

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: South Texas Project Units 3 and 4
Pre-hearing Conference

DOCKETED

August 24, 2011 (9:30 a.m.)

Docket Number: 52-012-COL and 52-013-COI

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

ASLBP Number: 09-885-08-COL-BD01

Location: Austin, Texas

Date: Wednesday, August 17, 2011

Work Order No.: NRC-1053

Pages 1395-1422

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

Template = SECY-032

DS 03

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

+ + + + +

ATOMIC SAFETY AND LICENSING BOARD PANEL

PREHEARING CONFERENCE

IN THE MATTER OF	Docket Nos.
NUCLEAR INNOVATION NORTH	52-012-COL
AMERICA, LLC (NINA)	52-013-COL
(South Texas Project	ASLBP No.
Units 3 and 4)	09-885-08-COL-BD01

Wednesday, August 17, 2011

Room 2210

Building F

Texas Commission on Environmental Quality

12100 Park 35 Circle

Austin, Texas

2:30 p.m.

BEFORE:

MICHAEL M. GIBSON, Chairman

GARY S. ARNOLD, Administrative Judge

RANDALL J. CHARBENEAU, Administrative Judge

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 APPEARANCES:

2 On behalf of the NRC Staff:

3 ANITA GHOSH, ESQ.

4 ANDREW L. SILVIA, ESQ.

5 MICHAEL SPENCER, ESQ.

6 of: Office of the General Counsel

7 Mail Stop 0-15D21

8 Washington, DC 20555-0001

9 301-415-8554

10
11 On behalf of the Applicant, Nuclear Innovation
12 North America, LLC:

13 STEPHEN J. BURDICK, ESQ.

14 STEVEN P. FRANTZ, ESQ.

15 JOHN E. MATTHEWS, ESQ.

16 CHARLES B. MOLDENHAUER, ESQ.

17 of: Morgan, Lewis & Bockius, LLP

18 1111 Pennsylvania Ave., NW

19 Washington, D.C. 20004

20 202-739-5460

21
22
23
24
25
NEAL R. GROSSCOURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 On behalf of Intervenor, Sustainable Energy and
2 Economic Development Coalition:

3 ROBERT V. EYE, ESQ.

4 BRETT A. JARMER, ESQ.

5 Kauffman & Eye

6 The Dibble Building

7 123 SE Sixth Avenue, Suite 200

8 Topeka, Kansas 66603

9 785-234-4040

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

P R O C E E D I N G S

JUDGE GIBSON: Okay. We're back on the record.

Just a couple of things that I just wanted to make sure that we're clear on. First of all, at some point in time -- apparently the Commissioners are still using the Agenda Room right now. What I had hoped to do was that all of us could march over there after we're finished here and see the hearing room, and then perhaps sort of get an agreement about how we want to configure the room for a trial.

But it looks like the Commissioners are still meeting on -- I don't know -- 110 agenda items or something. So my guess is they may not be out of there before we're done here, so you all may just have to take whatever we set up, but anyway, hopefully you'll be happy with it. But if that changes before we're done here, I'll let you know.

The second thing is I just wanted to make sure all the witnesses under than Mr. Mosenthal are going to be available at the start of trial tomorrow. Is that correct?

MR. SPENCER: The Applicant's witnesses will be here. Yes.

MR. MATTHEWS: Yes, Your Honor.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Likewise --

2 JUDGE GIBSON: Okay. And all of the
3 witnesses are going to be experts. There are no fact
4 witnesses. Is that correct?

5 MR. SPENCER: That's correct for the
6 Applicant.

7 MR. MATTHEWS: Yes, Your Honor. Correct.

8 MR. FRANTZ: Yes, Your Honor.

9 JUDGE GIBSON: Okay. What I'm envisioning
10 is that as we start tomorrow, you all can provide us
11 with any corrections or deletions in the evidence that
12 you've submitted to this point before we start. I
13 would -- unless you all have any strenuous objection,
14 I thought we ought to just do a mass admission of
15 evidence at the start of trial.

16 What I'm envisioning there is that we'll
17 start with the Applicant, then go to the Staff, and
18 then go to Intervenors. You can make an offer of the
19 exhibits that you plan to admit -- plan to offer, and
20 objections can be noted at that time to individual
21 exhibits on an exhibit-by-exhibit basis.

