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NUCLEAR REGULATORY COMMISSION

Title: 10 CFR 2.206 Petition Review Board
RE Vermont Yankee

Docket Number: (n/a)

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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10 CFR 2.206 PETITION REVIEW BOARD (PRB)

CONFERENCE CALL

RE

VERMONT YANKEE

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WEDNESDAY

JANUARY 26, 2011

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The conference call was held at 9:00 a.m.,
Theodore Quay, Chairman of the Petition Review Board,
presiding.

PETITIONER: THOMAS SAPORITO

PETITION REVIEW BOARD MEMBERS

THEODORE QUAY, PRB Chairman, Office of Nuclear Reactor
Regulation

JAMES KIM, Vermont Yankee Petition Manager, Office of
Nuclear Reactor Regulation

EKATERINA LENNING, Petition Coordinator, Office of
Nuclear Reactor Regulation

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1 NRC STAFF:
2 TANYA MENSAH, Office of Nuclear Reactor Regulation
3 MUHAMMAD RAZZAQUE, Reactor System Branch, Office of
4 Nuclear Reactor Regulation
5 STACEY ROSENBERG, Office of Nuclear Reactor Regulation
6 TOM SETZER, Region I, Division of Reactor Projects
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P-R-O-C-E-E-D-I-N-G-S

9:00 a.m.

1
2
3 MR. KIM: Good morning. I'd like to thank
4 everybody for attending this meeting. My name is
5 James Kim. And I'm the Vermont Yankee Project
6 Manager.

7 We are here today to allow the Petitioner,
8 Mr. Thomas Saporito, to address the Petition Review
9 Board regarding the 2.206 petition dated January 14,
10 2011. I'm the Petitioner Manager for the petition.

11 The Petition Review Board Chairman is Ted
12 Quay. As part of the Petition Review Board's review
13 of this petition, Mr. Thomas Saporito has requested
14 this opportunity to address the PRB.

15 This meeting is scheduled from 9 to 10
16 a.m. The meeting is being recorded by the NRC
17 Operations Center and will be transcribed by a court
18 reporter. The transcript will become a supplement to
19 the petition. The transcript will also be made
20 publicly available.

21 I would like to open this meeting with
22 introductions. As we go across the room, please be
23 sure to clearly speak your name, your position, and
24 the office which you work for within the NRC for the
25 record.

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1 I'll start off. This is James Kim. I'm
2 a project manager for the Division of Operating
3 Reactor Licensing in NRR.

4 CHAIRMAN QUAY: This is Ted Quay. I'm the
5 Petition Review Board Chairman, and I work in the
6 Office of Nuclear Reactor Regulation.

7 MR. RAZZAQUE: This is Muhammad Razzaque,
8 Reactor Systems Engineer with the Reactor Systems
9 Branch, NRR.

10 MR. KIM: Are there any other participants
11 from headquarters on the lien?

12 MS. LENNING: Yes. Ekaterina Lenning,
13 NRR, Petition Coordinator.

14 MS. MENSAH: Tanya Mensah, NRR.

15 MS. ROSENBERG: Stacey Rosenberg, NRR.

16 MR. KIM: Are there any NRC participants
17 from the Regional Office on the phone?

18 MR. SETZER: Yes, this is Tom Setzer. I'm
19 a Senior Project Engineer for the Division of Reactor
20 Projects in Region I.

21 MR. SPINDLER: Dave Spindler, Senior
22 Resident, Vermont Yankee.

23 MR. KIM: Are there any representatives
24 for the licensee on the phone?

25 MR. DEVINCENTIS: Yes, this is Jim

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1 DeVincentis, D as in David, E, V as in Victor, I-N-C-
2 E-N-T-I-S. I'm with Entergy Nuclear Operations.

3 MR. KIM: Mr. Saporito, would you please
4 introduce yourself for the record?

5 MR. SAPORITO: Yes, my name is Thomas
6 Saporito. I am the Petitioner in this proceeding and
7 I'm a resident of Jupiter, Florida.

