

June 5, 2008

Mr. Mark E. Leyse  
P.O. Box 1314  
New York, NY 10025

Dear Mr. Leyse:

In a letter addressed to Mr. Luis Reyes, the Executive Director for Operations at the U.S. Nuclear Regulatory Commission (NRC), dated March 7, 2008, you submitted a petition request pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 2.206 of the NRC's regulations, asking that enforcement action be taken against Indian Point Nuclear Generating Unit Nos. 2 and 3 (IP2 and IP3). You requested that the NRC "...either 1) revoke the operating license of Indian Point Units 2 and 3 ('IP-2 and -3'), 2) order the licensee of IP-2 and -3 to immediately suspend the operations of IP-2 and -3, or 3) temporarily shutdown IP-2 and -3, per 10 C.F.R. § 2.202." As the basis for your request, you stated that there are deficiencies in the emergency core cooling system (ECCS) evaluation calculations done to qualify the current power levels of IP2 and IP3. Your petition request was referred to the Office of Nuclear Reactor Regulation's (NRR's) Petition Review Board (PRB) and is publicly available in the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML080710121. This petition request is similar to one you previously submitted to the NRC on April 25, 2007 (ADAMS Accession No. ML071150299). You were informed that the NRR PRB did not accept that petition request for review in the 10 CFR 2.206 process by a letter from the NRC dated May 31, 2007 (ADAMS Accession No. ML071500238). In a letter dated July 17, 2007 (ADAMS Accession No. ML072000374), you appealed the PRB's decision to Mr. Reyes, who at the time was the NRC's Executive Director for Operations. In a letter to you dated August 21, 2007 (ADAMS Accession No. ML072140819), Mr. Reyes concurred with the PRB's decision.

On March 27, 2008, the NRR petition manager for your new petition request informed you that the PRB's initial recommendation was to not accept your petition for review. On April 23, 2008, you participated in a teleconference with the PRB. The transcript of that teleconference is enclosed. That discussion was considered by the PRB in its review of your request for immediate action and in deciding whether the petition request meets the criteria for acceptance under 10 CFR 2.206. Your request for immediate suspension of operations at IP2 and IP3 is denied because you identified no safety hazard which would warrant the requested action. The PRB's final decision is that your petition does not meet the criteria for acceptance under 10 CFR 2.206 because you did not provide facts sufficient to constitute a basis for the requested action. You identified no facts to indicate that IP2 or IP3 is in violation of any NRC requirement, or that operation of IP2 or IP3 presents a safety hazard. Specifically, you provided no facts to indicate that there is crud or oxidation on the fuel rods at IP2 or IP3 that would violate NRC requirements.

The PRB notes, as was noted in our response to your previous petition request, that a petition for rulemaking is an appropriate process to address your concerns, which are generic in nature, and further notes that you have submitted such a petition (ADAMS Accession No. ML070871368, docket PRM-50-84). The NRC will communicate with you periodically to advise you of the status of your petition for rulemaking.

M. Leyse

- 2 -

Thank you for your interest in these matters.

Sincerely,

*/ra/*

Ho Nieh, Deputy Director  
Division of Policy and Rulemaking  
Office of Nuclear Reactor Regulation

Docket Nos. 50-247 and 50-286

Enclosure:  
PRB Transcript dated April 23, 2008

cc w/encl: See next page

M. Leyse

- 2 -

Thank you for your interest in these matters.

Sincerely,

*/ra/*

Ho Nieh, Deputy Director  
Division of Policy and Rulemaking  
Office of Nuclear Reactor Regulation

Docket Nos. 50-247 and 50-286

Enclosure:  
PRB Transcript dated April 23, 2008

cc w/encl: See next page

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OFFICE	LPL1-1/PM	LPL1-1/LA	LPL1-1/BC	PRAB/BC
NAME	JBoska	SLittle	MKowal	JZimmerman
DATE	5/29/08	5/29/08	5/29/08	6/2/08
OFFICE	DD/DSS	DD/DPR		
NAME	JWermiel	HNieh		
DATE	6/3/08	6/5/08		

Official Record Copy

Indian Point Nuclear Generating Unit Nos. 2 & 3

cc:

Vice President, Operations  
Entergy Nuclear Operations, Inc.  
Indian Point Energy Center  
450 Broadway, GSB  
P.O. Box 249  
Buchanan, NY 10511-0249

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Jackson, MS 39286-1995

Vice President Oversight  
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Assistant General Counsel  
Entergy Nuclear Operations, Inc.  
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Buchanan, NY 10511-0249

Mr. Paul Tonko  
President and CEO  
New York State Energy, Research, and  
Development Authority  
17 Columbia Circle  
Albany, NY 12203-6399

Mr. John P. Spath  
New York State Energy, Research, and  
Development Authority  
17 Columbia Circle  
Albany, NY 12203-6399

Mr. Paul Eddy  
New York State Department  
of Public Service  
3 Empire State Plaza  
Albany, NY 12223-1350

Regional Administrator, Region I  
U.S. Nuclear Regulatory Commission  
475 Allendale Road  
King of Prussia, PA 19406

Senior Resident Inspector's Office  
Indian Point 2  
U. S. Nuclear Regulatory Commission  
P.O. Box 59  
Buchanan, NY 10511

Senior Resident Inspector's Office  
Indian Point 3  
U. S. Nuclear Regulatory Commission  
P.O. Box 59  
Buchanan, NY 10511

Mr. Charles Donaldson, Esquire  
Assistant Attorney General  
New York Department of Law  
120 Broadway  
New York, NY 10271

Mr. Raymond L. Albanese  
Four County Coordinator  
200 Bradhurst Avenue  
Unit 4 Westchester County  
Hawthorne, NY 10532

Mayor, Village of Buchanan  
236 Tate Avenue  
Buchanan, NY 10511

Indian Point Nuclear Generating Unit Nos. 2 & 3

cc:

