

1 After the steam generators, and this goes
2 to the issue of economics, I would think that a firm
3 that is in the business of being highly competitive
4 would make sure that its new steam generators, which
5 cost I don't know how much, were properly inspected
6 according to American Society of Mechanical
7 Engineering codes and the final safety analysis
8 report that they were be inspected to that extent,
9 but they didn't, and they didn't inspect them until
10 after it was installed and they couldn't get at the
11 parts. So in some cases, some of the subcomponents
12 were only inspected to 20, 25 percent. But by then,
13 it was too late. It would have been an economic
14 burden to take it out and do it again.

15 Secondly, a new program that was
16 identified is the alloy 600 program, which would
17 pertain to Catawba 2 steam generator as well as
18 other parts of the -- let's just stick with Catawba
19 2 steam generator.

20 The alloy 600 parameters, no commitment to
21 finishing it until the end of the 40-year license
22 period.

23 JUDGE YOUNG: Finishing the review?

24 MR. MONIAK: Finishing the review. I
25 find there to be a deficiency in that you can pretty

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1 much expect, if that's your commitment is to get it
2 done much like the way I submit contentions, if it's
3 5:00 p.m., I'm going to do it at 5:00 p.m., hope I
4 get away. I'm only kidding. I do try to get them
5 in early. But it's the same thing. If you have a
6 deadline, you say you're going to get it in by 5:00,
7 if you're going to do it by June 12, 2001, there's no
8 incentive to get it done prior to that time. And if
9 it doesn't get done, it would be much like the
10 initial license which was issued with numerous
11 amendments that allowed license commitment to be
12 extended --

13 JUDGE YOUNG: So you're saying --

14 MR. MONIAK: -- back in 1986.

15 JUDGE YOUNG: You have said in your
16 contention that completion by the end of the initial
17 40-year license period does not require the issuance
18 required by 10 CFR 50.21 to identify its aging
19 management program within the license application
20 program. And then I think another part that you
21 mention here is the chemistry control program CFR.
22 And was there anything further on the question that
23 Judge Rubenstein had mentioned earlier? Just to
24 sort of help you wrap up here so we can move on.

25 MR. MONIAK: No, I don't have

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1 anything further. I'll let it go.

2 JUDGE YOUNG: And then you'll have
3 rebuttal.

4 MR. MONIAK: Yes.

5 MR. REPKA: Duke Energy's position
6 with respect to this contention is that it is
7 exactly the sort of rambling, unfocused and
8 unsupported contention that's precluded by the basis
9 and specificity standards of 10 CFR 2.714. It's not
10 clear at all to us from reading the contentions and
11 perhaps even more unclear after listening to the
12 arguments this morning exactly what it is that we
13 would litigate or exactly what relief is being
14 requested. I think the Commission has made it
15 entirely clear that the burden on petitioner is to
16 identify specific deficiencies in the application to
17 show some understanding of the application and
18 identify exactly what deficiencies we would litigate
19 and what relief would be requested. That hasn't
20 been done here.

21 In particular, we've tried to identify all
22 the specific subcomponents of the contention, all
23 the fragments of arguments that are presented in the
24 contention statement and address those individually
25 in our papers, and I don't want to repeat all of

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1 that discussion here this morning because I think
2 that response speaks for itself.

3 I think that in general, what we see is a
4 lot of statements that simply reflect that the
5 petitioner didn't understand or missed something in
6 the application, presumed a void regarding something
7 that in effect is addressed in the application.
8 That's sort of a global assessment of what the
9 contention was.

10 More particularly, with respect to steam
11 generators, we do glean that there are -- the issues
12 related to the steam generator surveillance program,
13 chemistry control program and the alloy 600 aging
14 management review, all of those are discussed in the
15 application. And with respect to the steam
16 generator surveillance program, the application
17 alludes to the fact or addresses the fact fairly
18 specifically that the program meets the NEI
19 guidelines on steam generator surveillance. Those
20 are the guidelines referred to in the GALL report,
21 the generic aging lessons learned report, that it
22 should be NRC's staff guidance document on license
23 renewal. The chemistry control program, description
24 states that it meets and address the acceptance
25 criteria of the industry standards on chemistry

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1 control programs. So as a general proposition, here
2 we have programs that in every way are described in
3 the application as meeting the applicable standards
4 as they exist today.

5 And so it's not clear what specific
6 deficiencies or what further actions might be
7 required. I think that the contention seems to be
8 basically a contention that we, the petitioner, have
9 an interest in steam generators and I think steam
10 generators are important, but we're basically in
11 search of an issue and I think that's the kind of
12 contention the Commission has said they want to
13 preclude.

14 Let me try to address a couple of the
15 points I heard here this morning, and I frankly went
16 through a great deal of difficulty understanding
17 what these issues are.

18 With respect to the alloy 600 aging
19 management review and, again, the assertion is made
20 that that review has to be done sooner rather than
21 later. The alloy 600 aging management review is
22 intended as a review to assess whether or not the
23 programs in place, the aging management programs
24 have been -- have been effective and whether there
25 are other developments that should be incorporated

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1 to enhance those programs prior to the period of
2 extended operation. The license renewal application
3 by definition is related to operation in the period
4 of extended operation, not to the current period of
5 operation.

6 This is not a part 50 hearing, this is not
7 the forum to address current day part 50 issues, so
8 therefore it's entirely appropriate that the aging
9 management Commission, the alloy 600 aging
10 management review, would be done at -- certainly by
11 the end of the current period of licensed operation
12 leading to the period of extended operation.

13 With respect to some of the other
14 particular aspects that have been raised by the
15 petitioner, we have responded again in our papers.
16 The issue of -- I heard this morning, again, that
17 there's no program to address new degradation
18 mechanisms. Again, we have programs in place
19 described in the license renewal application, fully
20 consistent with industry standards. They will
21 address the known aging effects.

22 With respect to mechanisms or initiators
23 of aging effects, we have cited to the fact that
24 there's no basis in the law to require us to address
25 any more than the aging effects. It's the license

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1 renewal rule itself is premised on aging effects.
2 One particular example of that was the idea that
3 deformation issue, which there was some discussion
4 here this morning. Deformation is as we stated, is
5 a -- it's an initiator. The aging effect is
6 cracking and cracking is covered by the steam
7 generator surveillance program and the in-service
8 inspection program.

9 JUDGE YOUNG: Let me, while you're
10 taking a pause there, let me ask you a question
11 specifically about the alloy 600 aging management
12 review. Looking at 54.21, which BREDL has cited
13 here, section A-3 of that requires that you
14 demonstrate that the effects of aging will be
15 adequately managed so that the attending functions
16 will be maintained consistent with the current
17 licensing basis for the period of extended
18 operation.

19 And as I understand the argument, the
20 ongoing review that you're doing is anticipated to
21 be complete by the end of the 40-year license period
22 and that at that point you're going to -- or
23 whenever that review is deemed to be sufficient,
24 then enhancement, how did you put it, assuring that
25 enhancements are made prior to the extended period

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1 of the operation.

2 Being involved in another case involving
3 license termination and again, hearing arguments
4 from parties on the difference between a plan and
5 implementation, it's strikes me that this issue is
6 somewhat similar in terms of at what point do you
7 have to say what the enhancements are going to be
8 and what the program will include, because as I
9 understand the way the contention has raised it and
10 the way you -- and I understand you to be agreeing,
11 that what's going on at this point is reviewing the
12 present management program, and that at some point
13 in the future, you will make a determination what
14 enhancements may be needed to manage the effects of
15 aging after the end of the 40-year term.

16 MR. REPKA: The programs that would
17 manage the aging effects for both the present term
18 and the period of extended operation would be the
19 same. The steam generator surveillance program, the
20 ISI program --

21 JUDGE YOUNG: What about, what are
22 the enhancements that you mentioned in your
23 argument?

24 MR. REPKA: What the aging management
25 is intended to do prior to the year, is to review

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1 the effectiveness of those programs based upon
2 operating experience that has been gleaned over the
3 original license term up until that time, taking
4 into -- so you're taking into consideration
5 operating experience and any developments in terms
6 of inspection techniques or other things that may
7 have been put -- may have been developed in the time
8 since. So by its very nature, it's kind of like the
9 belt and suspenders, it's just a review prior to the
10 period of extended operation to determine if any
11 enhancements can be made.

12 JUDGE YOUNG: Right.

13 MR. REPKA: What those enhancements
14 might be, we can't say, because that he would be
15 predicting the future.

16 JUDGE YOUNG: Okay, then let me stop
17 you right there, because the argument as I
18 understand it is that -- well, first of all, the
19 applications for renewal, license renewal, were made
20 early, and presumably, demonstrating that the
21 effects of aging will be adequately managed and for
22 the period of extended operation means saying what
23 you will do during that extended -- that period of
24 extended operation.

25 Even though you might find improvements

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1 later on that you might want to add or enhancement,
2 as you put it, doesn't saying that you will review
3 it at this time and then later consider what
4 operating experience has suggested sort of beg the
5 question of what Duke will actually do to manage the
6 effects of aging in the renewal term?

7 MR. REPKA: No, because the review
8 today as to what the aging management programs will
9 manage aging effects is effectively done in the
10 license renewal application, lists the components
11 and structures --

12 JUDGE YOUNG: But I'm talking about
13 the alloy 600 in particular, and in that one you're
14 saying that you're going to make the determination
15 later as to whether any -- what and whether and if
16 so, what enhancement will be added based on
17 operating experience.

18 MR. REPKA: No, what I'm saying is
19 with respect to alloy 600 components, there are
20 already subject to an aging management review, and
21 that has been done. That's reflected in the tables
22 and the license renewal application. And they are
23 subject to aging management programs that include
24 the steam generator surveillance program, the ISI
25 program, or in-service inspection program or the

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1 chemistry control program that are specifically
2 credited in the license renewal application.