8 MR. KIM: Are there any other associated
9 members of the public on the phone?

10 Hearing none, I would like to emphasize
11 that we each need to speak clearly and loudly to make
12 sure that the court reporter can accurately transcribe
13 this meeting.

14 If you do have something that you would
15 like to say, please first state your name for the
16 record. For those dialing into the meeting, please
17 remember to mute your phones to minimize any
18 background noise or distraction. If you do not have
19 a mute button, this can be done by pressing *6 key.
20 To unmute, press the *6 key again. Thank you.

21 At this time, I turn it over to the PRB
22 Chairman, Ted Quay.

23 CHAIRMAN QUAY: Good morning. Welcome to
24 this meeting regarding the 2.206 petition submitted by
25 Mr. Saporito. I'd like to first share some background

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1 on our process.

2 Section 2.206 of Title 10 of the Code of
3 Federal Regulations describes the petition process.
4 The primary mechanism for the public to request
5 enforcement action by the NRC in a public process.
6 This process permits anyone to petition the NRC to
7 take enforcement type action related to NRC licensees
8 or licensed activities.

9 Depending on the results of its
10 evaluation, NRC could modify, suspend, or revoke an
11 NRC issued license or take any other appropriate
12 enforcement action to resolve a problem. The NRC
13 staff's guidance for the disposition of 2.206 petition
14 request is in Management Directive 8.11 which is
15 publicly available.

16 The purpose of today's meeting is to give
17 the Petitioner an opportunity to provide any
18 additional explanation or support for the petition
19 before the Petition Review Board's initial
20 consideration and recommendation. This meeting is not
21 a hearing, nor is it an opportunity for the Petitioner
22 to question or examine the Petition Review Board on
23 the merits or the issues presented in the petition
24 request.

25 No decision regarding the merits of this

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1 petition will be made at this meeting. Following this
2 meeting, the Petition Review Board will conduct its
3 internal deliberations. The outcome of this internal
4 meeting will be discussed with the Petitioner.

5 The Petition Review Board typically
6 consists of a Chairman, usually a manager at the
7 Senior Executive Service level at the NRC and has a
8 Petition Manager and a Petition Review Board
9 Coordinator. Other members of the Board are
10 determined by the NRC staff, based on the content of
11 the information in the petition request.

12 At this time I would like to introduce the
13 Board. I am Ted Quay, the Petition Review Board
14 Chairman. James Kim is the Petition Manager for the
15 petition under discussion today. Kate Lenning is the
16 Office PRB Coordinator. Other technical staff
17 includes Muhammad Razzaque from the Office of Nuclear
18 Reactor Regulations Reactor Systems Branch; Tom Setzer
19 from NRC Region I, Division of Reactor Projects.

20 As described in our process, the staff may
21 ask clarifying questions in order to better understand
22 the Petitioner's presentation and to reach a reasoned
23 decision whether to accept or reject the Petitioner's
24 request for review under the 2.206 process.

25 I would like to summarize the scope of the

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1 petition under consideration and the NRC activities to
2 date. On January 14, 2011, Mr. Saporito submitted to
3 the NRC a petition under 2.206 concerning the safe
4 operation of Vermont Yankee Nuclear Power Station.

5 In his petition request, Mr. Saporito
6 requested that the NRC (1) issue a confirmatory order
7 requiring the licensee to immediately bring the
8 reactor in question to a cold shutdown mode of
9 operation; (2) issue a civil penalty against the
10 licensee; (3) remove the licensee employees
11 responsible for this matter from NRC licensed
12 activities for a period of no less than five years;
13 (4) perform an immediate NRC investigation and
14 inspection of the Vermont Yankee Nuclear Facility to
15 ensure that all nuclear safety-related systems are
16 properly operational in accordance with the licensee's
17 technical specifications and the NRC license.

18 Allow me to discuss the NRC activities to
19 date. On January 19th, you requested to address the
20 Petition Review Board to provide supplemental
21 information for the Board's consideration prior to the
22 PRB's initial meeting to make an initial
23 recommendation.