22 And then once we've resolved those
23 objections, we'll either exclude it, and you'll have
24 an opportunity to make an offer of proof, or we'll
25 admit it, and your objections will have been duly

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 noted. Is that acceptable to you all?

2 MR. FRANTZ: Yes. As a matter of fact,
3 the parties had conferred before now, and we'd all
4 come up with the same proposal, so --

5 JUDGE GIBSON: Great, great. Well, you all
6 must have been sending me telepathic messages. I just
7 didn't know it.

8 MR. SPENCER: Your Honor --

9 JUDGE GIBSON: Yes.

10 MR. SPENCER: -- it sounds as if the Board
11 wants to have the parties state their objections on an
12 exhibit-by-exhibit basis, but we -- the Applicant and
13 Staff had made objections in a motion in limine.

14 JUDGE GIBSON: Right.

15 MR. SPENCER: And the Board has ruled on
16 that, and is it -- do we need to restate --

17 JUDGE GIBSON: If you want, you can do
18 nothing more than state, We want to reurge the grounds
19 set forth in our motion in limine, and that will be
20 sufficient. You're not going to need to go through
21 and read your motion in limine again.

22 MR. SPENCER: And we don't need to say
23 that for every exhibit.

24 JUDGE GIBSON: No, no.

25 MR. SPENCER: I would say that at the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 beginning and then say, No further objection.

2 JUDGE GIBSON: No. That's fine. But if
3 there's any additional things that you need to raise,
4 you just need to do it at that time, so we'll have a
5 record of it. Okay?

6 MR. SPENCER: Okay. Thank you.

7 JUDGE GIBSON: Fair enough. ?

8 MR. SPENCER: Yes.

9 JUDGE GIBSON: Okay. Opening statements:
10 I think it's customary to have, you know, a ten-, 15-
11 minute opening. If you all want to do less than that,
12 you can. If you want to do more than that, you really
13 feel strongly about it, you can let us know.

14 MR. FRANTZ: Judge Gibson, again I think
15 the parties have conferred and --

16 JUDGE GIBSON: Okay.

17 MR. FRANTZ: -- none of us believes that
18 an opening statement has much value from our
19 perspective.

20 JUDGE GIBSON: Okay.

21 MR. FRANTZ: If the Board wants one from
22 your perspective, that's fine.

23 JUDGE GIBSON: I think we pretty much know
24 what your positions are, but -- so you all are okay
25 with no openings.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. FRANTZ: That's correct.

2 JUDGE GIBSON: Is that a fair statement?

3 MR. SPENCER: Yes, Your Honor.

4 JUDGE GIBSON: Fantastic. Okay. Not that
5 we don't love to hear from you, but -- okay.

6 Now, a couple of other items, and this is
7 your homework, so you may think you're getting out at
8 2:30 to go lie out in front of the pool, but, you
9 know, you may have to end up doing a little more work.
10 On Friday in your closing arguments -- and you will do
11 closing arguments -- I would like you to address the
12 question of what is the permissible scope of the
13 Board's authority with respect to these two
14 contentions.

15 During Thursday and Friday, we're going to
16 have witnesses from the Staff, witnesses from the
17 Applicant, witnesses for the Intervenors, who are
18 going to testify about their different conclusions
19 about the replacement power costs and the impact of
20 building codes. And what we would like you to address
21 is what our responsibility is.

22 Are we to decide whose numbers are most
23 accurate, or are we merely to decide whether the
24 Applicant's numbers in its SAMDA calculations or the
25 Staff's calculations about building codes in its

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 environmental impact statements meet minimally
2 defensible criteria?

3 I think, stated another way, we're looking
4 at preponderance of the evidence in disproving a
5 contention and how reliable the numbers of the
6 Applicant and the Staff need to be in order to
7 disprove the contention by a preponderance of the
8 evidence. But we would appreciate your views about
9 that in your closing argument, and you all may want to
10 give some thought to that today, because you may be
11 busy tomorrow. I hope you are busy tomorrow.

12 The other thing that the Board would like
13 you to do is to be sure and bring a hard copy of your
14 proposed cross-examination questions with you. The
15 Board has considered your proposed cross-examination
16 questions, in addition to some of our own, and there
17 may be places in which we did not adopt your questions
18 verbatim. There may be other places in which we
19 thought we wrote them better and disregarded them.

