12 end which is in the nature more of a pre-hearing  
13 conference to talk about the schedule, where the staff  
14 is, where we're going, and scheduling potential time  
15 frames for scheduling further activities.

16 Are there any questions at this point?

17 Judge Baratta, is there anything you want  
18 to add?

19 JUDGE BARATTA: No.

20 CHAIRMAN KARLIN: Judge Murphy to add from  
21 California?

22 JUDGE MURPHY: Nothing to add.

23 CHAIRMAN KARLIN: Okay. Well, now we're  
24 going to ask for opening statements. And Ms.  
25 Campbell, you are first.

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## 1 OPENING STATEMENT OF CORA CAMPBELL

2 ON BEHALF OF ECOLOGY PARTY OF FLORIDA

3 MS. CAMPBELL: Thank you for hearing our  
4 argument. We acknowledge that we were untimely in  
5 this filing and one thing that I do want to say is  
6 that that ten-day window that we have between when  
7 disclosures happen and when we get to file a Motion to  
8 Compel, we have never been able to meet that ten-day  
9 window because Pillsbury or Progress has always  
10 required us to come to Washington to get the  
11 disclosures and we do not have the resources to send  
12 somebody up here to get those every time within ten  
13 days.

14 So for example, on the 19th of September,  
15 we were not able to get somebody up here until October  
16 16th. So Ms. Olson has been able to come up in  
17 conjunction with her business with NIRS which is the  
18 organization she works for and we've had to coordinate  
19 always with when she's been up here. So we have never  
20 been able to meet that ten-day window.

21 The other thing that I wanted to say is  
22 that there are hundreds and hundreds of these  
23 disclosures. I'm not trying to make an excuse because  
24 we're pro se, but it is a little bit different for us  
25 to be able to go through hundreds and hundreds of

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1 documents and sift through and try to analyze them and  
2 see which ones it is that we really need or we need  
3 more information on.

4 The other thing that I wanted to say is  
5 that we don't feel that the staff -- we didn't file  
6 this motion within the ten days or even earlier than  
7 we did should obviate Progress from producing that  
8 information because it was required in the beginning.  
9 We were required to have everything that we need that  
10 they had in order to analyze the evidence and a report  
11 is not enough.

12 What I understand this proceeding to be  
13 and I may be wrong and please correct me, is that both  
14 sides get to test each other's evidence and that's the  
15 point of the whole thing so that we test each other's  
16 evidence and then we present arguments on it and then  
17 you make a ruling on which one you think is more  
18 believable or credible or relevant or whatever and  
19 when we are just giving a report that says that --  
20 it's sort of like a fait accompli, here it is, there's  
21 no ability for us to analyze that or test that  
22 evidence.

23 And even though our motion was not timely  
24 and we admit, they are not harmed in any way by having  
25 to give it to us know. It's something that was

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1 required in the beginning and it was not given and it  
2 was not given when we asked for it and we don't think  
3 that the common good of weighing what the harm will be  
4 at Levy County with this huge construction and we  
5 don't think the common good should suffer because we,  
6 as intervenors who are trying to represent the common  
7 good, did not do that on time.

8 The other things are as far as your  
9 questions, I am remembering, I don't have like a list  
10 in my head because it wasn't like -- it was sort of  
11 interspersed between the ruling, you asked us about  
12 the untimeliness and I think I said that, that they  
13 are not harmed by this. And I think you also asked us  
14 what we needed, what it was exactly that we needed.  
15 And you have a list here at the bottom of your order  
16 on page two that says we should be prepared to address  
17 whether this includes the Southwest Florida Water  
18 Management District DWRM model. Is this the kind of  
19 thing you want from me right now, sir? The answers to  
20 that?

21 CHAIRMAN KARLIN: We'll ask questions  
22 about that. At this point, just give us the  
23 highlights of your argument.

24 MS. CAMPBELL: Okay, so we don't need the  
25 DWRM2 model. That model is available publicly. But

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1 we need what they put into the model to get out what  
2 they now say is not going to harm the environment.

3 I wanted to also point out that there's a  
4 huge difference. On page 524 of the DEIS, before this  
5 recalibration, what happened was they said it was .4  
6 to .5 feet immediately adjacent to the wellhead. That  
7 was the drawdown of the water. And after the  
8 recalibration which we do not know exactly what this  
9 recalibration is, it came out to 2.5 feet near the  
10 wellhead, and .5 feet extending three miles, affecting  
11 substantial off-site areas including many wetlands.

12 Now if what they did to the model could  
13 make such a drastic difference, there's no way for us  
14 to know whether they put some data in that didn't make  
15 an even more drastic difference and then they tweaked  
16 something here and there to come out with this which  
17 we still think is a pretty drastic difference. But  
18 there's no way to test this evidence. And we feel  
19 that it's mandatory that we be able to make our case  
20 by testing the evidence that they presented and that  
21 the staff has presented saying here, this is not going  
22 to hurt the environment. We need to trust. They can  
23 trust, but we think we should be able to verify it.

24 CHAIRMAN KARLIN: All right. Thank you.  
25 Thank you, Ms. Campbell.

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1 OPENING STATEMENT OF ROBERT B. HAEMER, ESQ.

2 ON BEHALF OF PROGRESS ENERGY FLORIDA, INC.

3 MR. HAEMER: Thank you, Your Honor.

4 Progress has followed the letter and the spirit of the  
5 regulation and this Board's ISO in providing what is  
6 required for disclosure.

7 As Ms. Campbell noted, specific to  
8 modeling we have disclosed dozens of documents  
9 covering thousands of pages of information. What the  
10 issue about is electronically-stored information, ESI.  
11 Progress does not have in its possession custody or  
12 control any of the ESI that it listed in the Motion to  
13 Compel, the intervenor's Motion to Compel.

14 The NRC did not ask for the ESI. If the  
15 NRC had asked for it, obviously, we would have it. We  
16 have supplied the disclosures in written documents in  
17 PDFs or other computer-generated forms, as we hold it.  
18 This is not like the cases of the intervenors have  
19 cited where we held it in ESI and have printed it out.  
20 We've given them what we have.

21 And therefore, since we're only required  
22 under the regulations to provide the ESI that we  
23 possess, this is consistent with the principles the  
24 Board put out in their order of December 29, 2009.  
25 And summarized on page one of that order that parties

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1 are only required to provide the documents that they  
2 possess, have custody or control of. They're not  
3 required to generate or produce documents.

4 So along those lines, the cases cited by  
5 intervenors that relate to discovery of evidence or  
6 relate to evidence is not applicable here. This is a  
7 disclosure and as the Board pointed out in the Order  
8 of the 29th at page 10, this disclosure, these are not  
9 evidence documents.

10 Progress has identified a witness to the  
11 intervenors as far as the disclosures related to  
12 modeling. He is a consultant with decades of  
13 experience in Florida and his name is Dr. William  
14 Dunn. We have also disclosed any documents that he  
15 has that's going to be reliance of his testimony.

16 The intervenors have conceded that their  
17 request is not timely and I would just simply say that  
18 what we supply to the intervenors each time is an  
19 index of the documents that are available, an index of  
20 the proprietary information, and the issue that has  
21 come up is that the intervenors want to look at all of  
22 that. They don't ask for a specific one and we make  
23 that available at a location that's mutually  
24 convenient, typically because NIRS has an office up  
25 here in Washington. It's been here at the D.C.

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1 offices of Pillsbury. Thank you, Your Honor. We're  
2 ready to answer any questions that you have.

3 CHAIRMAN KARLIN: Thank you. Mr. Martin?

4 OPENING STATEMENT OF JODY MARTIN, ESQ.

5 ON BEHALF OF THE NUCLEAR REGULATORY COMMISSION

6 MR. MARTIN: Thank you, Judge Karlin. As  
7 the staff said in this motion, we did not take a  
8 position on this because the staff does not have what  
9 the intervenors seek in its possession, custody, or  
10 control. So we viewed this as primarily a discovery  
11 dispute between the intervenors and the Applicant.  
12 And so at this time, we're going to keep that stance.  
13 We see it as a discovery dispute between them. So  
14 we're not going to take a position, but we're happy to  
15 answer any questions you may have for us.

16 CHAIRMAN KARLIN: All right, thank you.  
17 Okay, now we'll turn to addressing questions to the  
18 parties, lawyers and representatives and trying to  
19 achieve some clarification that way for a while.  
20 We'll start with Progress. Mr. Haemer, am I  
21 pronouncing that right, Haemer

22 MR. HAEMER: Yes, Your Honor. That is  
23 correct.

24 CHAIRMAN KARLIN: I'd like to ask some  
25 questions about the possession, as it were. Your

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1 position is that you do not possess the documents and  
2 therefore you don't, you can't, and don't have the  
3 obligation to provide them. Is that correct?

4 MR. HAEMER: Your Honor, we do not dispute  
5 that we have supplied a number of documents . We  
6 consider that this is a question about the  
7 electronically-stored information, the ESI. And in  
8 computer form, in the form that can only be read by a  
9 computer, we don't have that.

10 If I could draw an analogy, Your Honor,  
11 it's more like a Google Maps situation. The model as  
12 the intervenors have conceded is publicly available.

13 CHAIRMAN KARLIN: Let me just focus on  
14 that. The Reg. 2.336 that we're dealing with, does  
15 speak to the obligation of a party to disclose all  
16 documents and data compilations in the possession,  
17 custody, or control of the party. And that's what  
18 we're talking about here today, and you're suggesting  
19 you don't have that.

20 Now if you would turn to the intervenors'  
21 motion, page four, and they cite the DEIS, which I  
22 have here, but I think the citation in the pleading is  
23 sufficient. On page four, the NRC states in the Draft  
24 Environmental Impact Statement or at least that --  
25 "PEF constructed a local scale groundwater model". Is

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1 that correct?

2 MR. HAEMER: Your Honor, we have supplied  
3 as copies, two reports, Report 74 and Report 123 to  
4 our filings and motions --

5 CHAIRMAN KARLIN: That's not what I asked.  
6 I'm not asking about the outputs from running the  
7 model. What I am asking is this correct that PEF  
8 constructed a local scale groundwater model?

9 MR. HAEMER: Both of those reports, both  
10 Report 74 and Report 123, Your Honor, provide a  
11 describe of how the modeling was conducted and who  
12 performed that modeling. That is an accurate  
13 description, Your Honor.

14 CHAIRMAN KARLIN: Did PEF construct the  
15 local scale groundwater model? Come on, you can  
16 answer that.

17 MR. HAEMER: The answer to that question  
18 is that -- is that work was done by a member of the  
19 joint venture team, specifically CH2M HILL. And they  
20 supplied the report that is in the possession of  
21 Progress.

22 CHAIRMAN KARLIN: So CH2M HILL constructed  
23 the local scale groundwater model, is that right?

24 MR. HAEMER: The model itself is the  
25 standard model that's supplied by the U.S.G.S. and the

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1 State of Florida. What they did was they ran the  
2 inputs/outputs of that.

3 CHAIRMAN KARLIN: Okay. Well, let me get  
4 this straight, PEF constructed a local scale of  
5 groundwater model. Read the whole thing. Read the  
6 whole thing carefully, that quote. "PEF constructed  
7 a local scale groundwater model as a requirement to  
8 the facility site certification application to the  
9 State of Florida. This model, which was a submodel of  
10 the Southwest Florida Water Management District-wide  
11 Regulation Model Version 2, DWRM2, regional  
12 groundwater flow model, was used to simulate both LMP  
13 and cumulative groundwater use impacts."

14 So it correct, am I correct in saying that  
15 what this says is that PEF and its contractors  
16 constructed a local scale groundwater model which was  
17 a submodel of the regional one provided by the state?

18 MR. HAEMER: Your Honor, the process for  
19 which the TMR is used to extract that is again a  
20 state-supplied process.

21 CHAIRMAN KARLIN: What's TMR?

22 MR. HAEMER: TMR is the process by which  
23 the large grid use in the regional model are refined  
24 down to a small scale, generally under 300 yards for  
25 the --

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1 CHAIRMAN KARLIN: What does TMR stand for?  
2 It's an acronym. What does it stand for?

3 MR. HAEMER: I'm sorry, I'd have to look  
4 it up.

5 MS. CAMPBELL: It's --

6 CHAIRMAN KARLIN: No, one at a time.

7 MR. HAEMER: I don't remember, Your Honor.  
8 I'm sorry.

9 CHAIRMAN KARLIN: As I read this, there is  
10 a district-wide model or what was referred to as a  
11 regional groundwater flow model that the State  
12 provides, right?

13 MR. HAEMER: Yes, Your Honor.

14 CHAIRMAN KARLIN: And that's publicly  
15 available according to you, right?

16 MR. HAEMER: As far as we know, yes. Your  
17 Honor.

18 CHAIRMAN KARLIN: And you and your  
19 contractors, Progress and its contractors, took that  
20 state regional model and created a submodel.

21 MR. HAEMER: You're using the term  
22 "contractor", Your Honor, if I could just clarify.

23 CHAIRMAN KARLIN: Yes.

24 MR. HAEMER: CH2M HILL is a member of the  
25 joint venture team.

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1 CHAIRMAN KARLIN: Okay, well, let's ask  
2 about that. The joint venture team, if you want to  
3 get into that. Let me ask about that. Let's go to --  
4 well, okay, you refer in your statement of witnesses,  
5 your list of witnesses --

6 MR. HAEMER: Yes, Your Honor.

7 CHAIRMAN KARLIN: Can you go to that? Go  
8 to your list of witnesses you submitted on November  
9 9th?

10 MR. HAEMER: I'm not sure I have it, Your  
11 Honor.

12 CHAIRMAN KARLIN: You don't have the  
13 pleading you submitted?

14 MR. HAEMER: No, I do not, Your Honor.

15 CHAIRMAN KARLIN: You should. Why not?

16 MR. HAEMER: I don't. I apologize, Your  
17 Honor. I do not have it in front of me.

18 CHAIRMAN KARLIN: In the future, please  
19 bring the pleadings that you submit because we ask  
20 questions about those things.

21 But you say in your list of potential  
22 witnesses on page two that you submitted on November  
23 9th, "Mr. Snead will testify specifically that  
24 Progress does not have the computer model" and then  
25 you go on to say, "Progress understands that the model

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1 remains available in the form of ESI from the public  
2 sources and that the relevant sub models are available  
3 in the form of ESI for a fee from the member of the  
4 joint venture team."

5 MR. HAEMER: Yes, Your Honor.

6 CHAIRMAN KARLIN: So there you use the  
7 terminology, there is a model and then there is a sub  
8 model.

9 MR. HAEMER: I agree 100 percent, Your  
10 Honor.

11 CHAIRMAN KARLIN: And the sub model is  
12 available from the member of the joint venture team.

13 MR. HAEMER: Yes, Your Honor.

14 CHAIRMAN KARLIN: And you cite in footnote  
15 3 of that pleading that Levy COLA Part 2, Final Safety  
16 Analysis Report, chapter 17 at 17.1-1 is a reference  
17 to the JVT?

18 MR. HAEMER: It provides a description of  
19 who the JVT is, sir.

20 CHAIRMAN KARLIN: Okay, and --

21 MR. HAEMER: I've got that somewhere here.

22 CHAIRMAN KARLIN: What is the JVT? Is it  
23 a legal entity?

24 MR. HAEMER: It's an unincorporated  
25 general partnership that's unnamed. It's made up of

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1 CHM2 HILL, Sergeant Lundy, and Worley Parson.

2 CHAIRMAN KARLIN: Is a partnership  
3 agreements is existence?

4 MR. HAEMER: Your Honor, I'm not counsel  
5 to the JVT. I can't explain their organization.

6 CHAIRMAN KARLIN: Isn't it correct that  
7 Progress Energy is the Applicant here?

8 MR. HAEMER: Yes, Your Honor.

9 CHAIRMAN KARLIN: And they hired CH2M HILL  
10 to help them prepare their application.

11 MR. HAEMER: That's 100 percent correct,  
12 yes, Your Honor.

13 CHAIRMAN KARLIN: And so CH2M HILL is the  
14 one who has the sub model?

15 MR. HAEMER: Yes, Your Honor. CH2M HILL  
16 has the sub model and the associated --

17 CHAIRMAN KARLIN: And they have that  
18 because Progress hired them to help with this and to  
19 perform the revisions to make the sub model?

