

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: 10 CFR 2.206 Petition Review Board
RE Indian Point

Docket Numbers: 05000247, 05000286

Location: Rockville, MD

Date: Monday, May 9, 2011

Edited by Douglas Pickett

Work Order No.: NRC-876

Pages 1-36

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

1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

3 + + + + +

4 10 CFR 2.206 PETITION REVIEW BOARD (PRB)

5 CONFERENCE CALL

6 RE

7 INDIAN POINT ON FIRE PROTECTION

8 + + + + +

9 MONDAY

10 MAY 9, 2011

11 + + + + +

12 The conference call was held, Timothy G.
13 McGinty, Chairperson of the Petition Review Board,
14 presiding,

15 PETITIONER: NEW YORK STATE ATTORNEY GENERAL

16 PETITION REVIEW BOARD MEMBERS

17 TIMOTHY MCGINTY, Director, Division of Policy
18 and Rulemaking

19 TANYA MENSAH, 2.206 Coordinator

20 DOUG PICKETT, Petition Manager

21 NRC HEADQUARTERS STAFF

22 BRIAN METZGER, NRR Fire Protection Branch

23 DAN FRUMKIN, NRR Team Leader, Fire Protection

24 BRICE BICKETT, NRC Region 1

25 (Continued)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

NRC HEADQUARTERS STAFF (Continued)

KEITH YOUNG, NRC Region 1

JOHN ROGGE, NRC Region 1

NEIL SHEEHAN, NRC Region 1

NANCY SALGADO, NRR

JOHN BOSKA, NRR

BRETT KLUKAN, OGC

GERRY GULLA, OE

SCOTT BURNELL, Office of Public Affairs

LEE BANIC, NRR

STACY ROSENBERG, NRR

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

P R O C E E D I N G S

(1:00 p.m.)

MR. PICKETT: Good afternoon. I'd like to welcome everyone here that's attending this meeting. My name is Doug Pickett and I am a Senior Project Manager at the Nuclear Regulatory Commission.

We are here today to allow the Petitioner, the Attorney General of the State of New York, represented today by Mr. John Sipos, to address the Petition Review Board, also referred to as the PRB regarding the 2.206 petition submitted on March 28th, 2011.

I am the Petition Manager for the petition. The Petition Review Board Chairman is Tim McGinty on my right.

As part of the PRB's review of this petition, John Sipos has requested this opportunity to address the PRB. This meeting is scheduled for two hours, from one o'clock to three o'clock.

This meeting is being recorded by the NRC Operations Center and will be transcribed by a court reporter.

Also I understand that we have a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 representative of the press recording this meeting
2 today. The transcript will become a supplement to the
3 petition, and the transcript will also be made
4 publicly-available.

5 We have public meeting feedback forms that
6 you are welcome to fill out. These forms are
7 forwarded to our internal communications specialist
8 and you may either leave them here following the
9 meeting or mail them back. They are already postage
10 paid.

11 I would like to open the meeting with the
12 introductions. As we go around the room, please be
13 sure to clearly state your name, your position, and
14 the office that you work for within the NRC for the
15 record.

16 I'll start off. I am Doug Pickett, the
17 Petition Manager.

18 MR. MCGINTY: I am Tim McGinty, the
19 Petition Review Board Chair.

20 MS. MENSAH: I am Tanya Mensah. I am the
21 2.206 Coordinator.

22 MR. METZGER: Brian Metzger. I'm a
23 technical reviewer with NRR.

24 MR. FRUMKIN: Dan Frumkin, Fire Protection
25 Team Leader in the Office of NRR.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MS. SALGADO: I'm Nancy Salgado. I'm a
2 Branch Chief in the Division of Operating Reactor
3 Licensing.

4 MR. BOSKA: I'm John Boska, the NRR
5 Project Manager for Indian Point.

6 MR. DOBSON: Adam Dobson, New York
7 Assistant Attorney General.

8 MR. SIPOS: Hi. Good afternoon. This is
9 John Sipos -- it's S-i-p-o-s, Assistant Attorney
10 General for the State of New York.

11 MR. GULLA: Gerry Gulla, NRC Office of
12 Enforcement.

13 MR. OSTROFF: I'm Jim Ostroff. I'm a
14 senior editor with Platts Nuclear Publications.

15 MS. ROSENBERG: Stacy Rosenberg. I am a
16 Branch Chief, of Generic Communications.

17 MS. BANIC: Merrilee Banic of Generic
18 Communications and Power Uprate, Petitions
19 Coordinator.

20 MR. BURNELL: Scott Burnell, NRC Office of
21 Public Affairs.

22 MR. BESSETTE: Paul Bessette, Morgan,
23 Lewis & Bockius.

24 MR. GLEW: Bill Glew, Entergy Legal.

25 MR. WALPOLE: Bob Walpole, Licensee

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Manager at Indian Point.