20 But I want -- what's important to us is
21 that we address the concerns that you have in cross-
22 examination, because we want this record to be
23 complete. And so to the extent that witness -- we
24 have finished our initial examination of a witness.
25 To the extent that there are questions in your

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 proposed cross-examination that were not asked that
2 you would like us to ask, I want you to highlight them
3 and to provide those to us, so that we can then, after
4 a break, can call the witness back up and ask those
5 questions.

6 The second thing is to the extent that you
7 will have -- there are other things that come up in
8 that witness's testimony that were not covered in your
9 proposed cross-exam but that you would like us to ask,
10 you need to be sure and find some way of memorializing
11 those questions and providing them to us as well.

12 Ultimately those questions are going to be
13 filed and, in effect, supplant the proposed cross-exam
14 questions you've already done, but these subchapter L
15 proceedings are a little weird, at least to me, coming
16 from, you know, my own practice, and so it's important
17 to us as the ones who are asking the questions that,
18 you know, we cover everything that needs to be
19 covered, so I would ask that you please try to find
20 some way to communicate that with us.

21 The way I'm envisioning this is that we'll
22 call on Thursday -- and, again, I want your
23 acquiescence in this. On Thursday, we had envisioned
24 calling the Intervenors' -- the Applicant's witness
25 first, the Intervenors' witness second, and the Staff

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 witness third, and then on Friday, we envision calling
2 the Intervenor's witness first, then the Staff
3 witness, then the Intervenor -- I mean, the Applicant,
4 then the Staff, then the Intervenor on Friday.

5 JUDGE ARNOLD: And we're doing CL-2
6 tomorrow and the DEIS.

7 JUDGE GIBSON: Thank you. Yes. Mr.
8 Mosenthal for sure will be here by the time we get to
9 him.

10 MR. SPENCER: I just want to clarify. So
11 on Thursday, Applicant, Intervenor, Staff; Friday,
12 Applicant, Staff, Intervenor.

13 JUDGE GIBSON: That's correct.

14 JUDGE ARNOLD: Unless we change our minds.

15 JUDGE GIBSON: So the way we're
16 envisioning this is that we'll call the witness or
17 witnesses for the party. Then we'll take a break.
18 You all will have a -- be given an opportunity to
19 highlight the questions that we didn't ask that you
20 feel need to be asked, and to also write up the
21 additional questions. Then we'll come back on, ask
22 those questions, and then we'll release that witness
23 at least for a while, let him go off the stand, and
24 bring somebody else, subject to being recalled later.

25 So I hope your witnesses are planning on

1 sticking around at least for the entire day, and
2 obviously if they're not testifying about both
3 contentions, they don't need to stick around.

4 Is that procedure acceptable to you all?

5 MR. FRANTZ: Yes, it is.

6 MR. SPENCER: Yes, Your Honor.

7 MR. JARMER: Yes, Your Honor, it is.

8 JUDGE GIBSON: Okay. Now, is there
9 anything else that we need to cover before you all --
10 we recess for the day, and you all can start getting
11 on your homework?

12 MR. FRANTZ: Yes. There are a couple
13 things from our perspective. One, we note that
14 Intervenors' Exhibits 50 and 55 consist of excerpts
15 from the documents in question. We have asked and the
16 Intervenors have agreed to provide the entire document
17 for those exhibits, and I'll refer to Mr. Eye as to
18 how he wants to do that. I just wanted to alert the
19 Board to that.

20 MR. EYE: I think we'll just offer them as
21 exhibits at the beginning when everything else is
22 being offered in sort of the en masse aspect that you
23 suggested earlier.

24 JUDGE GIBSON: Okay. This is sort of an
25 optional completeness.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. SPENCER: Yes.

2 JUDGE GIBSON: Okay. Is there -- is that
3 acceptable to you as well?

4 MR. SPENCER: Yes.

5 JUDGE GIBSON: Okay. So what will happen
6 is -- I figured I was going to get something from Mr.
7 Esser. Just a minute, please.

8 Okay. We're going -- we'll ultimately
9 need to get an electronic copy, and I realize you may
10 not be able to prepare that for us right now, whatever
11 this document is.