20 MR. HAEMER: Progress hired them to obtain  
21 a water use permit from the State of Florida as part  
22 of the characterization approval and also to respond  
23 to questions from the NRC.

24 So Progress has them for that purpose.  
25 They did not hire them specifically to perform the

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1 modeling, except to add what would be necessary to  
2 achieve their purpose. I'm not trying to split hairs.  
3 I'm just trying, Your Honor, to explain that we didn't  
4 hire them to do modeling. It's not a model that we  
5 created.

6 CHAIRMAN KARLIN: Okay, well, so the  
7 application, the CES says that Progress created this  
8 sub model. Are you telling me that Florida Progress'  
9 contractors created this sub model? Is that right?

10 MR. HAEMER: Yes, Your Honor.

11 CHAIRMAN KARLIN: That was CH2M HILL?

12 MR. HAEMER: That work was performed by  
13 CH2M HILL.

14 CHAIRMAN KARLIN: And they did that for  
15 free or did Progress pay CH2M HILL to create that sub  
16 model for purposes of this application?

17 MR. HAEMER: Progress paid for CH2M HILL  
18 for submitting a water use permit and therefore, the  
19 work that CH2M HILL did included that work.

20 CHAIRMAN KARLIN: And that was part of the  
21 work that CH2M HILL did for pay for Progress, correct?

22 MR. HAEMER: Yes, Your Honor. That is  
23 correct.

24 CHAIRMAN KARLIN: Correct me if I'm wrong,  
25 simple principal agent legal theory 101 is that if a

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1 principal hires an agent to do something and the agent  
2 possesses the document or ESI, then the principal, if  
3 he wants the agent to provide it to him can simply ask  
4 the agent to provide it to him.

5 MR. HAEMER: That is not the specific  
6 agreement that CH2M HILL as a member of the JVT has  
7 with Progress.

8 CHAIRMAN KARLIN: So what is this  
9 agreements?

10 MR. HAEMER: The agreement reflects, Your  
11 Honor, that the documents that are provided to  
12 Progress are final products to achieve the objectives  
13 of the contract. These draft documents that are not  
14 the ESI which is not really readable by a person and  
15 in fact, not readable by anybody at Progress because  
16 they don't maintain that program, they'd have to take  
17 it, download it. So the ESI is not useful to progress  
18 per se.

19 What Progress wants is an application that  
20 will get them a water use permit and obviously get  
21 them support for the COLA and eventually obviously a  
22 COL. So that's what they contracted for. They  
23 contracted for those final products.

24 CHAIRMAN KARLIN: Let me ask this, did  
25 CH2M HILL take the regional model and create a sub

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1 model on its own, or did it do it in furtherance of  
2 its contract work for Progress?

3 MR. HAEMER: In order to answer that  
4 question, I have to split into two different models  
5 and talk about Report 74 and Report 123. Do you want  
6 me to address those together or separately?

7 CHAIRMAN KARLIN: Address them now as ever  
8 way you want. As I understand it, there is a regional  
9 model. Then there was a local model created by PEF  
10 and it's contractors. And then there was a revision  
11 to the local model created by PEF and its contractors.  
12 Is that basically right?

13 MR. HAEMER: Your Honor, to provide a full  
14 answer, like I said, I want to split the answer in  
15 talking about first the modeling work that is  
16 described in Report 74, and then second, the modeling  
17 work that was done in Report 123.

18 CHAIRMAN KARLIN: Okay.

19 MR. HAEMER: The report for 174, Report  
20 74, I'm sorry, Your Honor, the modeling work that was  
21 done for Report 74 was done as part of, as described,  
22 part of the site certification application. And  
23 specifically, to achieve a water use permit in the  
24 State of Florida.

25 CHAIRMAN KARLIN: Done by whom?

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1 MR. HAEMER: That work was done by CH2M  
2 HILL under direction of local counsel. That was  
3 submitted --

4 CHAIRMAN KARLIN: Direction of Progress?

5 MR. HAEMER: By direction of Progress'  
6 counsel, yes.

7 JUDGE BARATTA: did you say that was part  
8 of the site characterization?

9 MR. HAEMER: Site certification  
10 application, Your Honor. Florida, must like the NRC,  
11 has taken and has a COL proceeding that attempts to  
12 move all of the permitting early in the process.  
13 Florida has a unique statute they've passed  
14 approximately ten years ago called the Powerplant  
15 Citing Act and that takes the environmental permitting  
16 and also moves that up early in the process and that  
17 is called a site certification application or an SCA.

18 So in conjunction with asking for a COL  
19 under the integrated Part 52 process, Progress also  
20 submitted an SCA to the State of Florida to obtain the  
21 associated state environmental permit.

22 The Environmental Report for both the SCA  
23 and the COLA are the same document. So they're often  
24 cited together. As part of obtaining a water use  
25 permit, Your Honor, Progress works with the state to

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1 use the state's standard program in order to evaluate  
2 and obtain a water use permit. So that's what's  
3 reported in Report 74, is the conclusion of the  
4 interaction between CH2M HILL and the state regulatory  
5 authority producing the final report that was  
6 submitted to the state in support of the SCA,  
7 specifically, the water use permit aspect of it.

8 The SCA, as I said, covers a number of  
9 permits, one of which is a water use permit. Does  
10 that answer your question, Your Honor?

11 JUDGE BARATTA: Yes, thank you.

12 MR. HAEMER: So anyway, I was explaining  
13 74, yes, Your Honor. So that's the process. So 74 is  
14 negotiated with the state. The state reviews that  
15 document and at the end issues a water use permit.  
16 The conditions on that permit are included in a  
17 document called the COC, the Conditions of Compliance  
18 that were issued by the State of Florida. DEP is  
19 maintaining it, but was issued by the Governor of the  
20 Citing Board.

21 That work was completed prior to this  
22 proceeding. And that report -- that information is  
23 reported in Model 74 and was the basis of the  
24 Environmental Report.

25 CHAIRMAN KARLIN: All right.

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1 MR. HAEMER: The second question you  
2 asked, Your Honor, is about Report 123. Report 123  
3 was prepared in response to questions that were raised  
4 by the NRC through the Request for Additional  
5 Information process, the RAI process. In that case,  
6 Progress asked and obtained from CH2M HILL a revised  
7 report, Report 123 and supplied it as an answer to the  
8 NRC.

9 In both of these cases, the NRC has not  
10 asked for ESI and therefore Progress does not have  
11 ESI.

12 CHAIRMAN KARLIN: Well, all right, in any  
13 event, in both cases the sub model, I'm going to use  
14 the following terminology. The state has got a model  
15 in which I will call the regional model. Progress  
16 Energy has created via its contractor, CH2M HILL, a  
17 sub model, a local model. We'll call that the local  
18 model 1 and that's the -- the output of that, as I  
19 understand what you said is reflected in the Report  
20 74, local model 1.

21 MR. HAEMER: Yes, Your Honor.

22 CHAIRMAN KARLIN: And then there was a  
23 revised model done, a recalibrated model and I'll call  
24 that local model 2 that was developed at the behest of  
25 Progress by CH2M HILL and submitted and these results

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1 were submitted to the staff in Report 123. Is that  
2 correct?

3 MR. HAEMER: I'm more comfortable using  
4 the terminology that I've explained. I understand  
5 that Report 74 describes the modeling effort that was  
6 done in conjunction with the State of Florida.

7 CHAIRMAN KARLIN: I don't care whether it  
8 was done in conjunction with. What I'm saying is  
9 Progress developed a local model for whatever reason,  
10 via using hiring CH2M HILL to do that. I don't care  
11 what reason you did it for, what regulatory purpose  
12 you did it for. I'm just trying to find out factually  
13 that there was a local model created and it was  
14 created by someone you hired.

15 MR. HAEMER: If by local model, sir, you  
16 mean the model that describes the site and there's  
17 some DEIS figures that go to that we can look at, but  
18 if that's the model you're referring to, then yes, I  
19 understand that to be the local model.

20 CHAIRMAN KARLIN: Let's go back to the  
21 DEIS I quoted from the beginning. Do you have that  
22 document in front of you, Motion to Compel production  
23 of this document?

24 MR. HAEMER: I did not bring the entire  
25 DEIS with me, no, sir.

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1 CHAIRMAN KARLIN: No, I'm not saying that,  
2 just the motion.

3 MR. HAEMER: Oh, the motion.

4 CHAIRMAN KARLIN: Page four. "PEF  
5 constructed a local scale groundwater model." That's  
6 the one I'm talking about. Then it says later, bottom  
7 of the page that you, PEF recalibrated the local scale  
8 groundwater model. So the output of the first was  
9 Report 74 and the output of the second is Report 123.  
10 Is that correct?

11 MR. HAEMER: I agree, Your Honor, that is  
12 what --

13 CHAIRMAN KARLIN: So I am going to refer  
14 to a regional model from the state, a local model  
15 prepared by PEF and its contractor, and a revised  
16 local model prepared by PEF and its contractor.

17 MR. HAEMER: I understand what you mean,  
18 yes, Your Honor.

19 CHAIRMAN KARLIN: And is that a fair way  
20 to characterize -- I'm trying to characterize what the  
21 DEIS seems to say to me.

22 MR. HAEMER: Yes, I understand what you  
23 mean, yes, Your Honor. It's among what I'm trying to  
24 explain.

25 CHAIRMAN KARLIN: So how could PEF

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1 construct a local scale groundwater model without  
2 having in some sense possession, custody, or control  
3 of it?

4 MR. HAEMER: Your Honor, that's because  
5 the work was done by CH2M HILL and all that was needed  
6 to be provided to Progress under the --

7 CHAIRMAN KARLIN: Stop. Let me stop you  
8 right there. But CH2M HILL was working for Progress.

9 MR. HAEMER: CH2M HILL is not a party to  
10 this proceeding, Your Honor.

11 CHAIRMAN KARLIN: But you are. Your  
12 client is and your client, are you suggesting that  
13 your client can evade production of documents by  
14 virtue of making, keeping the documents in the hand of  
15 your subcontractors?

16 MR. HAEMER: No, Your Honor, I am not  
17 suggesting any sort of evasion at all.

18 CHAIRMAN KARLIN: Okay, are you suggesting  
19 that by virtue of the fact that PEF didn't put its  
20 hands on the groundwater model, but instead had its  
21 subcontractor do all the work on the model that  
22 somehow PEF never had possession, custody, or control?

23 Would it be possible if PEF said to CH2M  
24 HILL we want you to give us that model, what would  
25 CH2M HILL say yes, sir?

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1 MR. HAEMER: They would say for a price,  
2 yes, sir.

3 CHAIRMAN KARLIN: And how much is the  
4 price? Didn't you already pay them to do it? You  
5 mean Progress paid them to this model and they won't  
6 even give it to them?

7 MR. HAEMER: Your Honor, PEF did not pay  
8 CH2M HILL for the modeling. They paid for support for  
9 the water use permit and therefore did not -- it would  
10 be incorrect to say that they paid for a model and  
11 they can't get it.

12 CHAIRMAN KARLIN: Right. They paid for  
13 support to get the groundwater permit, right?

14 MR. HAEMER: Yes, sir.

15 CHAIRMAN KARLIN: And part of the support  
16 to get the groundwater permit as to do a groundwater  
17 model. So although the ultimate reason they paid CH2M  
18 HILL was to get the groundwater permit, a subsidiary  
19 task associated with that ultimate purpose was to do  
20 the local groundwater model.

21 MR. HAEMER: I agree 100 percent. Had  
22 that task been to produce an interim or draft product,  
23 it required submitted ESI to Progress or if the NRC  
24 had asked for the ESI, Progress would have it. The  
25 task was to produced a final report. That is what

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1 they paid for. That is what they've got. To go back  
2 and get the draft material or the interim would be a  
3 change to the contract and would require additional  
4 money. That's what we're explaining. We're not  
5 saying it's not available. This is not a spoliation  
6 issue at all. The information is available and in  
7 fact, we have no control over it, Your Honor. Anybody  
8 can contract with CH2M HILL and get this data. The  
9 intervenors can. The staff can. You can. I can.  
10 It's not under Progress's control.

11 CHAIRMAN KARLIN: Progress paid CH2M HILL  
12 to help it get a groundwater permit, right?

13 MR. HAEMER: Yes, Your Honor.

14 CHAIRMAN KARLIN: And as a subsidiary task  
15 in achieving that objective Progress paid CH2M HILL --  
16 the payments to CH2M HILL were used to develop a local  
17 groundwater model which was used to support the  
18 ultimate task of getting the groundwater permit,  
19 right?

20 MR. HAEMER: The way I would characterize  
21 it, Your Honor, is that CH2M HILL in achieving  
22 Progress' objectives, developed intellectual property  
23 that has value. Under the terms of the contract, CH2M  
24 HILL retained that property and retains the ability to  
25 sell it for their own purposes. It is not a product

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1 that is supplied to Progress. And that's a reasonable  
2 --

3 CHAIRMAN KARLIN: I thought you said it  
4 was proprietary? At some point you said it was  
5 propriety -- your pleadings say, claim proprietary.

6 MR. HAEMER: Your Honor, the interface  
7 documents, the graphical interface document required  
8 to use the specific file that CH2M HILL uses is  
9 proprietary. And I believe that's explained in the  
10 intervenors' filing at their Appendix F, I think, or  
11 E. They explain that there are two ways to analyze  
12 the -- to access the state report. The state provides  
13 them that information. One way to provide that is to  
14 access it to be a proprietary program. That is the  
15 way CH2M HILL does it, because that's the most cost-  
16 effective way for an expert to do it.

17 You don't need the proprietary information  
18 and as the state explains, there's an alternate way to  
19 do it. But the particular ESI that CH2M HILL handles  
20 can only be interpreted using and the contractor the  
21 state uses happens to also be named DSI. So I'm sorry  
22 for the confusion. But you have to use DSI's program  
23 to understand the ESI that CH2M HILL has. That's what  
24 I'm trying to explain in my pleadings.

25 In terms of whether or not Progress has

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1 it, Progress does not have it because it was not  
2 requested by the NRC.

3 CHAIRMAN KARLIN: Well, the issue here is  
4 not whether it's requested by the NRC so much,  
5 obviously, as whether it's a document that is relevant  
6 to a contention and whether you and/or your  
7 subcontractors, whether Progress and its contractors,  
8 have possession, custody, or control of that document.  
9 It seems to me that your subcontractor or contractor,  
10 CH2M HILL, does have possession, custody, or control  
11 of the ESI in question, the model. Is that correct?

12 MR. HAEMER: One hundred percent accurate,  
13 yes. That is under the control of a member of the  
14 JVT.

15 CHAIRMAN KARLIN: And if Progress Energy  
16 wanted it, they could obtain it from the contractor,  
17 you say at a fee?

18 MR. HAEMER: What I said specifically is  
19 that CH2M HILL is free to sell that product to anyone  
20 who wishes to purchase it.

21 CHAIRMAN KARLIN: So they could sell the  
22 model that was prepared for Progress to anybody on the  
23 street they wanted to sell it to?

24 MR. HAEMER: Yes, Your Honor. They could.  
25 Progress has no control over it.

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1 JUDGE BARATTA: You're saying they have no  
2 control over who they sell it to, but they clearly  
3 have a control over it because you say in your FSAR  
4 that Progress Energy maintains oversight of the joint  
5 venture team activities preformed in support of the  
6 COL application development contract. Now either that  
7 statement is true or not true.

8 MR. HAEMER: Your Honor, that statement is  
9 100 percent correct. As I explained, we have  
10 disclosed dozens of documents. They include the --

11 JUDGE BARATTA: That's not what I asked.  
12 That's not what I asked. You have said repeatedly you  
13 don't have control over it. If you don't have control  
14 over it, then you don't have oversight of the joint  
15 venture team. So either you're not meeting your QA  
16 requirements which is a more serious consideration --

17 MR. HAEMER: I agree, not meeting the QA  
18 requirements, Your Honor, would be a very serious  
19 consideration. And the documents that we have  
20 disclosed and the documents that Progress has includes  
21 the QA oversight of the outputs of the program. It is  
22 not necessary to meet the QA requirements to have the  
23 actual ESI. And I can explain the QA process if it  
24 would help, Your Honor.

25 JUDGE BARATTA: I guess that's rather

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1 interesting because I believe the staff standard for  
2 reviewing Environmental Reports as part of their  
3 Quality Assurance measures includes verification and  
4 validation of computer model.

