

Exhibit B

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

 FLORIDA POWER & LIGHT)
 COMPANY, NEXTERA ENERGY)
 DUANE ARNOLD, LLC, NEXTERA)
 ENERGY POINT BEACH, LLC and)
 NEXTERA ENERGY SEABROOK, LLC,) Case No.
 Plaintiffs,) 9:18-cv-80118
 vs.)
 NUCLEAR ENERGY INSTITUTE,)
 INC.,)
 Defendant.)

Videotaped Deposition of PHYLLIS N. RICH
Washington, D.C.
June 21, 2018
9:38 a.m.

Reported by: Bonnie L. Russo

1 Videotaped Deposition of Phyllis N. Rich held
2 at:

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Jones Day

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51 Louisiana Avenue, N.W.

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Washington, D.C.

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20 Pursuant to Notice, when were present on behalf
21 of the respective parties:

22

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1 APPEARANCES:

2

On behalf of the Plaintiffs:

3

GEORGE A. ZIMMERMAN, Esq.

4

CHRISTOPHER R. FREDMONSKI, Esq.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP

4 Times Square

5

New York, New York 10036

212-735-2047

6

george.zimmerman@skadden.com

christopher.fredmonski@skadden.com

7

8

9

On behalf of the Defendant:

JOSEPH E. FINLEY, Esq.

10

JONES DAY

1420 Peachtree Street, N.E.

11

Suite 800

Atlanta, Georgia 30309

12

404-581-3939

jfinley@jonesday.com

13

-and-

CHRISTINA T. MASTRUCCI, Esq.

14

JONES DAY

600 Brickell Avenue

15

Brickell World Plaza

Suite 3300

16

Miami, Florida 33131

305-714-9700

17

cmastrucci@jonesday.com

18

19

20

Also Present:

Robert B. Sandler, NextEra Energy Resources

21

Ellen C. Ginsberg, NEI

Jonathan M. Rund, NEI

22

Daniel Russo, Videographer

23

24

25

1 committee?

2 A. I am not.

3 Q. Do you periodically attend or
4 normally attend executive committee meetings?

5 A. Yes, I do.

6 Q. Are notes or minutes taken?

7 A. They are.

8 Q. And by whom?

9 A. Ellen Ginsberg.

10 Q. And is there a central place where
11 these notes and minutes are kept?

12 A. Yes, of course in the corporate
13 files, but we also have a diligent board system
14 and those minutes are available to all
15 executive committee members on that list.

16 Q. So is that the same with the board
17 of directors meetings?

18 A. Yes, it is.

19 Q. Are there typically agendas that are
20 set up in advance of either board meetings or
21 executive committee meetings?

22 A. Yes.

23 Q. And those are circulated events?

24 A. Yes.

25 Q. Did the -- let's go back.

1 You understand you have been
2 designated as a representative of NEI for
3 purposes of this deposition for certain topics.

4 A. Yes.

5 Q. And one of those topics is the
6 negotiation and origin of PADS.

7 A. Yes, sir.

8 Q. And PADS is all capital, P-A-D.
9 Just for the record, what does PADS
10 stand for?

11 A. Personnel access data system.

12 Q. What is your involvement with PADS?

13 A. My involvement is merely the final
14 approval, if you will, of the financial aspects
15 of the contract and the approval of the
16 contract once it has gone through the approval.
17 I do not engage in the management of PADS
18 itself.

19 Q. When you say, "final aspects of the
20 contract and the approval of the contract,"
21 what do you mean by that?

22 A. So we -- we contract with a company
23 called Canberra Robert Kelm and they provide
24 the actual administration, if you will, of the
25 database and so annually or at some period,

1 there is a review of that contract and the
2 charge of that, and so I get the final approval
3 of the contract.

4 Q. Okay. When you say Canberra is in
5 charge of administration of the database, what
6 does that mean?

7 A. They are -- they are not in charge
8 of the administration. They are -- they run
9 the machinery so there is a database. There
10 are hardware aspects to it so they run the
11 database.

12 Q. Okay.

13 A. For NEI.

14 Q. Are there any -- let's call them a
15 vendor, just for purposes.

16 A. Vendor.

17 Q. Fair enough. Are there any other
18 vendors that NEI retains in connection with
19 running or doing any part of PADS?