Mr. Jim Riccio  
Greenpeace  
702 H Street, NW  
Suite 300  
Washington, DC 20001

Mr. Phillip Musegaas  
Riverkeeper, Inc.  
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Tarrytown, NY 10591

Mr. Mark Jacobs  
IPSEC  
46 Highland Drive  
Garrison, NY 10524

Mr. Sherwood Martinelli  
FUSE USA  
via email

**Official Transcript of Proceedings**  
**NUCLEAR REGULATORY COMMISSION**

Title:                   Petition Review Board  
                              Petition of Mark Leyse

Docket Number:       50-247 and 50-286

Location:                (teleconference)

Date:                    Wednesday, April 23, 2008

Work Order No.:       NRC-2137       Pages 1-36

Edited by John Boska, NRR Petition Manager

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

Enclosure

Indian Point Nuclear Generating Unit Nos. 2 & 3

cc:

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

+ + + + +

OFFICE OF NUCLEAR REACTOR REGULATION

+ + + + +

PETITION REVIEW BOARD

+ + + + +

TELECONFERENCE

-----x

PETITION OF: : Docket Nos  
MARK EDWARD LEYSE : 50-247 and 50-286

-----x

Wednesday, April 23, 2008

OWFN, O-4B6  
11555 Rockville Pike  
Rockville, MD

The above-entitled matter came on for  
conference, pursuant to notice, at 3:00 p.m.

BEFORE:

HO NIEH, Chairman of the Petition Review Board

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WASHINGTON, D.C. 20005-3701



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NRC HEADQUARTERS STAFF PRESENT:

JOHN BOSKA

GIOVANNA LONGO

TANYA MENSAH

MARK KOWAL

RICHARD DUDLEY

PAUL CLIFFORD

FRANK ORR

ADRIAN MUÑIZ

ARLON COSTA

MICHELLE HONCHARIK

NRC REGIONAL OFFICE PARTICIPANTS:

SAM MCCARVER

PETITIONER:

MARK LEYSE

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WASHINGTON, D.C. 20005-3701

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

1  
2 MR. BOSKA: All right, this is John Boska from  
3 NRC headquarters back on the line. I'd like to welcome  
4 everyone and thank you for attending this teleconference.  
5 I'm the Indian Point project manager and I'm also the  
6 petition manager for this 2.206 petition request. The  
7 Petition Review Board chairman today is Ho Nieh. The  
8 Petition Review Board will also be referred to by its  
9 acronym PRB.

10 Mr. Leyse, are you on the line?

11 PETITIONER LEYSE: Yes, I am on the line.

12 MR. BOSKA: All right, so I'll go through  
13 introductions and then we'll open it up for you. So let me  
14 continue.

15 PETITIONER LEYSE: Thank you.

16 MR. BOSKA: As part of the Petition Review  
17 Board's review of his 2.206 petition, Mr. Leyse has  
18 requested this opportunity to address the PRB and provide  
19 additional information. This meeting is scheduled to last  
20 from 3:00 p.m. until 4:00 p.m. The teleconference is being  
21 recorded by the NRC Operations Center and will be  
22 transcribed by a Court Reporter. The transcript will  
23 become a supplement to the petition that was submitted on  
24 March 7<sup>th</sup>, 2008 by Mr. Mark Leyse. It will also be made  
25 publicly available.

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1 I'd like to open this meeting with  
2 introductions. As we go around, please be sure to clearly  
3 state your name, your position and the office that you work  
4 for within the NRC for the record here at headquarters.  
5 I'll start off. I'm John Boska, the Indian Point Project  
6 Manager from the Office of Nuclear Reactor Regulation,  
7 which is also known as NRR.

8 CHAIRMAN NIEH: I'm Ho Nieh. I'm the Petition  
9 Review Board Chairman. I'm the Deputy Director in the  
10 Division of Policy and Rulemaking in NRR.

11 MS. LONGO: I am Giovanni Longo. I'm a Senior  
12 Attorney in the Office of General Counsel and I'm the OGC  
13 advisor to the PRB.

14 MS. MENSAH: I'm Tanya Mensah. I am the 2206  
15 Coordinator and I work in the office of NRR.

16 MR. KOWAL: My name is Mark Kowal. I'm a  
17 Branch Chief in the Office of NRR.

18 MR. DUDLEY: I'm Richard Dudley. I'm the  
19 Project Manager for the petition for rulemaking submitted  
20 by Mr. Leyse, PRN 50-84.

21 MR. CLIFFORD: Paul Clifford, Senior Technical  
22 Advisor, NRR, Division of Safety Systems.

23 MR. ORR: Frank Orr, Technical (audio  
24 problem).

25 MR. MUÑIZ: Adrian Muñiz, NRR Project Manager.

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1 THE REPORTER: Gentlemen, could we go back  
2 just one moment. I missed an introduction. Paul Clifford.

3 MR. CLIFFORD: Paul Clifford, yes.

4 MR. BOSKA: And you want the next person?

5 THE REPORTER: Mr. Clifford, I think I missed  
6 part of your introduction. If you could just go through  
7 that again, and then continue on after that.

8 MR. CLIFFORD: Okay, Senior Technical Advisor,  
9 NRR, Division of Safety Systems.

10 THE REPORTER: Okay, thank you, continuing.

11 MR. ORR: Okay, Frank Orr, Technical Reviewer,  
12 Division of Safety Systems.

13 MR. MUÑIZ: Adrian Muñoz, Project Manager,  
14 NRR.

15 MR. BOSKA: All right, that completes the  
16 introductions at NRC headquarters.

17 MR. COSTA: You're missing one more. This is  
18 Arlon Costa, Acting Branch Chief for Financial Policy and  
19 Rulemaking Branch.

20 MR. BOSKA: All right, thank you Arlon. Anyone  
21 else from NRC headquarters? All right, are there any  
22 participants from the NRC Regional Office on the phone?