24 The PRB met on January 24th and denied
25 your request for immediate action of bringing the

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1 Vermont Yankee to a cold shutdown mode of operation
2 because the PRB did not identify any immediate public
3 health and safety concerns that would warrant an
4 immediate shutdown. On January 24th you were informed
5 of the PRB's decision on the immediate action.

6 As a reminder for the phone participants,
7 please identify yourself if you make any remarks as
8 this will help in the preparation of the meeting
9 transcript that will be made publicly available.
10 Thank you. And at this point I'll turn it over to Mr.
11 Saporito.

12 MR. SAPORITO: Thank you, and good morning
13 to everybody on the PRB staff. I appreciate this
14 opportunity to address the government in this fashion
15 regarding the public issue of nuclear safety.

16 First of all, because this is a public
17 record and there are perhaps people in the public on
18 this teleconference call and certainly the record will
19 be made available to those individuals, the Nuclear
20 Regulatory Commission is the government agency charged
21 by the United States Congress to ensure public health
22 and safety with respect to commercial nuclear power
23 plant operations including, but not limited to the
24 Vermont Yankee Nuclear Power Plant.

25 The Vermont Yankee Nuclear Power Plant is

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1 licensed for operation by the NRC, the Nuclear
2 Regulatory Commission in Docket No. 05000271 and NRC
3 maintains resident inspectors on site at Vermont
4 Yankee Nuclear Power Plant.

5 With respect to this petition, I
6 respectfully request that a copy of this transcript be
7 forwarded to the NRC's Office of the Inspector General
8 for the purpose of a review by that agency in
9 consideration of whether that agency would conduct an
10 investigation of the NRC's conduct in these
11 circumstances with respect to the PRB's refusal to
12 engage the licensee to bring their reactor in question
13 to an immediate shutdown mode of operation.

14 The concern here is the fact that as the
15 licensee's prior conduct in providing false testimony
16 under oath with respect to underground piping
17 associated with a Vermont Yankee nuclear power system
18 and there were a number of licensee management
19 personnel that were removed from their positions at
20 that facility in connection with that false testimony.

21 So in light of those circumstances and in
22 light of the fact that to date the NRC, by their own
23 admission, through the preliminary statements made on
24 the record today, has not performed Item 4 for the
25 petition and an immediate NRC investigation and

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1 inspection of the licensee's Vermont Yankee nuclear
2 facility to ensure that all nuclear safety-related
3 systems are properly operational and in accordance
4 with the licensee's technical specification and NRC
5 license.

6 To the extent that the NRC has not taken
7 actions as requested under the petition under Item No.
8 4, it's reasonable to understand that the public
9 health and safety is in danger and it's in grave
10 danger based on the fact that no government inspection
11 has been conducted as requested in light of the
12 issues, safety issues that we're going to discuss with
13 respect to this petition's initiation. And with
14 respect to the licensee's prior conduct of providing
15 false testimony under oath to a government agency in
16 a proceeding before a government body.

17 The other issues for the Office of the
18 Inspector General of the NRC should consider whether
19 the OIG should look into why the NRC resident
20 inspectors who are on site failed or apparently failed
21 to address this issue firsthand and it was allowed to
22 continue. The licensee was allowed to continue in
23 their operation after this event was announced.

24 And the other concern that the NRC and the
25 OIG should look into is at 10 CFR 50.7 issue which is

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1 a chilling effect that's in existence at the
2 licensee's facility at the Vermont Yankee plant which
3 prevented one or more licensee employees from timely
4 reporting the issue which is the subject of this
5 petition.

6 With that background, I would like to
7 continue to address the merits of this petition to
8 bring certain information to the PRB's attention which
9 I would like them to consider.