20 A. So there is Canberra, there is
21 Robert Kelm and then I want to say it's now
22 called shared -- Shared Data which is a
23 subcontractor of Robert Kelm.

24 Q. Okay. What does Robert Kelm do?

25 A. Robert Kelm is the -- he administers

1 so he makes sure that the software is running
2 appropriately, if it answers any questions of
3 the users.

4 Q. Oh, he is an individual, or is he a
5 company that is named after him?

6 A. Well, he is an individual but he is
7 a -- he is his company, if you will.

8 Q. Okay.

9 A. That's the best way to describe it.
10 I apologize.

11 Q. No problem. What does Shared Data
12 do?

13 A. It's a subsidiary or a subcontractor
14 for Robert and just basically assists him.

15 Q. Other than Canberra, Kelm and Shared
16 Data, are there any other vendors outside of
17 NEI who have any responsibilities with respect
18 to PADS?

19 A. The administration of PADS?

20 Q. Uh-huh.

21 A. In my opinion or my belief, that's
22 the three that we've listed there.

23 Q. Okay. And you also approve whatever
24 contracts exist between NEI and Robert Kelm?

25 A. Not the final. I just -- all I do

1 is approve that it has gone through the system.
2 I don't sign the contract.

3 Q. Is there a contract with Shared data
4 or is that just a subcontractor?

5 A. It's all under that, subsumed.

6 Q. So Canberra, Robert Kelm and Shared
7 Data effectively deal with the administration
8 of PADS; is that a fair summary?

9 A. Yes.

10 Q. What, if anything, does NEI do with
11 respect to PADS?

12 A. So NEI's role with respect to PADS
13 is the conduit with -- on regulatory issues
14 that may arise. It provides a service to the
15 industry if there are industry issues that come
16 up that need to be -- I am just trying to think
17 of a good example.

18 So for instance, if the industry
19 changes a method in the way that they process
20 individuals in and out of plants in respect --
21 you know, in response to a regulatory
22 requirement change, we work with the industry
23 and provide that guidance and direction and
24 create that framework, and if any changes that
25 need to be made to the PADS, data collection to

1 support that, we work with Robert to make sure
2 that that happens.

3 Q. How often do industry changes occur
4 that require NEI involvement?

5 A. I am not -- that's not an area of my
6 expertise, so I think quite frankly either
7 Robert Kelm or Bill Pitesa might be able to
8 answer that question better.

9 MR. FINLEY: George, just to be
10 clear, when you said that one of the topics was
11 PADS, she was really designated for the PADS
12 agreement I think if you look at it. Bob Kelm
13 has certain PADS-related topics within his
14 scope.

15 BY MR. ZIMMERMAN:

16 Q. Same question with respect to how
17 often regulatory issues come up.

18 A. And it's the same thing. Yeah.
19 Quite frankly, that is just not my area of
20 expertise.

21 Q. Okay. With respect to your
22 designation as a witness on behalf of NEI on
23 PADS, tell me generically what did you do to
24 prepare and educate yourself if anything.

25 MR. FINLEY: And just to object

1 again, it's the PADS agreement.

2 MR. ZIMMERMAN: PADS agreement.

3 BY MR. ZIMMERMAN:

4 Q. Well, why don't we do this for
5 shorthand.

6 Whatever topics you were designated
7 for PADS, tell me generally what you did to
8 prepare.

9 A. Yes. So I talked with a number of
10 individuals within the organization,
11 individuals who were responsible for the
12 administration of PADS, individuals who were
13 involved in the original agreement, individuals
14 that worked on the billing of the assessments
15 across the organization and then with my legal
16 counsel.

17 Q. Okay. Forgetting legal counsel,
18 with whom did you speak with respect to their
19 involvement in the original agreement?

20 A. So Bill Pitesa, who is our chief
21 nuclear officer, he is on loan to us from Duke
22 Energy currently, and Joe Pollock, who is our
23 vice president of regulatory affairs in our
24 nuclear generation division. Robert Dubrow,
25 who is my -- I've already mentioned, he's the

1 senior director of finance and accounting at
2 NEI. With respect to -- none of my legal
3 counsel because I would have talked -- of
4 course, Maria Korsnick, probably Pamela Cowan,
5 who is also vice president of regulatory
6 affairs, but predominantly, Bill Pitesa and Joe
7 Pollock and Rob Dubrow.

