

# Official Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

Title: Pre-Hearing Conference:  
Pilgrim Nuclear

**DOCKETED**

February 23, 2011 (11:00 a.m.)

OFFICE OF SECRETARY  
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Docket Number: 50-293-LR

Location: Teleconference

Date: February 18, 2011

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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PRE-HEARING CONFERENCE

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IN THE MATTER OF: :

ENTERGY NUCLEAR GENERATION : Docket No. 50-293-LR

COMPANY AND ENTERGY : ASLBP No. 06-848-02-LR

NUCLEAR OPERATIONS, INC. :

(Pilgrim Nuclear Power :

Station) :

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Friday, February 18, 2011

The above-entitled prehearing conference convened telephonically, pursuant to notice, at 3:00 p.m.

BEFORE:

ANN MARSHALL YOUNG Administrative Judge

PAUL B. ABRAMSON Administrative Judge

RICHARD F. COLE Administrative Judge

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24 On Behalf of the Town of Plymouth:

25 SHEILA SLOCUM HOLLIS, ESQ.

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

(2:58:30 p.m.)

1  
2  
3 CHAIRMAN YOUNG: Okay. So, I'm Ann  
4 Marshall Young. I'm the Chair of the Board, and with  
5 me I have Judge Richard --

6 JUDGE COLE: Richard F. Cole, C-O-L-E.

7 CHAIRMAN YOUNG: And our law clerk, Katie  
8 Tucker. And Judge Abramson.

9 JUDGE ABRAMSON: Yes, I'm here.

10 CHAIRMAN YOUNG: Judge Paul Abramson is at  
11 another location, so if at any point we need to  
12 confer, we're going to have to put you on mute, and  
13 then call each other on another phone.

14 Let's start with Entergy. Why don't you  
15 introduce yourself, and anyone else who's with you,  
16 Mr. Lewis.

17 MR. LEWIS: Thank you, Judge Young. This  
18 is David Lewis from the law firm Pillsbury Winthrop  
19 Shaw Pittman representing Entergy. With me is Mr.  
20 Paul Gaukler.

21 CHAIRMAN YOUNG: All right. And for the  
22 Staff?

23 MS. UTTAL: This is Susan Uttal  
24 representing the Staff, and I'm all alone.

25 CHAIRMAN YOUNG: Oh. And, Ms. Lampert,

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1 are you all alone, also?

2 MS. LAMPERT: No, I have a Labrador  
3 Retriever with me.

4 (Laughter.)

5 JUDGE COLE: What's his name, her name?

6 MS. LAMPERT: Zoe.

7 JUDGE ABRAMSON: We won't comment on the  
8 quality of the company you have compared to the rest  
9 of us.

10 (Laughter.)

11 CHAIRMAN YOUNG: That could be taken a  
12 number of ways. Anyway, Ms. Hollis.

13 MS. HOLLIS: Yes. I'm here with Jen Cook.  
14 Sheila Hollis on behalf of the Town of Plymouth, and  
15 Jennifer Cook. We're both with the firm of Duane  
16 Morris.

17 CHAIRMAN YOUNG: Thank you. Did I miss  
18 anyone? All right. Great. Well, thank you for  
19 making yourselves available at such short notice.

20 We received your joint motion, and we  
21 think it's overall a good idea. I guess we have a  
22 couple of concerns, and the main one being that -- and  
23 this may apply more to me, because I'm the non-  
24 technical lawyer/judge. Well, Judge Abramson is a  
25 lawyer, and a technical person. But, in any event,

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1 there's, obviously, a lot of evidence, and some of  
2 it's quite technical. So, we would like to provide  
3 for a way for us to ask any questions.

4 Now, under 10 CFR 212.08(c) we can do  
5 written questions. And if we find that we need to ask  
6 any of the witnesses any questions, we are fine with  
7 doing it in that manner. However, what we would like  
8 to do is, on March 9<sup>th</sup> in addition to holding oral  
9 argument on the new contentions, which would consist  
10 pretty much of just us asking each of you questions;  
11 in addition to that, that we would hold an oral  
12 argument on the issue, the threshold issue that's  
13 before us at this time with regard to Contention 3.