5 MR. HAEMER: Yes, Your Honor.

6 JUDGE BARATTA: And doesn't that V and V  
7 require an examination of the ESI?

8 MR. HAEMER: For this particular model,  
9 Your Honor, in order to obtain the verification, it is  
10 downloaded from the model itself, the initial model.  
11 It's downloaded from the government server, it's  
12 either the USGS or the State of Florida. Then there  
13 is a printout done to compare the data as run on a  
14 standard version of the inputs between the downloaded  
15 version and the version that's maintained on the state  
16 or --

17 JUDGE BARATTA: All that tells me is I've  
18 read the file the state has correctly. It doesn't  
19 tell me anything about the validation of the modeling  
20 that was done on the sub model.

21 MR. HAEMER: The program, when downloaded,  
22 is then run on their using standard inputs. Those  
23 outputs are then compared to a file that has -- that  
24 has been performed by the Federal Government. That is  
25 the method that's provided for validation. That is

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1 done by printout and comparison. That data is  
2 included in the thousands of pages of modeling data  
3 that we have disclosed.

4 JUDGE BARATTA: That validates the  
5 computer programming. It does not validate the model.  
6 The model has to be validated by an independent check  
7 on the inputs to verify that those inputs have, in  
8 fact, been input correctly into programming. How was  
9 that done?

10 MR. HAEMER: And that is described for  
11 both of the models in Report 74 and Report 123 and  
12 what has often been referred to as calibration. The  
13 outputs are compared to various calibration targets in  
14 order to determine that the modeling, that the inputs  
15 are correct and representative of the actual data  
16 that's been obtained.

17 So the model itself is a validated model  
18 that's obtained --

19 JUDGE BARATTA: That's a verification  
20 step. What I'm talking about is validation. That's  
21 the data that was put in was, in fact, correctly put  
22 in. There are several steps to computer model  
23 validation verification. Are you familiar with those?

24 MR. HAEMER: Yes, Your Honor . I am.

25 JUDGE BARATTA: Could you explain them to

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1 me?

2 MR. HAEMER: Yes. And as I explained, the  
3 first step is the one we just went through which is  
4 how you can verify that the actual model, the computer  
5 program is being run by CH2M HILL. We verified that  
6 that is the correct computer model and it is producing  
7 outputs to a standard output.

8 JUDGE BARATTA: Excuse me. That verifies  
9 that the computer program is operating correctly.

10 MR. HAEMER: Right, and that's the first  
11 step. That is done.

12 The second step is to verify the inputs.  
13 And again, to understand the ESI program is a  
14 graphical interface program and therefore the inputs  
15 are reported in Report 74 and Report 123 as graphical  
16 inputs. Those are the input files. If you look at it  
17 in a color version, you can see the different files.  
18 And therefore, you can look at them and see the  
19 graphical inputs and see what the inputs were that  
20 were placed into that.

21 Then in addition, what is called  
22 calibration is run and that is compared to various  
23 calibration data. Once that is done, then the  
24 simulations are provided and then the final graphical  
25 outputs are provided are those in the report that show

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1 the results of that.

2 So model 74 describes the process  
3 including how it is verified and validated. And that  
4 associated data, those QA data has also been part of  
5 our disclosure. But it does not require the ESI to be  
6 in the possession of Progress.

7 CHAIRMAN KARLIN: Possession, custody, or  
8 control, now the NRC has an obligation and is  
9 discharging that obligation, the staff, to review the  
10 ER that was submitted and the data that was submitted  
11 in support of it and to conduct its own Draft  
12 Environmental Impact Statement and Final Environmental  
13 Impact Statement.

14 If the NRC staff asked you, said we want  
15 to have the model. We want to have the ESI so that we  
16 can verify or validate or double check or whatever  
17 word you want to put on it, what you did, what CH2M  
18 HILL did, if the NRC said we want to have that ESI  
19 model, would you say oh, we don't have custody of it.  
20 You want to go buy it from CH2M HILL. Or would you  
21 say, yes, sir, here it is?

22 MR. HAEMER: If the staff sent us a formal  
23 request for the model, Progress would comply as an  
24 Applicant, yes, Your Honor.

25 CHAIRMAN KARLIN: So you would provide it

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1 to the staff if they asked for it?

2 MR. HAEMER: And if they had asked for it,  
3 we would have it and --

4 CHAIRMAN KARLIN: Does that not imply that  
5 you have control of it, you have access to it?

6 MR. HAEMER: If the staff asked for a  
7 Snickers bar, Your Honor, and it was an appropriate  
8 regulatory request, I'd buy it.

9 CHAIRMAN KARLIN: So how much is CH2M HILL  
10 proposing to charge you to provide this to the staff?

11 MR. HAEMER: The specific request that the  
12 intervenors have provided, and Mr. Snead will be able  
13 to testify, that that is in excess of \$30,000.

14 CHAIRMAN KARLIN: And that's not -- an  
15 old-fashioned discovery in the old days people used to  
16 say well, I'd like copies of the following documents  
17 and they would say that's a thousand pages, that will  
18 be five cents a page. Is this equivalent to the  
19 copying costs of copying onto a disk or is this  
20 something else?

21 MR. HAEMER: This is the cost for CH2M  
22 HILL to go through, pick out the correct computer  
23 file, put them together in an integrated package so  
24 that they run together and provide them on essentially  
25 a DVD.

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1 CHAIRMAN KARLIN: And how much is Progress  
2 Energy proposing to spend on these two nuclear power  
3 plants?

4 MR. HAEMER: Like I said, Your Honor, if  
5 the staff requested this, we would spend the money and  
6 do it. The point is that --

7 CHAIRMAN KARLIN: It's already there.  
8 It's just a matter of copying it on a diskette and  
9 handing it to them, right? It's already there.  
10 There's no additional work that needs to be done  
11 except make a copy of it.

12 MR. HAEMER: Your Honor, I disagree with  
13 that characterization.

14 CHAIRMAN KARLIN: Okay, explain why.

15 MR. HAEMER: As I said, the files need to  
16 be organized. You need to take the correct file.  
17 There a number of files associated with running each  
18 one of these individual models. And that is -- and  
19 that process of making sure that you've got the right  
20 ones that you then run it again to make sure it will  
21 actually work, that you've got all of them, that  
22 you've found all of them. Essentially, also because  
23 as Judge Baratta pointed out, there are going to be  
24 other requirements under the contract before CH2M HILL  
25 can submit it, such as quality assurance, verification

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1 that it's accurate. Those sorts of things will have  
2 to be, at this point, redone.

3 So that point, the issue is --

4 CHAIRMAN KARLIN: Why do they need to be  
5 redone? All they're asking for is -- do you posit  
6 that this is relevant to the contention?

7 MR. HAEMER: No, I don't posit it's  
8 relevant to the contention.

9 CHAIRMAN KARLIN: Okay.

10 MR. HAEMER: That's a separate issue, but  
11 yes, Your Honor.

12 CHAIRMAN KARLIN: Okay.

13 MR. HAEMER: We have filed that that is  
14 not the relevant issue. It's in our issues.

15 CHAIRMAN KARLIN: Okay.

16 MR. HAEMER: The conditions of  
17 certification are the relevant issues.

18 CHAIRMAN KARLIN: Okay.

19 MR. HAEMER: The water use permit.

20 CHAIRMAN KARLIN: I just -- I find it  
21 difficult to understand you making an argument that  
22 this ESI model is not within your -- Progress' control  
23 when you say in the one hand, if NRC asks for it, you  
24 could deliver it promptly, let's say. And if the  
25 intervenor says it needs to be produced you say oh, we

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1 don't have control over it.

2 MR. HAEMER: The difference is the  
3 regulatory requirement. I mean I have an obligation  
4 to provide the information that the NRC staff asks  
5 for. We would --

6 CHAIRMAN KARLIN: No, no, no. Why don't  
7 you tell the staff it's not relevant and we're not  
8 going to provide it?

9 MR. HAEMER: I think if you look at the  
10 record on Model 123, you will discover, there was a  
11 long discussion that went back and forth between the  
12 Applicant and the staff about that very issue.

13 CHAIRMAN KARLIN: Let's focus on Model 123  
14 then. Model 123, do you posit that that's relevant,  
15 the model that was used to produce the documents you  
16 call 123? Do you posit that's relevant to the  
17 contention relating to groundwater impacts associated  
18 with the proposed plant? The groundwater model is not  
19 relevant to that?

20 MR. HAEMER: We have moved and are waiting  
21 for the Board to answer this particular aspect is  
22 moot. So at the point if it's moot, I'm not sure it's  
23 relevant to anything.

24 CHAIRMAN KARLIN: If you posit that you're  
25 successful in throwing out all of contention 4, then

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1 yes, I guess it's moot, but we don't posit that here  
2 today, are we?

3 MR. HAEMER: I am not objecting that this  
4 is within the general relevance, that if this was a  
5 discovery request, it would be generally relevant.  
6 This is a disclosure obligation. And if we had it, we  
7 would disclose it. Yes, Your Honor. We just don't  
8 have it.

9 JUDGE BARATTA: I'm really troubled by  
10 that statement because from a QA standpoint, when  
11 you're dealing with computer models isn't it true that  
12 you have to be able to have a backup for whatever was  
13 done so the -- isn't it true?

14 MR. HAEMER: Your Honor, if this was not  
15 an Environmental Report and not submitted and not done  
16 primarily to meet a state requirement, your statement  
17 would be correct, that this was a safety thing  
18 associated with a Safety Analysis Report. This is an  
19 Environmental Report and like I said, if the ESI, not  
20 just the reports with thousands of pages of documents  
21 we have supplied, but if the ESI had been specifically  
22 requested by the NRC, you would have it.

23 JUDGE BARATTA: You're missing my whole  
24 point here. You're telling me that because it's not -  
25 - it's part of the Environmental Report that QA

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1 doesn't apply, and yet the staff apparently does  
2 consider to apply because the specific statement in  
3 NUREG 1555 that requires them to look and see if you  
4 have an adequate QA program, particularly with regards  
5 to verification, validation of computer model.

6 MR. HAEMER: And as I explained in  
7 response to your question earlier, Your Honor, that  
8 was done by a paper review of standard outputs. The  
9 actual ESI has not been requested by the NRC and  
10 therefore the additional costs to have Progress obtain  
11 that ESI and be able to meet the QA requirements to  
12 ensure that it's the right documents, because it would  
13 be adverse to quality if it was not the right  
14 documents under QA space. So yes, if the ESI was  
15 supplied to Progress, the QA would apply to it.

16 What was applied to this process is the  
17 output. This is the report. And the report, Your  
18 Honor, is verified by the paper record. It was the QA  
19 record that was performed --

20 JUDGE BARATTA: I'm really very troubled  
21 by your QA program. I think you've got more problems  
22 than you know.

23 CHAIRMAN KARLIN: Let me ask a question,  
24 as I understand something from the beginning statement  
25 by Ms. Campbell, when you produce documents under the

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1 mandatory disclosure requirements, you are, as I  
2 understand it, providing the intervenors with an index  
3 of the documents that are available?

4 MR. HAEMER: Yes, Your Honor.

5 CHAIRMAN KARLIN: And then you are  
6 requiring the intervenors to drive hundreds of miles  
7 up here to come up and get them if they want?

8 MR. HAEMER: No, Your Honor.

9 CHAIRMAN KARLIN: No? Are you providing  
10 them to them electronically?

11 MR. HAEMER: If they want specific  
12 documents, we would supply them, yes. What they have  
13 asked for is whether or not to review it and that has  
14 been done at a mutually convenient location. Because  
15 NIRS has a local Washington office, that has usually  
16 been the historical location.

17 CHAIRMAN KARLIN: Because who?

18 MR. HAEMER: The intervenor, NIRS. Since  
19 they have a Washington office, the Washington office,  
20 Pillsbury has been the traditional location.

21 CHAIRMAN KARLIN: So if they want the  
22 document electronically transmitted, you'll do that as  
23 well?

24 MR. HAEMER: If they want a copy of the  
25 document transmitted electronically?

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1                   CHAIRMAN KARLIN: Sometimes that's what  
2 parties usually do, is they provide the mandatory  
3 disclosures via electronic copies of the documents.  
4 It's quite easy. It's sort of a modern thing people  
5 use nowadays rather than going and physically going to  
6 look at the boxes.

7                   MR. HAEMER: The process that the parties  
8 have agreed to that has worked well and it's not until  
9 today didn't raise any sort of complaint about it, has  
10 been to make the files available to Ms. Olson at our  
11 offices in D.C. and she stopped by at a mutually  
12 convenient time. This has not been raised as a  
13 problem before. And to be honest, Your Honor, I don't  
14 understand how that excuses raising the issue within  
15 ten days that they can't get a document. If that's  
16 the issue, they do not need to wait until an oral  
17 argument to bring that issue up.

18                   I will simply say though that we have not  
19 had a complaint or a problem dealing with Ms. Olson in  
20 terms of making the documents available on her  
21 schedule.

22                   CHAIRMAN KARLIN: All right, if we've  
23 received such a complaint, we'll know what to do with  
24 it, but in the meantime if you all are happy with that  
25 approach, that's fine. It just seems to me somewhat

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1 old fashioned and I'm kind of an old-fashioned guy, to  
2 require people to physically come to your office to  
3 look at a document that could just be transmitted by  
4 the press of a button. If that's what you agreed to  
5 and everybody's happy with that, that's fine.

6 MR. HAEMER: The reason it works well is  
7 that we have IT support available to help Ms. Olson  
8 open up any files if there are any problems. We're  
9 able to readily resolve any problem with reading it.  
10 Ms. Olson does not have IT support readily available  
11 in Asheville, North Carolina. It's convenient and it  
12 ensures that she gets documents that she can read.

13 CHAIRMAN KARLIN: Okay.

14 MR. HAEMER: In other intervenor cases we  
15 have had, to make use of our IT resources in order to  
16 make a document electronically available in an  
17 alternate format, different than the one that it was  
18 prepared in, so that it could be read on their  
19 computer. That process has worked very efficiently if  
20 they're present where our IT people are and to be  
21 resolved rapidly. So it's a process that we're  
22 comfortable with and it has not -- until oral argument  
23 of Ms. Campbell, we were not aware that there were any  
24 problems with the process.

25 CHAIRMAN KARLIN: Let me ask in terms of

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1 ESI, as I understand it, you acknowledge that ESI is  
2 something that needs to be produced?

3 MR. HAEMER: Yes, Your Honor.

4 CHAIRMAN KARLIN: Subject to the mandatory  
5 disclosure requirements.

6 MR. HAEMER: Right.

7 CHAIRMAN KARLIN: And this model, this  
8 local model, let's say the revised local model is ESI,  
9 right?

10 MR. HAEMER: Yes, Your Honor. ESI.

11 CHAIRMAN KARLIN: Okay. I just wanted to  
12 see if that was an issue here.

13 Judge Murphy, go ahead, is this a point  
14 where you have some questions?

15 JUDGE MURPHY: I have one question. This  
16 is Judge Murphy. And I'm also referring to the Draft  
17 Environmental Impact Statement prepared by the NRC  
18 staff and Judge Karlin has characterized the models  
19 that we've been talking about as the regional model  
20 and the sub model and the revised sub model, but  
21 there's a description here of a multi-layer unsteady  
22 state model of the transient flow. Could you describe  
23 for me, please, the relationship between these and the  
24 genesis of this transient model?

25 MR. HAEMER: The basis for the model that

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1 we are talking about were, Your Honor, prepared by the  
2 U.S. Geological Service using their MODFLOW process.  
3 This is, as I understand it, a multi-layer unsteady  
4 state modeling process.

5 If you look in our Report 74 or 123 or in  
6 the DEIS, there is a figure that illustrates the five  
7 layers that are involved in the process and shows the  
8 interchange between the two. And that's the reason,  
9 Your Honor, the fact that it's an unsteady state  
10 process is one of the artifacts of this model and why,  
11 for example, if you look at DEIS Figure 4-1 in  
12 comparison to DEIS Figure 5-1, you will see that  
13 there's a significant difference in the way the model  
14 is run for 1 year or run for 60 years. It's because  
15 the modeling takes into account this unsteady state  
16 process. It's not a steady state.

17 And therefore, one of the QA issues  
18 associated with whether or not you can use a model  
19 like that reported in Report 123, is whether or not it  
20 reaches some level of closure consistent with the  
21 known physical effects, the known physical situation  
22 on the ground.