23 MR. McCARVER: Yes, this is Sam McCarver,  
24 Project Engineer, Division of Reactor Projects, Branch 2.

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1 MR. BOSKA: All right, and the licensee for  
2 Indian Point is Entergy. Are there any representatives of  
3 Entergy on the phone?

4 (No audible response.)

5 MR. BOSKA: All right, hearing none there, Mr.  
6 Leyse, would you please introduce yourself for the record?

7 PETITIONER LEYSE: Sure, Mark Edward Leyse.  
8 I'm the Petitioner.

9 MR. BOSKA: All right, and Mr. Leyse, are  
10 there any other people on the phone from your side of this  
11 case?

12 PETITIONER LEYSE: I'm not entirely certain.  
13 Some people were going to possibly call in, but if they  
14 haven't identified themselves, I would assume there is no  
15 one else.

16 MR. BOSKA: All right, if they do call in  
17 later, we can identify them at that time they call in.  
18 That's fine.

19 PETITIONER LEYSE: Okay.

20 MS. HONCHARIK: Excuse me, I'm not sure if my  
21 introduction was heard when I came on the line. This is  
22 Michelle Honcharik from NRR as well.

23 MR. BOSKA: All right, welcome, Michelle.

24 MS. HONCHARIK: Thank you.

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1 MR. BOSKA: All right, I'd like to emphasize  
2 that we each need to speak clearly and loudly. If you do  
3 have something you'd like to say, please first state your  
4 name for the record and make sure you're near to the phone  
5 so that the Court Reporter can accurately transcribe this  
6 teleconference.

7 At this time, I'll turn it over to the PRB  
8 Chairman Ho Nieh.

9 CHAIRMAN NIEH: Thank you, John. Good  
10 afternoon, Mr. Leyse and other phone participants. Thank  
11 you for taking the time to participate in this dialogue on  
12 the 2.206 petition under review regarding the Indian Point  
13 Nuclear Power Plant in New York. Before we get started, I  
14 just want to emphasize that this is going to be transcribed  
15 and that for the folks here at headquarters and on the  
16 phone, if you could identify yourself, please, before you  
17 speak, that will help us in doing the transcription which  
18 will be part of the public record regarding this petition.

19 Before we get into the details of the  
20 discussion, I want to provide some general information  
21 about the NRC's 2.206 petition process. Under Title 10 of  
22 the Code of Federal Regulations, Section 2.206, any person  
23 may petition the NRC to take an enforcement related action  
24 such as modifying, suspending or revoking a license. The  
25 NRC staff guidance for the disposition of 2.206 petition

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1 requests is contained in Management Directive 8.11 which is  
2 publicly available for review.

3 The purpose of today's meeting is to provide  
4 the Petitioner, Mr. Leyse, an opportunity to comment on the  
5 Petition Review Board's initial recommendation and to  
6 provide any relevant explanation and support for the  
7 petition. This meeting is not a hearing, nor is it a  
8 meeting for the participants to examine the merits of the  
9 issues raised in the petition request. No NRC decisions  
10 regarding the merits of this petition will be made during  
11 this dialogue.

12 Following the meeting, the Petition Review  
13 Board or PRB will conduct its internal deliberations to  
14 determine if there is a need to modify its initial  
15 recommendations. The outcome of this internal meeting will  
16 be documented in an acknowledgment letter to the  
17 Petitioner.

18 Any general questions about the process, Mr.  
19 Leyse?

20 PETITIONER LEYSE: Yes, I do have -- they're  
21 not necessarily general about the process, more about  
22 statements that you -- that the Petition Review -- oh,  
23 sorry, this is Mark Leyse speaking.

24 CHAIRMAN NIEH: Yes.

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1                   PETITIONER LEYSE:   More questions about the  
2 PRB's position that I have presented a generic issue that  
3 is better resolved in a rulemaking petition and that's  
4 something I have heard, I heard last year also when I  
5 submitted a very similar petition, so I have questions  
6 about that.

7                   CHAIRMAN NIEH:   I understand that Mr. Leyse.  
8 I understand that in the last petition you submitted in  
9 April -- I believe it was April 24<sup>th</sup>, 2007, that was  
10 provided back to you. That response was provided back to  
11 you in an acknowledgment letter. The purpose of this  
12 meeting is to fully consider the petition that you supplied  
13 to the NRC in March of 2008 and to the extent that we can  
14 better understand the issues that you've presented in your  
15 March letter, that's the main purpose of our meeting here  
16 today. It's not really to go back to revisit the previous  
17 petition that you submitted and I recognize that there are  
18 attributes of both petitions that are similar but namely  
19 the ones from your April petition and also the March  
20 petition.

21                   But I wasn't around for that previous petition  
22 and as far as your March petition goes, I am treating this  
23 as if it were a new petition received by the NRC and I want  
24 to take a thorough and comprehensive review of the  
25 information you provided.

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1                   PETITIONER LEYSE: Mark Leyse speaking. Yes,  
2 I wholeheartedly agree with what you are saying that this  
3 is a discussion about the March 2008 petition. I guess one  
4 thing is that John Boska, the Indian Point Project Manager,  
5 sent me an e-mail I believe, yeah, it's dated March 27<sup>th</sup>,  
6 and that states that -- are you still there?

7                   CHAIRMAN NIEH: Yes, we're here.

8                   PETITIONER LEYSE: Okay, sorry, I thought I  
9 heard a disconnect sound. And okay, anyway, he states that  
10 in this e-mail there's an allusion to the effect that I  
11 have presented a generic issue that is better resolved by a  
12 rulemaking petition. Yes, specifically, he's says, I  
13 quote, "You present generic concerns that are properly  
14 handled through a petition for rulemaking and the NRC is  
15 considering your petition for rulemaking on these issues",  
16 unquote.