14 Now, in order to make that meaningful, we  
15 feel that it would be appropriate to have you file  
16 proposed Findings of Fact and Conclusions of Law in  
17 advance of that date, so that by doing that you can  
18 sort of get us to focus on those parts of the evidence  
19 that you find to be the most important, and that you  
20 would like us to direct our attention to.

21 So, we are going to ask you to file  
22 proposed Findings of Fact and Conclusions of Law by  
23 March 4<sup>th</sup>, which would then give us the weekend and  
24 the days before March 9<sup>th</sup> to read those, and become  
25 familiar with those, and then be prepared to ask you

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1 questions about any of the issues that you address in  
2 those.

3 This would save you the expense of  
4 bringing your witnesses with you. And, obviously,  
5 counsel and Ms. Lampert for Pilgrim Watch could not  
6 say anything that would be evidence, but you might be  
7 able to point us to particular parts of the evidence,  
8 or particular aspects of it that you think are  
9 important. And we think that that would be very  
10 helpful to us in reaching a decision on the issue  
11 before us on the basis of quite a large amount of  
12 evidence. So, in addition to that, at the oral  
13 argument we would permit each party to have 10 minutes  
14 of closing argument, verbal closing argument.

15 One of the things that you mentioned in  
16 the joint motion is the motion in limine that was  
17 previously filed by Entergy. And, at this point, our  
18 ruling on that will be that we will exclude as  
19 evidence the Pilgrim Watch prefiled testimony, but  
20 that we are going to, at this point, admit all of the  
21 exhibits of Pilgrim Watch, and all of the parties into  
22 the record, but we will in our deliberations accord  
23 each of them only the weight to which they are  
24 entitled, based on the extent to which they are  
25 relevant, material, and reliable, the standard defined

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1 at 10 CFR 2.337(a), and to the extent they are  
2 persuasive on the threshold issue, which we have  
3 previously stated, and which you quote in your joint  
4 motion.

5 Let's see. Since -- if after the oral  
6 argument, which will center on the questions about  
7 your proposed Findings of Fact and Conclusions of Law,  
8 if we then have any specific questions for any of the  
9 witnesses, we would issue those in writing.

10 I guess one thing, I want to allow all of  
11 you to ask any questions or raise anything that you  
12 think we may have overlooked, but with regard to the  
13 proposed Findings of Fact and Conclusions of Law, I  
14 know that 212.08 refers to a -- let's see. Including  
15 statements of position, we would like you to file  
16 proposed Findings and Conclusions, because we think  
17 that they will better focus your attention, and our  
18 attention on specific facts.

19 So, Ms. Lampert here, I don't recall what  
20 your proposed Findings looked like on Contention 1,  
21 but to the extent -- I need to refresh that.

22 Basically, the proposed Findings of Fact would be  
23 separate numbered paragraphs, none of them too long  
24 stating specific facts. And then at the end of each  
25 one, providing a specific reference to a specific

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1 exhibit, or more than one specific exhibits, giving  
2 page numbers, so that we can go directly to the part  
3 that you want us to look at.

4 Then after the hearing, if anyone feels  
5 the need to file responses to each other's proposed  
6 Findings and Conclusions, then we would be willing to  
7 permit that. On the Conclusions of Law, for the  
8 standard, it's a legal standard. You might look back  
9 to the initial decision in the Contention 1 hearing.

10 Judge Abramson, Judge Cole, have I left  
11 out anything that we have talked about?

12 JUDGE COLE: No, I don't think so. I'm a  
13 little bit concerned that nobody said anything so far.

14 JUDGE ABRAMSON: Because nobody can get a  
15 word in edgewise.

16 (Laughter.)

17 CHAIRMAN YOUNG: Judge Abramson, is there  
18 anything else that we should mention that I may have  
19 overlooked?

20 JUDGE ABRAMSON: I think you've got it.

21 CHAIRMAN YOUNG: Do the parties have any  
22 questions? We think that this might pretty much take  
23 care of what you would like to do in your joint  
24 motion, but feel free to raise any questions. Did Mr.  
25 Lewis start to say something there?