2 MR. PICKETT: Okay. We have completed
3 introductions at the Entergy Headquarters. At this
4 time are there any NRC participants from Headquarters
5 that are on the phone?

6 MR. KLUKAN: Well, this is Brett Klukan
7 from the NRC Office of General Counsel. I'm the
8 Attorney Advisor to the PRB.

9 MR. PICKETT: That was Brett Klukan.
10 Are there any NRC participants from the
11 Regional Office on the phone?

12 MR. BICKETT: Yes. This is Brice Bickett,
13 Senior Project Engineer, NRC Region 1.

14 MR. PICKETT: Any others?

15 MR. YOUNG: Keith Young, NRC, Inspector,
16 Region 1.

17 MR. SHEEHAN: Neil Sheehan, NRC Public
18 Affairs, Region 1.

19 MR. ROGGE: John Rogge, Branch Chief from
20 Region 1.

21 MR. PICKETT: Okay. And are there any
22 representatives for the licensee on the phone?

23 (No response.)

24 MR. PICKETT: Okay. Mr. Sipos, would you
25 please introduce yourself for the record.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. SIPOS: Sure. Good afternoon. This
2 is John Sipos, S-i-p-o-s, Assistant Attorney General.

3 MR. PICKETT: Thank you.

4 It is not required for members of the
5 public to introduce themselves for this call, however
6 if there are any members of the public on the phone
7 who would like to introduce themselves, please state
8 your name for the record.

9 MR. SNOOK: This is Robert Snook,
10 Assistant Attorney General for the State of
11 Connecticut.

12 MR. WEBSTER: And I'm Richard Webster from
13 Public Justice.

14 MR. ROISMAN: And this is Anthony Roisman.
15 I'm a consultant to the New York State Attorney
16 General's Office.

17 MR. PICKETT: Not hearing any more.

18 I'd like to emphasize that we each need to
19 speak clearly and loudly to make sure that the court
20 reporter can accurately transcribe this meeting. If
21 you do have something that you would like to say,
22 please first state your name for the record.

23 For those dialing into the meeting, please
24 mute your phone to minimize any background noise or
25 distractions. If you do not have a mute button, this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 can be done by pressing the keys "star, 6." To
2 unmute, press the "star and 6" keys again.

3 At this time I'll turn it over to the PRB
4 Chairman, Tim McGinty.

5 MR. MCGINTY: Thank you, Doug. Good
6 afternoon. Welcome to this meeting regarding the
7 2.206 Petition submitted by the Attorney General of
8 the State of New York. Representing the Attorney
9 General's Office is Mr. John Sipos.

10 I would like to first share some
11 background on our process. Section 2.206 of Title 10
12 of the Code of Federal Regulations describes the
13 Petition Process, the primary mechanism for the public
14 to request enforcement by the NRC in a public process.

15 This process permits anyone to petition
16 the NRC to take enforcement type action related to NRC
17 licensees or licensed activities.

18 Depending on the results of this
19 evaluation, NRC could modify, suspend or revoke an
20 NRC-issued license or take any other appropriate
21 enforcement action to resolve a problem.

22 The NRC staff guidance for the disposition
23 of the 2.206 Petition Request is in Management
24 Directive 8.11, which is publicly available.

25 The purpose of today's meeting is to give

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the Petitioner an opportunity to provide any
2 additional explanation or support for the petition
3 before the Petition Review Board's initial
4 consideration and recommendation.

5 This meeting is not a hearing, nor is it
6 an opportunity for the Petitioner to question or
7 examine the PRB on the merits or the issues presented
8 in the Petition Request. No decisions regarding the
9 merits of this Petition will be made at this meeting.

10 Following this meeting the Petition Review
11 Board will conduct its internal deliberations. The
12 outcome of this internal meeting will be discussed
13 with the Petitioner.

14 The Petition Review Board typically
15 consists of a chairman, usually a manager at the
16 senior executive service level at the NRC. It has a
17 Petition Manager and a PRB Coordinator.

18 Other members of the Board are determined
19 by the NRC staff based on the content of the
20 information in the Petition Request.

21 At this time I'd like to introduce the
22 Board. We previously went around the room. I'm Tim
23 McGinty, the Petition Review Board Chair. Doug
24 Pickett is the Petition Manager for the Petition under
25 Discussion today. Tanya Mensah is the Office's PRB

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Coordinator.

2 Our technical staff includes Brian Metzger
3 from the Office of NRR's Fire Protection Branch.
4 Gerry Gulla from the Office of Enforcement. Brice
5 Bickett and Keith Young you heard from NRC Region 1 on
6 the phone. They are up in King of Prussia,
7 Pennsylvania.