23 So that's the --

24 JUDGE MURPHY: Well, it would seem to  
25 imply by the text of the DEIS that there are two

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1 separate kinds of models, the DRWM-2 regional model  
2 and then the sub models derived from that. And the  
3 MLU or the multi-layer unsteady state model. Are you  
4 saying they are versions of the same thing?

5 MR. HAEMER: I think the multi-layer  
6 unsteady state model is a generic term that describes  
7 the specific computer programs that we're talking  
8 about here. That is my understanding. It's like  
9 calling cats and dogs and then calling them a term  
10 that says they're animals. That's my understanding.  
11 I hope that's helpful. That's the way I think of it,  
12 Your Honor.

13 CHAIRMAN KARLIN: Well, let me follow up  
14 on that, and maybe this is -- on the Draft EIS, on  
15 page 2.26, do you have that, Mr. Haemer?

16 MR. HAEMER: No, Your Honor. I did not  
17 bring the Draft EIS with me.

18 CHAIRMAN KARLIN: I believe this is part  
19 of what Judge Murphy is referring to. The paragraph  
20 begins on line 7 on that page, 2-26 of the DEIS, "in  
21 addition to the slug testing program, three constant  
22 rate withdrawal pumping tests were conducted." It  
23 goes on to say "test response data were analyzed  
24 using" -- capital letters -- " the Multi-Layer  
25 Unsteady State Model of Transient Wellflow in Layered

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1 Aquifer Systems."

2 That paragraph then goes on to talk about  
3 the MLU model, capitalized MLU model, "tended to over  
4 predict drawdown at some locations and under predict  
5 at others."

6 Now is that a separate model, the Multi-  
7 Layer Unsteady State Model -- in caps -- or is that  
8 just -- what is that?

9 MR. HAEMER: It's my understanding  
10 specifically it was MODFLOW that was done on that.

11 CHAIRMAN KARLIN: But when they say Multi-  
12 Layer Unsteady State model, is there a model which  
13 they're talking about?

14 MR. HAEMER: It's the staff's document.  
15 I think you'd have to ask them, but I believe the  
16 point is that that work when Progress did it, it's my  
17 understanding there's a specific multi-layer unsteady  
18 state model that was used and that work was MODFLOW.

19 CHAIRMAN KARLIN: Okay, so that's a staff  
20 model and Progress doesn't have that?

21 MR. HAEMER: What the staff means in the  
22 staff's document, I think you have to ask the staff.

23 CHAIRMAN KARLIN: That's a good point.  
24 Fair enough.

25 Judge Murphy, go ahead.

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1 JUDGE MURPHY: But now MODFLOW is not the  
2 CH2M HILL modeling that we're talking about. Those  
3 are separate codes that were used. Is that right?

4 MR. HAEMER: No, Your Honor. MODFLOW is  
5 the basis for the state regional model and that the  
6 site-specific work was done by downloading or  
7 extracting aspects from the state regional model. And  
8 that is derived from the USGS' MODFLOW.

9 JUDGE MURPHY: So the MODFLOW, USGS  
10 MODFLOW code was used both for the regional and the  
11 local steady state models and for the unsteady state  
12 pump test type modeling. Is that right?

13 MR. HAEMER: It's my understanding that  
14 both the modeling that was done to obtain the water  
15 use permit that is reported in Report 74 and the  
16 modeling that was done to evaluate the data when the  
17 specific data was collected, was both done using a  
18 MODFLOW computer program, yes, Your Honor.

19 JUDGE MURPHY: Thank you.

20 JUDGE BARATTA: I want to go back to this  
21 issue of how the work was performed relative to the  
22 requirement that the staff has imposed that it be done  
23 under a QA program.

24 You seemed to imply a minute ago, because  
25 this was an ER and it's not done under a QA program.

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1 Is that --

2 MR. HAEMER: No, Your Honor. No, Your  
3 Honor. This work was all performed under a QA  
4 program.

5 JUDGE BARATTA: It was all performed under  
6 a QA program. Okay. Could you describe that QA  
7 program relative to the preparation of inputs to go  
8 into the computer code, into a computer code, be it  
9 this one or any other one? In other words, what are  
10 the requirements for documentation?

11 MR. HAEMER: Progress, as I explained,  
12 Progress has an extensive description of the QA  
13 program that is provided in SAR chapter 13 and SAR  
14 chapter 17. I would be uncomfortable trying to quote  
15 that and its associated appendixes from memory, Your  
16 Honor.

17 If you'd like a filing on that, we can --

18 JUDGE BARATTA: As you recall in our  
19 order, we specifically asked for information relative  
20 to any calc notes. Were those required to be prepared  
21 in connection with this model?

22 MR. HAEMER: The calculation, Your Honor,  
23 is what Report 73 is. It is the final approved  
24 calculation and other associated draft notes have been  
25 supplied as part of the 50-some odd -- dozens of

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1 documents supplied as part of disclosure have included  
2 calculation notes and associated drafts to the extent  
3 that they were submitted to Progress, yes.

4 I mean, Your Honor, the calculation  
5 package that was submitted to Progress is the final  
6 calculation package. The preliminary work that was  
7 done by the engineer and retained by CH2M HILL is  
8 retained by CH2M HILL.

9 JUDGE BARATTA: Nobody at PEF has verified  
10 that as is customary in a QA program?

11 MR. HAEMER: Elements of that have been  
12 submitted to Progress and have been included in our  
13 disclosure package. They have not involved submitting  
14 ESI.

15 JUDGE BARATTA: I'm not asking about ESI.

16 MR. HAEMER: Okay.

17 JUDGE BARATTA: I'm asking about the steps  
18 that are required to go from the physical site to the  
19 input that is-- the ESI that is put into the program.  
20 So are those documented and are there a set of  
21 calculation notes which could be reviewed to verify  
22 the approximations and assumptions that were used in  
23 developing the ESI?

24 MR. HAEMER: Your Honor, the CH2M HILL  
25 maintains the calculation file and in accordance with

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1 their internal QA program as described in the SAR  
2 program, it was used to prepare this. That is audited  
3 and available for review. Whether or not this  
4 particular package has been included in any one of  
5 Progress' or the joint venture team's audits of CH2M  
6 HILL's work in this area, I don't specifically know,  
7 but they would maintain that for the purpose of being  
8 able to respond to an audit.

9 Is that your question?

10 JUDGE BARATTA: Does not your contract  
11 with them require them to produce them on request?

12 MR. HAEMER: For a site inspection, yes,  
13 Your Honor. If you go back to the basic terms of the  
14 contract, if all of the valuable intellectual property  
15 was obtained from the contractor, the price would  
16 probably be different. Because the contractor retains  
17 it to resell it, and retains the ability to show it to  
18 us, that retains more value in their hands. It  
19 doesn't mean that it's under our control simply  
20 because it's there. Is that your question?

21 I mean obviously --

22 JUDGE BARATTA: It seems rather strange  
23 that you have a QA program which isn't under your  
24 control is what you're telling me. Because you should  
25 be able to go get those documents any time you want.

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1 MR. HAEMER: The documents, yes, Your  
2 Honor. We're talking about the ESI.

3 JUDGE BARATTA: I'm not talking about the  
4 ESI. I'm talking about the calculation notes right  
5 now. That is not ESI. It may be in electronic form,  
6 but it's not ESI.

7 MR. HAEMER: And Your Honor, the documents  
8 are not -- the documents that are in Progress's  
9 control are not the question being raised here. As I  
10 explained, the QA program that was performed was  
11 performed using printouts. It was not performed by  
12 looking at ESI.

13 JUDGE BARATTA: That's only one element of  
14 a QA program. That's only one element of a model.  
15 You're confusing ESI with a model. A model  
16 incorporates many other elements.

17 MR. HAEMER: And all of the other  
18 elements, Your Honor, have been disclosed in the final  
19 calculation report and is available. That's in the  
20 final calculation report which is Report 123 or Report  
21 74.

22 JUDGE BARATTA: So I can go there and I  
23 look and see how the engineer that developed the ESI  
24 went from a physical measurement on the site to the  
25 input for the ESI input. Is that correct?

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1 MR. HAEMER: You can, Your Honor. As a  
2 point of clarification, the method that that was done  
3 is a graphical interface, and so therefore there are  
4 pictures in the final report, not a list of table of  
5 documents. It's described in a graphic input. You  
6 have to look at it in color is what I'm trying to say,  
7 Your Honor.

8 JUDGE BARATTA: You have to convert from  
9 the physical measurement into some sort of input, be  
10 it by pressing a key or whatever on the computer,  
11 right?

12 MR. HAEMER: Absolutely correct, Your  
13 Honor.

14 JUDGE BARATTA: Okay, and how is that  
15 verified that that was done correctly?

16 MR. HAEMER: A printout of the final --  
17 the model, the inputs essentially provide four  
18 different or five different color squares for each  
19 square. So that you can tell what the modeler put in  
20 by looking at the picture that comes out and seeing  
21 what the colors are. If it's blue, it's a certain  
22 kind of a square. If it's red, it's a certain kind of  
23 a square. And those -- and there's a key that  
24 explains what on each one of the levels that input  
25 was.

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1           So that's the method, Your Honor. You  
2 look at a figure that's provided in the report. You  
3 look at it in color and it has different color,  
4 depending on what the input was.

5           JUDGE BARATTA: And there would be a calc  
6 note that somebody said that they reviewed that and  
7 confirmed that that was, in fact, done correctly?

8           MR. HAEMER: Both model 74 and model 123  
9 are submitted with the appropriate --

10          JUDGE BARATTA: Those are the summary  
11 reports. What I'm asking for is the material that  
12 supports those summary reports, and was that  
13 disclosed?

14          MR. HAEMER: To the extent that it was in  
15 the hands of Progress, yes, Your Honor. To the extent  
16 it wasn't privileged, yes. The final reports are what  
17 are provided and any additional ones that are in the  
18 possession of Progress -- I'm not trying to evade  
19 here, Your Honor. Obviously, there are more  
20 information available at the CH2M HILL --

21          CHAIRMAN KARLIN: Let me ask this. You  
22 say "in the possession", it's accessible to Progress,  
23 isn't it? It's in the hands of your contractor?

24          MR. HAEMER: Yes, it's in the hands of the  
25 --

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1 CHAIRMAN KARLIN: And if you asked for it,  
2 they'd give it to you?

3 MR. HAEMER: For a fee, yes, Your Honor.

4 CHAIRMAN KARLIN: They charge for  
5 everything they do, right?

6 MR. HAEMER: If it's within the scope of  
7 their contract, yes, Your Honor.

8 CHAIRMAN KARLIN: They work for pay. So  
9 you ask them to do something, they'll do it, but  
10 you've got to pay them for it, right?

11 MR. HAEMER: I think the difference is,  
12 Your Honor, that if this was within the scope of the  
13 contract, we wouldn't have to pay them. They would  
14 just simply supply it.

15 CHAIRMAN KARLIN: So if you ask for it and  
16 they say it's not within the scope of the contract, we  
17 refuse to give it to you --

18 MR. HAEMER: Without money, yes --

19 CHAIRMAN KARLIN: We already know money  
20 has to be paid. But are you saying they have control  
21 of it and you can't get it from them, even if you  
22 wanted to? Or are you just saying well, they'll give  
23 it to us, but we just have to pay for it?

24 MR. HAEMER: We're saying it's not under  
25 our control because anybody can pay for it, not just

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1 us.

2 CHAIRMAN KARLIN: They are your  
3 contractor. I mean you're really pushing the red face  
4 test with this argument, but they are your contractor  
5 and you pay them, obviously, Progress pays them, but  
6 you paid them to do this model, they did the model.  
7 You paid them to provide certain outputs from the  
8 model. They provided it to you. And you said well,  
9 I want to see the model to verify, to validate, or  
10 because NRC wants it, they would give you that too and  
11 of course, you'd have to pay for it.

12 MR. HAEMER: CH2M HILL, Your Honor, is a  
13 very large organization. It's the contractor to the  
14 U.S. Department of Energy. It's the contractor --

15 CHAIRMAN KARLIN: What does that have to  
16 do with it?

17 MR. HAEMER: It's not just my contractor  
18 is the point, Your Honor.

19 CHAIRMAN KARLIN: Well, yes, they're in  
20 the business, a well-known entity that does this sort  
21 of work doesn't change the fact that they are a --  
22 they've been hired by Progress to help Progress with  
23 pursuing this application, both the state application  
24 as you've described and this application and they're  
25 doing work for it and they're getting paid for it.

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1 And certainly, they're not going to withhold this  
2 document from you on some grounds that it doesn't  
3 belong to you and you have no right to it. Sure,  
4 there's payment due, but payment is due for everything  
5 that a contractor does for a company.

6 Let me switch a little bit --

7 JUDGE BARATTA: If I may, correct me. Are  
8 you saying that by you not having control, that you do  
9 not have the sole right to have information?

10 MR. HAEMER: We do not have control is  
11 what I mean, Your Honor. We would have to change our  
12 contract in order to obtain control of the document.  
13 It is not under our control.

14 JUDGE BARATTA: What I'm asking you is  
15 what do you mean by control? Because you made a  
16 statement a moment ago that anybody could obtain that  
17 information. So does that mean that you do not have  
18 the sole right to that material?

19 MR. HAEMER: One hundred percent. CH2M  
20 HILL does not require our permission -- does not  
21 require Progress's permission to sell that data to  
22 anybody who asks for it.

23 JUDGE BARATTA: Now, does that mean that  
24 you do not have the right to access that material?

25 MR. HAEMER: We have the ability to access

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1 it on site. We don't have the right to obtain it.  
2 It's not ours. It's not under our possession  
3 entrusted to your control.

4 CHAIRMAN KARLIN: What do you mean on-  
5 site? What do you mean on-site?

6 MR. HAEMER: I mean --

7 CHAIRMAN KARLIN: You go to CH2M HILL'S  
8 premises and you access it?

9 MR. HAEMER: As part of a recognized QA  
10 program, I believe that's what the context that Judge  
11 Baratta was asking about. Yes, as part of a  
12 recognized QA program, Progress QA auditors would be  
13 able to verify for that purpose, verifying quality  
14 assurance, but for that purpose.

15 JUDGE BARATTA: Is your contract strictly  
16 limited to that?

17 MR. HAEMER: Our contract -- yes, Your  
18 Honor, our contract is strictly limited. Final  
19 products are the property of Progress. Non-final  
20 products, products that are not deliverables are  
21 retained by contract and they can use those for their  
22 purposes.

23 JUDGE BARATTA: That's not what I asked.  
24 I said is that the only -- those intermediate  
25 products, non-final products, okay, are they only

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1 accessible for purposes of QA?

2 MR. HAEMER: QA or other contract  
3 verification items, if that's what you're asking  
4 about. I mean they are there to verify primarily for  
5 what we were talking about in the context of QA, yes,  
6 they are accessible --

7 JUDGE BARATTA: I didn't ask that. I've  
8 asked whether or not it was accessible for other than  
9 QA? You just said they're available for other  
10 verification purposes. Is that correct?

11 MR. HAEMER: You're asking, Your Honor,  
12 whether or not Progress can see these files in the  
13 hands of CH2M HILL without --and the answer is yes.  
14 If Progress wanted to see the files, Progress could  
15 see the files. That's different from being able to  
16 walk away with a DVD of the file. That would require  
17 a contract mod. That's the difference, Your Honor.

18 JUDGE BARATTA: Now as part of the  
19 adjudication process, if you were required to see  
20 those files or the adjudicators were required to see  
21 those files, would that be possible?

22 MR. HAEMER: If you're asking whether or  
23 not Progress would comply with an order, Progress  
24 would certainly -- received an order, would certainly  
25 ask CH2M HILL and would expect that they would provide

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1 it. I think the price might go up if we were under an  
2 order from the Board. And that's the difference. We  
3 are not -- we don't have a right to the files. We  
4 would have to negotiate for that right. That is the  
5 burden of what we're talking about.

6 JUDGE BARATTA: I'm not saying you want to  
7 walk away with the files. I'm saying that if someone  
8 wanted to see those files -- you just told me you have  
9 a right to see those files under the existing  
10 contract, correct?

11 MR. HAEMER: Yes, Your Honor.

12 JUDGE BARATTA: Thank you.

13 MR. HAEMER: And we have the right -- as  
14 a clarification, Your Honor, and we would also have  
15 the right to show those files to the joint  
16 intervenors, if that was the point.

