

Official Transcript of Proceedings

RAS J-318

NUCLEAR REGULATORY COMMISSION

Title: Entergy Nuclear Generation Company
Pilgrim Nuclear Power Station

Docket Number: 50-293-LR

ASLBP Number: 06-848-02-LR

DOCKETED

December 10, 2010 (8:00a.m.)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Location: (telephone conference)

Date: Tuesday, December 7, 2010

Work Order No.: NRC-614

Pages 729-753

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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: :

ENTERGY NUCLEAR GENERATION :

COMPANY AND ENTERGY NUCLEAR : Docket No. 50-293-LR

OPERATIONS, INC. (PILGRIM : ASLBP No. 06-848-02-LR

NUCLEAR POWER STATION) :

_____ :

Tuesday, December 7, 2010

Teleconference

BEFORE:

ANN MARSHALL YOUNG, Chair

DR. RICHARD COLE, Administrative Judge

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

3:02 p.m.

1
2
3 CHAIR YOUNG: This is Judge Ann Marshall
4 Young, the Chair of the Licensing Board. And I have
5 here with me Judge Richard Cole. Judge Abramsom is
6 not going to be going us today.

7 Also here with us is our Law Clerk Katie
8 Tucker and Andrew Welkie, who is in charge of the
9 visual data management system, VDMS for short.

10 If I could ask all the parties starting
11 with the Staff, to just introduce yourselves who is
12 present and just we'll go one-by-one.

13 MR. HARRIS: Yes, Your Honor. This is
14 Brian Harrison for the Staff. And with me I have Beth
15 Mizuno and Brian Newell.

16 CHAIR YOUNG: Okay. Applicant?

17 MR. LEWIS: Yes, Judge. This is David
18 Lewis. Law firm of Pillsbury Winthrop Shaw Pittman.
19 With me is my partner Paul Gaukler representing
20 Entergy. There are some members of the Pilgrim Staff
21 with me and on another line.

22 CHAIR YOUNG: Okay. And Ms. Lampert?

23 MS. LAMPERT: Yes. This is Mary Lampert.
24 I'm representing Pilgrim Watch pro se. And I'm here
25 by myself.

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1 CHAIR YOUNG: Okay. And Ms. Cook?

2 MS. COOK: Yes, correct.

3 CHAIR YOUNG: It's Jennifer Cook?

4 MS. COOK: Yes. Jennifer Cook from Duane
5 Morris on behalf of Plymouth.

6 CHAIR YOUNG: All right. The Town of
7 Plymouth.

8 All right. Basically the purpose of this
9 conference is to make sure that we all understand the
10 procedures for submitting prefile testimony and
11 exhibits, and for using the DDMS system for that
12 purpose.

13 We'll also be asking you whether the
14 parties want to be able to gain access to the
15 testimony and exhibits through this DDMS as well as
16 through the Electronic Hearing Docket.

17 In addition, one thing that we'll be
18 asking is whether the parties would consider switching
19 to EIE System at least for the purposes of the
20 testimony and exhibits, and possibly for the rest of
21 the hearing. Because there has been a recent change
22 in that system which makes it a lot easier to use and
23 actually should save some complications for the
24 parties.

25 But first, I was going to go through our

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1 Order of November 23rd to make sure that we're all
2 clear on that and bring up a couple of slight
3 revisions from what we had said before.

4 Before I do that, does any party have any
5 questions or otherwise have anything you'd like to say
6 before we go through the Order.

7 Okay. So then I'll do that. And then
8 after that Mr. Welkie is available to explain in more
9 detail how the DDMS system works and to answer any
10 questions about that. It should simplify things,
11 although it may seem a little complicated at the
12 outset.

13 So, just going through the Order, I guess
14 the first thing is that assuming that all the prefile
15 testimony and exhibits are properly filed and marked,
16 then you'll only need to bring to the hearing one
17 paper copy that's properly marked and numbered. And
18 then if you have any documentary material in addition
19 to your prefiled testimony and exhibits that you
20 expect may become relevant during the Board's
21 questioning of any witnesses, you need to make sure
22 that you have enough paper copies appropriately marked
23 available for all Board members, the Board's Law
24 Clerk, all parties and yourself. And also, that you
25 would have electronic copies appropriately marked as

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1 specified in the Order of November 23rd on either a
2 DVD or CD or some other electronic format.