10 First of all, this petition was based in
11 part on a fellow by the name of Marvin Resnikoff,
12 that's R-E-S-N-I-K-O-F-F, who is a senior associate
13 for the Radioactive Waste Management Association. He
14 was interviewed by the newspaper, Brattleboro Reformer
15 on January 14, 2011. He makes several statements.
16 One statement he made was that during the refueling
17 outage in April, Entergy, which is the licensee, knew
18 that three or four relief valves which managed
19 pressure for the feedwater systems had excessive
20 leakage through the thread seal and that all four had
21 accumulator leakage.

22 He also stated that if there was an over-
23 pressurization and the valves didn't work, they
24 wouldn't be able to cool down the reactor. If the
25 feedwater pipes burst, it would result in a meltdown.

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1 Also, he said had Entergy analyzed this
2 problem in one week, the matter would have become a
3 factor in a gubernatorial election. Whether Entergy
4 withheld this vital safety information because of
5 political motivation or whether the company is simply
6 incompetent, the matter is serious and should be
7 investigated.

8 The licensee, by Mr. Smith, was quoted by
9 this newspaper as stating, "We did the test in April
10 outage. Then the components were replaced." In order
11 to determine reportability of the test failures like
12 this, we need to have some material testing done on
13 the components.

14 The government, being the United States
15 Nuclear Regulatory Commission, was also quoted in this
16 article and Mr. Neil Sheehan, an NRC spokesman emailed
17 the newspaper and stated that with respect to the
18 relief valve is to relieve pressure during the events
19 in which the reactor shuts down suddenly. The
20 depressurization function is important because it is
21 designed to prevent damage to the system and to allow
22 injection of coolant water into the reactor vessel
23 following an accident.

24 Finally, Resnikoff states that "the
25 condition of the relief valve violated the technical

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1 specifications and seriously reduced the safety
2 margin." And really, that last statement is the
3 essence and the subject of the initiation of my 2.206
4 petition because these technical specifications for
5 the regulations under 10 CFR Part 50 which the NRC has
6 authority to take enforcement action against a
7 licensee as requested.

8 Now as we already discussed, Issue No. 1,
9 to bring the reactor to cold shutdown, the NRC has
10 preliminarily already denied that request. Issue No.
11 2 is to issue a civil count against the licensee and
12 that's well within the NRC's authority. Issue No. 3,
13 the cause and removal of licensee employees
14 responsible from NRC licensed activity for a period of
15 no less than five years. That certainly is within the
16 NRC's jurisdiction and the NRC has taken that
17 enforcement action many times in the past against
18 other licensees and perhaps this very same licensee.

19 Item No. 4, perform an immediate NRC
20 investigation and inspection of the licensee's Vermont
21 Yankee nuclear facility to ensure that all nuclear
22 safety-related systems are properly operating in
23 accordance with the licensee's technical
24 specifications and NRC license. And that certainly
25 needs to be done as soon as possible in these

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1 circumstances because of the licensee's past record of
2 providing false testimony under oath. And the other
3 issues surrounding all the many, many, many failures
4 of safety-related systems at this nuclear facility.

5 Now with respect to the petition and the
6 NRC's regulations, 10 CFR 50.72 is the immediate
7 notification requirement for operating nuclear power
8 reactors. And as we already discussed, Vermont Yankee
9 is a licensee of the NRC and they are subject these
10 regulations. These regulations give the NRC
11 enforcement action that I'm requesting.

12 In general, under 50.72, the nuclear power
13 reactor licensee under 50.21(b) or 50.22, holding and
14 operating a license under this part or combined
15 license under part 52 of this chapter and under the
16 Commission makes a finding under 52.103(g) "shall
17 notify the NRC operations via the emergency
18 notification system" and it goes and it talks about
19 declarations of emergencies and non-emergencies. And
20 we're going to talk about non-emergency and the
21 reporting requirements of the licensee in these
22 circumstances. Specifically, did the licensee violate
23 the NRC's regulations under 10 CFR 50.72 and did the
24 licensee violate its technical specifications in
25 failing to timely report this event with respect to

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1 these relief valves.