8 Q. Who did you speak with with respect
9 to billing assessments?

10 A. Robert Dubrow.

11 Q. What -- did you review any documents
12 in connection with preparing for this as it
13 relates to PADS?

14 A. Yes. I reviewed the agreement, of
15 course, any historical agreement, pieces to
16 that. I reviewed financial information, on
17 what the, you know, what we paid in or what we
18 paid in -- received in as revenues to
19 administer PADS and, of course, expensed out.

20 Q. When you say, "historical pieces to
21 the agreement," what does that mean?

22 A. Just previous, you know, if there
23 were any other previous agreements that -- that
24 Agreement 4 -- or Amendment 4, I should say, I
25 keep saying agreement. It's an amendment. So

1 if there was a previous amendment, I looked at
2 those as well.

3 Q. So you looked at the original
4 agreement?

5 A. Yes.

6 Q. Amendment 4?

7 A. Yes.

8 Q. Any other amendments?

9 A. Yes. Just -- I am trying to
10 remember. I think I saw two -- Amendment 2 as
11 well.

12 Q. Did you see any drafts of the
13 original agreement?

14 A. No, I did not.

15 Q. Did you see any minutes or notes
16 that related to the negotiation of any of the
17 agreements?

18 A. Only in preparation of -- nothing in
19 great detail. I was provided some ahead of
20 time.

21 Q. What were you -- what documents were
22 you provided that dealt with that?

23 A. The original agreement, some letters
24 that were provided -- some letters that went
25 from the -- which we refer to as the Nuclear

1 Strategic Issues Advisory Committee or NSIAC,
2 N-S-I-A-C. That conveyed to our membership the
3 agreement -- amendments, if you will.

4 Q. The NSIAC you just referred to, is
5 that one document or more than one?

6 A. It is a cover letter, it's just a
7 forwarding cover letter to the amendment.

8 Q. Okay. So it had the cover letter
9 and the amendment?

10 A. Uh-huh.

11 Q. And we are talking about Amendment
12 4.

13 A. I am trying to remember right now
14 what I have seen and that would be helpful if I
15 could see the actual documents. It was the
16 original -- I want to say it was Amendment 2,
17 but my memory is not going to be --

18 Q. Why don't we do this. At some
19 point, I will show you documents that will help
20 you.

21 A. Certainly. That would help me
22 extensively. Thank you.

23 Q. When did you learn that NextEra
24 terminated its membership with NEI?

25 A. January 4 of 2018.

1 Q. How did you learn that?

2 A. By telephone call. I'm sorry, Maria
3 Korsnick, my CEO, conveyed that Mano Nazar of
4 NextEra had contacted her by telephone and she
5 relayed that information to me.

6 Q. When did you learn that Entergy had
7 terminated its membership?

8 A. The following day, 1-05.

9 Q. How did you learn that?

10 A. The same way. Maria Korsnick
11 informed me of the phone call.

12 Q. Were you aware prior to January 4
13 whether there were any issues or areas of
14 disagreement between NextEra and NEI?

15 A. Yes, I was.

16 Q. How -- what were you aware of and
17 when did you learn it?

18 A. There were some membership concerns
19 relative to policy decisions, probably as early
20 as 2016, we were working closely with NextEra
21 management including Mr. Nazar throughout 2017
22 on those policy-related activities.

23 Q. And you were involved in those?

24 A. Yes, I was.

25 Q. Okay. Prior to January 4 when

1 A. Uh-huh.

2 Q. And then the next paragraph says --
3 makes a reference to changes to the INDEX
4 system.

5 What is the INDEX system?

6 A. You might recall earlier this
7 morning, I mentioned that that was a prior
8 system for collecting such data. To the best
9 of my knowledge, having not been involved, I
10 don't know what INDEX, how it worked.

11 Q. Okay. And then the -- back to the
12 first paragraph, the last sentence indicates
13 that: "The purpose of this letter is to obtain
14 NSIAC's approval of the PADS effort," correct?

15 A. That's correct.

16 Q. All right. And then the next
17 paragraph, second sentence: "To provide as
18 clear a picture as possible of the multitude of
19 participating activities and responsibilities,
20 the following key items are summarized below
21 and discussed in detail in the company
22 enclosures."

23 A. Uh-huh.

24 Q. And then it so encloses a copy of
25 the agreement, right?

1 A. Yes.

2 Q. Do you know whether after this was
3 circulated, any NSIAC members had any comments
4 or edits to the agreement that was attached?