3 At this point, how many parties intend to
4 have laptops at the hearing?

5 MR. LEWIS: Judge, this Entergy. We do.

6 MR. HARRIS: Judge Young, this is the
7 Staff. We'll have laptops at the hearing.

8 CHAIR YOUNG: Okay. Ms. Cook and Ms.
9 Lampert?

10 MS. LAMPERT: Frankly, I hadn't thought
11 about it. Provisionally I'd say yes.

12 MS. COOK: I would say yes as well. But
13 again, that would be provisionally. I'm not sure.

14 CHAIR YOUNG: Okay. It may be helpful,
15 and Mr. Welkie in a few minutes may explain how that
16 might be helpful more specifically than I will, or
17 can.

18 All right. We're going to be treating the
19 prefile testimony of each witness or panel of
20 witnesses as a separate exhibit. Obviously, written
21 statements of positions, legal arguments, responses,
22 et cetera those are not exhibits. Those don't need to
23 be filed through the DDMS System. They're just like
24 any other brief or legal argument. You file them in
25 the same way you always have up to this point.

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1 For the prefilled testimony and the
2 exhibits each must be filed in a separate PDF file.
3 And also if any is more than 50 megabytes, then you
4 need any such document into segments and then give
5 each one the same exhibit number with a different
6 letter designation at the very end of it.

7 For each item of prefilled testimony and
8 each exhibit you should mark it in the upper right
9 hand corner with an exhibit number. And we've
10 described the exhibit number as an identifier
11 consisting of a three character party designation, and
12 we've indicated those. We have not indicated one for
13 Plymouth. I guess we could say that would be PL -- is
14 it Y or I?

15 MS. COOK: You could say Y.

16 CHAIR YOUNG: PLY for Plymouth.

17 MS. COOK: You could say PLM.

18 CHAIR YOUNG: PLM. We'll say PLM for
19 Plymouth. Okay.

20 And then the numbering sequences would be
21 zeros after that up to make a total of nine. Is it
22 nine? Well, six digits plus the three letter party
23 identifier.

24 If you need to revise any testimony or
25 exhibit, for that matter, you're going to need to

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1 present a new exhibit and you need to mark that with
2 an R after the party identifier in the place of the
3 first zero. We don't encourage revisions. And I think
4 that we indicate elsewhere in the Order that if you do
5 have a revision, you would be expected to present that
6 at the beginning of the hearing. That's not to
7 prevent you from filing that in advance, but you would
8 need to do that at least at the beginning of the
9 hearing.

10 You need to order and number your prefiled
11 testimony in the order you plan to identify and
12 present them.. And you need to mark them with their
13 dates of filing or dates that they were revised.

14 Well, I'll get to that in a minute.

15 Let's see, it's quite possible that often
16 more than one party will want to introduce a
17 particular document as an exhibit. It seems as though
18 the vast majority of the evidence in this hearing at
19 this point will be presented by Entergy and the Staff.
20 So you should coordinate with each other. And if you
21 both intend to present a particular document as an
22 exhibit, we would encourage you to use the prefix JNT,
23 if you can agree on everything. And that should not
24 be that difficult.

25 Let's see. The prefiled testimony, both

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1 direct and rebuttal, should be in question and answer
2 format. Identify the witnesses proffering each
3 answer. At the beginning of the hearing will go
4 through piece of prefiled testimony. You should be
5 prepared to have the witness or witnesses in question
6 adopt their testimony while under oath. And then if,
7 as all the exhibits would be identified and if
8 appropriate, admitted. We would expect that if there
9 are any objections to any exhibits or testimony, that
10 those would be presented at that point and that a
11 ruling, or at least a provisional ruling, would be
12 made at that time.

13 Any testimony or exhibit that's not
14 admitted would be still included in the evidence as a
15 rejected exhibit so that that would serve as the same
16 purpose as an offer of proof.