12 MR. EYE: Oh, 50 and 55?

13 JUDGE GIBSON: Yes. Okay?

14 MR. EYE: I'll try and get that before
15 tomorrow, transmitted to you by email.

16 JUDGE GIBSON: You don't have to go, you
17 know, make a PDF. You can just take the -- if you
18 have an electronic copy, if you'll just put it on a
19 thumb drive and give it to Mr. Welkie, and he's pretty
20 facile with these things so --

21 MR. EYE: We'll do our best to do that,
22 Your Honor.

23 JUDGE GIBSON: Okay. If you could get us
24 an electronic copy, that would really be nice. We try
25 to, you know, do everything electronically. And the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 same thing with your exhibit list. I guess it will
2 be -- since it will be a new exhibit, will there be --
3 how would we designate that?

4 Let me just ask Mr. Welkie, what would be
5 the most effective way for them to designate these new
6 exhibits that are more complete?

7 MR. WELKIE: [inaudible].

8 JUDGE GIBSON: Okay. Can you do that?

9 MR. EYE: I believe we can.

10 JUDGE GIBSON: Good. Okay. Is there
11 anything else?

12 MR. FRANTZ: Yes. In the rebuttal
13 testimony for the Intervenors, there was a discussion
14 in Mr. Mosenthal's testimony on renovations. That's
15 the first time that any discussion of renovations had
16 appeared. The Staff and the Applicants never had an
17 opportunity to address that.

18 JUDGE GIBSON: Okay.

19 MR. FRANTZ: I believe that both the Staff
20 and the Applicant have prepared additional potential
21 filings on the issue of renovations, and we were
22 wondering whether the Board would be receptive to
23 having those additional filings on the issue of
24 renovations, given the fact that we have the burden of
25 proof and have not had the chance to address this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 issue previously.

2 JUDGE GIBSON: Okay. So let me just make
3 sure I understand. My options here are to require Mr.
4 Eye to strike that part of Mr. Mosenthal's testimony
5 or to allow you to submit some additional rebuttal
6 testimony on renovations.

7 MR. FRANTZ: That's correct. In fact, our
8 motions in limine, both of ours, had asked for that
9 portion to be struck.

10 JUDGE GIBSON: I understand. Now, have
11 you shown your -- I guess you haven't shown this to
12 Mr. Eye, because you didn't know if you could produce
13 it, or have you shown it to him?

14 MR. EYE: We have. He has had a couple
15 days. We submitted ours to him on Monday. I believe
16 the Staff submitted their exhibits to him on Friday.

17 JUDGE GIBSON: Okay.

18 MR. SPENCER: And I talked with Mr. Eye
19 this morning, and he indicated that he did not think
20 there would be a problem with our additional exhibits.

21 JUDGE GIBSON: Okay. Well, let's hear
22 from Mr. Eye himself. How about that?

23 MR. EYE: Thank you. I believe that
24 that's a fair statement.

25 JUDGE GIBSON: Okay.

1 MR. EYE: And I anticipate that their
2 additional information will be limited to the
3 exhibits. I don't -- I haven't seen any testimony
4 that they've prepared, so it would be limited to
5 exhibits that, I presume, would be somehow --

6 JUDGE GIBSON: Well, let me tell you how
7 I would like to proceed then. First of all, I want to
8 make sure that you give it the right nomenclature that
9 Mr. Welkie wants you to put on those exhibits. Okay?

10 Secondly, you will be allowed -- since Mr.
11 Eye is not going to oppose it, you'll be allowed to
12 file that testimony and give Mr. Eye a copy. Mr. Eye,
13 you'll need to look at that. As part of your homework
14 tonight, you'll need to look at that and determine if
15 there's anything to which you have an objection, that
16 you believe is more than simply rebuttal but is new
17 matter. Okay? And you can raise it at that point.

18 Now, I also want to tell you, the Board
19 has not had an opportunity to see this, so I would ask
20 that you please get that post haste to us, so that we
21 can consider that this evening.

22 MR. SPENCER: Your Honor, we've got paper
23 copies. We have -- we've got it on a stick. We can
24 give it to the court clerk. We can file it to the
25 EIE, whichever way the Board prefers.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 JUDGE GIBSON: I would like you to do it
2 the way that Mr. Welkie wants it. You didn't know
3 this guy has all this power over here, did you?
4 Frankly, the reason is he's the guy that has to, you
5 know, keep everything unsnarled, and I want everything
6 to go as smoothly as possible for him. Okay?