3 What the aging management review does is
4 it's just an additional program, an additional --
5 not even a program, an additional review at some
6 later date prior to the period of operation that's
7 relevant here, just to assure that there are no
8 further enhancements to be made. So the basic --

9 JUDGE YOUNG: So you already have a
10 program that you're contending at this point is
11 adequate to manage it?

12 MR. REPKA: That's correct, and
13 that's what is reflected in the license renewal
14 application.

15 MR. RUBENSTEIN: You could have
16 written that sentence, we will use our aging
17 management overview program at sometime conveniently
18 in the future as opposed to saying at four years,
19 couldn't you?

20 MR. REPKA: That's true, it could be
21 sometime in the future. The key is though it's
22 prior to the period of extended operation, because
23 that's what is in issue with license renewal.

24 MR. RUBENSTEIN: But common sense
25 would dictate that you would have some milestones

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1 where you take that feedback from the aging
2 management program within your aging management
3 program review and say I ought to change this and
4 that in the continual ongoing continuum of
5 operation.

6 MR. REPKA: Right, although --

7 MR. RUBENSTEIN: Why did you choose
8 such language?

9 MR. REPKA: In terms of when to do
10 it? Two reasons: One would be a factual technical
11 reason that prior to the period of extended
12 operation, you will have more experience. If you do
13 it later rather than sooner, you have more
14 experience, and so therefore it's a better basis on
15 which to make a review. The second reason would be
16 a more legal reason, which is the current part 50
17 process, the current part 50 license allows
18 operation up to year 40 without doing anything
19 further in that area.

20 JUDGE YOUNG: But let me stop you
21 right there, though. By filing the license renewal
22 application, you're required to demonstrate that
23 you're going to be able to manage the effects of
24 aging in the period starting year 41. And so I
25 guess I thought I heard you say, well, we've already

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1 done it but we'll do it again later. Have you --
2 and the language may be -- as Judge Rubenstein
3 suggested, is what's sort of confusing here, on one
4 hand it could be read as saying, well, later we'll
5 look at operating experience and figure out whether
6 it has anything to tell us about what changes we
7 need to make to be sure we're going to manage the
8 effects of aging after the end of the current
9 license, or it could be construed to mean, well,
10 we're doing that on an ongoing basis, determining
11 every day or every -- you know, periodically, what
12 enhancements need to be made. We've included it --
13 I thought I heard you say we've included it in our
14 license renewal application a statement of what
15 enhancements were already proposing. And then later
16 down the line, we'll even go the extra yard and
17 propose more. So I'm at this point not real clear
18 on which --

19 MR. REPKA: Well, it's as I said
20 before, we have identified today what the aging
21 management programs are based on a current daily
22 review.

23 JUDGE YOUNG: Have you looked at
24 operating experience at this point?

25 MR. REPKA: Yes.

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1 JUDGE YOUNG: And made any proposed
2 changes in the current programs at this point?

3 MR. REPKA: Those programs are based
4 upon industry guidelines, for example, the steam
5 generator surveillance program is based upon the NEI
6 guidelines. Those guidelines inherently reflect
7 current industry operating experience. So that
8 process continues every day. With respect to this
9 alloy 600 aging management review, that's just an
10 additional -- an additional step prior to the period
11 of continued operation.

12 MR. RUBENSTEIN: That program is to
13 determine the effectiveness of the current aging
14 management process?

15 MR. REPKA: Correct.

16 Beyond that, since there's so many little
17 subissues here, I'm not sure I want to address each
18 and every one. If there's specific questions, I'll
19 be glad to respond to them. I think the bottom line
20 for the reasons we point out in our application and
21 the Staff does likewise, there's simply no basis for
22 those assertions.

23 JUDGE YOUNG: Oh, one other question
24 I did have: On this pre-service inspection and in
25 your footnote 145, you talk about relief having been

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1 requested as BREDL asserts from the requirement to
2 examine essentially 100 percent of the steam
3 generator primary inlet and outlet inside radius
4 sections. The steam generator primary inlet and
5 outlet nozzle to safe end but welds the steam
6 generator auxiliary, so forth and so on.

7 I guess a couple of questions that
8 occurred to me with regard to this, you requested
9 relief such that you would not need to examine
10 essentially 100 percent of these items; and I guess
11 my question and it's sort of obvious, is why was the
12 requirement there in the first place, and does the
13 fact that you were granted relief from it
14 necessarily end the inquiry?

15 In other words, in various proceedings
16 that we have, the Staff may already have approved a
17 license amendment request before we -- before the
18 board conducts a hearing on it. So they proceed
19 along two separate tracks. So in other words, the
20 fact that the Staff may have approved an exception
21 to a rule is not necessarily determinative of the
22 question of whether there should have been an
23 exception or whether not examining 100 percent of
24 these components and structures if they include both
25 does not present a genuine issue, a genuine dispute.

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1 MR. REPKA: Okay. This does not, and
2 for several reasons. Number one, it's a relief
3 request today. It's part of a current process that
4 specifically is provided for in the regulations, 10
5 CFR 50.55 A, which is you follow the ASME code,
6 whatever the relevant year addition and agenda are
7 subject to relief requests, which can be asked for
8 and received from the NRC Staff. So that's a
9 current regulatory process.

10 JUDGE YOUNG: But my question is, the
11 granting of a relief request is not necessarily
12 determinative in this proceeding, is it, on whether
13 or not there should have been 100 percent
14 inspection?

15 MR. REPKA: Well, certainly it is
16 with respect to -- certainly, that relief request is
17 not an issue here. There would have to be some
18 basis and some link to an aging effect in the years
19 of extended operation. That certainly hasn't
20 been --

21 JUDGE YOUNG: So you're saying that
22 BREDL has not shown that even though the relief
23 request was granted, that there is any significance
24 in terms of the aging management?

25 MR. REPKA: That's correct. Now, let

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1 me just say a couple of other things about this.
2 This was relief request, it was with respect to
3 pre-service for the new steam generators. It's not
4 100 percent of the components that weren't
5 inspected, it relates to percentage of a particular
6 weld and perhaps because of accessibility or other
7 reasons, there may be some percentage of that weld
8 that's accessible and can be inspected from which
9 you can draw conclusions about the remainder. So
10 that's the basis for the relief pre-service. This
11 equipment remains subject to the in-service
12 inspection program, which is the ASME code required
13 in-service inspections for the same class 1
14 components, and that's submitted on ten-year
15 intervals.

16 And just so the fact that we may have
17 gotten relief for the pre-service inspection doesn't
18 mean we have relief for the next ten year interval
19 or the ten year interval after that. We have to
20 follow the regulatory process and the ASME code each
21 time there is an in-service inspection performed at
22 every interval. And it's on the basis, the
23 in-service inspection program that that's one of the
24 programs that's credited for managing aging effects.

25 MR. RUBENSTEIN: Did the Staff

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1 generate a safety evaluation report based on your
2 waiver request?

3 MR. REPKA: Yes, they did.

4 MR. RUBENSTEIN: And it was approved
5 under the current licensing basis?

6 MR. REPKA: That's correct, and that
7 was issued by the NRC Staff on April 23rd, 2001.

8 MR. RUBENSTEIN: Thank you.

9 JUDGE YOUNG: Do you have anything
10 further?

11 MR. REPKA: No.

12 JUDGE YOUNG: Ms. Utah.

13 MS. UTTAL: It's the Staff's position
14 that BREDL has not demonstrated any insufficiencies
15 within the license renewal application. Licensee
16 discusses their steam generator surveillance
17 program.

18 MR. KELBER: Ms. Uttal, I can hardly
19 hear you.

20 MS. UTTAL: Okay. The licensee
21 discusses their steam generator surveillance program
22 and the other related programs in detail in table
23 3.1.1 on pages 3.31 and in other areas in the
24 amendment application and the -- BREDL has not
25 pointed to any specifics that have not -- first of

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1 all, that were refuted by Mr. Repka here today and
2 also in the Staff and the licensee's brief, they
3 have not sought to really relate their contention to
4 any material deficiencies in the license for renewal
5 application.

6 JUDGE YOUNG: I just had one question
7 for the Staff, for you. There's one place in
8 your -- on page 48 of your response that you say
9 that BREDL, although BREDL states the steam
10 generator tubes are susceptible to corrosion, stress
11 corrosion and cracking, it does not demonstrate that
12 the applicants proposed programs for managing the
13 effects of tube cracking are inadequate. Isn't the
14 standard really whether they have raised a genuine
15 dispute?

16 MS. UTTAL: They have to raise a
17 genuine dispute with the application.

18 JUDGE YOUNG: Right.

19 MS. UTTAL: Therefore, a genuine
20 dispute would be that the program is inadequate to
21 manage the effects of aging. And what we're saying
22 is they haven't demonstrated that, therefore they
23 haven't raised an issue.

24 JUDGE YOUNG: And, but what it gets
25 down to is that you're saying that they have not --

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1 even though they have raised questions, let's say,
2 that they have not demonstrated with any specificity
3 what the deficiencies are and what the proposed
4 alternative or remedy would be.

5 MS. UTTAL: Well, they haven't raised
6 the contention with specificity. They have not
7 pointed to specific deficiencies. You can't just
8 make blanket statements, it's deficient and expect
9 that to be an admissible contention. It's not what
10 the Commission permits in terms of contention
11 pleading.

12 JUDGE YOUNG: Right, I was really
13 raising a much smaller issue. They don't have to
14 demonstrate conclusively anything, but they do have
15 to raise enough of an issue and support it with
16 specific facts sufficient to show that there's a
17 genuine dispute, and you're saying that they have
18 not done that.

19 MS. UTTAL: That's correct.

20 MR. RUBENSTEIN: How about the case
21 of the defects in the steam generator tubes, even
22 though it's within the current -- covered by the
23 current regulations and the current negotiations, I
24 would call it, or licensing or regulatory
25 environment on steam generator wastage, is the --

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1 they basically say the eddy current test is not
2 adequate to show defects.