17 One thing that we thought about this
18 morning, if you'll look at Appendix A to the November
19 23rd Order, what we'd like to do is try to best assure
20 that all exhibits are in the most useful form for all
21 the parties and for the Board. So it occurred to us
22 that it might be helpful instead of having the case
23 name, for example in Appendix A at the top of the
24 exhibit list, put the case name and the docket number
25 and the ASLBP number in the upper left hand side,

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1 upper left hand corner of each exhibit and of the
2 exhibit list. We'll send out a new template
3 illustrating that.

4 And then for the exhibit list, instead of
5 saying "Hearing Exhibit," say "Hearing Exhibit List."
6 And part of the reason for this, and for what I'm
7 going to be saying in a moment, is that however these
8 documents are file they will first go to the Office of
9 the Secretary. Someone in the document handling
10 Staff, and I'm not even sure if they're in the same
11 office of SECY, but someone in that Staff will make a
12 list of exhibits and the title that they put on them
13 will be the same titles that you put on your exhibits.

14 So, for example, if we consider the
15 Exhibit List to be an exhibit, the whole case name and
16 docket numbers would all be part of the name of
17 exhibit. So to avoid having these long names for
18 every exhibit, we think it would be helpful to instead
19 put:

20 The case name up in the upper left hand
21 corner;

22 The exhibit number in the upper right hand
23 corner, and;

24 As the title in the top middle of the page
25 as the title of exhibit give a short but descriptive

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1 title to the exhibit so that you and we when we're
2 looking at it won't see a three line set of works that
3 give the case names and then something that's not
4 really descriptive of what the exhibit is. But we see
5 instead something that clearly tells us whether we're
6 looking in the Electronic Hearing Docket or in the
7 DDMS System that clearly tells us what that exhibit is
8 to the extent possible.

9 Does that make sense to everyone? Let's
10 start with the Staff. Does that make sense to you?

11 MR. HARRIS: It does make sense to us, but
12 we can see some problems when you start putting all
13 that up at the top, that it may not all necessarily
14 fit depending on the document and, you know it has to
15 be photocopied. So there might be cases where you
16 need a cover page to be able to fit all that
17 information.

18 CHAIR YOUNG: We want to avoid the use of
19 cover pages if possible. And the reason for that is
20 because the page numbering changes when you use cover
21 pages. And that is what the DDMS people are telling
22 us. So we want to avoid that. So even if you put the
23 case number in the upper left hand corner in some
24 abbreviated form and just put the ASLBP number without
25 the docket number, that would be even better than

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1 having a whole lot of exhibits all with the same name,
2 in other words the case name and then a couple of
3 words at the very end identifying it in some way that
4 may or may not be very effective.

5 MR. HARRIS: Your Honor, I think would be
6 fine, especially being able to abbreviate up in the
7 upper left hand, so that would probably create enough
8 space potentially for all the other numbers to fit up
9 there.

10 CHAIR YOUNG: Okay. What we're doing,
11 but we're thinking in terms of when we're working on
12 the Order, when you were working on your proposed
13 findings of fact and conclusions of law to make the
14 references to the exhibits easier and to make locating
15 exhibits; "Oh, I remember I wanted to look at this
16 particular report but there's no exhibit with the name
17 that resembles what I'm thinking of." So we just want
18 you to do it in a way that would make it easier to
19 understand what the exhibit is from its actual title.

20 Do the other parties have any problem with
21 that? Does any other party have any problems?

22 MS. LAMPERT: My only question is are you
23 intending to have a summary in writing of these
24 instructions with a little example?

25 CHAIR YOUNG: Yes.

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1 MS. LAMPERT: I mean, I'm scribbling all
2 this stuff down, but I don't know whether my brain
3 having input.

4 CHAIR YOUNG: Yes. We'll issue an Order
5 following up on this conference. In addition to
6 having a revised exhibit list format, we'll have an
7 example of an exhibit.