17                   CHAIRMAN NIEH: This is Ho Nieh. I do see  
18 that. John Boska just provided a copy of that e-mail to me  
19 to review and maybe I misunderstood your question. I  
20 thought you were really referring back to the statements  
21 made in the letter that was sent back to you in May of 2007  
22 in response to your April petition. And I guess, regarding  
23 this one, the way I see this is that I think we're just  
24 stating an observation that the issues that were presented  
25 in your March petition do have some generic implications

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1 and that there is a petition for rulemaking that is being  
2 addressed separately from this 2.206 petition.

3 PETITIONER LEYSE: Mark Leyse, understand, I  
4 just want to point out that your actual rules in the  
5 Handbook 8.11 that you mention, the review process for 10  
6 CFR 2.206 petitions, it states specifically it says under -  
7 - on page 12, "Criteria for rejecting petitions". It  
8 states in the second paragraph on that page, "The  
9 Petitioner raises issues that have already been the subject  
10 of NRC staff review and evaluation either on that facility,  
11 other similar facilities or on a generic basis". Then it  
12 goes on, "For which a resolution has been achieved, the  
13 issues have been resolved and the resolution is applicable  
14 to the facility in question".

15 So I just really want to point out, this is a  
16 generic issue that does affect the entire fleet of PRWs.  
17 Nonetheless, it does still affect Indian Point, Unit 2 and  
18 3, and I really don't see that this is a situation where a  
19 resolution for Indian Point Unit 2 or 3 has been achieved,  
20 or that the issues have been resolved or that the  
21 resolution is applicable to both of those nuclear power  
22 plants.

23 CHAIRMAN NIEH: Thank you, Mark. This is Ho  
24 Nieh, the PRB Chair. I understand your views and I agree  
25 that, you know, these issues from a generic perspective

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1 are still being evaluated and considered by the NRC staff  
2 and I am not aware of a facility specific resolution for  
3 Indian Point.

4 If you will allow me to continue to go through  
5 some of the details and summarizing your petition, I can at  
6 least try to help reiterate the basis by which the PRB made  
7 its initial recommendation to not accept this particular  
8 petition for review.

9 PETITIONER LEYSE: Sure.

10 CHAIRMAN NIEH: I'm going to go on mute for  
11 one second while I consult with one of our staff here.

12 (Pause)

13 CHAIRMAN NIEH: Okay, Mark, we're back. This  
14 is Ho again. I was being offered advice from my colleague  
15 in the Office of General Counsel which in many ways,  
16 reinforces kind of what I just said that as we get further  
17 into the details of your petition and the basis for the  
18 initial recommendation to not accept, I'll cover that. So  
19 if you'll allow me to move forward so we can get to the  
20 more important discussion which is your information and  
21 your dialogue that you would like to present to the NRC  
22 would that work out for you okay, Mark?

23 PETITIONER LEYSE: Yes, most certainly.

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1 CHAIRMAN NIEH: Okay. And I will get back to  
2 the generic aspect as I just summarize your request and the  
3 NRC actions to date. Thank you.

4 PETITIONER LEYSE: Thank you.

5 CHAIRMAN NIEH: Okay, so what have we done so  
6 far and what is the scope of the petition? On March 7<sup>th</sup>, as  
7 John mentioned, you submitted to the NRC a petition under  
8 2.206 regarding deficiencies of the ECCS, Emergency Core  
9 Cooling System calculations performed at Indian Point Units  
10 2 and 3 and we'll just refer to them as IP 2 and 3 for ease  
11 of discussion. Those calculations are required by 10 CFR  
12 50.46.

13 In the petition, you requested that the NRC  
14 either revoke the operating license of IP 2 and 3 or order  
15 the licensee of IP 2 and 3 to immediately suspend  
16 operations or temporarily shut down IP 2 and 3 because  
17 recent ECCS evaluation calculations performed to qualify  
18 the current power levels of IP 2 and 3 did not calculate  
19 the most severe postulated Loss of Coolant Accidents, we'll  
20 refer to those as LOCAs for ease of discussion, that could  
21 occur at both plants, which is in violation of 10 CFR  
22 50.46.

23 You requested the NRC order the licensee to  
24 conduct conservative ECCS evaluation calculations that are  
25 in compliance with 10 CFR 50.46. These calculations should

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1 model fuel rods that are heavily crudded and/or oxidized or  
2 would have crud induced corrosion failures.

3 They should also model solids in the reactor  
4 coolant system water that might cling tenaciously to the  
5 fuel cladding and compromise the heat transfer. That was  
6 our read of the petition you submitted in March 2008.

7 Let me discuss the NRC activities to date. On  
8 March 27, the NRC Petition Review Board or PRB met to  
9 review the petition request against the acceptance criteria  
10 in Management Directive 8.11 and to discuss the need for  
11 any immediate NRC actions related to the Indian Point  
12 Nuclear Power Plant. Based on the information contained in  
13 your petition, the PRB made an initial determination to  
14 reject the petition from review under the 2.206 review  
15 process described in Management Directive 8.11.

16 The basis for that was that the petition did  
17 not contain sufficient information to warrant the requested  
18 action. We did not apply the criteria that you described  
19 which is the Petitioner raises issues that have already  
20 been the subject of NRC staff review and evaluation on a  
21 generic basis and for which a facility specific resolution  
22 has been achieved. Those, as I discussed with my colleague  
23 from OGC, that particular criteria does not apply for our  
24 purposes here because what you were requesting was an  
25 enforcement related action and that criteria, I understand

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1 is not for an enforcement-related action. Is that correct,  
2 Jenny?

3 MS. LONGO: Well, I think the simplest way to  
4 state it is that you did make a request for an enforcement-  
5 related action and the request for immediate action had to  
6 be supported by facts sufficient to warrant the requested  
7 action and the basis for the initial recommendation or the  
8 denial of that request for immediate action was that you  
9 did not present facts sufficient to establish either a  
10 violation or a safety hazard, so that we did not grant your  
11 request for immediate action.

