

# Official Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

Title: Exelon Nuclear Texas Holdings  
Victoria County Station Site  
Oral Arguments

**DOCKETED**  
**March 24, 2011 (8:00 a.m.)**  
**OFFICE OF SECRETARY**  
**RULEMAKINGS AND**  
**ADJUDICATIONS STAFF**

Docket Number: 52-02-042

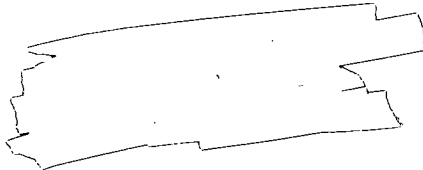
ASLBP Number: 11-908-01-ESP-BD01

Location: Victoria, Texas

Date: Thursday, March 17, 2011

Work Order No.: NRC-781

Pages 215-251



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*

1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION  
3 ATOMIC SAFETY AND LICENSING BOARD PANEL  
4 ORAL ARGUMENTS

5 \_\_\_\_\_  
6 IN THE MATTER OF Docket No.  
7 EXELON NUCLEAR TEXAS 52-042  
8 HOLDINGS, LLC  
9 (Victoria County Station ASLBP No.  
10 Site) 11-908-01-ESP-BD01  
11 \_\_\_\_\_

12 Thursday, March 17, 2011

13  
14 Theatre Victoria  
15 Leo J. Welder Center  
16 214 N. Main Street  
17 Victoria, Texas

18  
19 The above-entitled matter came on for oral  
20 argument at 9:00 a.m.

21  
22 BEFORE THE LICENSING BOARD:

23 MICHAEL M. GIBSON, Chair

24 DR. MARK BARNETT, Administrative Judge

25 DR. ANTHONY J. BARATTA, 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:

3 SARAH PRICE, ESQ.

4 LAURA GOLDIN, ESQ.

5 KEVIN ROACH, ESQ.

6 U.S. NRC Office of the General Counsel

7 Mail Stop O-15 D21

8 11555 Rockville Pike

9 Rockville, Maryland 20852

10  
11 On behalf of the Applicant:

12 STEVEN P. FRANTZ, ESQ.

13 JONATHON M. RUND, ESQ.

14 STEVEN J. BURDICK, ESQ.

15 Morgan, Lewis &amp; Bockius, LLP

16 1111 Pennsylvania Ave., NW

17 Washington, D.C. 20004

18  
19 On behalf of Texas for Sound Energy Policy:

20 JIM BLACKBURN, ESQ.

21 MARY CONNER, ESQ.

22 CHARLES IRVINE, ESQ.

23 Blackburn Carter

24 4709 Austin

25 Houston, Texas 77004

**NEAL R. GROSS**

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

P R O C E E D I N G S

JUDGE GIBSON: Good morning.

Does anybody have anything to report  
this morning?

MR. FRANTZ: Yes, the parties met  
yesterday after the termination of the proceedings  
yesterday afternoon, and we were successful in  
reaching agreement to admit two new contentions.

Mr. Rund, if you could hand out the  
contentions to the Board and the court reporter?

JUDGE GIBSON: Thank you.

MR. FRANTZ: And these contentions would  
replace the existing contentions, the Environmental  
Contentions 7 through 14, which would be withdrawn  
and replace by these two contentions.

JUDGE GIBSON: Why don't you give us a  
minute to look these over --

MR. FRANTZ: Yes.

JUDGE GIBSON: -- if you don't mind.

MR. FRANTZ: And these are double-sided  
by the way, so there is typing on the back also.

JUDGE GIBSON: Good.

(Pause.)

JUDGE GIBSON: Was this -- has this ever  
been done 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](http://www.nealrgross.com)

1 (General laughter.)

2 MR. FRANTZ: I remember back when I  
3 was --

4 JUDGE GIBSON: I'm just wondering if  
5 this is an historical event, Mr. Frantz.

6 (General laughter.)

7 MR. FRANTZ: Just as a background, as a  
8 young associate over 30 years ago, we used to do  
9 this, not frequently, but the rules were very  
10 different then.

11 JUDGE GIBSON: Right.

12 MR. FRANTZ: There was a much more  
13 relaxed standard for admission of contentions.  
14 Since the rules changed in the late 1980s it's been  
15 much rarer for this to happen.

16 JUDGE GIBSON: Okay. Well, my  
17 experience on the other side of this bench was that,  
18 you know, when the right occasion arose, good  
19 lawyers should be able to work things out. And I  
20 commend you all for this. The Board is -- at least  
21 based on our quick review of it, it looks fine.

22 Is there anything at all that you all  
23 want to put on the transcript about this?

24 MR. BLACKBURN: Not from our --

25 JUDGE GIBSON: Okay.

**NEAL R. GROSS**

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

1 MR. BLACKBURN: -- perspective. I  
2 think --

3 JUDGE GIBSON: Other than it's  
4 acceptable to you.

5 MR. BLACKBURN: It's certainly  
6 acceptable to me, and I appreciate everyone's  
7 willingness to work with us on this.