8 Dan Frumkin, Team Leader for the Office of
9 Nuclear Reactor Regulations, Division of Risk
10 Assessment. And on the phone also we obtain our legal
11 advice from the Office of General Counsel, represented
12 by Brett Klukan.

13 As described in our process, the NRC staff
14 may ask clarifying questions in order to better
15 understand the Petitioner's presentation and to reach
16 a reasoned decision as to whether to accept or reject
17 the Petitioner's Request for Review under the 2.206
18 process.

19 I would like to summarize the scope of the
20 Petition under consideration and the NRC's activities
21 today.

22 On March 28th, 2011, Mr. Eric
23 Schneiderman, Attorney General for the State of New
24 York who will be referred to as the Petitioner,
25 submitted a Petition under Title 10 of the Code of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Federal Regulations, Part 2.206, regarding fire
2 protection requirements at the Indian Point Nuclear
3 Generating Unit Number 1, 2 and 3.

4 The Petitioner describes the proximity of
5 Indian Point to population centers within a 50-mile
6 radius of the site. The Petitioner states that the
7 population density within the 10-mile and 50-mile
8 radius of the site is greater at Indian Point than any
9 site in the country.

10 Furthermore, the Petitioner states that
11 the site was selected in March 1955 which was before
12 the Atomic Energy Commission, AEC, or NRC established
13 siting criteria.

14 The Petitioner described how approximately
15 one-half of all core damage risk at operating reactors
16 result from accident sequences that initiate with fire
17 events.

18 The Petitioner described the Browns Ferry
19 fire of 1975 and the subsequent development of fire
20 safety regulations found in 10 CFR 50.48 and Appendix
21 R.

22 The Petitioner describes these
23 prescriptive requirements found in Appendix R. The
24 Petitioner states that Indian Point is required to
25 comply with the fire safety requirements of Appendix R

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 because the reactors were licensed to operate prior to
2 January 1st, 1979.

3 The Petitioner describes past
4 investigations by the NRC's Office of the Inspector
5 General and the Government Accountability Office
6 surrounding fire barriers, most specifically, Thermo-
7 Lag and Hemyc.

8 The Petitioner implies that the NRC staff
9 has neither been aggressive in resolving fire barrier
10 issues, nor has it taken meaningful enforcement action
11 with regards to Indian Point.

12 The Petitioner focuses on the exemptions
13 to Appendix R that were submitted by the licensee in
14 March of 2009. The exemptions include operator manual
15 actions and a large number of fire areas at Indian
16 Point.

17 The Petition states that the regulations
18 do not authorize operator manual actions as a means of
19 protecting a redundant system from fire. The
20 Petitioner references the current situation in Japan
21 and questions whether plant operators would be
22 physically able to perform these duties.

23 In conclusion, the Petitioner states that
24 the exemptions should be reserved for extraordinary
25 circumstances. The NRC should not approve the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 exemptions and that Entergy has not made a serious
2 effort to comply with Federal regulations.

3 With regard to the enforcement action, the
4 Petitioner requested the following immediate actions.
5 Number one, identify the violations of 10 CFR 50.48,
6 Appendix R, Paragraph III, F and G that exist as of
7 the date of this Petition, that is, March 28th, 2011
8 at Indian Point Units 1, 2 and 3.

9 Number two, compel Entergy Nuclear
10 Operations and its affiliates to comply on or before
11 September 20th, 2011 with the requirements contained
12 in 10 CFR 50.48, Appendix R, Paragraph III, F and G,
13 for all the fire zones in Indian Point Unit 2 and
14 Indian Point Unit 3, and any Indian Point Unit 1 fire
15 zone or system, structure or component relied on by
16 Indian Point Unit 2 or Indian Point Unit 3.

17 And, thirdly, convene an evidentiary
18 hearing before the Commission to adjudicate the
19 violations by Entergy Nuclear Operations and its
20 affiliates of 10 CFR 50.48, Appendix R, Paragraph III,
21 F and G at Indian Point Unit 1, Unit 2 and Indian
22 Point Unit 3.

23 Allow me to discuss the NRC activities to
24 date. On April 1st, the Petition Manager contacted
25 you to discuss the 10 CFR 2.206 process and offer you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 an opportunity to address the PRB by phone or in
2 person.

3 You requested to address the PRB in person
4 prior to the PRB's internal meeting to make the
5 initial recommendation to accept or reject the
6 Petition for Review.

7 On April 5th the PRB met internally to
8 discuss the request for immediate action. On April
9 12th you were informed that the PRB denied your
10 request for immediate action because the licensee
11 submitted a request for exemptions in accordance with
12 NRC guidance and enforcement policy as described in
13 Regulatory Issue Summary 2006-10.