2 The reporting requirements identified
3 under 10 CFR 50.72 specifically talk about one hour
4 reporting requirement, four hour reporting
5 requirements, and eight hour reporting requirements.
6 Under non-emergency events within the one hour time
7 reporting requirements it says it's not reported as a
8 declaration of an emergency class under paragraph A of
9 this section, "the licensee shall notify the NRC as
10 soon as practical and in all cases within one hour of
11 the occurrence, any deviation from a plant's technical
12 specification authorized pursuant to Section 50.54(f)
13 of this part." There's no mistake about it. It's a
14 "shall" requirement. It's within one hour.

15 The four-hour reporting requirement states
16 that if not reported under paragraphs A or B(1) of
17 this section, the licensee shall notify the NRC as
18 soon as practical and in all cases within four hours
19 of the occurrence of any of the following. And it
20 goes through and names six subparts and under the
21 subparts, subpart XI it states "any event or situation
22 related to the health and safety of the public or on-
23 site personnel or protection of the environment for
24 which a news release is planned or notification to
25 other government agencies have been or will be made."

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1 That meets the criteria here with respect to these
2 relief valves.

3 And finally the eight-hour report
4 requirement. Paragraph A, B(1) or B(2) of this
5 section, "the licensee shall notify the NRC as soon as
6 practical and in all cases within eight hours of the
7 occurrence of any of the following." And subparagraph
8 Item II says "any event or condition that results in
9 (a) the condition of the nuclear power plant,
10 including its principal safety barriers being
11 seriously degraded or (b) the nuclear power plant
12 being in an unanalyzed condition that significantly
13 degrades plant safety. And then under Section 4(b),
14 the systems to which the requirements of paragraph
15 c.3.4.a of this section applies are and then Item 1,
16 the reactor protection system, RPS, including reactor
17 scram and reactor trip. And Item 5, BWR or boiling
18 water reactor core isolation cooling system, isolation
19 condenser system and in this particular case, the
20 feedwater coolant injection system. Subsection B,
21 "any event or condition that any time of discovery
22 could have prevented the fulfillment of the safety
23 function of structures or systems that are needed to
24 (a) shut down the reactor and maintain it in a safe
25 shutdown condition; (b) remove residual heat; (c)

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1 control the release of radioactive material or (d)
2 mitigate the consequences of an accident."

3 Clearly, the regulation under 10 CFR 50.72
4 requires the licensee to timely report the failure of
5 the systems identified by Mr. Marvin Resnikoff in a
6 timely manner, either immediately within one hour,
7 within four hours, or within eight hours. And the
8 licensee failed to comply with the regulation.

9 The regulations under 10 CFR 50.72 are
10 inherently embraced within the licensee's technical
11 specifications and are implicitly implied within and
12 embraced within the licensee's NRC operating license
13 for that nuclear reactor. Therefore, the licensee is
14 in violation of NRC regulations and requirements with
15 respect to this incident in failing to timely notify
16 the NRC of a failure of this nuclear safety-related
17 system.

18 And in my opinion, the licensee placed the
19 public health and safety in grave danger because the
20 licensee had failed to timely report this incident and
21 had not determined at the time of occurrence how long
22 the system had been inoperable, how long the nuclear
23 reactor was at power with the system being degraded as
24 it has been identified and whether or not the system
25 could have engaged as designed to mitigate an event

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1 which could have led to a nuclear accident and a
2 release of radioactive particles into the environment
3 and/or subjected the licensee employees to an
4 excessive dose of radiation.

5 So in these circumstances, enforcing that
6 on the part of the NRC is not only needed, it's
7 required to ensure for the health and safety of the
8 public and to protect the environment as a whole.
9 This licensee has a very poor record of maintaining
10 its physical plant at the Vermont Yankee Nuclear Power
11 Plant and that's a matter of documented record by the
12 Government's own inspection program, the reactor
13 oversight process.

14 The licensee has a dubious record now of
15 providing false testimony under oath for which
16 licensee managers have been removed from their
17 positions of authority at the facility in question.