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1 MR. LEWIS: Yes, Judge, one observation.  
2 We have proposed this procedure as a way of  
3 simplifying the remaining procedure, and putting the  
4 existing evidence before the Board for a decision. If  
5 there is a need for -- if the Board has its own  
6 questions it wants to ask the witnesses, I guess my  
7 preference would be to go ahead and bring the  
8 witnesses there on March 9<sup>th</sup>.

9 It was not my intent in proposing this  
10 procedure to actually extend the hearing, so I am  
11 concerned that there would be some extensive post  
12 March 9<sup>th</sup> series of submissions, and questions and  
13 answers, and replies, that was not my intent. And,  
14 therefore, I would suggest if there is a need for our  
15 witnesses to answer any questions, my strong  
16 preference would be to go ahead and bring them on  
17 March 9<sup>th</sup>.

18 CHAIRMAN YOUNG: What do the other parties  
19 think about that idea?

20 MS. LAMPERT: I'd go even further. I think  
21 the joint motion, the intent was to dispense with the  
22 hearing, and simply have it -- your decision be based  
23 on written materials before you.

24 COURT REPORTER: This is the court  
25 reporter. Who was just speaking?

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1 MS. LAMPERT: That was Mary Lampert  
2 speaking.

3 MR. LEWIS: And this is David Lewis. That  
4 was, indeed, the intent of the motion.

5 CHAIRMAN YOUNG: Right. And we, again, we  
6 think that -- we appreciate the intent behind the  
7 motion, and we think it's a good idea to simplify  
8 things as much as possible. However, we, obviously,  
9 want to give due consideration to the evidence you  
10 presented, and so we think that it would be helpful  
11 for you to help focus us on any issues that you think  
12 warrant our special attention. And that's why we  
13 would ask for the proposed Findings of Fact and  
14 Conclusions of Law. And then, perhaps, have questions  
15 for you after oral argument.

16 What do the other parties think about the  
17 idea of bringing witnesses on March 9<sup>th</sup>?

18 MS. LAMPERT: Mary Lampert. I feel it's  
19 unnecessary. And, also, I would feel compelled then  
20 to drop Minnie Moore Isiason (ph) and request that I  
21 could bring Bruce Eagan as, it wouldn't be a late  
22 filed witness. That's like you'd be in a box, but be  
23 able to bring him. And I thought, at least from the  
24 Petitioner's point of view, our position was laid out  
25 pretty clearly on December 2<sup>nd</sup>. There's a memo to the

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1 Board.

2 CHAIRMAN YOUNG: What about the Staff and  
3 Ms. Hollis for the Town?

4 MS. UTTAL: Judge, this is Susan Uttal for  
5 the Staff. If witnesses are brought in then -- if  
6 Pilgrim Watch does not bring Dr. Eagan in, then the  
7 Staff would object to his testimony being accepted as  
8 written testimony into the record, because I believe  
9 that if the licensee and the Staff have to produce  
10 their witnesses, then the Intervener should have to  
11 produce their witness, also, for questioning by the  
12 Board.

13 CHAIRMAN YOUNG: Well, I think our idea of  
14 having the oral argument, and just have the counsel  
15 and representatives speak to the proposed Findings,  
16 was pretty much for the purpose of avoiding opening  
17 this up in the way that you sort of anticipated, and  
18 wanted to guard against in your joint motion. So, it  
19 may be that after we hear from all of you, we will  
20 need to put you on mute, and take a little break to  
21 talk with each other.

22 Ms. Hollis, do you have a viewpoint one  
23 way or the other?

24 MS. HOLLIS: We were not requested to join  
25 in the motion, so we're one step removed. Obviously,

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1 we want the issues to be covered appropriately, and it  
2 is -- some of it is technical. I leave it in the  
3 hands of the parties that are most active to determine  
4 what is the best way to achieve that coverage of the  
5 issues in a thoughtful and appropriate way pursuant to  
6 the NRC's regulations and its precedent.

7 CHAIRMAN YOUNG: Okay. Judge Cole.

8 JUDGE COLE: Yes, this is Judge Cole. If  
9 the proposed Findings of Fact and Conclusions of Law  
10 are what I think they're going to be, I do not  
11 personally anticipate a large number of questions, at  
12 least from me. I thought you ought to know that.