3 MS. UTTAL: And I believe Mr. Repka
4 addressed that.

5 MR. RUBENSTEIN: Well, refresh my
6 mind.

7 JUDGE YOUNG: Mr. Repka can, too, I
8 guess.

9 MS. UTTAL: I guess he can.

10 MR. RUBENSTEIN: In other words, if
11 they could demonstrate that it's not adequate
12 currently, then one would have to address the future
13 by saying we'll have a better method or we'll just
14 say we'll plug all the steam -- as we find them,
15 we'll just plug them.

16 MS. UTTAL: Well, I didn't -- I'm
17 sorry, I'm not understanding.

18 MR. RUBENSTEIN: Do you want to try?

19 MR. REPKA: Again, though, in the
20 steam generator surveillance program, it's committed
21 to the NEI guidelines, NEI 9706, which incorporates
22 industry experience with respect to surveillance
23 methodologies, techniques. So we have on -- with
24 respect to the issuance of is there a bases for
25 admissible contention or genuine dispute, we have on

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1 one side of the ledger a general statement, on the
2 other, a statement in the application that it fully
3 meets the standard review plan recommendation and
4 the NEI industry guidelines, so there is no genuine
5 dispute.

6 MR. RUBENSTEIN: Within the context
7 of the hearing, but I really was thinking, again,
8 back to BREDL Contention 1, where we offered them,
9 based on information, the opportunity for a rule
10 making, and not judging at this time the merits of
11 the statement that the testing, the inspection
12 system is inadequate, it could then go to relief
13 through rule making.

14 MR. REPKA: And certainly with
15 respect to Dr. Hoppenfeld's differing professional
16 opinion, that's certainly an ongoing present day
17 issue and it is what it is. There certainly has
18 been no -- there's no basis to litigate that here
19 and no suggestion that Dr. Hoppenfeld is going to
20 come in and somehow support that in this context or
21 should or could.

22 MR. RUBENSTEIN: I was really
23 focussing more on -- well, that is his contention.
24 The inadequacy of the eddy current testing
25 procedure. And what I'm really saying is you have

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1 the same relief to you to address, quote, the
2 Commission's position on that as you did as we
3 enunciated clearly in discussion of your Contention
4 Number 1.

5 JUDGE YOUNG: Does that complete
6 both? Okay.

7 MR. REPKA: That's all I had.

8 JUDGE YOUNG: Mr. Moniak, now is
9 your opportunity to rebut, and I think the main
10 thing I'm hearing is either the plan does address
11 the concerns that you have raised, for example, in
12 the alloy 600 aging management review, even though
13 they say at the end of the 40 years they are going
14 to recheck it, they are saying that on an ongoing
15 basis they are considering operating experience in
16 determining how they conduct their aging management
17 program, and that the argument is made that you have
18 not identified specific deficiencies that have any
19 impact in terms of defining a genuine dispute. If
20 I've misunderstood that or paraphrased it
21 incorrectly, please correct me.

22 MS. UTTAL: That's correct.

23 JUDGE YOUNG: Have I left anything
24 out? So if you could direct your rebuttal to that
25 and then if you want to say anything further, please

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1 feel free.

2 MR. MONIAK: Okay. My second part
3 will be on specificity. First, I'm going to say
4 that under 54.21 A 3, it states that for each
5 structure and component identified in paragraph A 1
6 of this section, demonstrate that the effects of
7 aging will be adequately managed so the intended
8 function will be maintained consistent with the
9 current licensing basis for the period of extended
10 operation.

11 It doesn't say discuss. All there is in
12 tables 3.1 and everywhere elsewhere it comes to
13 steam generators is this really weak discussion in
14 which ES NEI 96.07 has cited, but there's no way for
15 us to evaluate their compliance with that. And
16 that's a voluntary -- that's voluntary anyhow, it's
17 not part of the licensing basis at all. 97.06 is
18 not on the NRC web site or on Adams.

19 JUDGE YOUNG: Before you move on to
20 that, before you move on to that, help me out here.
21 You're saying that they have not demonstrated that
22 the effects of aging will be adequately managed by
23 reference to the NEI document or standards or
24 whatever the correct term is. What is the -- in
25 what way -- can you tell me specifically in what way

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1 you challenge what they are doing now? I hear you
2 saying that's not enough on a general level, but can
3 you tell me the specific things that are wrong with
4 how it's being done now?

5 MR. MONIAK: Specifically, how it's
6 being done now is the pre-service inspections were
7 done wrong. And while they were granted relief,
8 there's no doubt they were done wrong and they had
9 to get relief from the code. And my question would
10 be, would they -- would that also translate into
11 relief from the recommendations of 97.06, which I
12 have no way of verifying --

13 JUDGE YOUNG: Let's stop there. Then
14 the relief that they got on the pre-service
15 inspection, what's the impact of that? What's the
16 actual specific impact of not having done the 100
17 percent inspection that relates to aging?

18 MR. MONIAK: Poor baseline in which
19 to assess the aging on many of the components that
20 they --

21 JUDGE YOUNG: You say a poor
22 baseline?

23 MR. MONIAK: A poor baseline, a very
24 weak baseline. It's like looking at only this part
25 of the coffee pot and saying well, this part is

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1 okay, we're going to assume the rest of it is, but
2 you don't know if it is; and if you find something
3 wrong next time, you don't know if it was there
4 pre-service or afterwards, you don't know if it was
5 an effect of aging or if it was a defect at the
6 time. It's rather startling that such a company
7 that claims to be at the head of the industry as the
8 public relation says, would allow such a thing to
9 happen. I mean, that's just bad business practice,
10 too.

11 JUDGE YOUNG: I guess what --

12 MR. MONIAK: That's one thing that
13 was wrong, seriously wrong.

14 JUDGE YOUNG: I guess one thing that
15 I'm wanting to hear is some facts or expert opinion
16 that, for example, with regard to that, the relief
17 request or the granting of that relief request, it
18 has an actual impact that you can describe to me,
19 other than it's sort of self evident that if you
20 don't -- I mean --

21 MR. MONIAK: Well, that's the impact
22 is that they can't measure aging, and therefore
23 aging management is measuring aging.

24 MR. RUBENSTEIN: Did you read the
25 Staff's justification in their safety evaluation

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1 report approving this?

2 MR. MONIAK: Yes.

3 MR. RUBENSTEIN: And you take issue
4 with both the substance in the safety analysis
5 report and the SER?

6 MR. MONIAK: I read the SER several
7 times and the justification for allowing this is
8 that it would have been an economic burden upon the
9 licensee to make them go back and do it the right
10 way and that -- I mean, really they had no choice in
11 the matter.

12 MR. RUBENSTEIN: And they had to have
13 another sentence or two, it's an economic burden
14 which is not justified because --

15 MR. MONIAK: Which is not justified
16 due to the benefits of nuclear power for all of us.

17 MR. RUBENSTEIN: I don't think they
18 used --

19 MR. MONIAK: It's -- I can cite that.

20 JUDGE YOUNG: What is some of the
21 language they used?

22 MR. MONIAK: No, it was that plain of
23 a language.

24 MR. RUBENSTEIN: Was it based on
25 10 PRA as you said before?

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1 MR. MONIAK: What is that?

2 MR. RUBENSTEIN: Was it based on the
3 PRA?

4 MR. MONIAK: The code requirement,
5 Staff summary: Based upon the above, the Staff
6 concludes that the Staff requirements are
7 impractical.

8 MR. RUBENSTEIN: Based on the above
9 reference --

10 MR. MONIAK: The fact that it was
11 already in the reactor and it's impossible to look
12 at everything, plus it had been through a cycle by
13 the time it does this.

14 MR. RUBENSTEIN: And their safety
15 justification was?

16 MR. MONIAK: The relief granted as
17 authorized by law and will not endanger life or
18 property or the common defense and security and is
19 otherwise in the public interest giving due
20 consideration to the burden upon the licensee that
21 could result if the requirements were imposed on the
22 facility.

23 JUDGE YOUNG: Is there any expansion
24 on the not endangering?

25 MR. RUBENSTEIN: They had to have

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1 done some sort of analysis to justify that.

2 MR. MONIAK: I can give you a copy of
3 this.

4 MR. RUBENSTEIN: I'll look at it.

5 MR. MONIAK: Could I make copies
6 during lunch and hand them out? Because I did send
7 this by e-mail.

8 MR. REPKA: Prior to those statement,
9 there's several paragraphs of the Staff's evaluation
10 discussing what was done and the issues related to
11 the safety analysis as to why it was not necessary
12 to be done. So rather than reading that all --

13 MR. RUBENSTEIN: So they have a
14 justification, okay. That's all I was looking for,
15 because the statement was that both the SAR and the
16 SER were inadequate and it was just done for
17 economic reasons and it was not -- had no impact;
18 they had to have some justification for that, and
19 there are two or three paragraphs which I'll be
20 happy to read.

21 JUDGE YOUNG: Why don't you give us
22 copies after lunch, and if we need to come back to
23 this for -- briefly after lunch, we can do that.

24 MR. MONIAK: As for other
25 specificity, I've repeatedly cited that there's

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1 other defects other than cracking and loss of
2 material that, to provide assurance that it's going
3 to effectively manage aging would require a little
4 bit more demonstration rather than the brief
5 discussion. That's -- I have said that several
6 times.

7 And the other part I wanted to address was
8 the alloy 600, because I don't see where alloy
9 600 --

10 JUDGE YOUNG: Before we move on --

11 MR. MONIAK: -- is addressed anywhere
12 else in the --

13 JUDGE YOUNG: Before that, let's back
14 up for just a second.

15 MR. MONIAK: Yes.

16 JUDGE YOUNG: The statement that you
17 made right before that that -- would you repeat
18 that, or either could I ask the court reporter to
19 repeat his last statement?