7 MS. SILVIA: Your Honor, just one
8 clarification. Our additional exhibits are not in the
9 form of testimony. I believe Applicant's is in the
10 form of testimony. If you would like, we could attach
11 affidavits this evening, but right now, it's in
12 exhibit form.

13 JUDGE GIBSON: This is what I'd like you
14 to do. I'd like you to get copies of the exhibits.
15 Paper copies will be fine for us for right now, just
16 so the Board members can have their own copy of this
17 stuff. What I would like you to do is get that
18 affidavit prepared tonight. You can file it tomorrow.
19 We'll just look at the affidavit tomorrow.

20 I don't need to spend the whole evening
21 looking at your affidavit, but I will need to spend
22 some time looking at it and so will Judge Charbeneau
23 and Judge Arnold, need to spend time looking at these
24 new exhibits. And I hope these are not extensive
25 testimony and exhibits.

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. FRANTZ: No. Not in the case of the
2 Applicant. It's about ten to fifteen pages of
3 surrebuttal testimony, and then three relatively small
4 exhibits.

5 MS. SILVIA: Your Honor, we have six
6 exhibits. Four of those are references. One of them
7 is a calculation work sheet that's two pages with some
8 additional tables attached, but basically two pages of
9 a calculation; four additional exhibits that are
10 references used for that calculation; and then one
11 additional exhibits which is a summary table, which is
12 a one-page table. It's basically just an update of a
13 version of Table 1 that was in the Staff rebuttal
14 testimony.

15 JUDGE GIBSON: Okay.

16 MR. FRANTZ: And by the way, we do have
17 hard copies we can hand out right now.

18 JUDGE GIBSON: We do want hard copies.
19 All I can say is it would have been nice if we'd done
20 this earlier, but it's okay. You'll be able to
21 lodge -- this sounds like a lot of material. It's
22 hard -- I guess it all rebuts what Mr. Mosenthal said,
23 but, you know, you can raise those objections tomorrow
24 if we're going -- you know, either it's new matter or
25 they decided to take a surface-to-air missile on a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 deer hunt. I don't know. But, you know, we'll see.

2 MR. EYE: Your Honor, I want to
3 acknowledge the Staff and the Applicant's efforts to
4 get this information to me. I have had an intervening
5 health issue that arose last weekend, set me back --
6 well, immediately it set me back several days. It
7 will set me back for good, as it turns out, but that
8 accounted for my delay in being able to really get my
9 arms around this and deal with it in an effective way,
10 but I don't want to leave any lingering impression
11 that somehow the Staff and Applicant haven't done
12 their due diligence here in trying to get this
13 information to me so we can deal with it, and I
14 certainly will do so to the best of our abilities.

15 JUDGE GIBSON: I'm sorry to hear that
16 you're having health challenges, Mr. Eye, but we'll go
17 forward.

18 MR. EYE: We'll deal with it. Your Honor,
19 I have one other issue that I wanted to inquire about.

20 JUDGE GIBSON: Yes.

21 MR. EYE: And being a neophyte to subpart
22 L hearing procedures and having it be such a
23 substantial departure from normal trial practice,
24 which, you know, I'm an old dog. I'm hoping I can
25 learn some new tricks here. I just kind of wanted to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 make sure I understood the basic order of battle here,
2 if you will.

3 No opening statements, and then the
4 witnesses will come on. During the course of their
5 cross-examination, I intend to make objections to
6 questions that I think are objectionable for whatever
7 ground it may be. But I don't want to overstep my
8 bounds there, but I do want to make sure that we're
9 able to make a record on objections, even though these
10 are questions that have been vetted by the Board, and
11 I don't necessarily want to imply that somehow I don't
12 respect your ability to determine which questions
13 ought to be asked and which ones shouldn't.

14 But my sense is if we were doing this in
15 a conventional trial setting, there would be cross-
16 examination questions to which I would probably
17 object, that would be posed to our witnesses. Is that
18 what the Board would anticipate the process to be?

19 JUDGE GIBSON: Well, I have to say we
20 will -- obviously if you have an objection, you need
21 to note it. I will say, though, that on cross-
22 examination -- I don't remember unless I was badgering
23 a witness, I don't remember too many times I got
24 sustained.