13 CHAIRMAN YOUNG: Did we gain or lose  
14 someone just now?

15 (Off the record comment.)

16 CHAIRMAN YOUNG: And I don't think that we  
17 -- I guess one concern I would have about bringing the  
18 witnesses is that we construed your motion to be an  
19 attempt to simplify things. And we're planning to give  
20 one day to this, so if the witnesses were there, there  
21 would be the possibility for extending that time.

22 I'm not sure that that would be necessary  
23 at this point, and that we could, alternatively, issue  
24 any written questions, if we feel the need to, which  
25 we may not. It sounds as though two of the three

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1 parties involved in the joint motion would lean in the  
2 direction of not bringing witnesses.

3 Mr. Lewis, would you like us to confer, or  
4 do you want to -- do you maintain a desire to bring  
5 your witnesses? What's your perspective at this  
6 point?

7 MR. LEWIS: My perspective is simply to  
8 avoid multiple submissions after March 9<sup>th</sup>, if it's  
9 unnecessary. I do have my witnesses available on  
10 those dates. Of course, they reserved them, so they  
11 are available. If you have some simple questions, I  
12 could have them there, and even have them there on  
13 short notice, if you want to make that decision after  
14 you see the proposed Findings of Fact and Conclusions  
15 of Law.

16 I do appreciate the NRC Staff's concern  
17 with the process. I would not object if you only have  
18 questions for Entergy's witnesses to having them  
19 there, and letting you ask the questions. And I do  
20 appreciate the Staff's concerns with the process.  
21 Entergy does not have any questions for Dr. Eagan,  
22 based on his testimony, and, therefore, for that  
23 reason alone, we would not object to his testimony  
24 coming in as-is, even if we have our witnesses there.

25 JUDGE ABRAMSON: This is Judge Abramson.

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1 Let me ask a question, because it seems to me the  
2 Staff is the one that's primarily throwing a monkey  
3 wrench in the proposal.

4 Staff, do you agree that if we don't take  
5 testimony from any experts, that Dr. Eagan's exhibit  
6 testimony is admissible at this point? Isn't that  
7 what you said in your petition?

8 MS. UTTAL: That's absolutely true. If  
9 the Board grants the motion, then the Staff would not  
10 object, because none of the witnesses will be there.

11 JUDGE ABRAMSON: All right. So, let me  
12 suggest that there's a possible way to deal with your  
13 concern. Would you be comfortable with Applicant and  
14 Staff bringing their witnesses in case we have  
15 questions of them, and should we have questions of Dr.  
16 Eagan based on what was in the record, that we deal  
17 with those in writing?

18 MS. UTTAL: No, in terms of fundamental  
19 fairness, I would have a problem.

20 JUDGE ABRAMSON: Well, wait a minute.  
21 Let's talk about fundamental fairness. The purpose of  
22 this is for us to ask questions, not for you to ask  
23 questions, so what's unfair about it?

24 MS. UTTAL: I guess there's a whole lot of  
25 things.

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1 JUDGE ABRAMSON: Judge Young, are you  
2 still on?

3 CHAIRMAN YOUNG: I'm here.

4 JUDGE COLE: We're here.

5 JUDGE ABRAMSON: You're the expert on  
6 fundamental fairness. I'll let you address this one.

7 CHAIRMAN YOUNG: Well, let's see what Ms.  
8 Uttal has to say.

9 MS. UTTAL: Well, I originally agreed to  
10 this motion because it got rid of the process problem,  
11 and got rid of the, what would be inequity between the  
12 parties, and would not be consistent with prior  
13 practice, and prior law, because we had this thing  
14 happen in the Vermont Yankee case, where the Staff  
15 could not produce its witness. And we withdrew our  
16 testimony, and what the Board did was just accept his  
17 -- on their own decided to accept his testimony as an  
18 exhibit, but not as testimony. That was not at the  
19 Staff's bequest. We didn't ask for that.

20 JUDGE ABRAMSON: And would you explain to  
21 me how you view the difference of that, since the  
22 Board always weighs testimony or exhibits for their  
23 value as they contribute to the record?