20 (The record was read).

21 JUDGE YOUNG: The reason I
22 interrupted you there is what you've said there is
23 in a way sort of conclusory. It would require a bit
24 more discussion. There's nothing just from your
25 having said that that tells me -- I don't hear an

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1 expert telling me, well, they haven't done this and
2 the impact on it, on the steam generator of not
3 having done this, this, and this is that X, Y, Z
4 will occur. And so one of the things that the
5 contention rule requires is more than mere
6 assertion, bold assertion, conclusory statements,
7 you need to demonstrate through some facts or expert
8 opinion or fact-based argument what the actual
9 dispute is and to show that it's material.

10 And I think what we're sort of saying is,
11 and I think what the arguments that the licensee and
12 the Staff are making is several of these things that
13 you say, there's no dispute that the language was
14 used with regard to the aging 600 management review
15 such that they will be looking at that near the end
16 of the 40-year -- by the end of the 40-year period.
17 There's no dispute that this relief was granted with
18 regard to the pre-service examination. There's no
19 dispute about at least one tube rupture. I don't
20 hear actual disputes about what's happening, and
21 what I'm not hearing very clearly is what is the
22 significance, what is the impact of that apart from
23 saying, well, it's obvious that if you don't do X,
24 Y, Z then it's not enough.

25 I think that the contention rules and I

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1 know that my hearing it, I think the contention
2 rules require and it would assist me to understand
3 what it is you're saying, to know, well, what is the
4 significance of not doing that. There's some things
5 if you don't do it, there's a huge significance, and
6 that would be explained by an expert or by a
7 fact-based argument by you. Others might not have
8 as great a significance. When we look at the Staff
9 evaluation of the relief request, we'll understand
10 more about what the basis of that relief granted
11 was.

12 Does that sort of clarify for you what I'm
13 trying to hear, what I'm trying to get you to
14 respond to?

15 MR. MONIAK: I don't -- I'll also
16 make you a copy, if you want me to, I can cite
17 portions of this, voltage based alternative repair
18 criteria --

19 JUDGE YOUNG: And if you want, you
20 can also cite back to portions of your contention
21 that we may be overlooking at this point. But I
22 think what the issues that have been raised in
23 response to it are you're not being specific, you're
24 not showing the impacts or the significance of
25 various things that are not in dispute, and

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1 contentions are required to provide some facts,
2 expert opinion or at least a fact-based argument to
3 show that there is a dispute, that it's material,
4 such that the contention should be admitted, such
5 that further inquiry is warranted.

6 So if I'm missing anything, please fill me
7 in.

8 MR. MONIAK: I think it's fact,
9 whether you go to NIR Reg 17.40 or corrosion source
10 dot com and look up stress corrosion cracking --

11 JUDGE YOUNG: Now, I'm --

12 MR. MONIAK: Or go through the --

13 JUDGE YOUNG: Hold on, hold on.
14 When you tell us to go to X dot com, you need to --
15 I think you really need to provide us more than just
16 a reference to an Internet site. You need to tell
17 us what's there that you're relying on, you know,
18 provide --

19 MR. MONIAK: Okay. Stress corrosion
20 cracking is just one type of corrosion, while it
21 might be the predominant -- it's one type of
22 corrosion that results in cracks. It might be the
23 predominant concern now, it wasn't 15 years ago.
24 It's -- however, it is a predominant concern.
25 Stress corrosion crack initiation and growth are not

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1 well enough understood to be predictable in the
2 steam generator environment. And this was validated
3 by the cite I had on Argonne National Laboratories
4 review, it is cited in here.

5 JUDGE YOUNG: But what is it -- are
6 you challenging the current NRC rules? Are you
7 challenging a specific thing that was done or not
8 done? That statement that you made --

9 MR. MONIAK: Yes, I'm challenging the
10 fact that the licensee did not identify how it is
11 going to address all these uncertainties involving
12 steam generator tubes and other parts.

13 MR. RUBENSTEIN: Let me try. Cracks
14 are derived from a variety of physical, mechanical
15 mechanisms, one of which is stress corrosion
16 cracking. The regulatory basis for continued
17 operation is the measurement, the physical
18 measurement of the tubes. So in a way, the
19 mechanism, while it's important to understand the
20 ultimate behavior of the tube, is almost incidental
21 into knowing that there remains a certain amount of
22 structural capability in the tube.

23 Would you accept that? Cracks could be
24 there from preexisting defects, from the tube
25 rolling process, they could be there from whatever,

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1 maybe a flaw in the manufacturing process or some
2 impurity. So there are a large number of ways one
3 could get a crack in a steam generator tube. The
4 thrust of the regulatory basis is, okay, we measure
5 them, we measure the thickness of the wall, we
6 determine the forcing functions on the tube and we
7 accept that it is strong enough to withstand these
8 loads .

9 Now, I don't want to discount that stress
10 corrosion cracking problems will drive Duke mad,
11 will cause them great amounts of money, but that's
12 different than saying there's a safety significant
13 issue. Is that not true?

14 MR. MONIAK: That is true. The fact
15 that they're not proposing any means to detect small
16 cracks, pinholes, and other defects leaves it at
17 risk, it's unacceptable.

18 MR. RUBENSTEIN: And implicit in your
19 statement is and the current regulatory requirements
20 are inadequate in that regard --

21 MR. MONIAK: Yes, they are.

22 MR. RUBENSTEIN: -- but I don't have
23 much more than an assertion to express that.

24 JUDGE YOUNG: You just said yes, they
25 are?

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1 MR. MONIAK: Yes, they are. They are
2 inadequate.

3 JUDGE YOUNG: Then let me stop you
4 there again. If what you're challenging is the
5 current regulatory requirement, then we're back
6 again to a challenge to a rule. So, you know, the
7 expression on your face --

8 MR. MONIAK: I didn't realize I was
9 challenging.

10 JUDGE YOUNG: Hold on. Hold on. If
11 you're challenging the current regulatory
12 requirement, and I don't want you to feel like
13 you're in a catch 22 situation here, because
14 although the scope may be narrower than you might
15 want it to be, we still -- our job is to operate
16 within our jurisdiction and authority, and as I said
17 at the beginning, if you're challenging a rule,
18 that's not something that we can do anything about
19 it. There may be other ways that you can challenge
20 a rule if you want to. You can petition for rule
21 making to the Commission, would be one way to do
22 that. But if what we're getting to is a challenge
23 to the current regulatory scheme, then what we're
24 talking about is a challenge to the current rules
25 and we can't entertain that.

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1 MR. MONIAK: Evidently, when it comes
2 to stress corrosion cracking and pinholes and all
3 that, that appears to be, I didn't realize that,
4 because as I said earlier, it's hard to say what
5 exactly is the current licensing basis and --

6 JUDGE YOUNG: If you finish up,
7 finish up in about two minutes right now, then we'll
8 go to lunch. When we come back from lunch, you'll
9 have the copy of the document you want to give us --

10 MR. MONIAK: Yes --

11 JUDGE YOUNG: And if you over lunch
12 have an opportunity to refresh your memory on any of
13 the specifics you want to tell us about before we
14 leave this contention, we'll give you five minutes
15 to do that when we come back, okay?

16 MR. MONIAK: Okay.

17 JUDGE YOUNG: Okay. Now, we are
18 going to -- we've arranged that we can lock the
19 courtroom while we're at lunch, so -- and are there
20 places close enough that we can get back in an hour
21 and five minutes or do we need to give an hour and
22 20?

23 Let's be back at 2:25. Fortunately, some
24 contentions have been withdrawn so we can catch back
25 up on our schedule. But we're going to have to

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1 start moving to do that when we get back.

2 We did say we would give you two minutes
3 right now.

4 MR. MONIAK: I just wanted to address
5 the alloy 600 aging management review, because
6 the -- it's entirely futuristic. I see no -- I
7 guess the only place where there's alloy 600 aging
8 management going on now is within NEI 97 dash 06, is
9 that correct? It was stated that alloy 600
10 management review has already occurred, yet on page
11 B-3.1 1, its one page long and it's entirely
12 futuristic, it hasn't started, it not start until
13 the licensing, and it will not be complete until the
14 end of the 40-year period, at which time, if it is
15 complete, say, right around the end, then they will
16 take the results of the review and apply it. That's
17 not applying it in time -- that's applying it during
18 the 40 -- the extended period. That's all I'm going
19 to say.

20 JUDGE YOUNG: So your argument is
21 that does not demonstrate the effects of aging will
22 be effectively managed after the end of the 40
23 years.

24 MR. MONIAK: Not at all. I don't
25 understand why it will take 20 years, actually. If

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1 we've got 20 years between now and then, certainly
2 it would take a couple I would think.

3 JUDGE YOUNG: Anything else before
4 that?

5 MR. MONIAK: No, that's all, thank
6 you.

7 JUDGE YOUNG: Then let's be back at
8 2:25 and finish up on this one and then go to the
9 last two of BREDL's.

10 (Lunch recess)

11 JUDGE YOUNG: Okay, Mr. Moniak, you
12 were going the finish up on --

13 MR. MONIAK: Steam generators.

14 JUDGE YOUNG: Contention 3. Go
15 ahead.

16 MR. MONIAK: Well, two things. One
17 is I have a copy of the request for relief, and the
18 response to request for relief regarding preservice
19 inspections of the new steam generators. I would
20 just ask given the fact that we do not have access
21 to Duke Energy Institute 9706 or the previous
22 version, I believe that that should be compared to
23 -- the request for relief should be compared to the
24 9706 or its previous one whichever was in place at
25 time to determine whether the licensee was following

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1 the recommendations of 9706 as claimed.