12 We did not make that decision based on whether  
13 or not there was another proceeding available for you to  
14 participate in or whether the issue had been resolved  
15 already. What Mr. Boska's e-mail simply was doing was  
16 assuring you that to the extent that your petition contains  
17 generic aspects, it will be addressed in the rulemaking. I  
18 think that's all he really meant to say.

19 CHAIRMAN NIEH: So maybe I didn't characterize  
20 --

21 THE REPORTER: Please identify yourself.

22 CHAIRMAN NIEH: This is Ho Nieh again, the  
23 Petition Review Board.

24 THE REPORTER: The female speaking.

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1 CHAIRMAN NIEH: Oh, that was Jenny Longo from  
2 the Office of General Counsel. So Mark, this is Ho again.  
3 I probably did not characterize what Jenny had described to  
4 me when I went on mute but what I will summarize what I  
5 said before is that we didn't apply that particular  
6 criteria regarding the generic issue and like I said  
7 earlier, that John was mentioning that the generic aspects  
8 of your petition are, indeed, being considered in a related  
9 petition for rulemaking. So the criteria that we applied  
10 was that it did not meet the criteria to accept and to  
11 review under 2.206 for insufficient information and  
12 regarding the information that was provided, the NRC did  
13 not identify a safety basis to warrant any immediate  
14 actions at the Indian Point facility.

15 Following our March 27 meeting, the Petition  
16 Manager, John Boska, again provided you, Mr. Leyse, via e-  
17 mail the initial decision of the Petition Review Board to  
18 not accept the request as a 2.206 petition and made  
19 available the opportunity for you to address the Petition  
20 Review Board which is why we are here today. So I'm about  
21 ready to turn the discussion over to you, Mark. You know,  
22 like I said before, the purpose of the meeting today is to  
23 provide an opportunity for you to give the Petition Review  
24 Board additional information and explanation in support of  
25 your petition and also to provide you an opportunity to

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1 comment on the PRB's recommendation. We are eager and  
2 interested to listen to your comments because we are  
3 intending to do a comprehensive and thorough review of the  
4 information you provided. And we do understand that, yes,  
5 there is a Petition for Rulemaking that's underway and  
6 that, yes, you have submitted a previous petition on a  
7 related issue but in your March letter you have stated that  
8 you have provided substantive additional information from  
9 the April letter.

10 So we are indeed interested in learning more  
11 from you about your petition so we can make a thoroughly  
12 and comprehensively informed decision and that decision  
13 which will be made following this telephone call will be  
14 provided to you documented in a letter, in an  
15 acknowledgment letter.

16 So before I turn it over to you I'd like to  
17 just give you the opportunity to clarify anything that I  
18 might have mischaracterized in the summary of your petition  
19 or ask any other general questions before you can address  
20 the Board with your information.

21 PETITIONER LEYSE: Mark Leyse speaking. Yes,  
22 thank you. I believe your summary was quite accurate of  
23 what I had requested and I appreciate the explanation that  
24 -- you've mentioned that your decisions were not based on  
25 the fact that it was a generic issue. That was just

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1 something that you had pointed out. Your decision was more  
2 based on your position -- the Petition Review Board's  
3 position that the facts I presented were not sufficient and  
4 therefore, they decided to at least preliminarily reject  
5 the petition from review.

6 Now, I would like to speak about the facts  
7 that I have presented in the petition and also speak about  
8 what the NRC categorized, terms -- actually the term  
9 "anticipated operational occurrences". So I would like to  
10 address those issues. Is there anything that you would  
11 like to say previous to that?

12 CHAIRMAN NIEH: No, we're ready to listen to  
13 your information, Mark.

14 PETITIONER LEYSE: Okay. Mark Leyse speaking  
15 again. Well, basically, I wanted to point out this is a  
16 very simple thing. In the ECCS evaluation calculations  
17 that qualified the recent uprates at Indian Point, Units 2  
18 and 3, there was a claim by Entergy that in the event of a  
19 LOCA, that the pre-accident oxidation and transient  
20 oxidation would always be below 15 percent. That claim is  
21 referenced in letters that I cite in my petition. It's  
22 actually on page 11 of the March 2008 petition and there's  
23 actually a footnote that cites the letters concerning this  
24 claim.

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1           And basically, in recent years, within the  
2 last say dozen or 13 years, there have been three incidents  
3 at PWRs in the United States where during operation,  
4 oxidation has actually perforated the cladding of the fuel  
5 rods. So I don't see how Entergy can make this claim that  
6 the pre-accident oxidation and transient oxidation would  
7 always be under 15 percent at either Indian Point Unit 2 or  
8 3.

9           And I guess what I would like to ask the  
10 Petition Review Board, you don't have to answer this now  
11 but if you would just consider these two questions. The  
12 first question to consider is how can the Petition Review  
13 Board assure that there will never be any cases of crud  
14 induced fuel failures at either Indian Point Unit 2 or 3?  
15 And the second question is, how can the Petition Review  
16 Board assure that there will never in the event of a LOCA  
17 at either Indian Point Unit 2 or 3 be a situation where the  
18 pre-accident oxidation and transient oxidation would always  
19 be below 15 percent, when in the last 13 years during  
20 normal -- during operation of three plants, PWRs in the  
21 United States there has actually been 100 percent oxidation  
22 where oxidation perforated cladding?

23           So I would like the Petition Review Board to  
24 consider those two questions. If you want to answer them  
25 now, I'm not against that if you do want to go on the

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1 record and say that you are certain that neither of these  
2 situations will occur at either Indian Point Unit 2 or 3, I  
3 would appreciate it actually to hear an answer now.  
4 However, at the same time, if you don't want to answer it  
5 now, I think it's more important just that you consider  
6 those questions.

7 CHAIRMAN NIEH: This is Ho Nieh, the PRB  
8 Chair. The PRB will consider those questions. We are not  
9 prepared at this moment to make a definitive statement or  
10 answer regarding those questions. Again, the purpose of  
11 this particular meeting is that we want to learn from you  
12 any information you have in addition to what you already  
13 provided to us in your March 2008 letter or any  
14 clarifications you want to provide to us so that in the end  
15 we can determine whether any changes are needed to be made  
16 to the PRB's initial recommendation.