24 MS. UTTAL: There were -- well, I guess  
25 it's not just a matter of form, but whether it's

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1 introduced as testimony, or introduced as an exhibit.  
2 I have no idea what use the Board in that case put to  
3 the testimony that was withdrawn. I don't remember  
4 whether they cited it in the case at all. I wasn't  
5 really my case.

6 CHAIRMAN YOUNG: Let me just ask, if we,  
7 alternatively, held open the possibility of asking  
8 written questions, then what would really be the  
9 difference in terms of what's, ultimately, produced,  
10 and allowing those parties, namely, Entergy and the  
11 Staff, if it wishes to bring their witnesses, but  
12 allowing Ms. Lampert not to, the cross could be  
13 prohibitive. And then if we have any other questions  
14 we could, of course, do questions in writing. But to  
15 the extent that having them there just in case, if a  
16 party wants to, would simplify things, and move things  
17 along. What would really be the difference between  
18 having it done in writing, and us just asking the  
19 witnesses questions right there?

20 MS. UTTAL: Well, there's a difference  
21 between sitting down in front of a piece of paper and  
22 writing out a question, and editing it, and changing  
23 it, and speaking live. So, there is a difference.

24 CHAIRMAN YOUNG: Right. But we're going  
25 to be the ones who are going to be asking the

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1 questions, so that would be sort of on us.

2 MS. UTTAL: I don't know what to say,  
3 Judge. I think I've expressed what my position is. If  
4 Mr. Lewis wants to bring his witnesses, and the Board  
5 is going to allow that, I don't know if the Staff will  
6 bring their witnesses. In the face of Mr. Lewis  
7 bringing his witnesses, we might bring our witnesses.  
8 I have to talk to other people about that, so I would  
9 leave it in the Board's hands at this point.

10 CHAIRMAN YOUNG: I'd like to explore just  
11 a little bit more here. First, before I do that with  
12 you, Ms. Uttal, Ms. Lampert.

13 MS. LAMPERT: Yes.

14 CHAIRMAN YOUNG: Do you have any objection  
15 to, basically, letting any party who wants to have  
16 their witnesses available, have them there, but not  
17 requiring any party to bring their witnesses?

18 MS. LAMPERT: No, I don't have an  
19 objection to that. As far as, my opinion, and granted  
20 I'm pro se, I think Ms. Uttal's comments tend to be  
21 more theoretical, and not practical. I think your  
22 point, just asking -- being able to ask a question if  
23 you had to in writing really doesn't make a  
24 difference. This is a -- there's no cross-  
25 examination. This is a simple, straightforward

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1 procedure.

2 In many ways, our joint motion recognized  
3 the fact of where we were on this issue, and we were  
4 looking for efficiency.

5 CHAIRMAN YOUNG: Thank you.

6 JUDGE ABRAMSON: Yes, as are we.

7 MS. LAMPERT: Despite the accusations that  
8 we're dragging this out, that certainly isn't the  
9 case. What we're looking for is, and have been  
10 looking for, is a reasonable decision on this, in the  
11 hopes that we would get one mitigation. But, you  
12 know, how I receive the orders today.

13 CHAIRMAN YOUNG: Let me go back to Ms.  
14 Uttal, if I could. I want to make sure I understand  
15 your issue with allowing some parties to bring  
16 witnesses, but not others, if they don't want to.

17 What you said, if I recall correctly, is  
18 that if anybody brought witnesses, then Mr. Eagan  
19 should be there, and without him being there, then we  
20 should not accept his testimony. But, I guess, what  
21 I'm not understanding real clearly is what would be  
22 the Staff's interest in Mr. Eagan being there, if you  
23 don't want to cross-examine him, and we're not going  
24 to have questions from anybody but us. And, really,  
25 the only questions that I see any of us asking would

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1 be clarification questions.

2 JUDGE ABRAMSON: Yes, Judge Young, this is  
3 Judge Abramson. Let me pick up on that point. What's  
4 the difference between being willing to admit his  
5 testimony, or his written testimony as an exhibit, and  
6 having him there to answer a question, if he has no  
7 questions to -- if there are no questions to posed to  
8 him? I mean, why would it be objectionable to have  
9 his testimony in as an exhibit, just because he's not  
10 there?