2 And secondly, I also handed up NUREG-1740,
3 Voltage-based Alternative Report -- Repair Criteria,
4 which is the advisory committee on reactor
5 safeguards report on the differing professional
6 opinion regarding steam generators as supplementing
7 it, and that's all I would have -- oh, do we have to
8 offer, do we have to state what we think our relief
9 is at this point? I thought that was further along.

10 JUDGE YOUNG: Well, I mean there are
11 specificity requirements and one of the provisions
12 of the contention rule states that a contention
13 shall be refused the if the contention if proven
14 would be of no consequence in the proceeding because
15 it would not entitle the petitioner to relief, and
16 in the responses both Duke and the Staff talk about
17 the lack of specificity and the significance, so if
18 you do want to say anything on that, now would be
19 the time.

20 MR. MONIAK: The relief would simply
21 be that the existing aging management being proposed
22 for the license renewal be replaced entirely with
23 one that addresses the issue more realistically.

24 JUDGE YOUNG: And do you want to give
25 any specifics on what you mean by more

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1 realistically?

2 MR. MONIAK: One that addresses
3 NUREG-1740, the issues raised in that, and the
4 issues raised in all of the cites within the
5 contention and -- yes, that would be it.

6 JUDGE YOUNG: All right. If there is
7 nothing more on contention three, then --

8 MR. REPKA: Judge, may I respond to a
9 couple of points?

10 JUDGE YOUNG: Sure.

11 MR. REPKA: First on the issue of the
12 relief requests, I did hand the Board at the break
13 and I would like the record reflect, a copy of
14 Duke's submittals of May 4th, 2000 as supplemented
15 July 20th, 2000 on the relief request.

16 JUDGE YOUNG: Thank you for reminding
17 us to put that on the record, I told Mr. Moniak, but
18 you are right we needed to put that on the record.

19 MR. REPKA: Beyond that, Mr. Moniak's
20 discussion right now about the relief request, made
21 an assertion that somehow the thing needs to be
22 compared against NEI-9706, and I would point out
23 that he is mixing apples and oranges, NEI-9706 goes
24 to the steam generator surveillance program, the
25 relief request is related to the in service

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1 inspection program under the ASME code, so they are
2 really two different things. And there is no basis
3 for that kind of comparison.

4 The second thing Mr. Moniak referenced in
5 his discussion was the new reg he handed up on
6 alternative voltage base repair criteria, and there
7 has been no basis offered to show how in any way
8 that's related to anything that Duke Energy does or
9 does not do. There's simply been no tie made.

10 And the last thing I would say just going
11 back to something that was said before the break, in
12 terms of what specific issue is there here, there
13 was a statement made with respect to apparently, let
14 me find my notes exactly what the reference was,
15 that Duke doesn't use the rotating pancake coil
16 testing that was done at Turkey Point.

17 JUDGE YOUNG: Coil did you --

18 MS. REPKA: Coil, C-O-I-L. And that
19 statement I just want the record to reflect that
20 that really isn't the case. That particular kind of
21 testing is just one form of anticurrent testing, and
22 Duke Energy does employ a number of different types
23 of anticurrent testing where the type of testing is
24 really dictated by the configuration of the steam
25 generator, and so that the statement, the bald

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1 statement that it's not done is simply not correct
2 and there is no basis there for a contention.

3 JUDGE YOUNG: And do you want to
4 point us to a particular part of the application
5 that --

6 MR. REPKA: I don't believe that
7 level of detail is in the application itself, it's
8 just a general statement that anticurrent testing
9 for steam generators surveillance does employ a
10 number of techniques including the pancake
11 techniques that he mentioned.

12 JUDGE YOUNG: Okay. All right. If
13 there is nothing further, then you are also doing
14 the argument on the contention four.

15 MR. MONIAK: Yes. Contention four is
16 aging management of ice condensers, and the
17 contention was that the aging management programs
18 associated with the Catawba and McGuire ice
19 condenser systems are insufficient to ensure safe
20 operations and prevent design basis and severe
21 accidents.

22 First I want to address the issue that was
23 not specified under part C of the contention and
24 also within the contention that -- it is specified,
25 10 CFR 51153 requires ER to contain a consideration

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1 of alternatives for reducing adverse impacts as
2 required by 51.45, and on page 38, the statement is
3 made under brief explanations of the basis or bases
4 that the licensees severe accident mitigation
5 analysis is complete because it -- incomplete
6 because it fails to incorporate new and extensive
7 information regarding ice condenser vulnerabilities.
8 In it's analysis of potential containment related
9 SAMAs, the licensee failed to even identify the
10 potentially dominate failure modes for severe
11 accidents.

12 So it's not just the aging management
13 that's being discussed here. First, the connection
14 with aging management is that in the license renewal
15 application there is no mention of the ignitors as
16 either a part that's subject to aging management or
17 whether it's not subject, it's just not present at
18 all. Or if it is in there, I would like to have it
19 cited. But search for ignitors throughout the
20 appendix B and also chapters 3 and 4 yield no
21 results.

22 And the air return fans, and the reason
23 this is raised is because you cited as new
24 information and provided electronically is all given
25 the size of it NUREG CR-6427 assessment of the DCH

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1 issue for plants with ice condenser containments,
2 and this was published April of 2000 one year before
3 the application. On Page 124 of this, in the
4 summary and recommendation portion states that all
5 plants especially McGuire would benefit from a
6 reduction in station blackout frequency or some
7 means of hydrogen control that is effective on
8 SBO's.

9 In the severe accident management
10 assessment, in the Catawba -- part five of the
11 severe accident mitigation alternatives analysis,
12 Catawba analyzes as the containment related SAMA one
13 that is different even though they take credit --
14 one is directly related to this. In the McGuire,
15 same section, even though McGuire is identified in
16 the report as having a much higher significantly
17 higher risk of loss of containment from station
18 blackout and preventing the ignitors from --
19 preventing the hydrogen buildup from causing loss of
20 containment. For McGuire -- under the SAMA for this
21 one, it's a different -- I apologize. (Pause) From
22 McGuire on Page 31 the damage frequency is estimated
23 at 4.9E to the minus five per year. McGuire same
24 section is 5.8E to the minus five per year, and I
25 don't know exactly which page in this NUREG, I had

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1 it marked and I don't have it now, states that.

2 JUDGE KELBER: Excuse me, what were
3 the numbers you were reading before?

4 MR. MONIAK: Section 7 of the severe
5 accident mitigation alternatives analysis, of
6 McGuire, Page 31, states that the results of the
7 McGuire specific analysis for severe accidents shows
8 that the total core damage frequency is estimated at
9 4.9E to the minus five per year and the risk is
10 estimated at 13.5 person risk per year, and on the
11 parallel document for Catawba, the results of the
12 Catawba specific analysis for severe accident shows
13 the total core damage frequency is estimated at 5.8E
14 minus five per year, and the risk is estimated at
15 31.4 person risks per year.

16 JUDGE KELBER: 5 point what, sir.

17 MR. MONIAK: Five point 8 E to the
18 minus five.

19 JUDGE KELBER: E to the minus five
20 means 10 to the minus five. Now this is all core
21 damage frequency?

22 MR. MONIAK: Yes.

23 JUDGE KELBER: Okay, talking, for
24 both.

25 JUDGE YOUNG: And those are the

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1 licensee numbers?

2 MR. MONIAK: Yes.

3 JUDGE YOUNG: And one of the
4 questions that the Staff raised was that what
5 difference would there be in those numbers if the
6 Sandia study that you mentioned would be -- were
7 taken into account, yes.

8 MR. MONIAK: It's stated on page 40
9 of the evaluation of the contentions. On Page 124
10 it says a plant specific evaluation shows that all
11 plants except McGuire had an early failure
12 probability within the range of 0.35 to 5.8 percent
13 for full power internal events. The early
14 containment failure probability as computed here was
15 13.9 percent for McGuire. The higher containment
16 failure probability for McGuire is dominated by the
17 relatively high station blackout frequency and the
18 relatively weak containment for McGuire. The IPE
19 assessments of early containment failure for McGuire
20 of 2 percent are significantly lower than our
21 assessments, however, we have not investigated the
22 reasons for the difference.

23 And let me finish there.

24 JUDGE YOUNG: Okay.

25 MR. MONIAK: The contention in terms

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1 of severe accidents is that what is contained in
2 this Sandia NUREG and what's contained in the
3 license application does not appear to match very
4 well.

5 JUDGE YOUNG: Mr. Repka.

6 MR. REPKA: As reflected in our
7 filings, Duke Energy's position is there has been no
8 basis presented for an admissible contention on this
9 issue. The issue can be construed in several ways.
10 First, if it's a part 54 equipment aging license
11 renewal issue, as we stated in our papers, the ice
12 condenser system and the containment itself are
13 within the scope, they are discussed in the license
14 renewal application. Table 3.5-1 of the application
15 identifies the components of the ice condensers that
16 are contained in the aging effects, and the program
17 is credited for aging management for those
18 structures and components.

19 I have heard nothing that in effect
20 addresses that aspect of the application. What --
21 the second point that was just addressed this
22 morning -- pardon me, this afternoon in part 54, was
23 a statement that there is no mention of the
24 ignitors, AC powered ignitors, or no mention of the
25 containment, I believe it was the error return fans,

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1 in the license renewal application. That simply was
2 never said before, but beyond that it ignores what
3 in fact is in the application and what is in the
4 rule. Consistent with the rule, those are active
5 components, they are electrical components, they are
6 identified and addressed in section 2.1.2.3 of the
7 license renewal application, which is the screening
8 methodology for electrical components.

9 And the long and short of that is
10 consistent with the rule because they involve active
11 components, components that change states, they are
12 not subject to an aging management review. So
13 that's addressed and there is no basis for the
14 assertion that somehow they need to be addressed in
15 the application. It's simply a bald statement that
16 I don't see them without reflecting reason that is
17 presented in the application that they are not in
18 fact there.