17 CHAIRMAN KARLIN: How about the access  
18 whereby the expert by the joint intervenor expert  
19 would come to CH2M HILL and run the model and would  
20 use it and access it in that way rather than walking  
21 away with the disk of it, you could arrange for that,  
22 couldn't you?

23 MR. HAEMER: Your Honor, we can probably  
24 arrange with our contract to achieve anything within  
25 what you're discussing. The question is whether or

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1 not we have an obligation to under the disclosure  
2 rule.

3 CHAIRMAN KARLIN: So you're saying it's  
4 within your control to do that?

5 MR. HAEMER: No, Your Honor. I'm saying,  
6 Your Honor, that we have the ability to negotiate and  
7 that you have assessed the CH2M HILL will accede to  
8 that. I don't know that for a fact and they are not  
9 a party to this proceeding. I do not know that they  
10 will accede to our request.

11 CHAIRMAN KARLIN: How about this? What if  
12 the application were to be denied if you fail to  
13 produce documents that were critically relevant to  
14 some -- or a model that was critically relevant to  
15 evaluating whether or not the facility was safe?  
16 Certainly under that situation, the Applicant might be  
17 incentivized to try to get that model from its  
18 contractor.

19 MR. HAEMER: I disagree with your premise.  
20 The Applicant has an adequate incentive to comply with  
21 the regulations. All I am saying is that there is no  
22 obligation on CH2M HILL to provide it. It is not  
23 currently provided in our contract.

24 It's different from what we can negotiate  
25 and how it would be successful.

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1 CHAIRMAN KARLIN: I think we've exhausted  
2 this control issue. One more question, okay? I have  
3 other questions, but they're not related to control.

4 JUDGE BARATTA: What is your contract with  
5 CH2M HILL say relative to adjudicatory procedures and  
6 access to information?

7 MR. HAEMER: We have a master contract  
8 with the joint venture team and that that states that  
9 they supply us with the final products.

10 JUDGE BARATTA: That's not what I asked.

11 MR. HAEMER: They do not have a disclosure  
12 obligation under their contract, if that's your  
13 question.

14 JUDGE BARATTA: Even in an adjudicatory  
15 proceeding?

16 MR. HAEMER: They aren't a party to the  
17 adjudicatory proceedings, Your Honor. And they aren't  
18 under the contract.

19 JUDGE MURPHY: This is Judge Murphy. I  
20 have one brief follow up to my previous question.  
21 Were the unsteady state pump flow models also  
22 performed, those calculations performed by CH2M HILL?

23 MR. HAEMER: Your Honor, CH2M HILL had a  
24 subcontractor who also did that work. I would have to  
25 go research that specific detail of the question. It

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1 would have been performed under CH2M HILL's direction,  
2 whether it was done by their personnel or one of their  
3 subcontractors, I don't know as I sit here today.

4 JUDGE MURPHY: But it falls in the same  
5 category as the subregional or the local modeling, is  
6 that right?

7 MR. HAEMER: I'm not sure, Your Honor,  
8 what you mean by --

9 JUDGE MURPHY: I mean the calculations  
10 that were performed for the local model as Judge  
11 Karlin described by CH2M HILL and the calculations for  
12 the very local pump test models were handled in a  
13 similar way by CH2M HILL.

14 MR. HAEMER: I'm sorry, Your Honor, it's  
15 just the telephone -- I can't follow your question.

16 JUDGE MURPHY: Judge Karlin characterized  
17 the set of models as a regional model and a local  
18 model and a revised model and it seems that there's  
19 also a very local model associated with the pump test  
20 or a set of models associated with the pump test. And  
21 I'm trying to understand if those can all be regarded  
22 in the same context of being calculations conducting  
23 with MODFLOW by CH2M HILL or its subcontractors.

24 MR. HAEMER: The model that Judge Karlin  
25 was referring to is modeling associated with the state

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1 permit and was in response to an NRC RAI. The  
2 modeling of the pump test was done as part of  
3 gathering the data associated with evaluating the site  
4 for various site characterization work. It was done  
5 in different periods of time for different purposes.

6 But they're all evaluating using the same  
7 basic MODFLOW model is my understanding.

8 JUDGE MURPHY: And the work was done by  
9 CH2M HILL or its contractors?

10 MR. HAEMER: As I said, I just don't know  
11 whether or not what the division was between CH2M HILL  
12 and its contractors for that characterization work.

13 CHAIRMAN KARLIN: I have a few other  
14 questions for Mr. Haemer, not relating to control  
15 necessarily. I think we've exhausted that.

16 I'd like to talk about the time line a  
17 little bit in terms of the various models. And again,  
18 let's try to remember -- follow my -- for lack of a  
19 better approach, there was a regional model that I  
20 understand was provided by the state, the state has,  
21 the USGS has. And then there's a local model that was  
22 used by Progress in supporting its groundwater  
23 permitting with the state and I'll call that local --  
24 the first local submodel and that as I understand it  
25 reflected in Attachment C to your pleading in this

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1 matter, Mr. Haemer?

2 MR. HAEMER: Yes, Your Honor.

3 CHAIRMAN KARLIN: And that is Report 74,  
4 the output of that model is Report 74 from the local  
5 sub model. And then pursuant to RAIs by the staff, I  
6 guess, of NRC, Progress and its contractor, CH2M HILL,  
7 recalibrated or revised the model so there's a revised  
8 sub model. Is that right?

9 MR. HAEMER: Yes, Your Honor. Limited  
10 recalibration model.

11 CHAIRMAN KARLIN: Recalibration. We'll  
12 call it revised model, local model.

13 Now the revised local model, as I  
14 understand it, when was Report 74 submitted or  
15 identified in the mandatory disclosure process,  
16 September 1st in the initial mandatory disclosure or  
17 September 1, '09?

18 MR. HAEMER: Yes, Your Honor.

19 CHAIRMAN KARLIN: And it's dated November  
20 14, 2008, but of course, there was no mandatory  
21 disclosure requirement until September 1st of 2009 and  
22 so it was listed in that initial mandatory disclosure,  
23 right?

24 MR. HAEMER: Yes, Your Honor.

25 CHAIRMAN KARLIN: Okay, and the Attachment

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1 D is Report 123. That's dated December 7, 2009.

2 MR. HAEMER: Yes, Your Honor.

3 CHAIRMAN KARLIN: Now when was that  
4 submitted? I think you may have reflected this in  
5 your pleadings, when was that added to your mandatory  
6 disclosure list?

7 MR. HAEMER: The first disclosure in  
8 March, Your Honor.

9 CHAIRMAN KARLIN: So March of 2010, this  
10 year?

11 MR. HAEMER: Yes, Your Honor. That  
12 particular version, yes.

13 CHAIRMAN KARLIN: And that was -- this  
14 revised sub model, as I call it, was revised,  
15 recalibrated pursuant to an RAI by the staff?

16 MR. HAEMER: Yes, Your Honor.

17 CHAIRMAN KARLIN: What was the date of the  
18 RAI?

19 MR. HAEMER: It was -- I think you'd have  
20 to ask the staff that question. I don't remember  
21 offhand, but it was in 2008.

22 CHAIRMAN KARLIN: 2008?

23 MR. HAEMER: Yes, Your Honor.

24 CHAIRMAN KARLIN: So the RAI goes back a  
25 couple of years?

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1 MR. HAEMER: I'm sorry, 2009. I  
2 apologize, Your Honor. 2009. Near the end of 2009.  
3 It was prepared -- there's a -- I'd have to go back  
4 and review it. There's a draft process. There's a  
5 final RAI. And then the modeling was produced at the  
6 end of 2009 with a final response to one day I think  
7 in February.

8 CHAIRMAN KARLIN: And was Report 74 part  
9 of or submitted to the NRC as part of the Progress's  
10 application?

11 MR. HAEMER: Report 74 was not included in  
12 the application itself. It was made available to the  
13 staff as part of the documents, the back ups that are  
14 available for review.

15 CHAIRMAN KARLIN: So what do you mean by -  
16 - I'm trying to get the timing of when, if ever, it  
17 was provided to the staff?

18 MR. HAEMER: The specific Report 74?

19 CHAIRMAN KARLIN: Yes, sir.

20 MR. HAEMER: Progress maintains a large  
21 document database and also provides documents  
22 associated with the staff providing environmental  
23 audits. This would have been part of either that  
24 database or been available for the staff during any  
25 one of their audits. Whether or not the staff looked

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1 at it or when they obtained it, is something you'd  
2 have to ask the staff. I don't know.

3 CHAIRMAN KARLIN: Okay. And when did  
4 Progress submit Attachment D in response to the RAI?  
5 When was the response to the RAI submitted?

6 MR. HAEMER: I believe it was in February,  
7 Your Honor.

8 CHAIRMAN KARLIN: So it would have been  
9 February of '10?

10 MR. HAEMER: 2010, yes, Your Honor.

11 CHAIRMAN KARLIN: 2010. And it was added  
12 to the mandatory disclosures in March of 2010.

13 MR. HAEMER: For the February disclosure.  
14 And I believe, and I'd have to double check, but I  
15 believe that there was a preliminary version of some  
16 of the initial draft material that was included in an  
17 earlier disclosure, but the specific final document  
18 which is the one that we submitted because we -- there  
19 has been some dialogue with the intervenors over which  
20 is the right version, a number of versions of these  
21 reports are in there. So for clarity, we provided  
22 both Report 74 and Report 123 here.

23 CHAIRMAN KARLIN: Right.

24 MR. HAEMER: But in different versions of  
25 them or different drafts they have been supplied,

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1 under the principle of the ISO that if a draft is  
2 submitted by CH2M HILL for Progress it's sufficiently  
3 final to include it in a disclosure. We don't  
4 normally disclose that draft. In this case for these  
5 models, we have.

6 CHAIRMAN KARLIN: In your pleadings, you  
7 often have made the statement that the model is  
8 publicly available. As I understand what -- you're  
9 referring to the regional model is publicly available.  
10 Is that correct?

11 MR. HAEMER: The MODFLOW. Excuse me, Your  
12 Honor, the MODFLOW is available from the USGS and yes,  
13 the DWRM model and the DRM associated extractions are  
14 available from the state. And I believe the  
15 intervenors have conceded that they are available from  
16 the state.

17 CHAIRMAN KARLIN: And that's what the  
18 intervenors' emails, various emails that they attached  
19 show a dialogue between your firm and the intervenors  
20 about whether or not it's available and whether they  
21 can access it.

22 Let me just ask, is the revised local  
23 model publicly available other than being -- you can  
24 buy it from CH2M HILL. Is it publicly available?

25 MR. HAEMER: You mean the modeling in this

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1 report, Report 123?

2 CHAIRMAN KARLIN: Yes. Is the ESI model  
3 publicly available?

4 MR. HAEMER: To the extent that anybody  
5 can purchase it from CH2M HILL, yes, you're right,  
6 Your Honor.

7 CHAIRMAN KARLIN: No, no. That's not what  
8 I meant. Is it publicly available, you just go on the  
9 Internet, there it is, freebie.

10 MR. HAEMER: No, Your Honor. It is not.

11 CHAIRMAN KARLIN: No, it's a work product  
12 that you paid for, that was generated pursuant to a  
13 contract with Progress?

14 MR. HAEMER: That the contractor, a member  
15 of the JVT, under the terms of its joint venture team  
16 retains the right to. Yes, Your Honor.

17 CHAIRMAN KARLIN: Right. Okay, so when  
18 you say the model is publicly available, you don't  
19 mean the local that CH2M HILL did or the revised local  
20 model that CH2M HILL did?

21 MR. HAEMER: No, in that case, that model  
22 as -- not the model including sub model.

23 CHAIRMAN KARLIN: Okay. I'm not sure I  
24 have any other questions at the moment for Mr. Haemer.

25 Judge Baratta, Judge Murphy, any further

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1 questions for Mr. Haemer at this time?

2 JUDGE MURPHY: Not from me.

3 JUDGE BARATTA: I have none either.

4 CHAIRMAN KARLIN: Okay, thank you, Mr.  
5 Haemer.

6 MR. HAEMER: Thank you, Your Honor.

7 CHAIRMAN KARLIN: I think well, we've gone  
8 an hour and 40 minutes at this point. We might  
9 proceed, I'm not sure how much additional time we  
10 intend to spend with the staff or the Applicant, but  
11 perhaps this is a time for a break.

12 JUDGE BARATTA: Yes.

13 CHAIRMAN KARLIN: Why don't we take a ten-  
14 minute break. As I have it, it's 20 of 11. We will  
15 reconvene at 10 of 11 of ten minutes from now. And  
16 Judge Murphy, hopefully, this line will stay open.

17 JUDGE MURPHY: Okay.

18 CHAIRMAN KARLIN: And do you want us to  
19 call you separately as we take the break?

20 JUDGE MURPHY: I can call you if you would  
21 like.

22 CHAIRMAN KARLIN: Okay, why don't you do  
23 that, could you, please?

24 JUDGE MURPHY: Give me three minutes'  
25 interval, okay?

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1 CHAIRMAN KARLIN: A biological break here.  
2 Thank you. We will reconvene in ten minutes. Thank  
3 you.

4 (Off the record.)

5 CHAIRMAN KARLIN: And we're back on the  
6 record, Mr. Court Reporter.

7 Okay, this is the Atomic Safety and  
8 Licensing Board hearing continuing to deal with the  
9 oral argument related to the motion to compel  
10 disclosure of a groundwater model that has been filed  
11 by the Intervenors, asking that the Applicant be  
12 obliged to disclose some models.

13 We're back on the record. And I believe,  
14 Mr. Haemer, do you have some clarification you wanted  
15 to regarding earlier discussion?

16 MR. HAEMER: Yes, Your Honor. During the  
17 break, Mr. Snead reminded me that model -- the Report  
18 74, that report of modeling, had been provided to the  
19 NRC as an RAI response sometime in mid-2009. We  
20 believe July. So to the extent that I said it was  
21 only available in datarooms, I apologize. I was  
22 incorrect.

23 CHAIRMAN KARLIN: All right. Thank you  
24 for that clarification.

25 Mr. Martin --

1 MR. MARTIN: Yes.

2 CHAIRMAN KARLIN: -- we have a few  
3 questions for the NRC. And hopefully you can help us  
4 with this. But I think not quite as many perhaps.

5 The Board has -- well, the Intervenor has  
6 noted in its motion to compel that the Draft  
7 Environmental Impact Statement talks relatively  
8 extensively about the regional model, the initial  
9 local model, and the recalibrated local model.

10 One of our questions is did the NRC staff  
11 or any of its contractors, like PNNL, actually access  
12 the local model or the revised local model?

13 MR. MARTIN: No, we did not.

14 CHAIRMAN KARLIN: So you never looked at  
15 the -- never accessed the model, the ESI model itself?

16 MR. MARTIN: Not the ESI. We looked at  
17 the inputs, the outputs. But we never looked at the  
18 ESI model itself.

19 CHAIRMAN KARLIN: Okay. Did the Draft  
20 Environmental Impact Statement rely upon those models?

21 MR. MARTIN: To some extent. It did not  
22 rely completely for any of our conclusions on the  
23 models if you go into Chapter 4 or 5 analysis. But we  
24 did, we did rely on it to some extent in part of our  
25 analysis.

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1                   CHAIRMAN KARLIN: Right. And thus under  
2 the mandatory disclosures 2.336b, the staff has some  
3 mandatory disclosure requirements as well. And as I  
4 understand it, one of those responsibilities is to  
5 disclose documents or ESI that were relied upon by the  
6 staff. Is that right?

7                   MR. MARTIN: That is correct.

8                   CHAIRMAN KARLIN: Thus are you subject to  
9 the possession, custody, or control issue as well?

10                  MR. MARTIN: We do not believe we are.  
11 What we relied on -- I guess it kind of gets into some  
12 of the ESI issues again, but we relied on -- we looked  
13 at the inputs of the model, we looked at the outputs  
14 of the model. And we felt that we understood the type  
15 of modeling that was done well enough that we didn't  
16 need to request the actual ESI itself.

17                  And so what we relied on are the inputs in  
18 the reports that were given to us by Progress. And so  
19 that is the information that we relied on in any  
20 conclusion that we used that same model.

21                  CHAIRMAN KARLIN: So are you saying you  
22 did not rely on the revised groundwater local model or  
23 that you relied upon the outputs of the model but not  
24 the actual computer ESI model itself? Is it a  
25 question if you didn't rely on it or a question is you

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1 don't have possession, custody, or control of it?