8 JUDGE GIBSON: Staff?

9 MR. ROACH: No, we're satisfied, Your  
10 Honor. Thanks.

11 JUDGE GIBSON: Okay.

12 MR. FRANTZ: Again, we also appreciate  
13 the cooperation of Mr. Blackburn. It made things  
14 much easier.

15 JUDGE GIBSON: Good. Well, I commend  
16 you all for that.

17 If we could turn to Safety Contention 3?

18 On page 18 of your petition, Mr.  
19 Blackburn, you raise a safety challenge claiming  
20 that the applicant has not properly characterized  
21 the dangers from oil and gas wells and borings. Is  
22 that correct?

23 MR. BLACKBURN: That is correct.

24 JUDGE GIBSON: Now the applicant, in its  
25 answer, says that the focus of this contention is

**NEAL R. GROSS**

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

1 with the risks of abandoned wells. Would you agree  
2 with that characterization?

3 MR. BLACKBURN: Well, I would say it's  
4 primarily the risk of abandoned wells, but there's  
5 also active wells not only within the site at the  
6 current time, which I presume would not be active  
7 ultimately, but there's also active wells in the  
8 immediate vicinity. So I would say that there is a  
9 double risk that we have identified, both active and  
10 inactive wells.

11 JUDGE GIBSON: Okay. I'm curious from  
12 the staff perspective, do you agree with petitioners  
13 that the applicant did not fully describe the active  
14 and abandoned oil and gas wells and borings with  
15 accordance with NRC rules?

16 MS. PRICE: I do go back to the staff  
17 hasn't finished the review, so we haven't made any  
18 final determinations. What we recognized in the  
19 petition was that they identified a discrepancy in  
20 the data set of the wells that were included.

21 What the applicant put in their  
22 application was permitted wells and active oil and  
23 gas -- and oil and gas wells. What the petitioners  
24 pointed to in their petition was the data set from  
25 the Texas Railroad Commission, which included some

**NEAL R. GROSS**

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

1 old and abandoned wells which were not in the  
2 application.

3 So to the extent that there's a  
4 discrepancy in that data set, staff would not oppose  
5 the admissibility of the contention.

6 JUDGE GIBSON: Okay. Mr. Frantz, on  
7 page 25 of your answer, if I understand correctly,  
8 you seem to be claiming that the petitioners were  
9 not sufficiently precise about the wells that may be  
10 abandoned that may pose a risk of leaking and  
11 exploding. Is that correct?

12 MR. FRANTZ: Yes, they speculate that  
13 the abandoned wells may be leaking, but they have  
14 not identified any actual leaking wells.

15 JUDGE GIBSON: Okay.

16 JUDGE BARATTA: But from what we just  
17 heard, you did not include any inactive wells in  
18 your analysis. Is that --

19 MR. FRANTZ: We did to a certain extent.  
20 First of all, as we discussed yesterday, we've  
21 agreed to go out and make sure that any wells within  
22 the footprints of the cooling basin and the power  
23 block are appropriately plugged in accordance with  
24 state regulations.

25 Also, we picked the bounding case, and

**NEAL R. GROSS**

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



1 this is typical for safety analysis. We picked the  
2 bounding case; the bounding case is a breach of one  
3 of the nearby natural gas transmission lines. The  
4 active wells and the abandoned wells both are  
5 located further away than any transmission --  
6 pipeline transmission lines. And because we picked  
7 the bounding case, that's appropriate for the  
8 purposes of the safety analysis.

9 JUDGE BARATTA: I have another question,  
10 but I'll --

11 JUDGE GIBSON: Okay.

12 JUDGE BARATTA: -- hold it for a minute.

13 JUDGE GIBSON: Okay. Well, I guess the  
14 question that it raised for me was, if you don't  
15 know -- you know, you don't know, or at least have  
16 not completely characterized all the wells there,  
17 which I think you said you haven't, and  
18 understandably so, it's a little difficult to see  
19 how they, the intervenor, the petitioners, could  
20 have been sufficiently specific about the threat  
21 that's posed by an individual well when they  
22 certainly don't know either.

23 Apparently they were able to come up  
24 with some railroad database that had some wells on  
25 it that, you know, weren't in what you all

**NEAL R. GROSS**

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

1 described. But I'm just curious, how could they  
2 have been more specific, I guess?

3 MR. FRANTZ: Well, first of all, I'm not  
4 sure that they identified any wells that we have  
5 not. They have assumed, for example, that we have  
6 relied upon the Texas Railroad Commission database  
7 as the sole source of our identification of the  
8 wells. That's not correct. In addition to looking  
9 at that information, we've also looked at various  
10 land plots. We've also done walk downs of the site  
11 to identify wells.

12 And so it's not just a matter of looking  
13 at records from one agency; we've actually been on  
14 the ground identifying wells. And so I think we do  
15 have a complete characterization of wells. They  
16 have really not identified any wells that we have  
17 not identified.

18 We do have a plot, or a diagram, and  
19 it's our figure 2.2-5, which identifies the numerous  
20 wells around the site and in the area of the site.

21 JUDGE GIBSON: Do we know when the  
22 earliest oil and gas exploration production activity  
23 occurred in this area?

24 MR. FRANTZ: I don't know the precise  
25 date, but it's been I think for a good period of

**NEAL R. GROSS**

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

1 years, decades.