11 MS. UTTAL: Well, normally, one would need  
12 the witness' response to the testimony, and say that  
13 testimony is still true, and that they have no  
14 additions to make while they're under oath. That's how  
15 the testimony is brought in. If nobody is there to  
16 sponsor it in, then it's merely another exhibit.

17 CHAIRMAN YOUNG: Let me just interrupt for  
18 a second. This is Judge Young. Let me interrupt for  
19 just a second.

20 We would anticipate that all of the  
21 exhibits of all of the parties would be admitted into  
22 the record, basically, with an order that we would  
23 intend to issue on Tuesday. And, actually, what I was  
24 planning to do was to send out a courtesy copy of that  
25 order, if we're able to get to that point this

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1 evening, indicating, or, basically, sharing with you  
2 the order that would be issued first thing Tuesday  
3 morning. And in that order, we would admit into  
4 evidence, or admit into the record the -- well, the  
5 same difference, all of the exhibits of all of the  
6 parties. So, none of the parties would be sponsoring,  
7 or giving any explanatory discussion about any  
8 possible revisions. We would just accept them as they  
9 are. And the only questions to any of the witnesses  
10 would be, as I said, to explain something, just  
11 explanatory, to clarify testimony.

12 As the non-technical member of the Board,  
13 sometimes I feel a need to just ask a technical  
14 witness well, could you tell me exactly what this  
15 refers to? Could you give me a definition of this  
16 term? So, I'm not sure that the need to sponsor  
17 testimony would come up, because all of it would have  
18 been admitted prior to March 9<sup>th</sup>.

19 MS. LAMPERT: Could I say something? This  
20 is Mary Lampert.

21 CHAIRMAN YOUNG: Go ahead.

22 MS. LAMPERT: Dr. Eagan's declaration was  
23 signed under perjury, et cetera. He already attested  
24 to the truth of it, so I don't understand what Ms.  
25 Uttal is talking about, that you can't verify that

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1 what is said in that statement that he swore to isn't  
2 true.

3 JUDGE ABRAMSON: Ms. Lampert, let me just  
4 explain --

5 MS. LAMPERT: Maybe I didn't get it. I'm  
6 sorry.

7 JUDGE ABRAMSON: This is Judge Abramson.  
8 Let me just explain. The normal process is that when  
9 we go to hearings, a witness will have prefiled his  
10 testimony, and we simply have the witness come on the  
11 stand and swear that that was his testimony. We're  
12 not planning to do this whether or not witnesses show  
13 up at this hearing.

14 MS. LAMPERT: Oh, I get it. Thank you.

15 JUDGE ABRAMSON: So that, maybe for Ms.  
16 Uttal, that's the point. We don't plan to do that in  
17 this instance.

18 MS. UTTAL: So, basically, you've cut the  
19 rug out from under me, or pulled the rug out from  
20 under me.

21 MS. LAMPERT: Well, maybe I can pass the  
22 cup to you. If you want to pay for him, he can come.

23 CHAIRMAN YOUNG: Ms. Uttal, did I just  
24 hear you make a concession that you're withdrawing any  
25 objection to our allowing parties to bring their

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1 witnesses?

2 MS. UTTAL: No, I'm not, but you,  
3 basically, have --

4 CHAIRMAN YOUNG: It sounds like you don't  
5 want to officially concede, but you're not going to  
6 push it.

7 MS. UTTAL: I'm not going to drag you in  
8 front of the Commission, if that's what you're asking.

9 CHAIRMAN YOUNG: Because I think we all  
10 agree that, obviously, if we can proceed in a more  
11 efficient fashion, then that would be good. And this  
12 would -- it certainly does have the potential to move  
13 us forward more quickly, while still allowing for  
14 appropriate deliberations, and appropriate  
15 clarification of the record, and of any evidence on  
16 which we might have any questions.

17 So, I guess, did anyone else have any  
18 other issues with what we've said? And then in a  
19 moment, I'll go through what we're proposing to do.

20 JUDGE COLE: Do any of the parties have a  
21 problem with the date proposed for the Findings of  
22 Fact and Conclusions?