5 A. I would -- I would have no
6 knowledge.

7 Q. All right. Then it goes:
8 "Executive summary of PADS implementation
9 status," and the third one: "Industry use of
10 approved contractor vendor programs,
11 industry-wide area network for data exchange."

12 What does that mean, industry-wide
13 area network for data exchange?

14 A. May I refer back to the documents?

15 Q. Sure.

16 A. So my interpretation of this is that
17 it's the -- the description of how the
18 communication of the information that is on
19 PADS will go back and forth, hence, the
20 connection or the connectivity of the nodes to
21 the central system.

22 Q. If you go to Page 2, top paragraph:
23 "PADS implementation is based on the formal
24 industry position approved in March '94."

25 A. 2 -- of the letter?

1 Q. Yeah, second page.

2 A. Sorry.

3 Q. That's okay. Top paragraph. It is
4 73369 on the bottom.

5 A. That's correct.

6 Q. "PADS implementation is based on the
7 formal industry position approved in March
8 '94."

9 What formal industry position is
10 that referring to?

11 A. You recall I mentioned the industry
12 initiatives that -- that would have been, what
13 that -- that was taken in March of '94, some
14 industry position was taken that he is
15 referring to here.

16 Q. Okay. Do you know if that industry
17 position that was taken and approved in March
18 '94, is that in the form of a written document?

19 A. I wouldn't know that.

20 Q. Right above the next heading, "PAD
21 budget and billing process," the paragraph
22 above that: "A significant item that remains
23 is participation by contractors/vendors with
24 licensee-approved access authorization/fitness
25 for duty programs directly with PADS. We

1 believe they should participate but our
2 near-term focus is connecting the remaining
3 licensees as PADS participants."

4 What is the reference to remaining
5 licensees? What does that mean?

6 A. Having not been involved at that
7 time, I assume it would be speculation.

8 Q. Did you talk to anybody about what
9 that meant?

10 A. No, I did not get into that level of
11 detail.

12 Q. Do you know what -- is the reference
13 to licensees nuclear licensees?

14 A. Yes, it would be.

15 Q. So if you turn now to the actual
16 enclosure which is the agreement -- the PADS
17 agreement.

18 A. Okay.

19 Q. The first page.

20 A. Uh-huh.

21 Q. Where it says: "Agreement entered
22 into."

23 A. Yes.

24 Q. There are a number of whereas
25 paragraphs. Do you know what the purpose of

1 those whereas paragraphs are?

2 A. I would assume as typical whereas
3 paragraphs, they are a summary of -- of the --
4 of the document.

5 Q. Okay. If you look at the one, two,
6 three, fourth whereas: "PADS is intended."

7 A. Uh-huh.

8 Q. Is it your understanding that that
9 accurately reflects what PADS is intended to
10 do?

11 A. Yes.

12 Q. All right. "Whereas PADS is
13 intended to aid in providing your consistent
14 industry-wide approach to collecting,
15 maintaining, transferring and evaluating
16 information necessary for processing
17 applications for plant access," then there is a
18 parenthetical: "And such information will be
19 available to all signatories to this agreement
20 to facilitate their processing of applications
21 for plant access."

22 Who drafted this?

23 A. I don't know.

24 Q. There is a reference to: "The
25 information will be available to all

1 signatories."

2 Who chose that word "signatories?"

3 A. I don't know.

4 Q. Why was it chosen?

5 A. I don't know.

6 Q. Who would know?

7 A. I really don't know. Perhaps
8 someone in the past of NEI.

9 Q. In your preparation for this
10 deposition, did you inquire as to what or who
11 chose the word "signatories?"

12 A. Did I require or inquire?

13 Q. Inquire.

14 A. No, I did not.

15 Q. Did anybody tell you who drafted
16 that word?

17 A. Did anyone tell me who drafted that
18 word? No, I do not, but we did talk about
19 signatories versus participants.

20 Q. Well, I understand that. This says
21 signatories, not participants. That's why I'm
22 asking.

23 A. That's correct.

24 Q. Do you know why it says signatories,
25 not participants?

1 A. No, I don't.

2 Q. Did that come up in any of your
3 conversations?

4 A. Only to the extent that -- of what I
5 just mentioned to you.

6 Q. That there is a difference between
7 the two?

8 A. There's a difference, uh-huh.

9 Q. I understand that, so let me ask you
10 this: Since you are the corporate
11 representative, is it your understanding that
12 nobody at NEI can tell the Court why the word
13 signatories was used instead of participants in
14 this whereas clause?