18 And to date, the NRC has failed to comply with Item 4
19 of the petition which requested an immediate NRC
20 investigation and inspection of the licensee's nuclear
21 facility to ensure that all nuclear safety-related
22 systems are fully operational and in accordance with
23 the licensee's technical specification and NRC
24 license. And until that inspection is completed, it's
25 my position the public health and safety remains in

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1 grave danger because who knows whether systems are
2 failing or have been degraded or have simply not
3 timely reported by the licensee to the NRC at this
4 point.

5 This --

6 (Mr. Saporito's phone disconnects.)

7 CHAIRMAN QUAY: Mr. Saporito, are you
8 still there?

9 Looks like he's dropped off the line, so
10 why don't the rest of us hold for several minutes to
11 give him a chance to reestablish.

12 (Whereupon, the above-entitled matter went
13 off the record at 9:27 a.m. and resumed at 9:28 a.m.)

14 MR. SAPORITO: This is Tom Saporito, the
15 Petitioner, was I cut off or something? Did you get
16 most of what I said or what?

17 CHAIRMAN QUAY: We got a good portion of
18 it. You were just cut off probably within the last
19 three or four minutes, no more than that. All of a
20 sudden the line went dead. So if you could continue.

21 MR. SAPORITO: Where did I leave off? Can
22 the court reporter give me my last couple of
23 sentences?

24 CHAIRMAN QUAY: Sure.

25 (Whereupon, the above-entitled matter went

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1 off the record at 9:29 a.m. and resumed at 9:30 a.m.)

2 MR. SAPORITO: Given the background and
3 history of the licensee and to the extent that Item 4
4 requests the NRC do an immediate investigation and
5 inspection out here to look at all nuclear safety-
6 related systems I think the public health and safety
7 at this time remains in grave danger because we don't
8 know what systems are degraded, to what degree they
9 are degraded, if they are operational or not
10 operational and if not, how long they've been non-
11 operational. We don't know whether the licensee has
12 failed to timely report any of those issues, whether
13 they are even aware of those issues.

14 We don't know the extent of a chilling
15 effect out there is preventing licensee employees from
16 reporting these types of issues. So to the extent
17 that the NRC has failed to date and at least since
18 January 14, 2011 when this issue was made public by
19 the newspaper in question, since the NRC has not taken
20 that as an inspection type of activity, I implore the
21 NRC to do that as soon as possible.

22 I'll remain on the line here to answer any
23 questions and clarify any points that I've raised to
24 the PRB and certainly to take any questions from the
25 licensee or any member of the public that happens to

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1 be on this call. Thank you.

2 CHAIRMAN QUAY: At this time, does the
3 staff here at headquarters have any questions for Mr.
4 Saporito?

5 Hearing none, I'll make the same request
6 of the region.

7 MR. SETZER: No, I appreciate the
8 presentation. No questions from Region 1.

9 CHAIRMAN QUAY: Thank you. Before I
10 conclude the meeting, members of the public may
11 provide comments regarding the petition and ask
12 questions about the 2.206 petition process. However,
13 as stated in the opening, the purpose of this meeting
14 is not to provide an opportunity for the Petitioner or
15 the public to question or examine the Petition Review
16 Board regarding the merits of the Petitioner's
17 request.

18 Does any member of the public wish to make
19 comments?

20 Okay, hearing none, Mr. Saporito, thank
21 you for taking your time to provide the NRC staff with
22 clarifying information on the petition you've
23 submitted.

24 Before we close, does the court reporter
25 need any additional information for the meeting

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1 transcript?

2 (Whereupon, at 9:33 a.m., the
3 teleconference was concluded.)
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CERTIFICATE

This is to certify that the attached proceedings
before the United States Nuclear Regulatory Commission
in the matter of: Vermont Yankee

Name of Proceeding: 10 CFR 2.206 Petition of:

Thomas Saporito

Docket Number: (n/a)

Location: (teleconference)

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



James Salandro
Official Reporter
Neal R. Gross & Co., Inc.