19 The third thing and perhaps where the
20 thrust of this contention has evolved to is the
21 consideration of the new reg, the Sandia study, and
22 its discussion of early containment failure
23 particularly as it relates to ice condenser plants
24 and whether that should be addressed in some way in
25 the SAMA analysis for McGuire and Catawba.

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1 The fact of the matter is that that new
2 reg, the substance of that new reg is addressed in
3 the SAMA analysis and there is no indication in
4 anything that BREDL has filed or said here today
5 that they understand and have been really engaged
6 what is in the SAMA analysis itself --

7 JUDGE KELBER: Excuse me, could you
8 say where that substance is?

9 MR. REPKA: I was just about to get
10 that. If you take for example because it's similar,
11 the McGuire SAMA analysis which is attachment K to
12 the license application, the particular issue
13 identified in the new reg is early containment
14 failure and the susceptibility of an ice condenser
15 plant in a station blackout situation which is a
16 loss of AC power, and because of the ignitors or AC
17 power, there is no credit for the AC power ignitors
18 to control combustible gases. So in the SAMA
19 analysis, table 5-1, which is potential containment
20 SAMA considered to reduce person risk, there is a
21 number of specific SAMA's identified to address
22 precisely that issue including Number 5, install
23 back up power to ignitors; number 8 install back up
24 power to air return fans.

25 So to simply say that the new reg is not

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1 addressed, that contention devolves to a mere
2 formality. The new reg is not identified but
3 certainly the issue of the new reg is addressed.

4 JUDGE YOUNG: Of all of the issues --

5 JUDGE KELBER: Let's pursue that a
6 little bit further. In the attachment K, you
7 present some calculations of averted costs, which
8 are essentially the benefit of doing something.

9 MR. REPKA: That's correct.

10 JUDGE KELBER: Now, what event
11 frequencies were used in calculating those averted
12 costs? Are those the ones that were prepared
13 earlier by Duke Power Company, or did you use the
14 ones prepared -- presented by Sandia in their
15 report?

16 MR. REPKA: I believe the risk
17 calculations are based upon the McGuire plant
18 specifically in case of McGuire the plant specific
19 PRA that's maintained here as a living document.
20 Plant specific analysis.

21 JUDGE KELBER: But if you use the
22 event frequency presented by Sandia, would the
23 averted costs have been larger, as larger benefits?

24 JUDGE YOUNG: Lower .

25 MR. REPKA: I'm told that they

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1 probably would be larger yes. But again the issue
2 here is the SAMA analysis really utilizes the
3 McGuire plant specific PRA.

4 JUDGE KELBER: Let me follow this up.
5 Nevertheless the contention is that at least some
6 discussion should be done of why the event
7 frequencies in the Sandia report were not good, I
8 know that the analysis code used for the containment
9 by Sandia has passed a number of benchmark tests and
10 is both experimental and theoretical. I would hope
11 that the PRA performed by Duke for McGuire uses
12 something similar, and I'm somewhat puzzled as to
13 why there was a difference, but when there is a
14 difference in something like this of some magnitude,
15 possibly a large enough magnitude to justify one or
16 more of these alternatives, it would seem to me it's
17 worthy of some investigation, and I was wondering
18 why it's not been done.

19 MR. REPKA: I think the reason that
20 it's not been done is because the SAMA analysis is
21 based upon the plant specific data, and the plant
22 specific analysis is based upon the plant specific
23 designs.

24 JUDGE KELBER: But here comes a
25 technically sound report which challenges that. Is

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1 it -- can it be ignored since it wasn't performed by
2 the licensee?

3 MR. REPKA: No, and I don't think
4 it's a matter of being ignored. I think what the
5 report identifies is the basic vulnerability, which
6 helps define the scope of the kind of mitigation
7 alternatives that need to be evaluated. The report
8 doesn't define and certainly part 51 doesn't define
9 what basis for event frequency to use, and the best
10 data available is the McGuire plant specific data
11 used both in the individual plant examination and
12 the PRA.

13 JUDGE KELBER: Let me change
14 questions just a little bit, why is the cost of
15 replacement power not included among the averted
16 costs?

17 MR. REPKA: I can't answer that.

18 JUDGE KELBER: Now, essentially you
19 are saying that the Sandia report is in its detail
20 not applicable to McGuire?

21 MR. REPKA: What the Sandia report
22 is -- that would be true, but also keep in mind the
23 Sandia report is 10 years old, so it's --

24 JUDGE KELBER: The Report itself is
25 not itself 10 years old, some of the data are.

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1 MR. REPKA: Correct, and the PRA for
2 McGuire or Catawba are living documents maintained
3 up to date based upon current design.

4 JUDGE YOUNG: But are you not getting
5 into the merits there, isn't there a genuine dispute
6 here about whether the details and the calculations
7 done in the Sandia report should be used instead of
8 some of the Duke calculations?

9 MR. REPKA: A, I don't think that's
10 what the contention says, the contention says that
11 the new reg is not in any way referenced in the SAMA
12 analysis.

13 JUDGE KELBER: Literally that is true
14 is it not?

15 MR. REPKA: Literally that is true,
16 but is the import of the new reg addressed, and the
17 answer is yes, it is, and to ignore that in the
18 contention is an insufficient basis, it's a basis
19 argument. Then to say just to cite the new reg and
20 say something that's not written in the contention
21 whatsoever to say that because there might be
22 differences between the SAMA and the new reg in some
23 of the details that alone in and of itself is not a
24 basis for contention, certainly not one written by
25 the Commissioner.

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1 JUDGE YOUNG: Mr. Repka, in the
2 contention BREDL does quote the different failure
3 probabilities.

4 MR. REPKA: I'm not sure what you are
5 referring to.

6 JUDGE YOUNG: On the top of page 40.
7 I mean obviously, the contention is addressed to the
8 vulnerability of the containment, and the failure
9 probabilities, and I understand it to be saying that
10 if the Sandia report were taken into account in its
11 details, that you would end up with a different
12 result in terms of the averted costs.

13 MR. REPKA: But I don't think in any
14 way is the new reg intended to be a sight specific
15 SAMA evaluation.

16 JUDGE YOUNG: Let's.

17 JUDGE KELBER: Excuse me, but they
18 cite McGuire specifically.

19 MR. REPKA: That's true, based upon
20 data from that time.

21 JUDGE KELBER: Are the data that they
22 use inapplicable? Are the data sufficiently out of
23 date?

24 MR. REPKA: Certainly it's no longer
25 up to date.

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1 JUDGE YOUNG: But isn't that --

2 JUDGE KELBER: Are they materially
3 different?

4 MR. REPKA: Excuse me.

5 JUDGE KELBER: From the current state
6 of data are they.

7 MR. REPKA: That's a true statement.

8 JUDGE KELBER: Sandia's data on Duke
9 station blackout light lead on?

10 MR. REPKA: For example diesel
11 generator reliability, the McGuire plant specific
12 PRA is based upon more current data based upon for
13 example diesel generator reliability improvements
14 that are also referenced in the SAMA analysis.

15 JUDGE KELBER: So the station
16 blackout likelihood in McGuire has decreased
17 appreciably over the past 10 years?

18 MR. REPKA: That would be true.

19 JUDGE YOUNG: But are you not getting
20 into a merits argument there, it doesn't appear that
21 there may be a genuine dispute here, and that in
22 talking about the merits you are contesting the
23 legitimacy of the petitioners and by incorporation
24 of the Sandia report's conclusions on vulnerability
25 on such questions but there is a dispute there.

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1 MR. REPKA: Again I would still
2 characterize it as a basis issue and a differences
3 of opinion as to what constitutes a sufficient basis
4 to take a new reg and not address in any way what is
5 in the application itself, I think is a basis
6 argument, a basis dispute, and it's our position
7 that there is not a sufficient basis.

8 JUDGE YOUNG: But there is a part of
9 that quote that does refer to the McGuire plant.

10 MR. REPKA: That's true.

11 JUDGE YOUNG: So when you say that
12 there is not sufficient basis, can you tell me more
13 what you mean by that, what --

14 MR. REPKA: What I mean by that is
15 there is no attempt to correlate that to the SAMA
16 analysis actually submitted, there is no attempt to
17 say here's an additional alternative that needs to
18 be evaluated, here is an additional area where the
19 SAMA analysis is wrong. That simply has not been
20 done. In fact, the contention as filed shows no
21 understanding or awareness that there even was a
22 SAMA evaluation or that early containment failure
23 was a severe accident that was specifically
24 addressed in the SAMA evaluation.

25 JUDGE YOUNG: Well, let me read parts

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1 of the contention and ask you your view of that. On
2 the top of page 38, BREDL says the licensee SAMA
3 analysis is incomplete because it fails to
4 incorporate new and extensive information regarding
5 ice condenser vulnerabilities, in its analysis of
6 potential containment related SAMAs, the licensee
7 failed to even identify potentially dominant failure
8 modes for a severe accident refers to operational
9 history, and then quotes, -- let me finish -- quotes
10 the -- are you getting this?

11 THE REPORTER: Yes.

12 JUDGE YOUNG: Quotes, I believe the Sandia
13 reports references to the different failure
14 probabilities, so --

15 MR. REPKA: The statement in the
16 contention, the licensee SAMA analysis is incomplete
17 because it fails to incorporate new and extensive
18 information regarding ice condenser vulnerabilities.
19 Not true. It's in the application. It's in the
20 SAMA analysis where it specifically discusses the
21 early containment failure scenario that is the
22 subject of the new reg.

23 JUDGE YOUNG: But I think -- let me
24 interrupt you here. I think what you said before
25 was your response to the Sandia report, which is

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1 what I take BREDL to be arguing has not been
2 considered, your response was well, but we do
3 consider the substance of it.