23 CHAIRMAN YOUNG: Hearing none, we'll  
24 assume that there are no objections.

25 MS. LAMPERT: Well, I had one question.

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1 In regard to the request for hearing on the new  
2 contentions, am I correct that you do not want or nor  
3 would you ask questions of any experts?

4 CHAIRMAN YOUNG: We were intending to ask  
5 questions only of the lawyers and you. And I think  
6 what does tend to happen sometimes in oral argument is  
7 if a lawyer has their experts there, sometimes in the  
8 lawyer responding to us, they may confer with their  
9 expert. But we -- in oral argument, no. We would  
10 not, normally, direct any questions to witnesses. And  
11 I can tell you, we are, primarily, going to be looking  
12 at the -- whether the criteria of 10 CFR 2.309 and  
13 2.326 are met. So, it would be, primarily, legal  
14 issues, although one of the standards there is -- add  
15 it and read it to you, is that the motion must  
16 demonstrate that a materially different result would  
17 be, or would have been likely had the newly proffered  
18 evidence been considered. Initially, the motion must  
19 address a significant safety, environmental issue.  
20 So, to some extent, I mean, obviously, we're going to  
21 look to see how serious the issues are that you've  
22 raised, but oral argument is generally with counsel,  
23 in the same way that we have oral argument on  
24 contentions, except that these standards on reopening,  
25 we'd like to hear from the parties on. I know there

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1 may be still some argument about whether those would  
2 be applicable, but I think our inclination is to think  
3 that given that when the Commission remanded  
4 Contention 3, it was pretty specific about what it was  
5 remanding, so there's at least an argument to be made  
6 that that did not, thereby, reopen the proceedings for  
7 anything, any new contentions that might come along.

8 In any event, we'll hear all the argument  
9 on that, that may be elicited by our questions. So,  
10 there's nothing that you would need to prepare on the  
11 contentions. What you would need to prepare, and we  
12 set the date of March 4<sup>th</sup>, which is two weeks from  
13 today, would be the proposed Findings of Fact and  
14 Conclusions of Law.

15 Okay. If there are no other concerns,  
16 what we would do would be to issue an order, as I  
17 said, if possible, first thing on Tuesday indicating  
18 that we are granting the joint motion for good cause  
19 shown, that we do grant the motion in limine to the  
20 extent of excluding as evidence the Pilgrim Watch SAMA  
21 remand prefiled testimony, that we will consider it as  
22 argument in the nature of a Statement of Position,  
23 that we will admit all of the exhibits of all of the  
24 parties, but shall in our deliberations accord each of  
25 them only the weight to which they are entitled based

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1 on the extent to which they are relevant, material,  
2 and reliable pursuant to 10 CFR 2.337(a), and  
3 persuasive on the threshold issue that we've defined.  
4 And we would like to have proposed Findings of Fact  
5 and Conclusions of Law on that threshold issue by  
6 March 4<sup>th</sup> with specific references to specific  
7 exhibits and pages, and identifying them sufficiently  
8 so we can find what you're talking about; that we will  
9 conduct oral argument on the new contentions in the  
10 form of inquiries by us on whether the contentions  
11 meet the relevant regulatory criteria at 10 CFR 2.309  
12 and 2.326; that we will also hear arguments in the  
13 nature of closing arguments on the threshold issue of  
14 Contention 3 consisting, primarily, of Board questions  
15 relating to the parties' proposed Findings of Fact and  
16 Conclusions of Law; that each party shall be permitted  
17 to make short closing arguments, which will be limited  
18 to 10 minutes per party. Also, that any party may, if  
19 they wish, bring witnesses just to answer any Board  
20 clarification questions that might arise.

21 I'm just writing this down, so I make sure  
22 I remember. Okay. And that then we would hope that we  
23 would not need to ask any further questions in  
24 writing, but that that would still remain a  
25 possibility. And, obviously, we would try to do that

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1 in as expeditious fashion, as possible.

2 Now, just if I could have your attention  
3 for one more minute. I want to just quickly go over  
4 the exhibits that we have here. There's one joint  
5 exhibit. Then Entergy has 14 exhibits, Pilgrim Watch  
6 has 16 exhibits.