8 MS. LAMPERT: Okay. That'll be perfect.

9 CHAIR YOUNG: Okay. All right. Let me
10 just see if there's anything else.

11 I didn't go through proposed questions and
12 proposed cross-examination questions. Those should be
13 fairly explanatory and they don't concern formatting
14 as much.

15 Mr. Welkie, have I left anything out that
16 you think the parties should know about?

17 MR. WELKIE: Just the decision on whether
18 to refile the case or not.

19 CHAIR YOUNG: Right. That would probably
20 be a good thing to bring up next. And that is have
21 you all either already received refiling certificates
22 or talked with Emile Julian or someone else at SECY
23 about doing that? Is there anyone who has not done
24 that?

25 MS. LAMPERT: I just had a very brief

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1 conversation after I received the email today with
2 Emile Julian. But, we will have to have many more.

3 CHAIR YOUNG: Okay. Well, I know he's
4 open to talking with you. And from what I understand,
5 and I'm not probably the best person to be saying
6 this, but maybe on the other hand I am because I'm not
7 super computer savvy. But from what I understand once
8 you're using e-filing, it's actually easier to file
9 documents.

10 Do you want to explain a little better
11 than I could.

12 MR. WELKIE: Yes, and I'm not na EIE
13 expert, but from what I know once you have your
14 digital certificate from the Agency and you are
15 successfully connected to the Electronic Information
16 Exchange, it is truly just your PC and your browser
17 connecting and uploading PDF documents.

18 There is also another option that they've
19 just recently converted to is that you can file native
20 documents. So if you have a WordPerfect document or a
21 Word document, you can file it in its native form and
22 the Agency will actually convert it for you in the
23 PDF. So, if you don't have Adobe Acrobat, which is the
24 preferred PDF blender in the pool, the Agency will
25 actually make that document PDF for you.

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1 There are some caveats with that. Page
2 numbering and things sometimes may have issues. But
3 again, it doesn't force you to have to create them as
4 PDF.

5 The other advantage of using the
6 Electronic Information Exchange is that, again, these
7 documents are going to come in electronically to the
8 Agency, and that is the preferred pipeline, I guess,
9 we can kind of segue into DDMS. That those documents
10 come in through the Electronic Information Exchange
11 and get transferred down to the Digital Data
12 Management System for us in the hearing
13 electronically.

14 And I guess the biggest advantage for DDMS
15 is that everything stays electronic. Once the
16 exhibits are identified and admitted for the record,
17 we then transmit those records back up to the Agency's
18 official docket system for inclusion into the docket
19 as an official Agency record. So there is really no
20 more paper hand stamping and things don't have to be
21 re-scanned to be put back in the system. It all stays
22 electronic, it's all accessible electronically either
23 through the Digital Data Management System or through
24 an other system called the Electronic Hearing Docket,
25 which is also available.

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1 And that's kind of it in a nutshell.

2 CHAIR YOUNG: Do all parties except, for
3 example, the Intervenor and the Town of Plymouth, do
4 all of you have the certificates already for other
5 cases?

6 MR. HARRIS: Your Honor, this is the
7 Staff. We do.

8 MR. LEWIS: Judge Young, this is David
9 Lewis. Yes, we do.

10 CHAIR YOUNG: Ms. Lampert and Ms. Cook,
11 would you have any objection to moving to the EIE
12 system for this?

13 One thing you didn't explain is how you
14 get a certificate. You want to just explain that
15 part?

16 MR. WELKIE: Sure. That'll be working
17 through Emile Julian. He can point you. There is a
18 website that you would go to that is on the NRC's --
19 there's a link out in our NRC's website.

20 It's pretty step-by-step to be able to
21 request a certificate. You'll get an email with a
22 link that you click on that goes out to VeriSign to
23 download the certificate, that then gets installed.

24 The Agency does have a Help Desk that is
25 very good at helping parties get access to EIE and get

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1 their digital certificate installed.

2 I actually talked to a gentleman just
3 before this meeting and they are quite willing to do
4 whatever they need to do to help the parties get their
5 certificates installed and access to the system.

6 CHAIR YOUNG: Basically, it's not what I
7 would consider to be the normal use of the term
8 "certificate." Basically it's a process for getting
9 a password that you create yourself, right?