25 MR. EYE: Well, beyond the scope or so

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 forth once in a while.

2 JUDGE GIBSON: Yes. And if there's
3 something like that, you can certainly raise the red
4 flag and let us know, and you can make a continuing
5 objection, too, so you don't have to stand up all the
6 time if we're getting into an area that you think is
7 clear. But I think a lot of that can be covered --
8 let me say this. A lot of that can be covered in
9 the -- at the time that the testimony is offered,
10 insofar as if you believe that the Staff or the
11 Applicant are offering testimony that is outside the
12 permissible scope, you know, you should make that
13 objection then.

14 If we ask questions that are beyond the
15 pale, certainly you can do that, but, again, I
16 anticipate that we won't be doing much that's going to
17 be the basis for a legitimate objection, but if there
18 is one, by all means.

19 MR. EYE: Nor do I, and I actually think
20 that the process of having to go through and submit
21 proposed cross-examination sort of minimizes the
22 likelihood of objectionable questions being posed on
23 cross.

24 JUDGE GIBSON: Right.

25 MR. EYE: But the other thing that I

1 wanted to inquire about was witness sequestration. I
2 assume since we're dealing with all expert witnesses
3 that the general rule of sequestering fact witnesses,
4 for example, probably wouldn't apply here.

5 JUDGE GIBSON: That's certainly my
6 impression. I've never seen expert witnesses excluded
7 under the rule.

8 MR. EYE: I just wanted to be sure.

9 JUDGE GIBSON: That's why I asked if we
10 had any fact witnesses, and my understanding is we
11 don't have any, so --

12 MR. EYE: I believe those are the only
13 things that I needed to raise with the Board. Thank
14 you.

15 JUDGE GIBSON: Mr. Frantz, were you
16 finished with your list?

17 MR. FRANTZ: Yes, I was. Thank you.

18 JUDGE GIBSON: Mr. Spencer, you must have
19 some.

20 MR. SPENCER: I have a few additional
21 items, Your Honor. One item is we determined with our
22 initial testimony on contention CL-2 that there was a
23 mistaken reference on one page and that on three other
24 pages, we needed to add a clarification to to better
25 describe what we actually did, just so there wouldn't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 be a false impression, and we shared that with the
2 parties on Friday, and they did not object to us
3 submitting the revised testimony.

4 And I noticed that you talked about
5 submitting revisions tomorrow. We have two different
6 forms. One is I have change bars beside the material
7 that was changed. I also have a version that has
8 redline strike-out to show exactly what was changed.
9 Would the Board have any preference in that regard?

10 JUDGE GIBSON: Okay. Well, I definitely
11 would like you to provide us with redline strike-over
12 copies for us to look at tonight, since you're going
13 to be submitting this tomorrow and we haven't seen it
14 yet. I do not see any reason why it needs to be
15 submitted in redline strike-overs if the other parties
16 have seen it. I think just submitting it in corrected
17 form would actually be preferable, because somebody --
18 an appellate court looking at this in -- on review is
19 not going to care about redline strike-over. They're
20 going to care about, you know, what you actually
21 submit, and that's what you're submitting.

22 MR. SPENCER: Your Honor, what I could do
23 is I've got right now in hard copy, I have a full --
24 the full testimony with just change bars beside the
25 portion being changed, and I have four sheets with

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 redline strike-out, and I can give both to the Board.

2 JUDGE GIBSON: That would be fine.

3 MR. SPENCER: Okay. And in terms of
4 filing, you mentioned filing it tomorrow, but I can
5 submit it today to Mr. Welkie.

6 JUDGE GIBSON: Well, just be sure you
7 submit it in the form that he wants, so that it has
8 the R in it, the revised form.

9 MR. SPENCER: We already did that.

10 JUDGE GIBSON: Okay. Well, okay. Hold on
11 one second, please.

12 (Pause.)

13 JUDGE GIBSON: You've got some other
14 things, Mr. Spencer.

15 MR. SPENCER: Yes. I noticed that after
16 the motion in limine, the Board ordered the
17 Intervenor to strike out certain of Mr. Mosenthal's
18 direct rebuttal testimony, and the Intervenor
19 submitted a version that was blacked-out testimony.