2 MR. MARTIN: I think the question goes  
3 back to the possession, custody, and control again.  
4 I mean we did rely on the outputs of the model. But  
5 obviously to get to the outputs, you have to have done  
6 something with the model itself. And so it is an  
7 interesting question.

8 I mean we never asked for the ESIs. We  
9 never had it in our possession, custody, and control.  
10 But we do rely on part of our analysis on the models.  
11 And so --

12 CHAIRMAN KARLIN: Right. Okay. That's  
13 what I infer from your position, your pleading.

14 ADMIN. JUDGE MURPHY: Could I -- this is  
15 Judge Murphy -- could I clarify something please?

16 You say you have the inputs. The PEF  
17 representative says that the calculations were done  
18 using MODFLOW, which is publicly available from the  
19 USGS. And you have the outputs. So what is there in  
20 addition to that?

21 MR. MARTIN: I'm going to step a little  
22 bit into my -- the technical area. I think I can give  
23 a generic response. And if you want something more  
24 specific, we can call our witnesses up.

25 But I think what's missing is we have the

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1 -- I think there is some work that it sounds like the  
2 contractors for Progress did that took it from the  
3 regional model that Southwest Water Management  
4 District had, you put inputs in but then there's  
5 something else to help -- I think we call it goodness  
6 of fit in EIS but there is some sort of like mesh that  
7 helps kind of bring it down into a more specific area.

8 And there's some sort of -- there is a  
9 delta between the inputs that we looked at and the  
10 outputs that came out that is proprietary. And it is  
11 based off the Southwest Water Management model and the  
12 regional scale. But to bring it down local, there is  
13 something else that has to be done.

14 And I'm sorry it's not very specific. But  
15 we can have our witnesses provide a more specific  
16 response if you would like.

17 ADMIN. JUDGE MURPHY: So perhaps it's the  
18 construction of the discretization of the local  
19 system?

20 MR. MARTIN: Yes, I mean I've heard them  
21 talk about -- like there is a grid thing that has to  
22 go into the model.

23 ADMIN. JUDGE MURPHY: Yes.

24 MR. MARTIN: I just don't know the  
25 technical term.

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1 ADMIN. JUDGE MURPHY: So you just  
2 distinguish that from the input?

3 MR. MARTIN: Correct. There is -- just  
4 having -- as I understand, just having the input and  
5 what you can download MODFLOW from Southwest Water  
6 Management District won't get you all the way there.  
7 There's still another piece. And I think that's the  
8 ESI piece that Mr. Haemer is referring to. And that's  
9 the piece that we don't have.

10 CHAIRMAN KARLIN: May I ask if -- and  
11 Judge Murphy, did you want to pursue that line?

12 ADMIN. JUDGE MURPHY: No, that's fine.

13 CHAIRMAN KARLIN: Okay. I didn't want to  
14 interrupt. I think this is related to that but if the  
15 NRC staff -- would the NRC staff be authorized to ask  
16 PEF to provide the local revised groundwater model,  
17 the ESI?

18 MR. MARTIN: If we asked an RAI or request  
19 for additional information, we would expect to get a  
20 response. But we try to limit RAIs to things that we  
21 feel that we need to make our conclusions in EIS. And  
22 in this situation, we didn't determine that we needed  
23 the actual ESI information. So we did not ask an RAI  
24 on it.

25 We probably -- I think we would have the

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1 regulatory authority to but we don't just ask for  
2 everything. We --

3 CHAIRMAN KARLIN: Right. Right. You ask  
4 what you think you need --

5 MR. MARTIN: Correct.

6 CHAIRMAN KARLIN: -- for making the  
7 assessments you are required to make I guess.

8 I guess there can be a debate about  
9 whether this is something you might need or might  
10 want. But you say you could ask for it if you thought  
11 it was relevant to the staff's assessment.

12 MR. MARTIN: Correct. Yes.

13 CHAIRMAN KARLIN: And you would expect  
14 Progress to provide it if you asked for it?

15 MR. MARTIN: Correct.

16 CHAIRMAN KARLIN: And you -- would the  
17 staff have to pay for it?

18 MR. MARTIN: No. The staff does not  
19 believe it has to pay for it.

20 CHAIRMAN KARLIN: Okay. And what about  
21 situations, other model situations where, for example,  
22 an Applicant is using a design by Westinghouse or GE,  
23 a reactor design. And they have computer models that  
24 support some of their safety analyses or statements.  
25 Does the staff ever ask for access to those computer

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1 models, the ESIs, so they can verify and run those  
2 sorts of things?

3 MR. MARTIN: I do believe the staff does  
4 occasionally does ask for models.

5 CHAIRMAN KARLIN: Yes. Okay. And it  
6 doesn't pay for them when it does that?

7 MR. MARTIN: No.

8 CHAIRMAN KARLIN: Okay. All right.  
9 That's all I have at the moment.

10 ADMIN. JUDGE BARATTA: Okay. You heard me  
11 mention NUREG-1555.

12 MR. MARTIN: Would you mind providing me  
13 with the section that it was? Because I can't --

14 ADMIN. JUDGE BARATTA: Oh, yes, I'm sorry.  
15 I apologize. I should have mentioned that. It's at  
16 page 13, I believe, where it talks about -- it's the  
17 general requirements section. And specifically it is  
18 entitled Quality Assurance.

19 CHAIRMAN KARLIN: And what is the title of  
20 NUREG-1555?

21 ADMIN. JUDGE BARATTA: Environmental  
22 Standard Review, NUREG-1555 is the title of it.

23 CHAIRMAN KARLIN: Okay. Thank you.

24 ADMIN. JUDGE BARATTA: And I'm talking  
25 about a statement that appears on page 13.

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1 CHAIRMAN KARLIN: Okay.

2 ADMIN. JUDGE BARATTA: Is the staff using  
3 that as their guide for reviewing the ER?

4 MR. MARTIN: Yes. The staff does use that  
5 as guidance.

6 ADMIN. JUDGE BARATTA: Okay. Could you --  
7 you said earlier that you had not requested the ESI  
8 relative to the so-called submodel that is the subject  
9 of the two reports mentioned earlier. How then did  
10 you satisfy the requirement to evaluate the  
11 Applicant's quality assurance measures taken with  
12 respect to the V&V, verification and validation of the  
13 computer models? How did you do that?

14 MR. MARTIN: The staff -- and I was  
15 actually unaware that that citation from NURGEG-1555 -  
16 - but what the staff in this situation felt was that  
17 they did not need to have the actual physical model to  
18 feel comfortable in the responses. And there's a  
19 couple reasons for that.

20 I mean the first overriding response is  
21 that anything that Progress introduces or submits to  
22 us has to be under oath and affirmation. And there is  
23 a requirement that it be complete and accurate  
24 information.

25 The NRC does not recreate entire COL

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1 applications because we just don't have the time. So  
2 the first level is that we have to rely on them to  
3 provide complete and accurate information to us and  
4 sign under oath and affirmation.

5 In this particular case, the staff is very  
6 comfortable with the MODFLOW model itself. They've  
7 used it. They have many years of experience using it.  
8 And then Southwest -- the model -- the local scale  
9 model here was made -- or made is not the correct word  
10 but it was made local from the regional Southwest  
11 Water Management District model, which was another  
12 agency -- that's not a state agency -- that has  
13 responsibility in this area.

14 And so because it was based on two sort of  
15 modeling techniques that the staff felt that it  
16 understands and knows very well and because we were  
17 able to look at the inputs and the outputs, the staff  
18 felt comfortable in the results of the model without  
19 having to actually request the ESI itself.

20 ADMIN. JUDGE BARATTA: I was more  
21 interested in how you would have gone about verifying  
22 that the creation of the submodel was done correctly  
23 than actually saying you had to have the material; the  
24 submodel itself. How did you do that? How did you --  
25 I understand you were satisfied that the MODFLOW code

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1 is a validated, accepted model and the Southwest  
2 Regional model is a validated, accepted model.

3 But this is derived from that. How did  
4 you, you know, have a so-called warm and fuzzy feeling  
5 about that one?

6 MR. MARTIN: I may need to turn to my  
7 witnesses for the specifics. But I'll try to give you  
8 the way I understand it. And see if we need more  
9 specifics.

10 I feel like they feel that -- they told me  
11 that from the outputs of it, you can -- in looking at  
12 the outputs, especially at the two different models,  
13 you can get a good idea for how well the model is  
14 working. So they had the outputs of the first one.  
15 They weren't 100 percent certain with the results of  
16 that. So they asked the RAI. And they had the  
17 outputs for the second one.

18 One reason -- and so -- and they got a  
19 better fit that time. So they felt more comfortable  
20 with the way this model was working. One reason why,  
21 I think, we didn't need to ask for it is because if  
22 you look at our conclusions, we're not completely  
23 relying at any point on this model for our final  
24 environmental impact conclusions.

25 We also kind of -- we also relied a lot on

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1 the state conditions of certification. So I think the  
2 reason why they didn't feel it was necessary to  
3 validate this was because this was not -- this was  
4 definitely not the basis for a safety conclusion. And  
5 it was not the sole basis for any of our environmental  
6 conclusions. That was sort of part of an analysis.

7 ADMIN. JUDGE BARATTA: Okay. Thank you.  
8 I have no more questions.

9 CHAIRMAN KARLIN: Judge Murphy, anything  
10 further?

11 ADMIN. JUDGE MURPHY: I have nothing more.

12 CHAIRMAN KARLIN: Okay. I think for the  
13 moment, that completes our questioning of oral  
14 argument by the staff.

15 Thank you, Mr. Martin.

16 Okay, Ms. Campbell?

17 MS. CAMPBELL: Yes, sir.

18 CHAIRMAN KARLIN: Now as we understand, as  
19 I understand the draft EIS that you cited in your  
20 motion to compel, again the terminology I will try to  
21 use is there is a regional model that was provided by  
22 the state of Florida and maybe USGS. Is that correct?

23 MS. CAMPBELL: No, as I understand it,  
24 there's a big model, the USGS MODFLOW model. And my  
25 expert may be able to clarify this. And I hope you

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1 will talk to him since we dragged him all the way up  
2 here.

3 But there is a USGS MODFLOW model. But  
4 that is for the whole of the United States. And then  
5 what there is there is this other program called  
6 Groundwater Vistas that makes it easy to put things  
7 into the MODFLOW model. And that is the proprietary  
8 model that we got a response from the state saying,  
9 you know, yes, you would have to have this model.

10 But the DWRM is made by the same guy who  
11 did the U.S. -- the Groundwaters Vista. And it is a  
12 districtwide model that is for the South Florida Water  
13 Management District. And it is basically used to  
14 evaluate well permits.

15 So it has a lot of limitations that it  
16 doesn't integrate the different levels of the  
17 surficial aquifer with the flows of the streams. And  
18 all sorts of other things. So that's what I  
19 understand is the difference.

20 But yes, what they did was they did a  
21 model for the water use permit. And I want to just  
22 say that --

23 CHAIRMAN KARLIN: Now wait a second. I  
24 think that's helpful but for our purposes, maybe too  
25 much. I'm looking at page 4 of your motion to compel.

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1 MS. CAMPBELL: Yes, sir.

2 CHAIRMAN KARLIN: And you cite the draft  
3 EIS. And sort of the similar question I asked Mr.  
4 Haemer. And as I read your quote from the page 2-25  
5 of the DEIS, "PEF constructed a local scale  
6 groundwater model."

7 MS. CAMPBELL: Yes.

8 CHAIRMAN KARLIN: Going on, this model was  
9 a submodel of the districtwide regulation model. I'm  
10 paraphrase --

11 MS. CAMPBELL: Yes, yes.

12 CHAIRMAN KARLIN: -- I'm cutting out some  
13 words --

14 MS. CAMPBELL: Right.

15 CHAIRMAN KARLIN: -- but okay, would that  
16 quote, as I understand it, there is a districtwide  
17 regulation model and that's what I will call the  
18 regional model. And then there is a submodel that PEF  
19 and its contractor, CH2M HILL constructed, a submodel  
20 of that, okay?

21 MS. CAMPBELL: Yes.

22 CHAIRMAN KARLIN: And then as you quote in  
23 your motion on page 4 and 5, then apparently the model  
24 on page 5, I quote from the DEIS -- you quote from the  
25 DEIS the model, "was recalibrated by PEF using both

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1 site-specific and regional head data." So then there  
2 is a revised or recalibrated local model. Okay?

3 And with that terminology, one of our  
4 concerns is the first question we ask in our notice,  
5 which is what do you really need? What do you want?  
6 And I hope you don't say all of the above. But just  
7 what are you asking for?

8 MS. CAMPBELL: What we need is the digital  
9 file. We do not need a report that says we did this  
10 iteration and this is what we got. We need the  
11 digital files that went into producing the results.

12 CHAIRMAN KARLIN: Right. You've got, as  
13 I understand it, you have -- you have Report 74 and  
14 Report 123.

15 MS. CAMPBELL: We have, yes, we have --

16 CHAIRMAN KARLIN: That's the output as it  
17 were.

18 MS. CAMPBELL: Right. And that's what  
19 we're saying. We're saying the output is not enough.  
20 We do not think that just seeing -- I mean I don't  
21 know, the analogy that I think of is if you were in a  
22 car liability test and you said well we think that  
23 these seat belts weren't made correctly just to  
24 protect the passengers and somebody said well, look,  
25 we ran this test and we show it is, well you would

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1 want to know all the things that went into that  
2 decision. Like how big the dummy was, how fast the  
3 car was going, what kind of wall it was going to hit,  
4 all those things.

5 We need to know those things, not just  
6 what the result was. The reports are really --

7 CHAIRMAN KARLIN: Okay. Okay. We  
8 understand that. I think conceptually we --

9 MS. CAMPBELL: Okay. Okay.

10 CHAIRMAN KARLIN: -- I understand that.  
11 But I think they say well this is going to cost 30,000  
12 dollars. You want it, you can go buy it from CH2M  
13 HILL for 30,000 bucks.

14 MS. CAMPBELL: Well, Your Honor, when I'm  
15 listening to them talk about the way that they have  
16 this joint venture team and CH2M HILL has this  
17 contract, it sounds to me as if the whole thing were  
18 constructed so that they wouldn't have to give us this  
19 information.

20 And I think that that information -- you  
21 know in your orders, you say -- it says everything.  
22 It says everything that you are basing things on. And  
23 they are basing this on it. And just giving us a  
24 report is just -- it's just not enough.

25 CHAIRMAN KARLIN: Okay.

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1 MS. CAMPBELL: And it's like they are  
2 insulating themselves from giving it to us by this  
3 complicated thing.

4 CHAIRMAN KARLIN: Okay.

5 ADMIN. JUDGE BARATTA: Your analogy of the  
6 seat belt I think is a good one because it lets me ask  
7 the following question.

8 It sounds like you mentioned while you'd  
9 like to get the information about how the seat belt  
10 was constructed, isn't that analogous to getting the  
11 information on how the inputs to the program were  
12 developed?

13 MS. CAMPBELL: No, Your Honor, I don't  
14 know that. I mean all I know is that when we have  
15 given whatever it is that they have given us, the big  
16 list, the PDFs, all those diagrams, when we have given  
17 them to our experts, they have said that they cannot  
18 use just those final things. They have to get the  
19 digital files.

20 Now apparently Southwest Florida  
21 Management had a set of digital files. But I don't  
22 know that they have the recalibrated set of digital  
23 files. And since they're not really relying on the  
24 original model and they are relying on this  
25 recalibrated model substantially in this DIS, it is

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1 not just a little bit, we need that -- whatever it is  
2 that they are relying on, we need to verify.

3 CHAIRMAN KARLIN: Now are you asking for  
4 the recalibrated local model? Or the first local  
5 model? Or both?

6 MS. CAMPBELL: Both because I think we  
7 need to see what they changed in the recalibrated  
8 model to see if it accurately reflects the conditions  
9 of the water at --

10 CHAIRMAN KARLIN: Okay. I understand  
11 that. Now with regard to what I call the regional  
12 model, but the DEIS -- what the DMW -- whatever.