17 PETITIONER LEYSE: Mark Leyse. Yes, I  
18 understand that. I guess what these two questions would  
19 probably fall under the category of clarification just to  
20 maybe help the Petition Review Board review actual events  
21 that have occurred in recent history with PWRs and that  
22 they will look at page 11 of the March 2008 petition and  
23 see that those facts are explicitly stated.

24 Now, I would like to with further  
25 clarification, I want to point out that the NRC has a

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1 Standard Review Plan. It's NUREG 800, Standard Review Plan  
2 and Section 4.2 has a section -- it's actually on page 15  
3 and page 16. It's Standard Review Plan Section 4.2,  
4 actually pages 15, 16, where it discusses doing ECCS  
5 evaluation calculations where the thermal conductivity of  
6 the fuel, the cladding, the cladding crud and the cladding  
7 oxidation layers are phenomena that should be modeled in  
8 such evaluation calculations. This is an NRC document.  
9 Now, this is not a legally binding rule. These are  
10 guidelines and they're actually addressing high burn-up  
11 fuel with these guidelines, but I just want to point out  
12 that these guidelines, you have the ability to do ECCS  
13 evaluation calculations, where you consider the thermal  
14 resistance effects of crud and oxidation and basically what  
15 my petition is stating, this has happened for fuel which is  
16 in its first cycle and in this situation with the low burn-  
17 up fuel, you have a situation where -- if you would model  
18 that, the ECCS evaluation calculation results would be more  
19 -- it's just modeling a more severe type of accident than  
20 if you're modeling the beginning of life fuel.

21 So I just want to point out that this is in  
22 like I said, Standard Review Plan, Section 4.2 page 15 and  
23 16 addressing high burn-up fuel. You just need to have  
24 things shifted where you're talking about fuel in its first  
25 cycle and apply the same logic. Therefore, you will be

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1 actually calculating the most severe type of LOCA which  
2 would be in compliance with 10 CFR 50.46(a)(1)(i). And I  
3 also want to -- this is kind of back to the generic issue  
4 but it's just in case the PRB is thinking, oh, well, this  
5 is kind of being taken care of with this rulemaking, I just  
6 want to point out that the rulemaking is actually -- the  
7 rulemaking petition which I submitted in April 2007 --  
8 sorry, actually, that was submitted in I believe in --  
9 anyway, not April but it was submitted in 2007. The  
10 rulemaking petition is basically a petition where there are  
11 not existing rules where I'm requesting new rules to limit  
12 crud and rules to limit hydriding in cladding and rules  
13 regarding how to model the ECCS evaluation calculations.  
14 It's to amend Appendix K to Part 50. But basically, I mean,  
15 this is very simple, but in the petition that I submitted  
16 as an enforcement action that's not to -- that's  
17 considering violations of an existing rule.

18 It's related to the rulemaking petition but  
19 it's you know, more regarding the fact that you have not  
20 submitted or rather you have not done the most severe type  
21 of calculation to model the most -- I'm sorry, you have not  
22 modeled the most severe type of LOCA that could occur at  
23 Indian Point, and I want to just mention that in the  
24 standard review plan that I mentioned before, there's a  
25 term which says anticipated operational occurrences, so I

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1 just want to submit, if something has occurred three times  
2 in PWRs in the United States in the last 13 years, why is  
3 that not considered an anticipated operational occurrence?  
4 You're just acting like this has never occurred and it will  
5 never, that it's impossible that this will ever occur at  
6 either Indian Point Unit 2 or 3 with your decision, just  
7 stating that this is not the most severe type of LOCA that  
8 could occur when, in fact, it could.

9           And I just -- as just to kind of wrap up what  
10 I have to say at this point, I just want to say that in the  
11 petition from pages 22 to page 30, I cite an example of  
12 crud induced fuel failures which occurred at Three Mile  
13 Island Unit 1 during cycle 10 and I discuss my belief that  
14 with high probability the parameters that are set forth in  
15 10 CFR 50.46(b) might have been violated had there been a  
16 LOCA during that fuel cycle. And I also want to point out  
17 that in detail, in the petition from page 10 to page 22, I  
18 discuss the ECCS evaluation calculations that were  
19 conducted by Entergy for the recent power uprates and  
20 that's basically what I have to say at this point.

21           CHAIRMAN NIEH: Okay, thank you for that  
22 information, Mark, and I do appreciate your framing of  
23 those questions for the Petition Review Board to consider.  
24 And as I mentioned, as we walk through our dialogue  
25 internally to consider what you've provided today, I can

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1 assure you that I'm going to ask those same questions to  
2 the technical staff that are part of this review board.

3 I did not mention before the composition of  
4 the board. That was one aspect of the process. I kind of  
5 moved along a little quicker because I wanted to make sure  
6 we had enough time to listen to your questions and be able  
7 to ask you questions. But I'm the Petition Review Board  
8 Chair. We have John Boska is our Project Manager and the  
9 other folks that support the Board are the folks you heard  
10 from, the technical staff and then the folks from the  
11 region and we get advice from the General Counsel. So if  
12 you had questions on who was actually part of the Board,  
13 just look at the names you took down for the NRC  
14 participants and they all support the decision-making. So  
15 we want to make sure that we have the right people and we  
16 do have the right folks from the fuel side of the Division  
17 of Safety Systems here to consider those things. With that  
18 said, part of this process involves the staff the  
19 opportunity to ask you questions to further understand and  
20 better understand the things that you've provided us today  
21 and you know, we're not trying to engage in a debate with  
22 you on some of the issues you raised. We really just want  
23 to understand. So with that, I'd like to turn it over to  
24 any of the technical staff here that have questions for Mr.  
25 Leyse.