2 JUDGE GIBSON: Yes. And oftentimes --  
3 if this was an early formation that was formation  
4 produced, oftentimes, you know, records were not as  
5 precise in those days. And so I can certainly  
6 appreciate the difficulty that you might have in  
7 delineating that.

8 But I was just -- at least that's the  
9 question it called into me. It was hard for me to  
10 see how they could be a lot more specific when there  
11 seems to be a lot of information that we just don't  
12 know.

13 MR. FRANTZ: Well, again, it's not just  
14 those records. We have been on the ground and doing  
15 walk downs, and that's what we've done for the  
16 application.

17 Obviously, too, once we get into  
18 construction we'll be doing excavation of both the  
19 cooling basin and the power block, and to the extent  
20 there are any additional wells out there, we'd  
21 identify those during the construction activities  
22 and ensure that they are properly plugged too. So  
23 it's not just what we're doing now, it's what we'll  
24 be doing during the construction period also.

25 JUDGE GIBSON: Okay. Mr. Blackburn, do

**NEAL R. GROSS**

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

1 you have anything additional to tell us about any --  
2 do you all -- were you all able to ascertain  
3 anything more about the age of this field, when it  
4 was -- when it began to be produced?

5 MR. BLACKBURN: I don't have the  
6 specific information. A lot of the adjacent area  
7 was developed in the time period prior to World War  
8 II. So it wouldn't surprise me certainly to see  
9 some of the activity dating back to the -- I think  
10 the primary development began in the '30s and '40s I  
11 would say. It wouldn't surprise me to see --

12 JUDGE GIBSON: Okay.

13 MR. BLACKBURN: -- exploration  
14 activities going back into the '20s, if not even  
15 earlier, but -- and we've seen -- Railroad  
16 Commission records are really the primary source we  
17 have for abandoned and for older wells, and they're  
18 often truly inadequate.

19 And so I think what we have identified  
20 is a significant data gap, that the illustration  
21 2.5-151 is active oil wells. And I understand I  
22 mean that's a much easier thing to find and locate  
23 than --

24 JUDGE GIBSON: Right.

25 MR. BLACKBURN: -- than these. But we

**NEAL R. GROSS**

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

1 do think there's a significant data gap, and we do  
2 think there are significant safety hazards that  
3 haven't been fully looked at and that the bounding  
4 condition does not adequately address.

5 JUDGE GIBSON: Well, you know, that  
6 raises another question that I had. If I understand  
7 the sort of gist of this contention, it is that --  
8 sort of two-fold. First of all, they didn't  
9 characterize these wells adequately.

10 And secondly, it is that those wells, if  
11 we don't know exactly what they are and they're not  
12 all plugged and protected, could pose a problem in  
13 terms of explosions or in terms of hydrogen sulfide  
14 that might be released from those wells. I know  
15 there are some other hydrocarbons that might seep  
16 up, I think is what --

17 MR. BLACKBURN: Those were the  
18 primary --

19 JUDGE GIBSON: -- you said. But  
20 essentially one of your contentions was that it  
21 posed a threat to seepage down, now it's a threat  
22 that essentially would be seepage up.

23 How do you see this as a safety  
24 contention in terms of posing a threat to, you know,  
25 the safety -- I believe -- I don't know if power

**NEAL R. GROSS**

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

1 block is the right word here, but obviously as  
2 you've learned, perhaps painfully so, there is a  
3 much more discreet area that is defined as, you  
4 know, of safety concern than would be for  
5 environmental concerns.

6 MR. BLACKBURN: I have so learned, and I  
7 think my response would be really a couple of  
8 different responses. One is we don't -- like I say,  
9 first of all, we don't really know truly what we're  
10 looking at here in terms of what the depths of these  
11 wells were that were particularly abandoned, and,  
12 you know, what the activity is that is occurring in  
13 the area, which I would think is actually within the  
14 scope of this data gap at issue. But, you know,  
15 it's primarily the abandoned wells.

16 But it's also a characterization of  
17 what's happening. There's a question of zone of  
18 control, and this really goes to data gap. You  
19 know, how far out -- I mean is it going to be  
20 acceptable for there to be oil and gas activity full  
21 speed ahead, 15,000 feet, pulling out the whole next  
22 generation of hydrocarbons, is that acceptable.  
23 What are the implications of that I think is also  
24 sort of raised by this. I'm not sure we're there  
25 yet by any means.

**NEAL R. GROSS**

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

1 But subsurface activity is occurring  
2 adjacent to this site. There is inter-connects by  
3 sand layers across this site to adjacent sites. If  
4 you've got activities going on, you've got -- and  
5 the faulting is connected here because faulting in  
6 oil and gas development oftentimes go hand-to-hand  
7 together.

8 And I think that's what you'll find  
9 where there have been examples -- for example there  
10 was a not -- in the not-too-distant past a blow out  
11 occurred and not too far from there -- where there  
12 is literally so much pressure in the subsurface that  
13 the penetration activity failed because of a blow  
14 out, not unlike what happened in the Gulf.

15 The point is that subsurface is active  
16 and it has the ability to transmit gas at  
17 significant volumes that we have not characterized.