10 CHAIRPERSON QUAY: Well, it is a digital
11 certificate that gets installed on your computer as
12 part of your browser, your internet browser. And that
13 you use that digital certificate -- that digital
14 certificate actually authenticates you when you make
15 a connection to the system so you can download a
16 document.

17 CHAIR YOUNG: But you have to put in a
18 password?

19 MR. WELKIE: You do put in a password to
20 access the digital certificate, yes.

21 CHAIR YOUNG: Okay. So it's a piece of
22 electronic something that gets installed onto your
23 computer?

24 MR. WELKIE: Correct.

25 CHAIR YOUNG: And then to get to it and

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1 get to the Electronic Information Exchange you put in
2 your password?

3 MR. WELKIE: To access the digital
4 certificate, and the digital certificate authenticates
5 you to the Electronic Information Exchange.

6 CHAIR YOUNG: Okay. And that's to get
7 documents that other people have filed. To file a
8 document, you use that same certificate and --

9 MR. WELKIE: You use the same certificate,
10 correct.

11 CHAIR YOUNG: Okay.

12 MS. LAMPERT: Excuse me. Where is the Help
13 Desk located in the world of NRC?

14 MR. WELKIE: There is an 800 number that
15 is available for the Help Desk.

16 Physically, I don't know where they're
17 located.

18 MS. LAMPERT: Well, I don't mean that. I
19 meant for our electronic access. I'm not going down in
20 person. Maybe I will be.

21 MR. WELKIE: I believe the hours are the
22 business hours. I believe it's 8:00 to 5:00 or 8:00
23 to 6:00.

24 And probably the easiest thing for me to
25 do is to either Katie send you an email with the link.

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1 I don't know it off-hand. I know where it is on the
2 website.

3 MS. LAMPERT: Great. As long as we have
4 a starting place.

5 MR. WELKIE: Yes. And again, they are very
6 helpful. They are very patient and very helpful.

7 MS. LAMPERT: I hope I don't encourage
8 them to quit. It's a possibility.

9 CHAIR YOUNG: Well, Emile Julian hasn't
10 quit yet, and I know he's glad to talk with you.

11 MS. LAMPERT: Oh, he's great.

12 MS. COOK: To the extent that Plymouth
13 would be filing anything in this proceeding, we would
14 not be opposed to e-filing.

15 CHAIR YOUNG: Okay. Okay. Good.

16 Well, then, Ms. Lampert, are you willing
17 to give this a try?

18 MS. LAMPERT: At my age I'll try anything.

19 CHAIR YOUNG: Okay. Well given that we're
20 going to send you the 800 number for EIE, and you know
21 how to reach Mr. Julian already, if we need to revisit
22 this we can certainly call another conference at some
23 point. But it sounds as though it will make it easier
24 in the long run once you get over the initial step of
25 getting the certificate and creating your password and

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1 so forth.

2 All right. So then let's just say that we
3 will proceed through EIE and that all these steps that
4 I've gone through that are in the Order as issued
5 before, will be followed with the change which I'll
6 put in an Order regarding the names of exhibits and
7 how to format the top of the page for the exhibits and
8 the Exhibit. Can you think of anything else?

9 MS. TUCKER: No, I can't.

10 CHAIR YOUNG: Questions now. Can anyone
11 think of any questions at all on any of this?

12 MR. LEWIS: Judge, this is David Lewis.

13 I did have one question just to understand
14 your expectations on the November 23rd memorandum. On
15 page 3 you refer to "Any cited exhibits that are not
16 provided in proceeding shall not be considered as
17 evidence. Mere reference to a document, even by ADAMS
18 number, is not appropriate."