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1           Okay, any of the project management staff here  
2 have questions for Mr. Leyse? We're going to go on mute  
3 for just one second, Mark. Please hold.

4           (Off the record.)

5           CHAIRMAN NIEH: We're back, Mark, this is Ho  
6 Nieh again, the PRB Chair. You know, the issues you've  
7 represented in your petition are, indeed, I think, complex  
8 and we're trying to fully understand things. I did have a  
9 question related to some of the information you provided  
10 regarding the Standard Review Plan, Section 4.2. In  
11 reading through your petition you submitted in March, you  
12 discuss that the calculations performed by the licensee for  
13 Indian Point 2 and 3 do not comply with 50.46 and during  
14 your discussions you specified certain aspects of the SRP  
15 Section 4.2. Can you just for my information and  
16 consideration with the meeting with the PRB, can you tell  
17 me what portions of 50.46 you believe the licensee has not  
18 complied with.

19           PETITIONER LEYSE: Oh, sure.

20           CHAIRMAN NIEH: The ECCS acceptance criteria?

21           PETITIONER LEYSE: Oh, certainly. Yes, and I  
22 first -- Mark Leyse speaking.

23           CHAIRMAN NIEH: Yes.

24           PETITIONER LEYSE: Yes, I can tell you that  
25 and first I want to first say I appreciate the fact that

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1 you will consider the questions I asked earlier. You had  
2 mentioned that maybe five minutes ago and I just wanted to  
3 express my appreciation of that. And I would like to say a  
4 couple more things but first I'll address what you just  
5 asked. You asked which sections of 50.46 do I believe were  
6 violated?

7 CHAIRMAN NIEH: Yes.

8 PETITIONER LEYSE: Okay, basically it's  
9 section 50.46(a)(1)(i). It basically, it states that the  
10 ECCS cooling performance must be calculated in accordance  
11 with an acceptable evaluation model and must be calculated  
12 for a number of postulated loss of coolant accidents of  
13 different sizes, locations and other properties, sufficient  
14 to provide assurance that the most severe postulated loss  
15 of coolant accidents are calculated.

16 So that's just on the first page of that rule.

17 CHAIRMAN NIEH: Understand.

18 PETITIONER LEYSE: And so basically what it's  
19 asking is that accidents of different sizes, locations that  
20 they be calculated. That's why they will calculate a large  
21 break loss of coolant accident and a more mild loss of  
22 coolant accident. They'll basically model -- one might be  
23 a double guillotine break. They'll model different  
24 hypothetical loss of coolant accidents which could actually  
25 occur and that is to provide assurance that the most severe

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1 postulated LOCAs are calculated. So that's the rule, and  
2 basically, when you turn to 50.46(b), you see the  
3 parameters that cannot be -- well, if a LOCA were to occur  
4 at a plant, to be compliant with 50.46, it must be  
5 compliant with the parameters set forth in Section B. So  
6 there's a peak cladding temperature, maximum cladding  
7 oxidation, maximum hydrogen generation.

8 So basically, what I'm saying is you have a  
9 situation at Indian Point, Unit 2 and 3 where there is the  
10 possibility of having a heavy crud layer during the first  
11 cycle of operation for fuel and that has not been modeled.  
12 So because that has not been modeled, that's a very severe  
13 -- you know, that would be a very severe accident, were it  
14 a large break accident for example.

15 And Entergy claims -- well, it's a standard to  
16 claim that the most severe Large Break Loss of Coolant  
17 Accident would be with fresh beginning of life fuel. What  
18 I'm saying, well, actually there's a situation where if you  
19 had a large crud layer, it would actually be more severe.  
20 It was estimated, which is discussed in my petition, that  
21 at Three Mile Island Unit 1 during Cycle 10, that during  
22 operation the cladding temperatures actually increased by  
23 about 300 degrees Fahrenheit. So if you were to have that  
24 situation, it would be possible that the peak cladding  
25 temperature in the event of a LOCA would actually exceed

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1 2200 degrees Fahrenheit. If you have a crud layer with  
2 already -- if there's a crud induced fuel failure, you  
3 would actually already have 100 percent oxidation. That's  
4 actually already over the 17 percent rule.

5 But that's just an observation. So that's  
6 basically what I'm trying to explain in the petition.

7 CHAIRMAN NIEH: I did have another question  
8 for you, Mark. This is Ho Nieh, again, the PRB Chair. In  
9 your petition, you take issue with the previous  
10 acknowledgment letter you received following your April  
11 2007 petition saying that the NRC's rejection for  
12 insufficient facts was incorrect because you had presented  
13 facts to support your claim. And I just want to make sure  
14 that I get a good understanding of what those facts are and  
15 part of the facts that you're providing today and in your  
16 March letter is that there have been instances which  
17 occurred and you cite three occurrences, I think, Palo  
18 Verde, TMI and another facility. Is that one of the facts  
19 that you're presenting as evidence that these cladding  
20 oxidation levels can be greater than 15 percent?

21 PETITIONER LEYSE: Mark Leyse, yes, those are  
22 facts. I'm claiming that there have been crud induced  
23 corrosion fuel failures at three PWRs in the United States  
24 --

25 CHAIRMAN NIEH: Okay.

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1           PETITIONER LEYSE: -- in recent years and that  
2 those are most certainly facts.

3           CHAIRMAN NIEH: Can you help me with some more  
4 facts again to steer me toward as far as what the oxidation  
5 levels at Indian Point are, like what type of information  
6 you might have in that regard.

7           PETITIONER LEYSE: Well, I would say that  
8 oxidation levels at Indian Point must vary from time to  
9 time on different fuel rods. More what I'm presenting is  
10 the fact that there would be the possibility of there being  
11 extreme oxidation at Indian Point Unit 2 or 3 if there were  
12 a heavy crud layer at either plant. Like I said before,  
13 these are postulated loss of coolant accidents that are  
14 calculated.