18 I mean I've thought of -- frankly  
19 thought quite a lot about this and, again, in the  
20 context of sort of -- it seems that the safety  
21 problems that one encounters in this business seem  
22 to be one event compounding another event, and you  
23 begin to layer events and you get the question,  
24 Okay, what's a reasonable layering and that's, I  
25 guess, a different inquiry.

**NEAL R. GROSS**

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

1 But the idea that there could be gas,  
2 particularly poison gas, toxic gas, coming up at a  
3 time when there's an attempt to -- perhaps dealing  
4 with a serious situation at the plant, something  
5 like that, and, you know, you look back and you go,  
6 Why would anybody in their right mind locate a  
7 nuclear power plant in the midst of a field that has  
8 hydrogen sulfide gas?

9 There's H2S gas not far away from --  
10 McFadden is not far away, and we have proof of  
11 hydrogen sulfide gas at 15, 16 parts per million at  
12 McFadden. That's scary. I mean everybody in Texas,  
13 and we don't worry about a whole lot, we worry about  
14 hydrogen sulfide gas. It is a very nasty, naturally  
15 occurring phenomenon.

16 I just don't think it's particularly  
17 wise to go into an area like this without fully  
18 understanding just exactly what you've gotten into  
19 with locating a nuclear power plant in both an  
20 active and inactive oil and gas field with hydrogen  
21 sulfide gas and methane remnants.

22 We don't locate much of anything in oil  
23 and gas. We build everywhere in this state. But  
24 you don't find a lot of construction activity in oil  
25 and gas fields.

**NEAL R. GROSS**

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



1 JUDGE GIBSON: Okay. I just would  
2 appreciate --

3 I'll give you a chance to respond, Mr.  
4 Frantz.

5 -- but I just would like to know -- I  
6 understand the staff is okay with the fact that  
7 maybe -- though this contention would be admissible  
8 insofar as there's an issue about whether the wells  
9 were properly characterized, but with respect to  
10 whether this is appropriate as a safety contention  
11 in terms of the threat it may pose to the limited  
12 discreet area that would be of concern for a safety  
13 matter.

14 Do you all have a view on that? Not  
15 merits but just --

16 MS. PRICE: Yes.

17 JUDGE GIBSON: -- purely whether it's  
18 admissible as a --

19 MS. PRICE: Based on --

20 JUDGE GIBSON: -- contention.

21 MS. PRICE: -- the contention.

22 JUDGE GIBSON: Okay.

23 MS. PRICE: I think that was fairly well  
24 articulated in our response, which was that where  
25 the petitioners asserted there would be issues with

**NEAL R. GROSS**

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

1 hydrogen sulfide gas, they don't recognize that that  
2 sort of thing is part of the control room design  
3 which will actually occur at the COL stage.

4 So hydrogen sulfide gas, whether or not  
5 it's from the oil fields, has been identified as a  
6 potential hazard as the site -- I believe for this  
7 site it was based on travel up and down I-77 -- that  
8 will be considered in the design of the control  
9 room, and that's where the safety issue comes in.

10 The other things that they asserted,  
11 which was the upper migration, I understand that  
12 they're saying that there's wells that you don't  
13 know about, but considering the fact that the power  
14 block area, which we've all agreed is where the  
15 safety related systems, structures and components  
16 will be, that area will be pretty well bulldozed.

17 I don't think that there's anything that  
18 could possibly be there that would be able to escape  
19 detection, and proper plugging and abandonment  
20 according to what the applicant has said.

21 The other thing that they bring up was  
22 the explosion hazard for the upward migration, and  
23 there's nothing in the petition that even asserts  
24 that, if they found an oil and gas well, of any size  
25 diameter, that there was a potential for that oil

**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 and gas well to create an explosion that would be  
2 larger than the bounding analysis.

3 They didn't address -- the bounding  
4 analysis was actually in the application and they  
5 didn't even postulate the possibility other than to  
6 say, Oh, you know, there could be an explosion.  
7 They didn't postulate some sort of situation where  
8 that -- in which that could exceed the bounding  
9 analysis.

10 So from a safety standpoint, I don't  
11 think that there's anything in the petitioner that  
12 supports that. What we recognized was the  
13 discrepancy in the database for the wells.

14 JUDGE GIBSON: Okay. I've got another  
15 question, but I think Judge Baratta --

16 JUDGE BARATTA: Yes.

17 JUDGE GIBSON: -- needs to ask you one.

18 JUDGE BARATTA: What I'm somewhat  
19 troubled by is whether or not what the applicant's  
20 done, and I think this is what the petitioner is  
21 getting at, whether or not they satisfy section  
22 100.20(b) which requires that -- that section's  
23 entitled Factors to be Considered When Evaluating  
24 Sites.

25 And one of those factors, item (b) is

**NEAL R. GROSS**

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

1 the nature and proximity of man related hazards, and  
2 it talks about military and chemical facilities, and  
3 clearly a well, in a way, is a chemical facility --

4 MS. PRICE: Sure.

5 JUDGE BARATTA: -- if you like. And I  
6 guess what I've heard so far is that -- and I want  
7 to make sure I understand your position, okay, is  
8 that you do agree that they haven't identified the  
9 proximity of man related hazards since they haven't  
10 actually -- with respect to these wells, because  
11 they haven't really located all of them as they --  
12 or may not have located all of them. Okay.