15 A. Perhaps in legal --

16 Q. They won't let me ask that. They
17 can't testify in court.

18 A. Sorry. Quite frankly, Bill Rasin
19 left NEI many, many years ago. No one to my
20 knowledge that is -- I was not involved at any
21 senior level by that point that I would have
22 understood it.

23 Q. Do you know what Bill -- what is his
24 last name?

25 A. Pitesa.

1 Q. No, you said Bill Rasin.

2 A. Bill Rasin.

3 Q. Who is he?

4 A. He was -- at that time, he was vice
5 president of technical regulatory -- a
6 predecessor to what is now the nuclear
7 generation division.

8 Q. What would be his role in all of
9 this?

10 A. He was comparable to a -- to the
11 chief nuclear officer role, if you will.

12 Q. Okay. Why do you think he would
13 know?

14 A. Because he was leading the NEI
15 discussion on this.

16 Q. Do you know, when did he leave NEI?

17 A. In the '90s, late '90s.

18 Q. Do you know where he is?

19 A. We have no follow up -- or we have
20 no contact information for him.

21 Q. Okay. If you go to page -- let me
22 ask this. I asked this before and forgive me,
23 I forgot the answer.

24 Do you know whether any -- any
25 member of NSIAC when they received this e-mail

1 made any comments or revisions to this
2 agreement?

3 A. As coming from this letter, I have
4 no knowledge.

5 Q. Okay. If you go to Page 5.

6 A. Of the agreement?

7 Q. Yes, where it says: "Termination of
8 membership," so we are on the same page.

9 A. Uh-huh. Okay.

10 Q. If you -- what do you understand
11 this section to be discussing?

12 A. That this is the way a NEI member
13 can cease their membership in PADS, and going
14 on, that if they -- on the flip side of that,
15 should they fail to meet the obligations under
16 the agreement that we could revoke the rights
17 of their membership in PADS.

18 Q. Okay. Where are the obligations in
19 -- is there anywhere in this agreement where
20 the obligations are set forth, that a failure
21 to meet would entitle the executive committee
22 to revoke the right to access PADS?

23 MR. FINLEY: Object to form.

24 BY MR. ZIMMERMAN:

25 Q. You can answer.

1 A. Could you repeat the question. I'm
2 not really sure I --

3 Q. Let me rephrase it. To your
4 knowledge, is there anywhere in this document,
5 an obligation that an NEI member must remain an
6 NEI member for any period of time? They have
7 to sign on according to this agreement?

8 MR. FINLEY: Object to form.

9 THE WITNESS: That they must --

10 BY MR. ZIMMERMAN:

11 Q. Is there any portion of this
12 agreement that states it is an obligation of a
13 signatory to remain an NEI member for any
14 specific period of time?

15 A. This is -- this isn't with regard to
16 NEI membership, it's regard to participation in
17 that -- in PADS.

18 Q. So that's my question. Is there any
19 obligation -- this says: "Should a participant
20 fail to meet its obligations under this
21 agreement, NEI's executive committee of the
22 board may revoke the right of a noncompliant
23 participant to use PADS."

24 Do you see that?

25 A. That's correct.

1 Q. Is there any obligation under this
2 agreement that you're aware of, that in any --
3 that a signatory to this agreement must remain
4 a member of NEI for any specified period of
5 time?

6 A. They must remain a member of NEI to
7 be a participant, so...

8 Q. Where in this agreement does it say
9 it's an obligation to do that?

10 A. Under participation in PADS, on Page
11 3: "Participation in PADS is limited to NEI
12 members."

13 Q. Uh-huh.

14 A. So if you are no longer an NEI
15 member, you are no longer a member of PADS --
16 or a participant in PADS.

17 Q. Well, that's what the lawsuit is
18 about because we just went over the whereas
19 clause, right, that access has to be made to
20 all signatories.

21 So my question is different. I know
22 your position and your client -- your position
23 on this, and we don't have to debate that now.
24 We'll do that another time.

25 What I am asking is: Is there any

1 obligation under this agreement, forgetting who
2 can participate or not, where it is a
3 requirement that a signatory remain an NEI
4 member for any specified period of time?
5 That's a yes or no.