4 But when Judge Kelber asked you, I
5 understood you to concede that there would be some
6 differences if you followed the Sandia report as
7 opposed to the calculations that you did. And so I
8 guess what I'm missing is, what's -- the contention
9 asserts that the SAMA analysis is incomplete because
10 it fails to incorporate this information from the
11 Sandia report, and although obviously it could go
12 into more detail, it does cite a consequence, a
13 significance in terms of the different failure
14 probabilities depending upon which calculations and
15 analyses you use.

16 MR. REPKA: Well, to complete the
17 thought on number 3, the contention is in its
18 analysis of potential containment related scenarios,
19 the licensee failed to even identify potentially
20 dominant failure modes for severe accidents, not
21 true. That is specifically addressed --

22 JUDGE YOUNG: Let's go back to the
23 first part about vulnerabilities and complete that
24 thought before we get to the next thought.

25 MR. REPKA: Okay. Vulnerabilities,

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1 the early containment failure vulnerability is
2 addressed in the SAMA conclusions-

3 JUDGE YOUNG: But differently, from
4 how it would be addressed if all the particulars of
5 the Sandia report were used, correct?

6 MR. REPKA: That could be the case,
7 but --

8 JUDGE YOUNG: That's I think the
9 thrust of how I understand the contention, and so if
10 there is a dispute there, and the support for that
11 is the Sandia report --

12 MR. REPKA: But the requirement is to
13 present a SAMA analysis, and under NEEPA, the SAMA
14 analysis is not in any way action forcing any way,
15 so we have presented a SAMA analysis, it addresses
16 the early containment vulnerability, it addresses
17 particular severe accident mitigation alternatives
18 to address that vulnerability, it meets the
19 requirements.

20 JUDGE YOUNG: On the merits, you are
21 arguing the merits that it does meet the requirement
22 but there is a dispute on whether it's complete or
23 not, and the contention asserts that it's not
24 complete because it does not take into account the
25 analyses done in the Sandia report, isn't that, I

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1 mean --

2 MR. REPKA: We believe it does.

3 JUDGE YOUNG: You believe it does, so
4 there is a dispute, looks to me that there is a
5 dispute.

6 MR. REPKA: I think it's a question
7 of is there a dispute for which there is any relief
8 in this proceeding.

9 JUDGE KELBER: Let me pursue this a
10 little bit more. If a licensee comes before us and
11 unlike Duke, which I believe has an excellent
12 technical staff, presents IPE and a PRA which are
13 poorly done, and have driven more by political
14 considerations than actual technique, but
15 nevertheless they follow all of the form. And they
16 examine all of the alternatives, a whole bunch of
17 alternatives and decide that the alternative costs,
18 averted costs are too small to justify adopting the
19 devices.

20 Now someone else comes along and says here
21 I have a technically sound evaluation of this plant,
22 and it -- and if I use that, I would receive -- get
23 an opposite result, I would find that thus and so
24 was the case in terms of averted costs. Would I be
25 -- would we not be obliged to tell them there is no

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1 dispute because the licensee has done all that is
2 required of him.

3 MR. REPKA: There may be a dispute as
4 the details, that's true, the relief would be no
5 more than perhaps a change at most to the SAMA
6 analysis and the environmental report, but the fact
7 of the matter is you are still required to have a
8 basis that in some way suggests that that report,
9 that technical report really is better or of more
10 relevance than the plant specific PRA.

11 JUDGE KELBER: Well, let me put it
12 this way, I am very familiar with all of the work
13 presented there, except for the risk analysis
14 itself, simply because it was done under my
15 direction many years ago. I don't know what kind of
16 containment failure code was used by Duke, I do know
17 what contain is worth. I'm tempted to say oh, I
18 would choose the Sandia report as the basis, but I
19 will say this, clearly you are right if the data
20 have changed over the past 10 years and Sandia have
21 not incorporated them then that should be looked at.
22 Clearly you are right that the Duke results may
23 indeed be valid, there are uncertainties in this,
24 but there is a dispute.

25 JUDGE YOUNG: And I think that's what

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1 we need to look at is whether there is a dispute and
2 whether there is any support for the argument that's
3 being put forth by the petitioner. And the Sandia
4 report has been offered as support for the
5 contention that your SAMA analysis is incomplete.

6 Now, you contend that your SAMA analysis
7 is correct and certainly in a hearing if this
8 contention were to be admitted, then the issue in
9 the hearing would be whether Duke's SAMA analysis is
10 correct and better or whether the Sandia report
11 analysis would make any difference in how the SAMA
12 analysis should have been done. That would be the
13 issue for the merits determination were this
14 contention to be admitted.

15 But maybe I'm missing something but it
16 seems to me hard to ignore the Sandia report as
17 support for the argument, the contention that the
18 SAMA analysis is incomplete in failing to
19 incorporate information regarding ice condenser
20 vulnerabilities. What am I missing there?

21 MR. REPKA: I think it's still a
22 basis argument and I think it's a question as to
23 whether the Sandia report has really been linked to
24 what is in the application. There is nothing to
25 suggest that it's any better or even that it's

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1 different from what is in the application. So you
2 may be right that that would be the issue if you
3 were to go to the next step but I think there's been
4 no basis presented in the four corners of the
5 contentions to draw the conclusion that there is
6 genuine issue here.

7 JUDGE YOUNG: Even the difference in
8 the vulnerabilities provided in the quote?

9 MR. REPKA: That's true, given that
10 they are relying on different data sets. Some
11 difference would not be surprising.

12 JUDGE YOUNG: Do you have anything
13 further, do we want to go.

14 MR. REPKA: No, I don't.

15 MR. FERNANDEZ: Your Honor --

16 JUDGE YOUNG: Mr. Fernandez.

17 MR. FERNANDEZ: The Staff believes
18 that most of the conversation has been going on
19 regarding to the merits of the proceeding, and we
20 stand by our brief with regard to the decision that
21 on the face of the contention as written by the
22 petitioner, they do not raise a material issue of
23 fact or law thereby not creating a valid
24 contention --

25 JUDGE YOUNG: You don't see any

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1 dispute between the Sandia report and the SAMA
2 analysis --

3 MR. FERNANDEZ: I see how the Board
4 has crafted their interpretation of what is on the
5 paper, yes, I could see how one could maybe argue
6 that that is a contention.

7 JUDGE YOUNG: I think we are just
8 reading what the contention says.

9 MR. FERNANDEZ: Correct, I think
10 that's a difference of opinion. The Board has the
11 final say.

12 JUDGE YOUNG: What I'm trying to
13 understand is the difference of opinion on, I
14 noticed one thing in the Staff's response, you say
15 ice condensing containments are fully licensed by
16 the NRC, but does that automatically exclude a
17 contention that is based on another approach that
18 could be used in the SAMA analysis?

19 MR. FERNANDEZ: They are excluded to
20 the extent that contentions can be interpreted as an
21 attack on the current licensing basis for the ice
22 condensers. If one reads the contention as well and
23 several portions I cannot cite right now off of the
24 top of my head, it reads sort of as general attack
25 of using ice condensers as a device in general, and

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1 it seems to be --

2 JUDGE YOUNG: If we are talking about
3 an attack on the regulations, which regulations are
4 you talking about?

5 MR. FERNANDEZ: Part five, the
6 current licensing basis for the facility. I mean,
7 the facility is allowed to use this type of the
8 device to meet its safety goals, that is approved by
9 the Commission entirely.

10 JUDGE KELBER: Does McGuire meet the
11 commissions guidelines on large early release
12 frequency?

13 MR. FERNANDEZ: If there a
14 regulation --

15 JUDGE KELBER: Does it meet
16 commission guidelines, it's not a recommendation,
17 it's guidance.

18 MS. UTTAL: Yes, they do.

19 JUDGE YOUNG: Didn't the Commission
20 leave open the issue of SAMAs however and said we
21 are not going to define what all should be in a SAMA
22 at this point, that's why we are putting them in
23 category two, so by stating in the statement of
24 considerations that they were leaving it open, I
25 guess I'm not following what you seem to be arguing

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1 that a petitioner could not come in using the Sandia
2 report as the basis and support for the contention
3 challenging the SAMA analysis cited by the
4 licensee --

5 MR. FERNANDEZ: Maybe I misspoke
6 because I think maybe you are misunderstanding what
7 I'm trying to say. Merely because a facility uses
8 an ice condenser that doesn't automatically trigger
9 the fact that you have a SAMA contention in a
10 license renewal proceeding, just saying this plant
11 has an ice condenser therefore you have a SAMA
12 contention, that can't be the case.

13 JUDGE YOUNG: Is anyone arguing that?

14 MR. MONIAK: No.

15 MR. FERNANDEZ: If the petitioner is
16 arguing this report was not addressed, therefore we
17 have a SAMA contention, that's not sufficient basis
18 either. The way the contention is currently crafted
19 it doesn't provide a different alternative, it
20 doesn't challenge the alternatives contained within
21 the report that the applicant drafted. It doesn't
22 take issue with the initiation events analyzed by
23 the applicant. I mean, if the --

24 JUDGE YOUNG: It takes issue with the
25 SAMA analysis done and says that it's incomplete

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1 because it doesn't take into account the Sandia
2 report under which there would be higher
3 probabilities of vulnerability for McGuire at least.

4 MR. FERNANDEZ: I think we are
5 differing, and I think we are arguing about the
6 merits, and the Staff's position is clear as
7 evidenced by the response.

8 JUDGE YOUNG: It's not clear to me at
9 this point.

10 MR. FERNANDEZ: In the response we
11 state that they do not have valid contention, and
12 the reason --

13 JUDGE YOUNG: I know that's your
14 position, but what I hear you saying -- I'm not sure
15 what you are saying because if the Sandia report is
16 not sufficient support for a contention, what would
17 be?