19 We're still working on our testimony, so
20 this is still a work in progress, but we were thinking
21 that in some cases in our testimony we would be citing
22 references simply to alert the other parties what the
23 basis was for an assertion or what our expert had
24 looked at but not necessarily to provide that document
25 as an exhibit which might clutter the record. And as

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1 an example, I think in our Summary Disposition Motion,
2 for example we had a discussion of Mollenkamp's study
3 of how MAX do compare to certain three dimensional
4 models. And at Summary Disposition we had our expert
5 discuss and present figures from that study and
6 explain what that indicated to him, but we didn't
7 actually give the whole big long document as an
8 exhibit. And we were thinking of doing the same thing
9 on those cases where we might provide a reference so
10 all the parties know what a witness has looked at, but
11 our expert's testimony would be self-sufficient. I
12 wanted to make sure that was consistent with your
13 expectations, that it wasn't going to be a problem
14 providing references but not submitting every
15 reference also as an exhibit.

16 CHAIR YOUNG: I guess my initial reaction
17 is that to the extent that any testimony relies on
18 some other document, that the record's not going to be
19 clear unless at least a portion of that other document
20 is provided as an exhibit. Otherwise, you have to
21 just assume that everyone is going to take the
22 description of exhibit as being accurate. And if
23 there's any question raised about that, then if you
24 haven't submitted the actual exhibit, then what we're
25 trying to say is that from the standpoint of creating

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1 a record that just a reference to a document --

2 MR. LEWIS: Well, it wouldn't be just a
3 reference, Judge. There would be a discussion of the
4 document. As the Mollenkamp example again, at Summary
5 Disposition we actually included the figures and
6 tables that the expert was looking at, but not the
7 whole report. We included those tables and figures in
8 the expert's report, which was an exhibit. So the
9 information that the expert looked at was contained in
10 his testimony, and the expert provided his opinion
11 based on that. But the whole -- I think it was the
12 Sandia study. But the whole study itself wasn't -- we
13 can put all the references in, but it might end up
14 with a lot of unnecessary information.

15 That's all. I was just really reacting to
16 paragraph F-3 to make sure that what I was thinking of
17 doing was not going to be inconsistent with your
18 expectations.

19 CHAIR YOUNG: I guess it makes me a little
20 uncomfortable. And my initial reaction is any party
21 that does that, does it at its own risk. Because if
22 there are any questions ever raised about what that
23 document actually says, you know then do you get in a
24 fight over well who needs to provide the document or
25 a portion of the document.

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1 Just from the standpoint of looking at it
2 as a record, the best evidence of a document is the
3 document itself and not a summary of it given by a
4 witness.

5 So, I don't know. Do you have any
6 reaction?

7 DR. COLE: Well, actually, you're
8 providing more than just a reference to the document.
9 You're providing copies of pertinent parts of the
10 document that the witness relied on in making his
11 judgments. Is that correct?

12 MR. LEWIS: That's correct, and --

13 DR. COLE: And a little closer, but it
14 still makes me a little uncomfortable. So you're
15 going to have to make a judgment call on that.

16 If you think it's coming close to
17 producing the whole document, you'd better do that.

18 MR. LEWIS: Okay. That's a help. I just
19 wanted to get your reactions on it. I know how to
20 proceed now.

21 CHAIR YOUNG: And I guess the other thing
22 would be that even if a party doesn't question it, if
23 in evaluating the evidence and making our decision,
24 deliberating and writing our decision, if we don't
25 have that document in the record, then I don't know.

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1 That, I think, where some of our discomfort comes
2 from.

3 And I think that if you're going to rely
4 on a part of it, it would probably be much more
5 helpful to provide an actual copy of those pages
6 rather than just having the witness say what's on
7 those pages. That's our reaction to that.

8 MR. LEWIS: That sort of helps, Judge.
9 Thank you.

10 CHAIR YOUNG: Any other questions?

11 All right. Well, this has been short and
12 sweet.

13 Can you think of anything else, Mr.
14 Welkie? Ms. Tucker?

15 MS. TUCKER: No.

16 CHAIR YOUNG: Okay. Well thank you all.

17 In the next few days we'll get an Order
18 out confirming what we said today and sending you
19 examples; templates for the Exhibit List, a new
20 template and an example of how to mark an exhibit.

21 All right. Thank you all.

22 (Whereupon at 3:34 p.m. the teleconference
23 was adjourned.)

24

25