13 MS. PRICE: May have not have located  
14 all of them. I think that is the point where we  
15 agree. The point where we agree is that they may  
16 not have Part 100 because there is a discrepancy in  
17 the data set.

18 JUDGE BARATTA: Right. And you don't --  
19 but you don't agree -- and there are really two  
20 issues here -- that they have raised an issue  
21 relative to the noxious gas, and you say that's  
22 really a COL issue.

23 MS. PRICE: It's really a COL issue for  
24 design of the control room, to make sure that the  
25 air intake can filter out that so that you have

**NEAL R. GROSS**

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

1       habitability within the control room.

2                   The other thing is that the information  
3       that Mr. Blackburn was just giving about lateral  
4       movement along bedding and hydrogen sulfide from  
5       other areas is not in their petition, and I don't  
6       think it's in any of their supporting documentation,  
7       so that will be new and shouldn't be considered as a  
8       basis for this contention, or support for this  
9       contention.

10                   JUDGE BARATTA: But they did raise the  
11       issue of hydrogen sulfide gas.

12                   MS. PRICE: They did raise the issue of  
13       hydrogen sulfide gas, and that is something that is  
14       looked at for control room habitability.

15                   JUDGE BARATTA: Okay. And your position  
16       is that they did not provide specific critique of  
17       the bounding analysis that --

18                   MS. PRICE: Which is necessary to meet  
19       2.309(f)(1)(vii).

20                   JUDGE BARATTA: Yes. Let's  
21       hypothetically say that we admit that part of the  
22       contention you feel is admissible, and we find a  
23       well some fairly close distance, very close to the  
24       power block. And they come in and say, Well,  
25       they're -- because that well's there, we don't think

**NEAL R. GROSS**

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

1 the bounding analysis is adequate because of X, Y  
2 and Z. Would that --

3 MS. PRICE: At this time it's a  
4 hypothetical, and I'm not sure quite how --

5 JUDGE BARATTA: What would your position  
6 be on the admissibility of that?

7 MS. PRICE: Again, I'm not sure. It  
8 would depend on the facts of that. Certainly they  
9 would have an opportunity to file anything  
10 admissible that would be based on the specific  
11 situation. But at this time, where they had a  
12 responsibility to address the information in the  
13 SSAR, they certainly didn't do it.

14 JUDGE BARATTA: Right.

15 MS. PRICE: And they postulated no  
16 circumstance under which a well found closer to the  
17 facility could exclude that bounding analysis, which  
18 I think should have been done at this stage.

19 JUDGE BARATTA: Okay. Would you care to  
20 comment?

21 MR. BLACKBURN: Well, I just think we  
22 could not basically challenge the bounding analysis,  
23 per se, because we didn't have the data, so -- but,  
24 you know, I think that certainly if you were to  
25 admit as a contention the data gap as an issue and

**NEAL R. GROSS**

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

1 that the applicant would be required to go out and  
2 gather that, I think that would then certainly  
3 provide information that may allow us to go further  
4 and develop that issue into perhaps a -- maybe a  
5 more specific, perhaps better drafted safety  
6 contention.

7 But I frankly think the issue is posed  
8 right now. I mean one of the things that I both  
9 appreciate and am frustrated by is this step-wise  
10 process that we seem to be engaged in, where it's  
11 sort of like I petition to open the door, then I  
12 open the door, then I walk in room, then I ask  
13 permission to sit at the couch. And it's a very  
14 step-wise process in that way.

15 And I think it's pretty clear that if  
16 we're even halfway close to being right about the  
17 number of wells that are undiscovered on this site  
18 and what that database looks like, there's going to  
19 be issues about safety, and there will be a  
20 challenge to the bounding analysis properly drawn,  
21 if it's improperly drawn at the current time.

22 So I would just simply say I think that  
23 we have posed sufficient information to raise a  
24 safety related challenge, and I do think it goes to  
25 the section that you quoted of the regulations which

**NEAL R. GROSS**

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

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 is about the manmade hazards.

2 That's what we quoted in our  
3 documentation, and it's, you know, I think  
4 clearly -- I think clearly relevant and it's clearly  
5 been raised at this point in time.

6 JUDGE BARATTA: Yes. Let me go back to  
7 the staff on that issue, whether or not this is a  
8 safety -- since that talks to -- I think we agree  
9 that that section is the operative section, section  
10 100.20(b), and since it has the word "hazards" in  
11 it, to me that implies safety.

12 So do you have any issue with this being  
13 called a safety issue? I mean it's a contention of  
14 omission, but it falls not under the environmental  
15 report side, but under the SSAR side, is that --

16 MS. PRICE: Yes, I think that the  
17 staff's expectation when they're looking at meeting  
18 Part 100 is that you will, not just from a safety  
19 perspective but from a bigger picture perspective,  
20 identify what's on the site. At that point you can  
21 decide whether it becomes a safety issue.