7 MS. LAMPERT: Excuse me. May I ask a  
8 question?

9 CHAIRMAN YOUNG: Sure.

10 MS. LAMPERT: Or do you want to finish  
11 that, then I'll get to my question.

12 CHAIRMAN YOUNG: Okay. I'm almost --

13 MS. LAMPERT: Oh, I'm sorry, Judge.

14 CHAIRMAN YOUNG: That Pilgrim Watch has 16  
15 exhibits, the 16<sup>th</sup> of which is the -- I guess that's  
16 the January 30<sup>th</sup>, is the declaration of Bruce Eagan,  
17 and the NRC Staff also has 16 exhibits. Are those  
18 correct? Are those numbers correct? I took those  
19 from your witness list, and I think I got the updated  
20 ones in all cases.

21 MS. LAMPERT: May I ask a question now?

22 CHAIRMAN YOUNG: Yes, go ahead.

23 MS. LAMPERT: Yes. In regard to Dr.  
24 Eagan's January 30<sup>th</sup> declaration, that has not been  
25 formally submitted as an exhibit. I requested in, and

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1 this gets really confusing when dealing with pro ses.  
2 I had requested in that response that it be part of --  
3 that it be an exhibit. And then I asked both Entergy  
4 and NRC if they would object to a motion to the effect  
5 that it be accepted as an exhibit. That is what led to  
6 Entergy's offer and suggestion of the joint motion  
7 requesting resolution that was submitted yesterday.  
8 So, my question being, should I properly after we hang  
9 up submit the motion to accept it, or is that just  
10 foolish, more paper?

11 CHAIRMAN YOUNG: You don't need to do  
12 that.

13 MS. LAMPERT: Okay.

14 CHAIRMAN YOUNG: We will be accepting all  
15 of the exhibits under the -- with the proviso, as I  
16 said before.

17 MS. LAMPERT: Okay. I'm sorry, but I  
18 didn't want to mess up on it.

19 CHAIRMAN YOUNG: No, no, that's fine,  
20 always ask. It's always better to ask. So,  
21 basically, that would be it, and we would see you on  
22 March 9<sup>th</sup> starting at 9:00. And we would, also, issue  
23 a revised Notice of Hearing, which will be put up on  
24 the NRC website. Anything else?

25 MS. HOLLIS: I had a quick question. This

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1 is Ms. Hollis.

2 CHAIRMAN YOUNG: Go ahead.

3 MS. HOLLIS: Is it your -- is it the  
4 panel's understanding and plan that this would be a  
5 one-day hearing?

6 CHAIRMAN YOUNG: Yes. I would imagine that  
7 we would try to break this up into the morning for the  
8 contentions, and the afternoon for the closing  
9 argument. So, I don't think we'll need you any more  
10 than one day. And if we need to stay a little bit  
11 late, the room in the hotel will be available.

12 MS. HOLLIS: Thank you so much.

13 CHAIRMAN YOUNG: Well, thank you all.  
14 Again, I'm assuming -- let me give you one more  
15 chance. Does anyone have anything else that you  
16 anticipate that we might need to look at?

17 MR. LEWIS: No, Judge Young.

18 MS. UTTAL: Nothing from the Staff.

19 MS. LAMPERT: Now I'm fine. Thank you.

20 CHAIRMAN YOUNG: All right. Well, thank  
21 you all. We appreciate it, and I will try to get a  
22 courtesy copy of Tuesday's order out to you before I  
23 leave this evening, and I think that should take care  
24 of it. Thank you all very much.

25 Does the court reporter have any questions

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1 about names, et cetera?

2 COURT REPORTER: I just have -- we can  
3 go off the record.

4 CHAIRMAN YOUNG: Okay. That would  
5 conclude this conference.

6 (Whereupon, the proceedings went off the  
7 record at 3:41:06 p.m.)

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CERTIFICATE

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

Name of Proceeding: Pre-hearing Conference

Docket Number: 50-293-LR

ASLBP Number: 06-848-02-LR

Location: (teleconference)

were held as herein appears, and that this is the  
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