15           For example, there has never been a LOCA at  
16 either Indian Point 2 or 3 so far but hypothetically, there  
17 could be a LOCA there. So hypothetically, an event that  
18 has occurred at a PWR in recent years in the United States  
19 could also occur at Indian Point. That should be  
20 considered an anticipated operational occurrence. So  
21 that's more of what I'm going at. It's not that I'm citing  
22 specific evidence regarding actual oxidation levels at  
23 Indian Point. It's more that I'm stating that  
24 hypothetically, well, more it's like this has occurred in  
25 recent years at other places. It should be considered an

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1 anticipated operational occurrence. Therefore, this should  
2 be included in the ECCS evaluation calculations for Indian  
3 Point Unit 2 and 3.

4 CHAIRMAN NIEH: I believe I understand now.  
5 And the other aspect that you're reaching or conclusion  
6 that you're reaching is that based on the calculations  
7 you've seen at Indian Point, they have not accounted for  
8 these hypothetical circumstances that you believe are  
9 possible. Do I understand that correctly?

10 PETITIONER LEYSE: Yes, you do.

11 CHAIRMAN NIEH: Okay.

12 PETITIONER LEYSE: Yes, Mark Leyse speaking.  
13 Yes, yes, you do understand that correctly, that I'm just  
14 saying this should be considered an anticipated operational  
15 occurrence and it should be modeled in what is the rule to  
16 model the most severe postulated loss LOCAs.

17 CHAIRMAN NIEH: Okay, thank you.

18 PETITIONER LEYSE: May I just add a couple  
19 things I had not added before and it kind of relates to the  
20 question you just asked me.

21 CHAIRMAN NIEH: Yes, sir.

22 PETITIONER LEYSE: Mark Leyse speaking.

23 CHAIRMAN NIEH: Yes, you can, of course.

24 PETITIONER LEYSE: Thank you. Basically, I do  
25 want to say that it's another question for the PRB is

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1 hypothetically, if the current power levels of Indian Point  
2 Unit 2 and 3 had been indeed, qualified by non-conservative  
3 ECCS evaluation calculations that were done in violation of  
4 10 CFR 50.46, would you believe that that would be a safety  
5 hazard? So that's a question that, if you did believe that  
6 I was correct in my assertion that these were non-  
7 conservative ECCS evaluation calculations, would that,  
8 indeed, be a safety hazard? So that's a question for you  
9 to please also consider.

10 And I just want to read a little bit from the  
11 Standard Review Plan Section 4.2, Fuel System Design. I'll  
12 try to be quick because I realize we're running out of  
13 time.

14 CHAIRMAN NIEH: Sure.

15 PETITIONER LEYSE: It states that, "Fuel  
16 system safety review provides assurance that 1, the fuel  
17 system is not damaged as a result of normal operation and  
18 anticipated operational occurrences, 2, fuel system damage  
19 is never so severe as to prevent control rod insertion when  
20 it is required, 3, the number of fuel rod failures is not  
21 underestimated for postulated accidents, and 4, coolability  
22 is always maintained". That's on page 1 actually of the  
23 Standard Review Plan 4.2.

24 So it alludes to the anticipated operational  
25 occurrences and it also alludes to the fact that the number

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1 of fuel rod failures should not be underestimated for  
2 postulated accidents and I just want to point out that when  
3 you have crud induced fuel failures, those are failed fuel  
4 rods and as the Standard Review Plan states, the number of  
5 fuel rod failures should not be underestimated for  
6 postulated accidents. That basically sums it up.

7 CHAIRMAN NIEH: Thank you, Mark. We're just  
8 going to go on mute for one second. I have an internal  
9 question here.

10 (Off the record.)

11 CHAIRMAN NIEH: Okay, hi, Mark. We're back  
12 here. We just had an internal question here. Was there  
13 anything else that you wanted to provide for us, to us,  
14 Mark?

15 PETITIONER LEYSE: Mark Leyse speaking. At  
16 this moment, I would say no, I believe I just tried to help  
17 clarify the petition by presenting a few additional aspects  
18 and I want to state that I appreciate your questions and  
19 your interest in trying to clarify what I had to say also  
20 with your questions.

21 CHAIRMAN NIEH: This is Ho Nieh. Thank you,  
22 Mark. This is why we're having the call. We just want to  
23 make sure that we do make informed decisions and can fully  
24 consider all of the input you have for the NRC in this

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1 process. Are there any questions from anybody else here at  
2 headquarters for Mr. Leyse?

3 (No audible response.)

4 CHAIRMAN NIEH: Does the NRC staff that are  
5 participating via the telephone, do you have any questions  
6 for the Petitioner?

7 MR. McCARVER: None from Region 1.

8 CHAIRMAN NIEH: Okay, thank you, Sam. Hearing  
9 no other, Mark, we'll get ready to conclude the call. I do  
10 want to thank you for taking the time to give us this  
11 information and I will assure you that the Petition Review  
12 Board is going to thoroughly evaluate your March petition  
13 and the issues you've documented in that letter and also  
14 the information you've provided today. We are going to get  
15 this conversation transcribed in a very timely manner  
16 hopefully and have it publicly available, so we can all  
17 read through it and make sure we understand what we've  
18 heard today so that we can look at our initial  
19 recommendation and determine a course of action moving  
20 forward.

21 The results of the PRB meeting following this  
22 call will be documented to you in a letter and we will also  
23 call you before sending you the letter as well. With that,  
24 Mr. Leyse, again, thank you very much and we are going to

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1 secure from the call, unless you have any further questions  
2 for the NRC staff.

3 PETITIONER LEYSE: Mark Leyse. No, I just  
4 wanted to thank you for your listening to what I have to  
5 say and your time also. Thank you.

6 CHAIRMAN NIEH: You're welcome. Have a good  
7 afternoon.

8 PETITIONER LEYSE: You too. Bye.

9 (Whereupon, at 3:59 p.m., the above-entitled  
10 matter concluded.)  
11  
12  
13  
14  
15  
16

**NEAL R. GROSS**

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