22 So to the extent that there may be more  
23 wells on the site that weren't identified --

24 JUDGE BARATTA: But it's not a NEPA  
25 issue, is what I'm trying to get at.

**NEAL R. GROSS**

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



1 MS. PRICE: It's not a NEPA issue, no --

2 JUDGE BARATTA: Okay.

3 MS. PRICE: -- it certainly would be --

4 JUDGE BARATTA: All right.

5 MS. PRICE: -- on the safety side.

6 JUDGE BARATTA: Whether or not we call  
7 it a safety issue or a site characterization issue  
8 or whatever, it's not a NEPA issue.

9 MS. PRICE: No.

10 JUDGE BARATTA: And you concur with  
11 that?

12 MR. BLACKBURN: I would be happy if you  
13 were to allow it as a contention however it is  
14 framed.

15 (General laughter.)

16 JUDGE GIBSON: Well, I want to be -- the  
17 staff and Mr. Blackburn have weighed in on this.

18 Mr. Frantz, I didn't want to keep you  
19 from having an opportunity to speak to it.

20 MR. FRANTZ: Thank you, Judge Gibson.  
21 First of all, there have been allegations that there  
22 are data gaps or data discrepancies, and frankly  
23 there are not. Figure 2.2-5 identifies both the  
24 active and abandoned wells; both types of wells are  
25 shown on that figure.

**NEAL R. GROSS**

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

1                   And there are three types of hazards  
2                   here that we're talking about. We're talking about  
3                   pipelines, we're talking about active wells, we're  
4                   talking about abandoned wells. By their nature,  
5                   abandoned wells are the least hazardous of all these  
6                   because they've been depleted. That's why they've  
7                   been abandoned. And they've been plugged.

8                   The biggest hazard is the natural gas  
9                   pipeline. Not only is it substantially closer to  
10                  the power block, there are substantially -- it's a  
11                  substantially greater hazard by itself.

12                  Just to give you an order of magnitude  
13                  feel for this, the natural gas pipeline that comes  
14                  closest to the plant is anywhere from 26 to 30  
15                  inches in diameter at a pressure of anywhere from  
16                  750 to 900 psi.

17                  In contrast, these wells are much  
18                  smaller typically, on the order of, say, six inches  
19                  in diameter. And for an abandoned well, it's  
20                  essentially atmospheric pressure. So you're talking  
21                  about an abandoned well that is further away than  
22                  the pipeline, that has a lower diameter, a much  
23                  lower pressure, and it's a much lower risk.

24                  And so we've looked at the risk from the  
25                  pipelines, which is greatest, and shown that it

**NEAL R. GROSS**

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

1 bounds it from -- bounds the active wells and the  
2 active wells bound to the abandoned wells. And to  
3 provide a specific evaluation of the least hazardous  
4 wells doesn't make sense when we've a bounding  
5 analysis for the transmission lines.

6 JUDGE GIBSON: Okay. Thank you.

7 I want to get back with the staff on one  
8 other point. You indicated that it -- there are  
9 some things that can't be challenged until the COL  
10 stage.

11 And, you know, I think that we get back  
12 into this, you know, unscrambling an egg problem  
13 that we talked about yesterday, and that is the  
14 concern addressed by the Texans for a Sound Energy  
15 Policy has to do with this alleged threat to safety  
16 posed by the wells, the pipelines and other things.

17 If it's not appropriate to lodge that  
18 until the COL stage, does that concern you, is that  
19 appropriate? I guess maybe it's -- you're going to  
20 say that's what the rules require. But I just want  
21 to make sure. I mean perhaps this is -- this goes  
22 to the whole question of alternative site selection  
23 that we talked about yesterday. I don't know.

24 If it turns out that there really is  
25 some hazard posed here that there wouldn't be posed

**NEAL R. GROSS**

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

1 in Matagorda County, and I must say there's a lot of  
2 oil and gas operations in Matagorda County too. But  
3 I'm just curious, is that of concern, this  
4 segmenting question and postponing it?

5 MS. PRICE: As you rightfully pointed  
6 out, that's what the regulations are. Hydrogen  
7 sulfide gas as a potential hazard has been  
8 identified, and from a safety perspective that goes  
9 to control room habitability, and that's something  
10 that would be handled at the COL stage.

11 JUDGE GIBSON: Okay. Mr. Blackburn, do  
12 you wish to address that point?

13 MR. BLACKBURN: Well, you know, it seems  
14 to me that -- I mean it's called an early site  
15 permit.

16 JUDGE GIBSON: I'm sorry, I didn't hear  
17 what you said.

18 MR. BLACKBURN: I'm sorry. It's called  
19 an early site permit, and it seems like -- and  
20 again, I keep coming back to common sense, which  
21 goes only so far in certain of these structures, but  
22 if there are problems with the site, they ought to  
23 be clearly articulated and understood at this stage,  
24 because there hasn't been a tremendous amount of  
25 money spent yet. I mean, well, there's been a lot

**NEAL R. GROSS**

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

1 of money spent, but not by -- not like what there  
2 will be spent at a later stage.

3 And as my understanding is, once this  
4 process unfolds, and if it turns out that an ESP is  
5 issued, then basically these issues are not going to  
6 be revisited except in the context of engineering,  
7 if then.

8 And I think that's what worries me is  
9 now is the easy time from a decision making  
10 standpoint to honestly and objectively evaluate  
11 these issues. So anything that is deferred to the  
12 COL stage is worrisome to me in that it becomes a  
13 constraint as opposed to what is now an opportunity  
14 to find another site.