6 MR. FINLEY: Object to form.
7 You can go ahead and answer.

8 THE WITNESS: There is no obligation
9 that a member remain a member, but upon their
10 resignation of membership, they cease
11 participation in PADS.

12 BY MR. ZIMMERMAN:

13 Q. That's -- that's your position. I
14 know that, but that wasn't my question, but I
15 will take that answer and strike the last part
16 of it -- move to strike the last part of it.

17 Let me ask this: Was there -- there
18 was a series of amendments to this over time?

19 A. Subsequent, yes.

20 Q. The one where -- I'm going to ask
21 you about is Amendment No. 4, which I will show
22 you in a minute.

23 A. Okay.

24 Q. Did you have any involvement in
25 Amendment No. 4?

1 A. No, I did not.

2 Q. Do you know what generally it
3 encompasses?

4 A. Uh-huh.

5 Q. What was -- what led to Amendment
6 No. 4? I mean, why was it -- why did it come
7 to be?

8 A. If you have it so that -- I know
9 there's a cover letter. The cover letters
10 often describe the changes that --

11 Q. Yes.

12 MR. ZIMMERMAN: So this is Exhibit
13 15.

14 THE WITNESS: Thank you.

15 MR. ZIMMERMAN: The Exhibit B is not
16 part of the document, but the rest is.

17 So it's October 6, 2011, NEI letter
18 to NSIAC, and that's 15.

19 (Deposition Exhibit 15 was marked
20 for identification.)

21 BY MR. ZIMMERMAN:

22 Q. So take a look at it and then once
23 you do, I will repeat the question.

24 A. Okay.

25 Q. Okay. Now that you have looked at

1 it, can you tell me what led to Amendment No. 4
2 being enacted?

3 A. According to the -- to the cover
4 letter, if you look at the second paragraph,
5 the reason Amendment 4 was put in place was to
6 -- to deal with some modifications required
7 with regard to individuals who are authorized
8 to have safeguard information and also to allow
9 contractors/vendors who are NEI members to
10 participate in PADS for the -- for the purpose
11 of processing applications.

12 Q. What is safeguards information?

13 A. Information that is at a level of
14 security that only a certain level of people
15 with proper clearances can have access to.

16 Q. Okay. So let's look at Page 1, the
17 first whereas, second paragraph.

18 A. Uh-huh.

19 Q. The -- so: "Whereas, each
20 commercial nuclear facility licensee including
21 those with nuclear power plant under
22 construction, has been ordered by the NRC to
23 implement and maintain a program consistent
24 with" -- and I am skipping, little (i) in the
25 whole: "To authorize access to qualified

1 individuals who work at commercial nuclear
2 facilities or at a commercial nuclear facility
3 under construction." And then: "(ii), make
4 available to all other commercial nuclear
5 facility licensees, certain information about
6 individuals who have been granted or applied
7 for access authorization."

8 Is that covering the safeguards
9 information you just told me about?

10 A. Quite frankly, that's in the
11 regulatory realm. I would seek to ask Bill
12 Pollock or -- I mean, to ask Joe Pollock or
13 Bill Pitesa. I can't speak to that, sorry.

14 Q. Okay. I don't think -- you can
15 verify, but if you look at the original
16 agreement, this second proviso: "Make
17 available" all other commercial -- "to all
18 other commercial nuclear facility licensees
19 certain information about individuals who have
20 been granted or applied for access
21 authorization."

22 This was added in Amendment 4. So
23 you don't know what -- what the genesis of that
24 is?

25 A. The tendency of our references, I

1 wouldn't -- that may have some bearing. I --
2 like I said, I'm not a regulatory expert.

3 Q. Okay, that's fine. And then the
4 next paragraph, which does mention safeguards
5 information: "Whereas each commercial nuclear
6 facility licensee that has a nuclear power
7 plant under construction, has been ordered by
8 the NRC to implement and maintain their
9 safeguards information program consistent with"
10 -- skipping some numbers: "To authorize
11 safeguards information access to qualified
12 individuals and to make available to all other
13 commercial nuclear facility licensees certain
14 information about individuals who have been
15 granted or applied for access to safeguards
16 information."

17 So is that the paragraph now that is
18 being added that covers the safeguards
19 information you told me about from this cover
20 e-mail?