14 Enforcement discretion is applicable
15 during the staff review of the exemptions, which are
16 currently being evaluated against the criteria of
17 NUREG 1852 entitled "Demonstrating the Feasibility and
18 Reliability of Operator Manual Action in Response to
19 Fire."

20 Also, the licensee evaluated the credited
21 Operator Manual Actions against the acceptance
22 criteria of NRC Inspection Procedures 71111.05T and
23 confirmed them to be feasible and reliable operator
24 actions during the post fire coping scenario.

25 And lastly, the PRB concludes that: one,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the licensee's actions are within an NRC-defined
2 process; two, enforcement discretion is applicable;
3 and, three, there are no immediate safety concerns.

4 Therefore, there is no basis to take immediate action.

5 As a reminder for the phone participants,
6 please identify yourselves if you make any remarks, as
7 this will help us in the preparation of the meeting
8 transcript that will be made publicly-available.

9 At this point, Mr. Sipos, I will turn it
10 over to you to allow you to provide any information
11 you believe the PRB should consider.

12 MR. SIPOS: Thank you very much, Mr.
13 McGinty. I appreciate your opening remarks and, on
14 behalf of the Petitioner, the Attorney General of the
15 State of New York, Mr. Eric Schneiderman, I appreciate
16 all the arrangements that have taken place to bring
17 about this meeting, and we're appreciative of being
18 able to speak with you today.

19 With me is my colleague, Assistant
20 Attorney General Adam Dobson, D-o-b-s-o-n, who will be
21 assisting me today at today's hearing.

22 Before I get into some of the detailed
23 comments that we have for today, I thought it would be
24 good to discuss some procedural issues, as well.
25 First, that the Attorney General's request to this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Petition Review Board is that this Board accept the
2 Petition for enforcement.

3 As we understand it, that can then result
4 in a hearing, in a proceeding before the
5 Commissioners, themselves, as was done in the case
6 back in 1978 involving some other fire protection
7 matters. And I refer the Board to 7NRC400, April 13,
8 1978 ruling in the matter of Petition for Emergency
9 and Remedial Action which was filed by the Union of
10 Concerned Scientists in the wake of Browns Ferry.

11 Secondly, we would like an opportunity to
12 review the transcript just for typographical errors if
13 one is generated from today. We find that that can
14 often times lead to clarity and resolve some
15 unintended typographical issues, things of that
16 nature.

17 And third, in connection with Management
18 Directive 8.11, Part III B, I guess the Petitioner
19 would note, since we can't ask a question, that
20 there's potentially an issue of whether or not anyone
21 on the Board had, in the past, worked on Indian Point
22 specific fire-related issues.

23 Again, I'm not asking a question because I
24 understand I can't, but I just -- I note that there is
25 a reference in the Management Directive to that, and I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 just wanted you to apply to that.

2 MR. MCGINTY: Thank you.

3 That would turn into a conflict of
4 interest by working on it?

5 MR. SIPOS: Not necessarily a conflict of
6 interest in a financial sense or anything like that,
7 but there may be --

8 MR. MCGINTY: Maybe employed by Indian
9 Point? Maybe they worked on ... -

10 MR. SIPOS: I hadn't thought of being
11 employed by Indian Point, although I guess that would
12 be -- that could be an issue.

13 Mr. Pickett: Where is that?

14 MS. MENSAH: [If you refer to page 8 of
15 Management Directive 8.11, it states] "In assigning
16 technical staff members to the petition, management
17 will consider any potential conflict from assigning
18 any staff person who was previously involved with the
19 issue that gave rise to the petition."

20 MR. SIPOS: I don't know of one. I'm not
21 asking a question. I'm just flagging it as a
22 potential --

23 MR. MCGINTY: Thank you. We appreciate
24 it.

25 MR. SIPOS: I'm sure you've taken that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 into account.

2 The Attorney General's Petition, simply
3 stated, is a straightforward request for enforcement
4 action by the Nuclear Regulatory Commission. They are
5 the Federal regulator that has responsibility for the
6 fire protection regulation.

7 The Attorney General, as set forth in the
8 Petition, sees it as a very straightforward regulation
9 that contains specific proscriptive requirements and,
10 furthermore, based on Entergy's regulatory submissions
11 to NRC, it is apparent that there are violations of
12 the Appendix R, Paragraph III G2 requirements, and
13 that these violations have continued for quite some
14 time. It appears for as long as the plant has been
15 owned and operated by Entergy, and likely before that
16 time.