13 MS. CAMPBELL: The DWRM.

14 CHAIRMAN KARLIN: The DWRM.

15 MS. CAMPBELL: Right.

16 CHAIRMAN KARLIN: What? The DWRM.

17 MS. CAMPBELL: DWRM2.

18 CHAIRMAN KARLIN: Okay. DWRM2, which was  
19 an acronym for --

20 MS. CAMPBELL: Districtwide --

21 CHAIRMAN KARLIN: -- DWRM, Districtwide  
22 Regulation Model, Version 2.

23 MS. CAMPBELL: Right.

24 CHAIRMAN KARLIN: DWRM2.

25 MS. CAMPBELL: Right.

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1 CHAIRMAN KARLIN: Okay. Now DWRM2, are  
2 you ask -- is that publicly available?

3 MS. CAMPBELL: That is publicly available.

4 CHAIRMAN KARLIN: Okay. So you're not  
5 asking for that.

6 MS. CAMPBELL: We're not asking for that,  
7 no.

8 CHAIRMAN KARLIN: Okay.

9 MS. CAMPBELL: We're asking for what went  
10 into them using the DWRM. What did they put into DWRM  
11 --

12 CHAIRMAN KARLIN: I understand.

13 MS. CAMPBELL: Yes.

14 CHAIRMAN KARLIN: I think I understand  
15 that. Okay.

16 ADMIN. JUDGE BARATTA: But you heard -- at  
17 least I think I heard that there are additional  
18 reports which would describe a more detailed process  
19 that was used to develop the pre-calibrated model and  
20 the original model. Would that be sufficient?

21 MS. CAMPBELL: Not according to our expert  
22 to whom I showed -- sent some of that information on  
23 the RAIs and the additional information, he said I  
24 need the digital model files.

25 ADMIN. JUDGE BARATTA: Okay.

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1 MS. CAMPBELL: And what they're providing  
2 in these things are PDF documents. They're not  
3 digital files. And that's what we were told we need.

4 CHAIRMAN KARLIN: Okay. And --

5 ADMIN. JUDGE MURPHY: This is Judge  
6 Murphy.

7 CHAIRMAN KARLIN: Yes?

8 ADMIN. JUDGE MURPHY: Mr. Martin said that  
9 they had examined and evaluated the inputs to the  
10 local scale model. Have you -- do you have access to  
11 those inputs?

12 MS. CAMPBELL: I believe we do. But I  
13 don't that is a digital model file. I think it is  
14 just a like a PDF document. And our experts say they  
15 need the digital files in order to input the data. Is  
16 that right?

17 ADMIN. JUDGE MURPHY: Okay.

18 CHAIRMAN KARLIN: One item that was  
19 discussed earlier was access via going to CH2M HILL at  
20 an appointed time and doing what you need to do to  
21 look at -- run the digital computer model and probe it  
22 and test it. Is that something that is sufficient?  
23 Or do you actually need to have a diskette with a  
24 model on it to run it in the privacy of your office at  
25 some length?

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1 MS. CAMPBELL: I'm not qualified to answer  
2 that. I don't know that, sir.

3 CHAIRMAN KARLIN: Okay. We may --

4 ADMIN. JUDGE BARATTA: Do you want to  
5 consult with your expert for a moment?

6 MS. CAMPBELL: Right now?

7 CHAIRMAN KARLIN: Yes.

8 ADMIN. JUDGE BARATTA: Yes.

9 MS. CAMPBELL: He says -- would that --  
10 he, the expert says that they could meet with CH2M  
11 HILL. I don't know. We obviously have the kinds of  
12 resources that Progress has to send him all over to do  
13 that. But --

14 CHAIRMAN KARLIN: Well, that's saying that  
15 that's possible. Would that be better than the -- or  
16 do you have the resources? If they gave you this  
17 computer model -- and we may have to put Mr. Vought on  
18 the stand to ask some factual questions. But at this  
19 point, if they gave you a diskette with the digital  
20 computer model on it, revised local model, would you  
21 say oh, we can't run this? We don't know how to run  
22 this.

23 MS. CAMPBELL: No. We would know how to  
24 run that. But -- yes, we would know how to run that  
25 because --

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1 CHAIRMAN KARLIN: And we wouldn't want to  
2 get into a situation if he ends up granting this  
3 motion for summary -- to compel -- saying oh, all we  
4 need is X. Well, we say okay, we order them to  
5 produce X. And they say oh, you know now that we need  
6 Y also. And we need Z and we need all of these -- now  
7 I know it is impossible to predict exactly. But is  
8 this sort of -- you know we don't want to get into the  
9 situation where well, yes, now we want more.

10 MS. CAMPBELL: But I mean I don't intend  
11 to do that obviously. And that's not -- but the thing  
12 is until we see it, how will our expert know if they  
13 have enough? If they've given them enough?

14 CHAIRMAN KARLIN: Yes.

15 MS. CAMPBELL: And he may say no, that  
16 this isn't enough.

17 CHAIRMAN KARLIN: Yes. And the main  
18 things here -- or one thing to remind myself with is  
19 that there's no -- as a general rule, the lawyers will  
20 all know -- they say in this Subpart L and so there is  
21 no discovery allowed in Subpart L proceedings.

22 And what that means is that the parties do  
23 not have the right to file -- to take the depositions  
24 of the other parties' witnesses or to ask  
25 interrogatories or ask for the other side to produce

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1 certain documents. There's no discovery.]

2 But there is mandatory disclosure. And  
3 that's what this is. And that's what we're talking  
4 about is whether or not this document, these local  
5 computer models are subject to the mandatory  
6 disclosure requirements and if they are, then are they  
7 in the possession, custody, or control of the  
8 Applicant? And if they are, then are they claimed to  
9 be proprietary? And, therefore, only disclosable  
10 under a protective order?

11 And then there is a final argument of  
12 well, you know, yes, it's subject to the disclosure --  
13 but -- mandatory disclosure. But it's costly. And  
14 its benefit is negligible compared to the enormous  
15 costs.

16 So those are the kinds of analytical steps  
17 I think we all are trying to go through here. So keep  
18 in mind you can't just ask for anything you want. It  
19 has to be something that in the first instance is  
20 subject to the mandatory disclosure in the first  
21 place. And if they fail to provide it, then a motion  
22 to compel is entirely appropriate.

23 So that's where we are right now. But I  
24 think, you know, in terms of remedy, if you were be  
25 granted a motion to -- that this be disclosed, the

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1 remedy would be maybe to perhaps to instruct the  
2 disclosure in some way, shape, or form that is as  
3 narrow as possible to minimize the cost of burden but  
4 is effective to provide the information that A, has to  
5 be disclosed anyway under the mandatory disclosure and  
6 that which you need to -- that is relevant to your  
7 contention.

8 Sorry for that digression but that's my  
9 analytical structure for the moment of where we are.  
10 I'm not sure whether -- do you have any other  
11 questions for the Intervenor?

12 ADMIN. JUDGE BARATTA: No, I don't.

13 ADMIN. JUDGE MURPHY: I have a question.  
14 This is Judge Murphy.

15 Are you interested as well in the sub-  
16 local model? The pump test modeling?

17 MS. CAMPBELL: Are you talking about that  
18 -- the multi MU whatever?

19 ADMIN. JUDGE MURPHY: MLU, yes.

20 MS. CAMPBELL: Yes. We definitely are  
21 interested in that.

22 ADMIN. JUDGE MURPHY: Okay.

23 MS. CAMPBELL: I mean we don't need -- our  
24 expert --

25 CHAIRMAN KARLIN: But it is my

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1 understanding that that is not -- that is referenced  
2 in the Draft Environmental Impact Statement certainly.

3 MS. CAMPBELL: Right.

4 CHAIRMAN KARLIN: On page 2-26. But the  
5 Applicant says well, that isn't anything we did.  
6 That's some model that the staff is referring to and  
7 using or whatever. So that, again, I don't know  
8 whether that's even in the possession -- was ever even  
9 used by the Applicant.

10 MS. CAMPBELL: Well, somebody used it,  
11 didn't they? Because they're relying on it.

12 CHAIRMAN KARLIN: The staff.

13 MS. CAMPBELL: So --

14 CHAIRMAN KARLIN: So you may have to ask  
15 the staff to produce that. Or maybe the staff already  
16 has produced it. Maybe I could just ask Mr. Martin.  
17 You seem to have the DEIS open to page 2-26.

18 MR. MARTIN: I'm going to give you an  
19 unsatisfactory response. I'm not sure. I don't know  
20 the details of that particular model because I know  
21 our experts are knowledgeable that model. And we can  
22 ask them about whether we have it or whether Progress  
23 performed that or if the staff performed that. I'm  
24 just -- I'm not sure about that, the MLU, the  
25 multilayer unsteady state model.

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1 CHAIRMAN KARLIN: Right.

2 MR. MARTIN: Unfortunately I can't  
3 respond. I don't know the answer to that. We can  
4 ask.

5 CHAIRMAN KARLIN: I'm going to violate my  
6 own general rules of protocol and then ask Mr. Haemer  
7 that same question. I generally like to keep on one  
8 person at a time.

9 But, Mr. Haemer, the multilayer unsteady  
10 state model that's referred to on page 2-26 of the  
11 DEIS? Do you all have it? I mean are you -- what's  
12 you -- was it used by you or any of your contractors,  
13 any of your team in preparing the ER or responding to  
14 any RAIs?

15 MR. HAEMER: The pump test was performed  
16 as part of the data characterization of the site along  
17 with --

18 CHAIRMAN KARLIN: When I think pump test,  
19 pump test, that's a different word. I'm referring to  
20 the multilayer unsteady state model.

21 MR. HAEMER: In order to interpret the  
22 pump test --

23 CHAIRMAN KARLIN: Okay.

24 MR. HAEMER: -- computer modeling is done  
25 in order to know what so many gallons pumped in at

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1 what pressure, what that responds to. You're trying  
2 to predict how the soil reacts or how levels react in  
3 other locations.

4 So the modeling is performed in order to  
5 interpret the pump test results. The pump test  
6 results are done as part of site characterization, as  
7 I was explaining to Judge Murphy earlier.

8 It is my understanding and Mr. Snead isn't  
9 sure but we think that multilayer unsteady state model  
10 was a MODFLOW model or a MODFLOW-based model. It  
11 might have been a different multilayer unsteady state  
12 model and that's why it is described differently. But  
13 it is in the same family. And the work would have  
14 been done as part of site characterization.

15 CHAIRMAN KARLIN: By Progress and CH2M  
16 HILL?

17 MR. HAEMER: It would have been within  
18 CH2M HILL's work scope. And they may have  
19 subcontracted, as I answered previously.

20 CHAIRMAN KARLIN: Okay. So it is  
21 something that seems to be related to the pump tests  
22 that it was sued or deployed or employed by your team  
23 in preparing the application or responding to RAIs or  
24 something.

25 MR. HAEMER: The -- to be clear, Your

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1 Honor, there is a question of characterization and  
2 timing here that's important. Site characterization  
3 was taken as part of a process that evaluated the site  
4 to be appropriate.

5 Whether or not that ESI or that particular  
6 test done during site characterization was retained,  
7 I have no idea. We have not asked that question. It  
8 wasn't in the original request. And I'm not prepared  
9 to know whether or not CH2M HILL or its subcontractors  
10 had that data available.

11 There's no reason to think that they would  
12 because that contract has been wrapped up. And CH's  
13 practices generally to -- if it's not valuable, to  
14 throw it away. So I don't know whether or not that  
15 particular ESI is recoverable at this point, Your  
16 Honor.

17 CHAIRMAN KARLIN: Okay. Thank you.

18 So, Ms. Campbell, are you suggesting that  
19 you'd like to see that, too? The question is whether  
20 or not that's within the possession, custody, or  
21 control, et cetera, all the other discussions we've  
22 had before of the Applicant or the staff.

23 ADMIN. JUDGE BARATTA: The site  
24 characterization tests were developed or referenced  
25 specifically in the FSAR, correct?

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1 MR. HAEMER: Many site characterization  
2 tests were included in that, yes. This particular  
3 test, if you're wondering Your Honor, it used as part  
4 of the low-level radioactive waste storage tank  
5 casualty and the evaluation of the potential for that.  
6 That is the particular use for it.

7 Again, the question is whether or not the  
8 particular of the data that was collected at the time,  
9 if that particular version of the multilayer unsteady  
10 state model is currently available. I don't know.

11 Obviously there would be a chain that  
12 would get you back to that -- how that data was  
13 produced. I just don't know whether or not the ESI  
14 would be associated with that chain. I haven't asked.

15 ADMIN. JUDGE BARATTA: It would seem that  
16 -- again going back to your Appendix B, which is  
17 called out in the FSAR as the applicable QA  
18 requirements, that that data should have been  
19 retained.

20 MR. HAEMER: There are certain product  
21 deliverables, Your Honor, that require the ESI and  
22 require the backup ESI to be provided, primarily, of  
23 course, Chapter 7 casualty analyses. Those ESIs are  
24 preserved. The expense is to preserve those as  
25 electronic files for the life of the plant.

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1           That's not a small expense. But it is one  
2 that is prudent when you're talking about that level  
3 of data.

4           This particular data that we're talking  
5 about here associated with site characterization, I  
6 don't know whether or not that was done. That is a  
7 method of inquiry.

8           I do know that for the subject of this  
9 motion, the ESI is retained at CH2M HILL but not been  
10 submitted to that level of QA review primarily for the  
11 same reasons as the staff stated. You can verify from  
12 paper records whether or not the model has been run  
13 properly and whether or not the conclusions are  
14 available.

15           And actually having the ESI is not  
16 necessary or actually helpful to the QA inspector. So  
17 the answer is on that one, I know. On the other one,  
18 I don't know.

19           ADMIN. JUDGE BARATTA: Okay. Thank you.

20           CHAIRMAN KARLIN: I'm not sure that I have  
21 any further questions of the Intervenor at this point.

22           Judge -- I'm not sure either whether we  
23 need to ask Mr. Vought to get on the stand. I don't  
24 really think that we do at the moment. I mean he has  
25 come a long way. I know that everyone has gone to

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1 some expense. I think this has been helpful. And  
2 your ability to consult with him as we asked some  
3 questions might have helped us as well.

4 Well, I just will go back to your motion  
5 to compel. The very first page, it is a very broad  
6 scope, you know. You ask to order Progress to produce  
7 the revised groundwater water described below and any  
8 other water-related models referred to in the DEIS  
9 and/or relied on by the NRC in drawing their  
10 conclusions." Including but not limited to all water-  
11 related computer models, input files and reports,  
12 parameters, input data, boundary conditions,  
13 assumptions, and all iterations and results in a  
14 model-ready digital format.

15 Is it correct that what you really want is  
16 the digital model?

17 MS. CAMPBELL: For everything that is  
18 publicly available, we don't need the actual model.  
19 But if it is not publicly available, we do think that,  
20 you know, based on the Federal Rules or whatever that  
21 we cited, that we should be able to get that model.

22 And we also feel that we need those inputs  
23 that they used the publicly-available -- that they put  
24 into the publicly-available model.

25 CHAIRMAN KARLIN: All right. Well, you

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1 know, what you should be able to get is one thing.  
2 But what the rules require is all we can really focus  
3 on, which is it subject to the mandatory disclosure  
4 requirement 2.336a. And we will try to address that  
5 and deal with that.

6 I mean unless Judge Baratta or Judge  
7 Murphy have any other questions, we may be done with  
8 the questioning phase.

9 ADMIN. JUDGE MURPHY: I have nothing  
10 further.

11 ADMIN. JUDGE BARATTA: And I have nothing  
12 further.

13 CHAIRMAN KARLIN: Okay. So I think we  
14 will now proceed -- I don't think we need to take  
15 witness testimony. Dr. Baratta, Dr. Murphy, do any --  
16 do you think any of the witnesses who have been  
17 listed, you would need to ask questions of at this  
18 moment?

19 ADMIN. JUDGE MURPHY: Not at this moment.

20 ADMIN. JUDGE BARATTA: I would have no  
21 questions for them at this time.

22 CHAIRMAN KARLIN: We do have the  
23 opportunity, if necessary, to file some questions I  
24 suppose afterwards, written questions that we might  
25 ask the parties to answer in writing. I don't want to

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1 prolong this deliberation or ordeal about this motion  
2 to compel.

3 But, again, we could do that if we need  
4 to. I'm just talking almost out loud to my colleagues  
5 on the Board. But I hope we don't need to do that.

6 In any event, let us move then to the next  
7 phase, which is briefly -- just briefly, we're going  
8 to get Mr. Snead out of here on his plane or whatever  
9 it is by noon -- to the schedule, the further -- going  
10 forward -- that's sort of redundant -- the schedule  
11 for how we proceed from here on out.