21 A. As I mentioned before, the various
22 tendency of our references would be someone who
23 has had regulatory background could answer
24 those better than -- than myself.

25 Q. If you then go to the top of Page 2,

1 and I will ask a question, I suspect it will be
2 the same answer but I'll ask it anyway.

3 "Whereas PADS is intended to provide
4 a consistent industry-wide approach to
5 collecting, maintaining, transferring and
6 evaluating information necessary for processing
7 applications for, one, plant access or, two,
8 access to safeguards information."

9 That is the addition of the
10 safeguards information we just talked about?

11 A. I wouldn't surmise. Again, that is
12 better served by someone who understands the
13 regulation.

14 Q. And: "Whereas such information
15 would be available to all signatories to this
16 agreement to facilitate the processing of
17 applications for plant access."

18 Do you know whether between -- was
19 there any discussion leading up to Amendment
20 No. 4 about changing the word signatories to
21 participants?

22 A. I wasn't involved in any
23 conversations with -- with that provision.

24 Q. I guess what I need help with from
25 you or your lawyers. You were designated as

1 the corporate representative to discuss
2 drafting, negotiation, construction and
3 interpretation of any version of the agreement
4 in which any plaintiff was a signatory.

5 So what I am trying to figure out is
6 who is going to give me the answers to these
7 questions if this is the corporate
8 spokesperson? And if the answer is nobody,
9 that's fine. There is a change of personnel, I
10 get that.

11 I just want to make sure that I
12 don't hear at trial an answer to a question
13 from somebody else that I am not hearing today.

14 MR. FINLEY: I understand. For the
15 record, she already testified she can't answer
16 that question.

17 MR. ZIMMERMAN: I know. Then that's
18 what I am asking. This is not addressing her,
19 obviously, I get it.

20 MR. FINLEY: I understand. If there
21 is a witness that is going to -- that is still
22 to be deposed that can answer that question, we
23 will let you know.

24 MR. ZIMMERMAN: In advance.

25 MR. FINLEY: Yes.

1 MR. ZIMMERMAN: Because this is part
2 of -- okay. That's fair. Fair enough.

3 MR. FINLEY: And if the answer is
4 none of them can, then --

5 MR. ZIMMERMAN: Then, that's fine.
6 Then, we know what we're up against.

7 BY MR. ZIMMERMAN:

8 Q. If you go to Page 4 under: "Past
9 funding."

10 A. One moment.

11 Q. Uh-huh. There is a reference to --
12 in the last line -- well, let me read it.
13 "PADS is funded through the payment of a yearly
14 assessment to NEI, all participants" -- I will
15 skip the parenthetical: "All the equal
16 interest in PADS as tenants in common without
17 the right of partition."

18 Do you understand what the rights of
19 tenants in common is supposed to refer to -- or
20 what rights that entails?

21 A. Probably.

22 Q. What -- tell me your understanding.

23 A. Any participants that are NEI
24 members would have an equal right to
25 participation in PADS.

1 Q. What does holding equal interest in
2 PADS mean?

3 A. That they all have access equally,
4 that one utility can't have more access or less
5 access. If they are a participant in PADS,
6 they have a reciprocal relationship that they
7 give and get the same information.

8 MR. ZIMMERMAN: Subject to what we
9 just talked about on the 30(b)(6) issue, at
10 this point I have no further questions.

11 MR. FINLEY: Okay. Then we are
12 done.

13 MR. ZIMMERMAN: Yes, we are. Thank
14 you.

15 THE WITNESS: Thank you.

16 THE VIDEOGRAPHER: We are going off
17 the record at 3:00 p.m.

18 This concludes today's testimony by
19 Phyllis N. Rich.

20 Total number of media units used was
21 three and will be retained by Veritext Legal
22 Solutions.

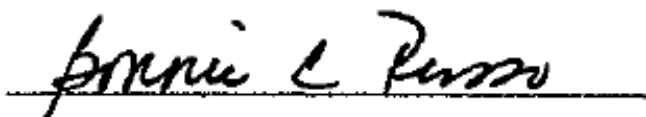
23 (Whereupon, the proceeding was
24 concluded at 3:00 p.m.)

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CERTIFICATE OF NOTARY PUBLIC

I, Bonnie L. Russo, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me in shorthand and thereafter reduced to computerized transcription under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.



Notary Public in and for
the District of Columbia

My Commission expires: June 30, 2020