17 So, it is not the type of Petition for
18 Enforcement Action where there are some vagaries or
19 there's some question. It's a straightforward, simple
20 regulation. I believe the present Chairman of the NRC
21 has characterized the regulations in that manner, and
22 Entergy's filings, which we take at face value, show
23 that there are violations.

24 I'm sure folks are familiar with the
25 regulations. I'm not going to belabor them. They are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 -- they were developed in the wake of Browns Ferry.
2 They were developed after General Design Criteria 3
3 had been around, and there was a decision to
4 promulgate and have specific proscriptive standards
5 for fire protection in the wake of Browns Ferry and in
6 the wake of investigations and internal NRC review of
7 fire risk and fire safety.

8 That provision uses the mandatory word
9 "shall," s-h-a-l-l, which, you know, requires
10 compliance. And also that regulation does not use the
11 term "operator manual action." That term is not used
12 in the regulation and does not -- it's not on the face
13 of the regulation, it's not contained in the
14 regulation.

15 NRC's position, as the Attorney General's
16 Office has been able to determine is that not only is
17 -- or not only are OMA's not mentioned, not only is
18 the term OMA not mentioned or the term "operator
19 manual action" not mentioned in the regulation, but
20 that Entergy has recognized that NRC's position is
21 that OMA's are not explicitly or implicitly permitted
22 by the regulation.

23 And I'm referring back to the March 2009
24 exemption request filed by Entergy Nuclear Operation.
25 Moreover, that reliance on operator manual actions

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 without specific review and approval is a violation of
2 Appendix R. Again, that is, as we understand it, the
3 NRC's position, and we understand that Entergy
4 understands that to be NRC's position.

5 And there have been discussions recently
6 that the Attorney General's Office is aware of, of the
7 standard called NFPA 805, National Fire Protection
8 Association, Standard Number 805, but that issue or
9 that -- that mechanism is not at issue at Indian Point
10 because as the Attorney General's Office understands
11 things, that is, that Indian Point has elected not to
12 go down the NFPA 805 route and, therefore, again, the
13 Appendix R, Paragraph III, G2 standards apply.

14 Entergy's 2009 filing with the Commission
15 where it sought Commission approval for what had been
16 going on in an unauthorized manner at the plant
17 identified various zones, various fire areas, various
18 fire zones and various OMA's.

19 By the count -- by our count it identified
20 more than a hundred operator manual actions in that
21 filing and it also identified approximately 270-plus
22 fire zones within Indian Point Unit 2 and Indian Point
23 Unit 3 that rely on operator manual action.

24 Those numbers are objectively high, but
25 that is a high number, and it was -- there was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 supplemental information provided, and I'm referring
2 to a document that came in about a year ago, May 4,
3 2010.

4 This was in response to a request for
5 additional information by the NRC staff in response to
6 RAI-02.2 which asked for "List the requirements of
7 Paragraph III in G2 that are not met for the OMA's in
8 the -- at issue."

9 Entergy responded on May 4, 2010, and
10 identified, by our count, 50 fire zones, 50 separate
11 fire zones where there was a lack of compliance with
12 Paragraph III G2.

13 In other words, in that filing, Entergy
14 identified 50 zones where there were violations of the
15 fire safety regulations that had been in place since
16 1980. That is NL-10-042 for Indian Point Unit 2 and
17 NL-10-043 for Indian Point Unit 3.

18 The ML on the latter is ML101320263, and
19 that -- the zones are identified in a series of tables
20 in the back of that document and it starts off, for
21 Indian Point Unit 2, a table, RAI-GEN -- G-E-N-1, and
22 it goes through to GEN 27.

23 That would be for Indian Point Unit 2 and
24 I believe for Indian Point Unit 3 it's a similar title
25 for the table. I think it goes from GEN-21 to GEN 23,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 totalling together, 50 separate zones.

2 The Attorney General's Office believes
3 that it's important to emphasize that these regs were
4 promulgated 30 years ago and that the facility should
5 have been in compliance.

6 These 50 zones identified in the
7 correspondence a year ago, the more than 100 OMA's
8 identified two years ago, that this should have been
9 -- this facility, this operator should have been in
10 compliance and, again, that the term "operator manual
11 action," is not contained in the Federal Regulation.

12 It probably doesn't need to be
13 overemphasized or said too often that these are
14 important regulations. I'm sure NRC takes the view
15 that all its regulations are important, as any
16 regulatory body would.

17 These regulations go to ensuring the
18 safety, the workability of cables that operate safety
19 systems at power reactors and ensuring that these
20 cables can operate during the events or in the event
21 of a fire. They are -- they go to the heart of what's
22 going on within the power reactor.

23 Mr. McGinty summarized the Petition and
24 some of the other -- some of the other components in
25 Petition and I would just like to reiterate or expand

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 on a couple of them.