12 Obviously we take this motion to compel  
13 under advisement. We will discuss it and try to rule  
14 on it as promptly as possible. There are a lot of  
15 other motions that have been filed. By my count,  
16 there are six. So we're working on them and we may or  
17 may not need to have oral argument on some of those  
18 other motions.

19 Yes, Ms. Campbell?

20 MS. CAMPBELL: I just wanted -- for the --  
21 so I know what's going to happen now. Do I get to say  
22 anything else after this? Or is this the end?  
23 Because if I don't get to say anything after this, I  
24 would like to say one thing.

25 CHAIRMAN KARLIN: Well, I think -- now let

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1 me back that up. I think I did say, did I not, at the  
2 beginning that everyone gets a five-minute closing  
3 oral -- or if I didn't -- oh, it's in my notes here.  
4 I missed that part.

5 (Laughter.)

6 CHAIRMAN KARLIN: Well, I think what we  
7 should do is -- I'm sorry if I didn't announce that --  
8 but if each party would like to make a brief closing  
9 statement, not to exceed five minutes, on the issue of  
10 the oral argument, please do so. But keep it short.

11 And Mr. Kirstein will keep the clock  
12 running on the five minutes. So with that, we will  
13 proceed in terms of the Intervenors' closing  
14 statement, the Applicant closing statement, and the  
15 staff.

16 Ms. Campbell, you're up.

17 MS. CAMPBELL: I wanted to say that -- to  
18 maybe clarify that before when I said that we agree  
19 that our motion was untimely, I didn't refer back to  
20 my motion, which said that you said ordinarily it  
21 would be done with ten days. And as I said, I think  
22 these are extraordinary circumstances.

23 So we were late in getting it in. But I  
24 feel like they were also required to produce it in the  
25 beginning.

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1 We also did a lot of things to try to get  
2 it. We went through many, many hoops. And we always  
3 assumed, because I was reading something about -- I  
4 think it's an Exelon case, that the staff has the  
5 responsibility in the DEIS to review the evidence.  
6 They are responsible for the -- yes, they can the ER  
7 evidence, that the staff has the ultimate  
8 responsibility to evaluate it.

9 So we always thought somebody would be  
10 evaluating this model to make sure it was accurate.  
11 And so we always thought we would be able to get it at  
12 some point.

13 The other thing is that Mr. Haemer said  
14 that when CH2M HILL was contracted, they were  
15 contracted to provide this modeling for the water use  
16 permit for the State of Florida. And the site  
17 certification application. And the conditions of  
18 certification.

19 But staff is substantially relying on  
20 those conditions of certification and the water use  
21 permit conditions to support the fact, in addition to  
22 the groundwater modeling, that there is not going to  
23 be harm or that there will be a small amount of harm.

24 So if they are producing this information  
25 -- CH2M HILL is producing this information for the

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1 site application and then they are transferring it to  
2 the DEIS, it seems to me that we should be able to get  
3 that information because they're using what CH2M HILL  
4 provided to support the DEIS. Am I making myself  
5 clear?

6 CHAIRMAN KARLIN: I think so.

7 MS. CAMPBELL: Okay. And I don't  
8 understand, when he said they would have to go through  
9 and redo everything, I don't understand why it  
10 wouldn't be there and all they would have to do is  
11 just give it to us, unless they threw it away. And I  
12 would say that throwing away something like that, that  
13 would be such important evidence, is inappropriate.

14 And the other thing is -- that's it, I  
15 think. Thank you.

16 CHAIRMAN KARLIN: All right. Thank you,  
17 Ms. Campbell.

18 Mr. Haemer?

19 MR. HAEMER: Thank you, Your Honor.

20 To reiterate, Progress has complied with  
21 the regulations for mandatory disclosure and has  
22 produced dozens of documents, covering thousands of  
23 pages specific to modeling, that provides the  
24 information necessary -- that the staff has found  
25 adequate to evaluate the modeling that was done in.

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1 this case.

2 The report 74 model was submitted as part  
3 of a state proceeding. The conclusion from that state  
4 proceeding was the issuance of a water use permit.  
5 From that we can understand that the state has also  
6 reviewed the quality of the modeling and found it  
7 adequate.

8 So that's sort of where we are, Your  
9 Honor, in terms of this. Progress has documents and  
10 has documents that show the events. We don't have the  
11 ability at this point to recreate the study that was  
12 done in 2008.

13 The primary cost of the expense is not  
14 just simply dumping a lot of data on the Intervenors  
15 but is to provide it -- provide the files organized  
16 such that they can be run on a computer program. If  
17 it was simply a matter of just copying a bunch of  
18 data, that would be a different thing. This is a lot  
19 of data and it's all on a DVD.

20 So from that standpoint, Your Honor, we  
21 feel we've complied. And we feel that the motion to  
22 compel should not be carried.

23 CHAIRMAN KARLIN: Thank you. Thank you,  
24 Mr. Haemer.

25 Mr. Martin?

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1 MR. MARTIN: The staff has nothing further  
2 to add at this time.

3 CHAIRMAN KARLIN: Okay. Thank you.

4 So I'm sorry I didn't announce earlier.  
5 I appreciate the short closing statements. I think  
6 we're on track to get out of here by noon.

7 And just briefly to talk about the  
8 schedules going forward, I would like to ask staff  
9 and double check with them, you'd filed your estimated  
10 schedule on August -- I'm sorry, November 4th, and  
11 your status report.

12 And as I understand it, in that schedule,  
13 you said that the FEIS is expected to be issued -- you  
14 expect to issue it by July 20th of 2011. Is that  
15 correct?

16 MR. MARTIN: That's still correct, yes.

17 CHAIRMAN KARLIN: Okay. And that's still  
18 correct.

19 And the other thing about the final safety  
20 evaluation report and the delivery of the final safety  
21 evaluation report to the ACRS, originally your  
22 estimate had earlier estimated that it would be  
23 delivered to the ACRS on December 14th, 2010, you know  
24 in a month or something like that. And now you're  
25 taking that off the table and saying we don't have an

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1 estimate.

2 What is your -- what is the situation with  
3 the final safety evaluation report? And do you have  
4 any estimate of when that will come out?

5 MR. MARTIN: I do not have it now. But I  
6 can tell you that the letter that we were going to  
7 prepare to send the progress is currently going  
8 through concurrence in the staff. So we will  
9 certainly have that estimate for you for the December  
10 status update.

11 CHAIRMAN KARLIN: Right. Okay.

12 MR. MARTIN: But until it is through  
13 concurrence, I can't give you what the estimate is.

14 CHAIRMAN KARLIN: All right. All right.  
15 And you mentioned in your November report that you  
16 thought you'd have something more clear for us in  
17 December, in your December status report.

18 So the FEIS is July of 2011. That would  
19 seem to be the later of the two documents, of the  
20 trigger events. But we don't know that at the moment.

21 All that said, we had discussed at the  
22 earlier scheduling conferences the possibility of a  
23 site visit. And limited appearance statement session  
24 down in Levy County. And our theory is that the time  
25 to have such a thing would be after the Draft

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1 Environmental Impact Statement has come out, which is  
2 has in August of this year.

3 And after the contentions of kind of --  
4 the dust has settled on what the contentions are going  
5 to be. And there's still a lot of dust in the air on  
6 some of that. But we would like to think that we can  
7 get our rulings out on that in the next few months.

8 So I think we are thinking about a site  
9 visit and a LAS, Limited Appearance Statement Sessions  
10 maybe in the February to April time frame of 2011. I  
11 know this is -- well, this is a burden on all the  
12 parties, but particularly the Applicant usually  
13 because they have to make arrangements for us to visit  
14 the site.

15 Does that -- without giving any specific  
16 time frames, is there any problem you see in that  
17 window of February to April of next year, Mr. Haemer?

18 MR. HAEMER: Yes, okay. Yes, Your Honor,  
19 I assumed the question was for me.

20 CHAIRMAN KARLIN: Yes.

21 MR. HAEMER: The nature of the site is  
22 very swampy.

23 CHAIRMAN KARLIN: Yes.

24 MR. HAEMER: It is better earlier in the  
25 year. January, February is a better time to do a site

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1 visit.

2 CHAIRMAN KARLIN: Okay, yes.

3 MR. HAEMER: You're running less risk of  
4 getting bogged down in the review and the minutiae.

5 CHAIRMAN KARLIN: I see, I see, yes.

6 MR. HAEMER: That said, Progress has run  
7 site visits throughout the entire year. And we can  
8 consult and see whether or not there's anything that  
9 would specifically be conflicted. But --

10 CHAIRMAN KARLIN: Okay.

11 MR. HAEMER: -- certainly earlier in the  
12 year is easier on the logistics. But any time can be  
13 accommodated.

14 CHAIRMAN KARLIN: Because the spring is a  
15 rainier season or something? More wet or something?

16 MR. HAEMER: You can get to fewer areas,  
17 yes, primarily fenced off to avoid damaging wetlands.

18 CHAIRMAN KARLIN: Oh, I see, yes. Okay.

19 MR. HAEMER: But you also can get bogged  
20 down if you get off the beaten paths. Yes, sir.

21 CHAIRMAN KARLIN: Definitely. And  
22 Intervenor, Ms. Campbell, does that generally work for  
23 you? That time frame?

24 MS. CAMPBELL: I think February, April  
25 would be fine.

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1 CHAIRMAN KARLIN: Yes. And maybe we push  
2 it towards the February -- the earlier -- maybe late  
3 January, February, or March. But okay, we will have  
4 to ask. Hopefully Mr. Kirstein or Ms. Hove will  
5 contact you and we'll talk about -- try to evaluate  
6 some time frames that this might work.

7 Staff, do you see any problem with that  
8 kind of a time frame?

9 MR. MARTIN: No. That should be fine for  
10 the staff.

11 CHAIRMAN KARLIN: Okay. I think that's  
12 what we would like to do. We think that the  
13 contentions will be -- you know we'll be able to have  
14 ruled on a number of the motions that are pending by  
15 that time frame. And this will focus our site visit -  
16 - site visits are conducted for the purpose of the  
17 Board to better understand the contentions and the  
18 case and the evidence that's presented in the hearing.

19 And so, you know, we need to know what we  
20 are going to be having a hearing about before we have  
21 the site visit. It's always helpful.

22 Other than that, I look at the schedule  
23 and I see if we use the FEIS as the trigger date for  
24 the filings that must proceed the evidentiary hearing  
25 itself, assuming we're going to have an evidentiary

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1 hearing, that some contentions survive, then it is  
2 likely that we would have the evidentiary hearing in  
3 December of 2011 or January or February of 2012.

4 We'll all have to look at our schedules  
5 and work on that. But that's not a new date. I think  
6 we've talked about that in the last scheduling  
7 conference we had. It's just an estimate.

8 With that, are there any further points or  
9 questions that Judge Murphy you would like to make?

10 ADMIN. JUDGE MURPHY: No, not at this  
11 time.

12 CHAIRMAN KARLIN: Judge Baratta?

13 ADMIN. JUDGE BARATTA: No, not at this  
14 time.

15 CHAIRMAN KARLIN: Okay. Then we  
16 appreciate the parties coming here.

17 Mr. Haemer, did you have something?

18 MR. HAEMER: In terms of talking about the  
19 scheduling conference, Your Honor.

20 CHAIRMAN KARLIN: Yes?

21 MR. HAEMER: The Intervenors have filed  
22 two motions for an amended Contention 4 and a new  
23 Contention 12 on Monday. The filings are not  
24 complete. They don't have all of the attachments. At  
25 least not the versions that I have. I understand from

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1 Mary's emails, she's had a number of administrative  
2 problems getting that through.

3 It would be helpful -- and procedurally it  
4 would be helpful to know when we have the complete  
5 document and the associated schedule associated with  
6 that. Whether or not we're still on the same 25 days  
7 or is it 25 days from the 15th? Is it 25 days from  
8 the last enclosure? But some clarity on this.

9 I mean we can work through it. But some  
10 clarity from the Board on this issue would certainly  
11 be helpful.

12 CHAIRMAN KARLIN: Yes. Well, on that  
13 point, obviously a party is obliged to make its  
14 filings on certain dates. So within ten days of X,  
15 within 30 days of Y. And they filed their motions on  
16 the 15th, I believe you're referring to, and there  
17 were various attachments referred to in those filings.

18 So I guess you're suggesting or saying  
19 there was some difficulty in the transmission of some  
20 of those attachments, and they didn't come until a day  
21 later or several days later or haven't come yet even.

22 MR. HAEMER: Haven't come yet, Your Honor.  
23 There are a number. One specifically --

24 CHAIRMAN KARLIN: I don't know what to do  
25 about that. I think if you believe there is a -- I

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1 would urge you to work very actively with the  
2 Intervenor to get those documents. And, Intervenor,  
3 obviously you need to have all your documents attached  
4 and there when you file. And you can't dribble them  
5 in later.

6 I don't think you intended to do that. I  
7 think there were difficulties in transmission. But I  
8 don't know.

9 But anyway, your obligation is to get it  
10 filed on that date, with all attachments. And it may  
11 be that you tried valiantly to do that and had a  
12 problem. I would suggest you try to work it out.

13 If there is some delay, motions can -- I  
14 would urge you to file a motion and say well, I need  
15 additional time or I move to strike this entirely. Or  
16 whatever is appropriate.

17 But I think we would be amenable to some  
18 reasonable extension if there has been a serious delay  
19 for technical reasons associated with the transmission  
20 of some document. A short extension might work.

21 Ms. Campbell?

22 MS. CAMPBELL: Your Honor I understand  
23 that Ms. Olson has been -- you can answer that.

24 CHAIRMAN KARLIN: Well --

25 MS. CAMPBELL: Yes, she has --

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1 CHAIRMAN KARLIN: -- you're the only one  
2 authorized to speak.

3 MS. CAMPBELL: -- that she has a new  
4 version of Microsoft or I have a Mac and I have my own  
5 issues with the EIE. But she had to reboot her  
6 computer and reboot her computer.

7 I also believe there was an issue with our  
8 expert. And her visual disabilities, which aren't  
9 cleared up yet.

10 And I just wanted to know since Mr. Haemer  
11 brought that up, can I talk about getting the  
12 disclosures directly instead of having to come to --

13 CHAIRMAN KARLIN: Well, that's not before  
14 us --

15 MS. CAMPBELL: Okay.

16 CHAIRMAN KARLIN: -- at the moment. If  
17 you want to arrange a different mechanism for making  
18 disclosures, please discuss it with the Applicant or  
19 the staff. And if this becomes a problem, you can  
20 file a motion.

21 We will not resolve these kinds of things  
22 by emails or, you know, if it rises to the level of  
23 being problematic, please file a motion. I'm sorry to  
24 impose that on you but that's how our formal process  
25 works. If someone's got a problem, they need to file

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1 a motion. We don't just give sort of advice via email  
2 on how to do things.

3 And I know that you're pro se. But you  
4 have to read the regs and follow them just as much as  
5 anyone else. And I know you're trying to do that.  
6 But, again, I would encourage you to try to work the  
7 exchange of those materials out. And if there's an  
8 extension needed, you might even amongst yourselves  
9 that some extension and answers would be appropriate.

10 Or if you think that it is so egregious  
11 that it needs to strike the entire proceeding or  
12 strike that exhibit or attachment, that's another  
13 route you can pursue and file a motion if you felt  
14 that was the appropriate way.

15 Anything else? Anything, Mr. Martin, from  
16 the staff?

17 MR. MARTIN: Nothing to add.

18 CHAIRMAN KARLIN: All right.

19 MR. HAEMER: Thank you, Your Honor, that's  
20 very helpful.

21 CHAIRMAN KARLIN: Thank you. And, again,  
22 I thank the witnesses for coming and attending. I  
23 feel responsible that we did not actually end up  
24 asking you questions. But I think we got what we  
25 needed to try to rule on this motion to compel.

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1                   So with that, we will stand adjourned.

2                   Thank you.

3                   (Whereupon, the above-entitled oral  
4                   argument was concluded at 11:50 a.m.)

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CERTIFICATE

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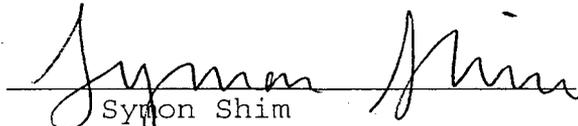
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