15 And I just think that the siting  
16 process, as I've understood it throughout my  
17 professional career, has been to try to identify  
18 problems with the site, realistically assess the  
19 hazards associated with those, fully vet that, and  
20 then, if you're comfortable, move forward.

21 I don't think these issues have been  
22 fully vetted. I think that's the basis of our  
23 safety contentions. We think there are issues  
24 associated with these things.

25 And certainly at the least we need the

**NEAL R. GROSS**

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

1 Railroad Commission data, certainly at the least we  
2 need a full understanding of this issue. But I  
3 think more generally there is a bona fide concern  
4 that needs to be addressed at the ESP stage, and I  
5 think it's through the manmade hazard side of that.

6 JUDGE GIBSON: Okay. Okay. Thank you.  
7 Did you have anything, Mark?

8 JUDGE BARNETT: Yes. What section of  
9 the SSAR is this bounding analysis?

10 MR. FRANTZ: It's in section 2.3.1, I  
11 believe it is.

12 JUDGE BARNETT: 2.3.1?

13 MR. FRANTZ: Yes -- I'm sorry, it's  
14 2.2.2-34.

15 JUDGE BARNETT: Okay.

16 MR. FRANTZ: And I believe that refers  
17 to other sections in the SSAR.

18 JUDGE BARNETT: Okay. You said you did  
19 this bounding analysis and the biggest threat comes  
20 from the natural gas pipeline.

21 MR. FRANTZ: Yes, that's because it's  
22 the closest, it's much closer than the active wells  
23 and abandoned wells, and it also has a higher volume  
24 and higher pressure.

25 JUDGE BARNETT: But isn't it a different

**NEAL R. GROSS**

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

1 kind of threat, so the threat from the natural gas  
2 pipeline is an explosion threat, and the threat from  
3 these abandoned wells could be H2S leakage. Right?

4 MR. FRANTZ: Yes, I think you raise a  
5 good point, that they are separate hazards. And as  
6 the staff has pointed out though, with respect to  
7 the toxic gas hazard, it is standard practice to  
8 defer that to the COL stage because you don't  
9 evaluate that hazard in isolation. You can't  
10 determine the impact of that hazard without actually  
11 having a design in place. And the design could  
12 account for that hazard.

13 And therefore at this stage of the  
14 proceeding there's not much you can evaluate without  
15 a design. You need that design to determine whether  
16 or not that hazard is acceptable or not, the toxic  
17 gas hazard. With respect to the explosive gas  
18 hazard, you can do that evaluation now.

19 JUDGE BARNETT: For the petitioner, what  
20 is your response to this bounding analysis that  
21 they've done? So they claim that the explosion  
22 hazard is the maximum threat. What's your response  
23 to that -- so therefore they don't need to consider  
24 the abandoned wells further than what they've done  
25 already?

**NEAL R. GROSS**

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

1 MR. BLACKBURN: Well, I actually  
2 disagree with it in a couple of respects. One,  
3 natural gas pipelines can be shut off, and, you  
4 know, the idea that it would be an uncontrolled,  
5 unabated event is really less likely.

6 I think what's worrisome about these  
7 abandoned wells and about this, if there is a  
8 leakage, if there is a source there, you don't have  
9 a shut-off valve. I mean this is a different type  
10 of event.

11 And I think that the hydrogen sulfide  
12 issue does go beyond the control room and I think  
13 that it is a separate type of concern that is in no  
14 way addressed by the bounding analysis. So I would  
15 respond in that way.

16 JUDGE GIBSON: Judge Baratta?

17 JUDGE BARATTA: The applicant, in their  
18 answer to your petition, pointed out that you used  
19 the terminology "may be improperly plugged" for  
20 example. Does that put this into the speculative  
21 background?

22 MR. BLACKBURN: No, Your Honor.

23 JUDGE BARATTA: Why not?

24 MR. BLACKBURN: Because we were really  
25 exploring data gaps, and we were exploring

**NEAL R. GROSS**

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



1 information that was not present. And when you're  
2 talking, first of all, about omissions, it's hard to  
3 be specific. I think the term "may" is just a much  
4 more honest assessment of the situation because  
5 there are things we don't know.

6 But we did put in our petition a lot of  
7 specifics. That there was a large number of wells  
8 that were identified from the records and that there  
9 were problems with those data. That's not a  
10 speculative concept.

11 You know, the speculation would be  
12 whether there's leakage. Now that would be I think  
13 what was claimed as speculation. My co-counsel  
14 shudders when I use the term.

15 We're at a funny point where we don't  
16 have data, we can't conduct an engineering analysis  
17 on information we don't have, and "may" is the  
18 appropriate term I think to use.

19 I don't see how else one raises -- I  
20 mean we had essentially an engineering report that  
21 identifies that in the assessment of a professional  
22 engineer these are bond fide issues and bond fide  
23 risks.

24 I don't think that we can say with  
25 absolute certainty -- I think if we said that you

**NEAL R. GROSS**

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

1 wouldn't believe it, and I think the honest  
2 statement is "may" and it is not speculative.

3 When we have site access, assuming we  
4 get site access, I don't know if we will, but if we  
5 did, it would be much more appropriate I think to  
6 ask if the "may" could transfer into a "could this  
7 truly happen."