2 Indian Point is unique. It has the
3 highest surrounding population by far and away of any
4 power reactor in the country, whether you're looking
5 at it at ten miles or 50 miles, no plant, no reactor
6 site in the country comes close.

7 There are more than 17 million people that
8 live with 50 miles. That number is expected to grow
9 by 2035 and the facility is within five miles of one
10 reservoir of the New York City watershed, that is the
11 New Croton Reservoir, and 15 miles within another
12 important reservoir, a little further to the south in
13 Westchester County.

14 Again, that watershed provides the
15 drinking water for the New York -- for New York City
16 and its citizens.

17 New York, it bears noting, is the
18 financial center of the country, provides a
19 transportation hub and it is a very critical area
20 within the States -- within the United States.

21 Seismicity has got some attention
22 recently, and in the -- in the latter part of March
23 there was a report about ongoing seismic analysis,
24 perhaps in consultation with the United States
25 Geologic Service, and there was a report in the New

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 York newspapers and also on television discussing the
2 core damage frequency for Indian Point Unit 3 as well
3 as the CDF for Unit 2.

4 Unit 3 apparently has a very high core
5 damage frequency according to the media reports and
6 also Unit 1, which has been around since the late
7 Fifties, came on line in the early Sixties, it is not
8 clear that there is a seismic spectra for that
9 facility at all and it is seismically more fragile --
10 I don't think there's any dispute as to that -- than
11 the two facilities which are next to it.

12 For sure, that is not generating power
13 now. Unit 1 is not generating power, but it is still
14 there and there are shared or interconnected systems
15 identified by Con Edison several years back, so there
16 is a seismic concern.

17 The Petition did cite a Sandia report that
18 noted that seismic events can be a contributor to fire
19 or fire initiators, so the Petition would ask that
20 that be taken into account.

21 There's also the issue of security. I'll
22 keep my remarks on this brief and limited to publicly-
23 available material, but NRC, itself, has acknowledged
24 that there is a, quote, "high-level threat
25 environment," close quote, in the wake of 9/11.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 That's in 67 Federal Register 9792, March
2 4, 2002. There -- the Petition identifies concerns
3 that, if taken -- that have to come to fore in the
4 wake of 9/11, including what happened on that date.
5 The 9/11 report goes into additional detail about the
6 plans of the terrorists at that time and we would note
7 that as well for the Board.

8 The State of the Union, which came a year
9 after that also confirmed publicly the threat
10 situation that exists, there was a reference in that
11 to power plant diagrams.

12 And just last week the Daily News reported
13 -- and we have a copy of it here, I'll be happy to
14 hand it out at the end -- that there appeared to be
15 surveillance at the Sellafield facility in England in
16 which people were arrested for that.

17 It is -- the Attorney General's Office
18 position is that at a time of increased threat, given
19 the design basis threat, given interim compensatory
20 measures and given concerns about aircraft impact
21 analysis and B.5.b issues, that it is certainly
22 appropriate for the fire safety regulations that were
23 promulgated in 1980 to be enforced and for Entergy to
24 -- to comply with those regulations.

25 We've talked about remedies that the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Petition seeks. Again, we would like this Board to
2 accept the Petition for Review. We think it's a
3 straightforward Petition in terms of an evidentiary
4 matter, and that there really is -- there's really no
5 excuse for the lack of compliance with these
6 regulations.

7 As we noted earlier, what Entergy now
8 seeks to have authorized at this facility is not
9 specifically mentioned. Entergy said it's not
10 prohibited, but it's very clear that it's not
11 authorized operator manual action.

12 It appears that this is a case where
13 Entergy simply disagrees with the application of
14 Appendix R, that it's not to its liking, and that it
15 does not wish to comply with the plain meaning of that
16 regulation.

17 The Petition and the Attorney General's
18 Office believes it's appropriate for NRC to compel
19 compliance of those regulations at this facility, that
20 the regulations are on the books.

21 They've been on the books for 30 years,
22 and it's -- there appears to be widespread
23 noncompliance, widespread violations at the site and
24 it's now time to compel compliance.

25 One -- one other -- one other fact before

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 I conclude. The Price-Anderson Act provides for
2 taxpayer financed response to a nuclear incident.
3 That's been around since 1957. Congress determined
4 that that was necessary.

5 But, in exchange for that arrangement it
6 is essential that the Indian Point facility comply
7 with the fire safety regulations. An accident at
8 Indian Point would likely be quite expensive,
9 certainly relative to other facilities in the country
10 given the dense population and the highly-developed
11 and built-out infrastructure within the 50-mile area.

12 We understand the existence, and we
13 understand the program behind Price-Anderson, but
14 Entergy should comply with the fire safety regulations
15 which have been around since 1980.