20 JUDGE GIBSON: Uh-huh.

21 MR. SPENCER: And then later submitted
22 another version, and there is -- on one page, there is
23 a table that in the first version had the lines -- two
24 lines of the table or four lines blacked out, and then
25 the later version didn't. But in the Board order, the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 lines should have been blacked out.

2 JUDGE GIBSON: Hold on. Mr. Eye, I'll let
3 you tell us --

4 MR. EYE: That was just an oversight.
5 We're not trying to get evidence in that you've
6 excluded, so however you want to handle that. I mean,
7 I can manually strike it if you wish, but the
8 electronic copy's obviously something that would have
9 to be done, you know, electronically, so --

10 JUDGE GIBSON: Right. Well, I tell you
11 what. How about if we -- how about if you confer with
12 Mr. Welkie when we're through here and see if you
13 can -- and Mr. Esser, and see if you can submit that
14 in a form that's going to be satisfactory to them.
15 I'm sure that the Applicant and Staff are going to be
16 fine with anything, as long as it's correct.

17 MR. EYE: Yes. We'll make sure the record
18 copy's --

19 JUDGE GIBSON: You know, the real issue
20 has to do with what is the -- whether the electronic
21 copy is correct or not. That's all. Okay?

22 MR. SPENCER: And, Your Honor, we're sure
23 it was entirely inadvertent. We just want to be sure
24 the record's clear.

25 JUDGE GIBSON: Okay. That's great. I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 think we're all past the point of thinking that, you
2 know, Mr. Eye is going to pull one over on us here.
3 So go ahead.

4 MR. SPENCER: Two other little minor
5 items. One is in the initial scheduling order from
6 2009, there is -- on page 6 regarding the hearing file
7 is the following statement: "The duty to update
8 mandatory disclosures in the hearing file shall
9 terminate at the close of the evidentiary hearing."

10 JUDGE GIBSON: Uh-huh.

11 MR. SPENCER: So if we're going to hold an
12 evidentiary hearing in two days, by the literal words
13 of the order, the duty to update would end at that
14 time. I just wanted to make sure that that was the
15 Board's intent, and that would be okay with the Board.

16 JUDGE GIBSON: Yes. One of the things
17 we'll talk about in -- as we close the hearing is that
18 whole issue, the difference between closing the
19 hearing and closing the record. The hearing will be
20 closed when we conclude on Friday. The record,
21 however, will remain open for some time. You don't
22 need to wait until the record is closed. It's when
23 the hearing concludes on Friday. That's the purpose
24 of that.

25 And the reason is, you know, we're just --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the only reason we're holding the record open is
2 because we've got to get the transcript corrections
3 and all that, and once we've gotten the proposed
4 findings submitted and stuff -- so once we're done
5 with that, then the record's closed, and we can go
6 forward. Okay? But the actual hearing will be closed
7 on Friday.

8 MR. SPENCER: Okay.

9 JUDGE GIBSON: Does that help?

10 MR. SPENCER: And we will address
11 transcript corrections at the close --

12 JUDGE GIBSON: We'll do that at the close.
13 Right. We will. We'll get through all that then. We
14 have enough to do now. It sounds like we've got some
15 homework of our own to do tonight.

16 Anything else you had, Mr. Spencer?

17 MR. SPENCER: No, Your Honor.

18 JUDGE GIBSON: Mr. Frantz?

19 MR. FRANTZ: No.

20 JUDGE GIBSON: Mr. Eye?

21 MR. EYE: No, sir.

22 JUDGE GIBSON: Okay. We will stand in
23 recess until tomorrow morning. We will commence our
24 evidentiary hearing tomorrow at 9:30 in the Agenda
25 Room. I have just been advised that the Commissioners

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 have left, so if you all would like to march over with
2 me in this nice cool Austin weather to Building E, we
3 can go look at the Agenda Room and see how we want to
4 configure it so everybody will be happy. Okay? Is
5 that fair? Okay.


6 (Whereupon, at 3:00 p.m., the prehearing
7 conference in the above entitled matter was
8 concluded.)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

This is to certify that the attached proceedings
before the United States Nuclear Regulatory Commission
in the matter of: South Texas Project

 Units 3 & 4

Location: Austin, Texas


Penny Bynum
Official Reporter
Neal R. Gross & Co., Inc.

www.nealrgross.com