8 I think at this point that we have  
9 raised what we think is a very realistic  
10 possibility. Probability is a little stronger than  
11 where we are right now.

12 We just -- we know these issues exist  
13 with these wells, we have an engineer that supports  
14 that assessment, we have geologists that have looked  
15 at the data. The gaps are there. We think the  
16 issue is there, and I don't think the issue is  
17 speculative at all.

18 JUDGE BARATTA: Your primary issue at  
19 this time, getting back to what we discussed  
20 earlier, is the data gaps.

21 MR. BLACKBURN: Well, absolutely,  
22 significant data gaps.

23 JUDGE BARATTA: And the importance of  
24 the data gaps is because if there is a well that's  
25 leaking, or if there is that sort of thing, there is

**NEAL R. GROSS**

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

1 that that could create a problem.

2 MR. BLACKBURN: That's correct.

3 JUDGE BARATTA: Okay. Thank you.

4 MR. FRANTZ: Judge Baratta, if I may  
5 clarify, the data gaps are not data gaps in the  
6 application; they're data gaps in the records of the  
7 Texas Railroad Commission.

8 I'm not sure they've identified any data  
9 gaps in our application, and we don't -- as I said,  
10 we don't rely totally upon those Railroad Commission  
11 records. We've gone out and done our own, you know,  
12 walk-downs of the site, and we've looked at other  
13 records.

14 So to the extent they're saying there  
15 are gaps in those Railroad Commission records, I'm  
16 not sure that's very material to what we're doing  
17 here. I mean some of those gaps are minor things,  
18 like the well number, the depth of the well. How is  
19 that material to the hazards posed by the wells? I  
20 don't believe it is.

21 JUDGE BARATTA: No, I think the issue is  
22 the location --

23 MR. FRANTZ: Yes.

24 JUDGE BARATTA: -- and whether or not  
25 all the wells have been located, as opposed to --

**NEAL R. GROSS**

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

1 MR. FRANTZ: Yes. And to the extent  
2 they contend that we -- our figure 2.2.5 does not  
3 identify the wells, they haven't shown any well that  
4 they believe exists that we have not shown on that  
5 figure, and that includes the inactive or the  
6 abandoned wells.

7 JUDGE GIBSON: Well, I believe that  
8 concludes the questions that we had for you all. I  
9 don't know if you all feel, you know, moved by the  
10 spirit to have to give some sort of a closing  
11 statement.

12 It's certainly not anything we're  
13 demanding of you. But at the same time, if you  
14 stayed up all night writing something, I don't want  
15 you all to be disappointed.

16 (General laughter.)

17 JUDGE GIBSON: So is there anything  
18 further that you all need to say to us, or can we  
19 adjourn?

20 MR. BLACKBURN: I am happy to allow --  
21 at least from my standpoint, for us to adjourn.

22 JUDGE GIBSON: Okay.

23 Staff?

24 MS. PRICE: The staff has nothing  
25 further to add.

**NEAL R. GROSS**

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

1 JUDGE GIBSON: Mr. Frantz?

2 MR. FRANTZ: And I did not spend up all  
3 night writing a closing statement, so I have nothing  
4 to say.

5 (General laughter.)

6 JUDGE BARNETT: Did you want to deal  
7 with this last issue?

8 JUDGE GIBSON: Oh, yes.

9 One other thing, Mr. Blackburn: I just  
10 want to make sure there was nothing at all in your  
11 petition indicating that you were hoping to pursue  
12 this under Subpart G rather than under Subpart L.

13 And I just wanted to be sure that you  
14 weren't expecting to have some formal cross-  
15 examination of all the witnesses by you, as opposed  
16 to examination by the judges.

17 MR. BLACKBURN: I won't even go there.

18 (General laughter.)

19 MR. BLACKBURN: I'm very happy to go  
20 forward as contemplated, but I am not asking for  
21 anything --

22 JUDGE GIBSON: Okay.

23 MR. BLACKBURN: -- under Subchapter G.

24 JUDGE GIBSON: Okay. That's fine.

25 Well, hopefully that'll be fine if we end up having

**NEAL R. GROSS**

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

1 the need to go to trial.

2 With that, we stand adjourned. And I  
3 thank you all for doing a fine job and for reaching  
4 this agreement. You all are to be commended for  
5 that. Thank you.

6 MR. BLACKBURN: Thank you.

7 MS. PRICE: Thank you.

8 (Whereupon, at 9:45 a.m., the proceeding  
9 was concluded.)

10

11

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

CERTIFICATE

This is to certify that the attached proceedings  
before the United States Nuclear Regulatory Commission  
in the matter of:                   Exelon Nuclear Texas Holdings  
Victoria Co. Site Station

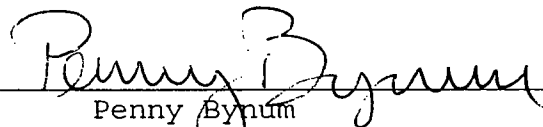
Name of Proceeding: Oral Arguments

Docket Number:           52-02-042

ASLBP Number:           11-908-01-ESP-BD01

Location:                Victoria, Texas

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

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

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

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)