16 I think that concludes my comments. I'd
17 like to thank you all for your time and for arranging
18 today's meeting. And again, we would request that
19 despite Entergy's request for an exemption, that the
20 Petition Review Board accept the Attorney General's
21 Petition for enforcement action at this area.

22 Thank you very much.

23 MR. PICKETT: Thank you.

24 At this time, based on what you've heard,
25 does the staff here at Headquarters have any questions

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 for Mr. Sipos regarding --

2 Any of the staff on the phone from the
3 Regions, do you have any questions?

4 MR. KLUKAN: This is Brett Klukan, the
5 attorney advisor to the PRB. I have one question, a
6 quick question for the Petitioner.

7 The Petition characterized the violations,
8 but certainly the basis for the Petition as being
9 apparent. Is that the case -- and I just want to be
10 able to understand this so that I can accurately
11 advise the PRB on moving forward on how the
12 disposition or position.

13 If the violations are apparent, what would
14 be the point of the requested evidentiary hearing?

15 MR. SIPOS: There could be two purposes.
16 One would be: Are there any further violations? We
17 have the tables that were referred to before, the RAI-
18 GEN, G-E-N tables as well as the 2009 submission.

19 As to those -- as to the zones and OMA's
20 identified in there, there need not be an evidentiary
21 hearing. There -- it is possible that there are
22 additional zones, given the breadth or the shear
23 volume of violations, but I mean, there's also, you
24 know, the potential of civil penalties that could come
25 up at a hearing. You know, the Attorney General's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Office is interested in ensuring compliance and
2 ensuring that this facility complies with these
3 regulations.

4 We recognize that, you know, the licensee
5 might request a hearing although, you know. We don't
6 know how it could contest the violations that are
7 already identified in this, in the filing.

8 MR. KLUKAN: Thank you.

9 That's all for me.

10 MR. MCGINTY: Thank you, Brett.

11 And once again, I'll ask, any questions
12 from any of the staff in the Region -- in the Regions?

13 (No response.)

14 MR. MCGINTY: Also there's -- we have some
15 representatives of the licensee here. Do you have any
16 -- does the licensee have any questions or comments?

17 MR. BESSETTE: We have no comments or
18 questions, thank you.

19 MR. MCGINTY: As I previously stated, the
20 licensee is not part of the PRB's decisionmaking
21 process. Before I conclude the meeting, members of
22 the public may provide comments regarding the Petition
23 and ask questions about the 2.206 Petition process.

24 However, as stated at the opening, the
25 purpose of this meeting does not include the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 opportunity for the Petitioner or the public to
2 question or examine the PRB regarding the merits of
3 the Petition Request.

4 With that stated, are there any questions
5 from members of the public?

6 MR. SNOOK: This is Robert Snook from the
7 State of Connecticut, S-n-o-o-k. We just want to go
8 on record supporting the position of the Attorney
9 General of New York in this, in urging the PRB to
10 accept this Petition.

11 MR. MCGINTY: Mr. Snook, that is so noted.

12 MR. SNOOK: Thank you.

13 MR. WEBSTER: And this is Richard Webster
14 from Public Justice. I'd like to ask how long has
15 this lack of compliance existed and has the NRC staff
16 taken any moves to correct the lack of compliance.

17 MR. KLUKAN: Mr. Webster, as was just
18 pointed by the Petition Chairman, and this, in fact
19 can echo through the substance of the Petition.

20 If you have any questions regarding the
21 2.206 process or the contents of Management Directive
22 8.11 which guides the staff execution of the process,
23 we'd be happy to answer those here.

24 But again, the purpose of this public
25 meeting today is not for the staff or for members of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the public or the Petitioner to ask any questions,
2 factual or otherwise regarding the substance of the
3 Petition.

4 But -- so thank you.

5 MR. WEBSTER: Well, could I ask a question
6 about the enforcement process?

7 MR. KLUKAN: Yes. You are more than
8 welcome to ask a question about the enforcement
9 process as it relates to the 2.206 process.

10 MR. WEBSTER: Well, can I ask does the
11 NRC have any guidelines for correcting noncompliance
12 at nuclear power plants?

13 MR. KLUKAN: That is a very general, broad
14 question, so it's difficult to come to through, and
15 the answer is yes. The licensees are required to have
16 corrective action programs and as part of the NRC
17 enforcement process, the staff does take into
18 consideration what corrective actions the licensee has
19 taken in response to identified violations.

20 I mean, that's a very broad answer --

21 MR. WEBSTER: Right.

22 MR. KLUKAN: -- but, it's difficult to
23 summarize it otherwise.

24 MR. WEBSTER: Well, I understand that but
25 I think the question -- my question is more about

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 timing. Is there any limit, time limit for how long
2 the corrective action could occur, or is the
3 correction --

4 MR. GULLA: This is Gerry Gulla with
5 Enforcement. There are documents publicly-available
6 on our website. You might want to look into the
7 Enforcement Manual and the Enforcement Policy and if
8 you read those documents you should be able to get
9 those questions answered.

10 MR. WEBSTER: Well, could you possibly
11 answer them for me now?

12 MR. MCGINTY: Mr. Webster, pertaining to
13 the question -- this is Tim McGinty, the PRB Chair.

14 As Brett Klukan mentioned earlier,
15 questions that are directly applicable to the 2.206
16 Petition Request are what you have an opportunity to
17 address the PRB on, and so I think he's then pointed
18 to information that will be helpful to your general
19 curiosity, but we really don't need --

20 MR. WEBSTER: Right.

21 MR. MCGINTY: But we really don't need, at
22 this point, to take the entire time of all the staff
23 and the Board to address that question.

24 MR. WEBSTER: Okay. Well, can I ask
25 another question, then, which is just -- does -- if

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the PRB finds lack of compliance does it have -- does
2 it then analyze the time for which that lack of
3 compliance has existed?

4 MR. MCGINTY: So that would also -- so
5 that would be a question -- if I could rephrase your
6 question. And again, this is actually what I consider
7 to be more of a question about our enforcement process
8 as opposed to this Petition Request.

9 But, within the enforcement process, time
10 is a factor, yes.

11 MR. KLUKAN: And I would point out the
12 purpose of the PRB, Mr. Webster, is whether to accept
13 or reject the Petition. It's not -- the purpose of
14 the PRB at this stage is not to determine what the
15 outcome would be or even how it would be disposition,
16 were it to be accepted.

17 The really -- under the 2.206 process the
18 purpose of this PRB and this Petition Review Board is
19 to determine whether to accept or reject into the
20 process, the 2.206 process the Petition as stated by
21 the Petition of the State of New York.

22 So, it's that -- that goes just further on
23 down the line, which is not necessarily the purpose of
24 the PRB at this stage in this area.

25 MR. PICKETT: Okay. Thanks, Brett.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Are there any other questions?

2 (No response.)

3 MR. PICKETT: Okay. Thank you, Mr.
4 Webster. Any other questions or any other individuals
5 that are on the line listening in?

6 (No response.)

7 MR. PICKETT: Okay. Before we -- I don't
8 believe that the court report -- I did get a report
9 that the court reporter was having trouble dialing in.

10 Does the court reporter happen to be on
11 the line?

12 THE COURT REPORTER: Yes, I am on the line
13 now.

14 MR. PICKETT: As we discussed prior to
15 your joining us, that the NRC's Operations Center has
16 the capability -- and we confirmed -- that the
17 Operations Center was recording these -- this
18 particular discussion.

19 Did you -- however, not knowing exactly
20 when you joined, do you have any additional
21 information for the meeting transcript that you need
22 repeated or anybody's name to be identified? Is there
23 any way we can help you?

24 THE COURT REPORTER: I think I'll be able
25 to get most of it from -- is Mr. Boska on the line?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 I've worked with him before.

2 MR. PICKETT: Yes, Mr. Boska is here with
3 us in the room.

4 THE COURT REPORTER: Okay. I can get the
5 NRC participants from him and I'm confident of that.
6 But if the representatives from the New York Attorney
7 General's Office can identify themselves, I would
8 appreciate it.

9 MR. SIPOS: We will do that one more time.
10 Would you like us to do that now? Okay. We will do
11 that now.

12 Adam, why don't you speak first.

13 MR. DOBSON: Adam Dobson, Assistant
14 Attorney General, State of New York. And that's D-o-
15 b-s-o-n.

16 MR. SIPOS: And this is John Sipos, S-i-p-
17 o-s, Assistant Attorney General.

18 THE COURT REPORTER: And who was the
19 gentleman who was making the presentation when I came
20 in, which was about 1:25?

21 MR. SIPOS: That was probably me. It may
22 have been Mr. McGinty.

23 THE COURT REPORTER: No. It was
24 definitely the New York Attorney General Office's --

25 MR. SIPOS: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 THE COURT REPORTER: -- presentation on
2 the Indian Point factors.

3 MR. SIPOS: That would be me, John Sipos.

4 THE COURT REPORTER: Thank you, Mr. Sipos.
5 I appreciate that.

6 MR. MCGINTY: Okay. This is Tim McGinty
7 again, the PRB Chair. So, without any further adieu ,
8 this meeting will be concluded and we'll be
9 terminating the phone connection.

10 (Whereupon, the conference call was
11 concluded at 1:55 p.m.)
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com