18 MR. FERNANDEZ: Just merely stating
19 that the SAMA analysis is insufficient and just
20 throwing out a bunch of quotes from a report, just
21 doing that is not sufficient to meet the contention
22 standard of 2714, there is not a precise argument in
23 this contention, and it's not specifically supported
24 by sufficient basis. The Staff stands by their
25 pleading, and --

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1 JUDGE YOUNG: Well, we understand
2 that, and it sounds sort of conclusory to me what
3 you are saying, so I want you to provide a little
4 bit more explanation of what you mean when you make
5 these conclusory statements that it's not
6 sufficient, because we are not talking about quotes
7 that are being thrown out, we are looking at what
8 the quotes say.

9 MR. FERNANDEZ: Again, Your Honor,
10 the petitioner fails to allege with any
11 particularity how the Sandia report applies with
12 regards to the applicants submitted license renewal
13 application, they don't say what containment within
14 the Sandia report is applicable in this proceeding,
15 what is it specifically that is deficient in
16 relation to both documents, between the
17 environmental report, and the Sandia report?

18 JUDGE KELBER: Maybe I'm dense, Mr.
19 Fernandez, but when I saw that, I looked up
20 attachment K and I said gee whiz, if they had used
21 these larger event frequencies, they would have
22 gotten higher averted costs, I said, at least want
23 you to discuss the differences in these, and I said,
24 you are right, it's incomplete. Am I wrong in that?

25 MR. FERNANDEZ: I think if we were

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1 doing notice pleading, that's what you would do, you
2 would engage in asserting a bald statement and
3 subsequently fill in the blanks how you did that,
4 but we are not involved -- notice pleading is not
5 the type of --

6 JUDGE YOUNG: We understand that, Mr.
7 Fernandez, what we are trying to get you to do is
8 address what is actually been said here in the
9 concerns that Judge Kelber and I have been
10 expressing about, there is an issue that's been
11 raised, it has been supported by facts that go far
12 beyond what would be contained in notice pleading,
13 and it does raise a question about the
14 vulnerability, and about the analysis that was --
15 the SAMA analysis that was done by Duke. So let's
16 try to get into addressing those --

17 MR. FERNANDEZ: I believe Your Honor
18 wants me to address the merits and I'm not prepared
19 to do that.

20 JUDGE YOUNG: No, no, no, I don't
21 think you don't understand when we talk about merits
22 what we are talking about is which is better, when
23 we are looking at whether to admit a contention what
24 we need to look at is has a genuine dispute been
25 raised that's material and has it been supported by

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1 facts, expert opinion or a fact-based argument that
2 warrant further inquiry.

3 MR. FERNANDEZ: I don't know what the
4 question is, Your Honor, I don't know what you are
5 asking me right now.

6 JUDGE YOUNG: I was trying to explain
7 to you the difference between a merits argument and
8 an argument on whether the contention requirements
9 have been met, and I was trying to get you to
10 address the issue of whether there is a genuine
11 dispute here. Do you see no dispute.

12 MR. FERNANDEZ: No, we don't, again
13 we believe that the pleading as filed is
14 insufficient to meet the contentions.

15 JUDGE YOUNG: Any rebuttal, Mr.
16 Moniak?

17 MR. MONIAK: Yes, we point out in the
18 severe accident mitigation alternatives on page 16
19 of both the Catawba and McGuire ones, Section 4.4,
20 installing the third diesel. For McGuire,
21 installing a third diesel could reduce the core
22 damage frequency associated with loss of off-site
23 power events, and September 1995 a design study was
24 performed to evaluate the cost associated with
25 adding an alternative AC power source including a

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1 third diesel at McGuire and Catawba. In this design
2 study the cost estimate includes engineering
3 equipment and material, contracts and installation
4 craft resources. The results of the cost estimate
5 analysis to install a third diesel is approximately
6 2 million dollars, and that's the same for both
7 McGuire and Catawba, and then the last sentence is
8 the only one that's different, the cost of
9 implementing this alternative will far outweigh the
10 benefit of converted risk worth, and at McGuire they
11 say the converted risk worth is \$200,000. At
12 Catawba it's \$570,000, both of them make the
13 alternative cost prohibitive, yet in the NUREG,
14 Sandia report as cited, they specifically say that
15 the risk at McGuire is much higher, and they cannot
16 account for the differences between that and the
17 individual plant examination but it's clear that
18 McGuire, that those two numbers -- and there is no
19 way for us to determine the legitimacy of that
20 analysis in 1995 because that would be proprietary
21 information. We would have to sign a protective
22 order, and also point out that the 1995 study
23 preceded the published results of this study by a
24 good five years, and also in the contention which
25 is -- where was I? Excuse me for a minute, I seem

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1 to have misplaced the contention.

2 JUDGE YOUNG: Are you wanting to
3 respond --

4 MR. MONIAK: Oh, it's right here, the
5 contention specifically said that in its analysis of
6 potential contaminant related SAMAs the licensee
7 failed to identify potentially dominant failure
8 modes for severe accidents. And in this report, the
9 NUREG, it identifies on pages 1123, the containment
10 is threatened by hydrogen combustion events alone if
11 AC power ignitors are not available. And if the air
12 returns are not available, it's also threatening.
13 The lack of availability of those, they were
14 addressed as possibly mitigation alternatives in the
15 SAMAs but it's unclear whether the failure of those
16 systems would result in the --

17 JUDGE YOUNG: Why don't you just
18 conclude by telling us what the genuine dispute you
19 see.

20 MR. MONIAK: The genuine dispute is
21 that the -- the genuine dispute is that the most
22 current information -- relatively it's not even an
23 independent source, but most current information --

24 JUDGE YOUNG: When you say most
25 current information what are you referring to?

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1 MR. MONIAK: The Sandia report.

2 JUDGE YOUNG: Okay, the Sandia
3 report.

4 MR. MONIAK: Because that is not --
5 it's so different from what's presented in here.

6 JUDGE YOUNG: In here meaning?

7 MR. MONIAK: In the SAMAs.

8 JUDGE YOUNG: In the application for
9 SAMA.

10 MR. MONIAK: Is so different that it
11 has to be considered in order to do a sufficient
12 severe accident mitigation analysis.

13 JUDGE YOUNG: Okay. If there is
14 nothing more on that contention, there is one more
15 of BREDL.

16 MR. FERNANDEZ: Your Honor before we
17 move on, we just the Staff wanted to add one thing
18 for the record.

19 JUDGE YOUNG: Go ahead.

20 MR. FERNANDEZ: That the Sandia
21 report has not been adopted. I know that's kind of
22 a side point, but it has not been adopted by the
23 Staff or the Commission as a final agency document
24 so it could easily be rejected by the Staff.

25 JUDGE KELBER: Has it been discussed

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1 with ACRS?

2 MR. FERNANDEZ: I don't think so.

3 JUDGE YOUNG: Mr. Fernandez.

4 MR. FERNANDEZ: It was part of the
5 resolution of the direct team --

6 JUDGE YOUNG: What we need to look at
7 is whether or not there is sufficient support for
8 contention and not --

9 MR. FERNANDEZ: I understand.

10 JUDGE YOUNG: But thanks. Okay
11 anything else on contention four?

12 MR. MONIAK: No.

13 JUDGE YOUNG: Do we need a break
14 before we go to the last BREDL contention?

15 JUDGE YOUNG: Are you saying that you
16 need a break.

17 MR. ZELLER: I'm fine.

18 MS. UTTAL: Your Honor I would like
19 one.

20 JUDGE YOUNG: Five minute break.

21 (Brief recess.)

22 JUDGE YOUNG: Did everyone get copies
23 of the slides that he is going to show?

24 MS. UTTAL: These documents?

25 MR. MONIAK: The copies that I --

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1 MR. ZELLER: The copies that I do
2 have is --

3 MS. UTTAL: Your Honor, I have a
4 problem with production of documents at this late
5 date that I've never seen before and I would object
6 to that.

7 MR. REPKA: I would kind of like to
8 know what it is, it appears to be a restatement of
9 contention five with some additional exhibits but
10 there clearly are procedural issues here.

11 JUDGE YOUNG: We will certainly take
12 your objection under advisement, and Mr. Zeller, I
13 do want to caution you to direct your comments to
14 the responses that the Staff and Duke have provided,
15 and not just to bring in a whole lot of new
16 information here. We will be inclined to sustain
17 the objection if all you are doing is bringing in
18 new information to add on to your contention, but we
19 will hear what you have to say because at this point
20 I'm not clear what that will be.

21 MR. ZELLER: Right, well, my
22 intention in making these copies is to provide both
23 clarity in terms of following our response to the
24 responses, to our contention Number 5, and also to
25 address the concerns raised primarily by Duke Energy

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1 Corporation in their response to our contentions.
2 Now, beginning -- of course this contention five
3 states that -- our contention states that the
4 assessment of reactor vessel integrity with regard
5 to embrittlement and metal fatigue is insufficient
6 and incomplete.

7 What I'm going to go over briefly here
8 today covers issue of metal fatigue which is second
9 to heat stress and irradiation, and showing how the
10 license -- the LRA does not sufficiently address
11 these issues. Just to begin with, the first one,
12 objection that Duke had raised is that BREDL
13 contention five was not received until after the
14 deadline of November 29th. The sole reason for
15 including BREDL attachment 5-1 is to show that the
16 email with contention five was sent out in good
17 time. That's the sole reason for including that.

18 JUDGE YOUNG: Which indicates it was
19 sent 4:58.

20 MR. ZELLER: Just before the
21 deadline. Another issue raised by Duke Energy is
22 the explanation of basis merely provides a general
23 dissertation on the well-known phenomenon, their
24 quotes, of embrittlement of reactor parts, so I have
25 provided a couple of things here to address this

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1 from two sources, 5-2 and 5-3, which is improved
2 embrittlement correlations for reactor and pressure
3 vessel seals, Eason and Odette published in --

4 JUDGE YOUNG: For the record, we got
5 those two of the documents that he -- okay.

6 MR. ZELLER: -- in which the
7 abstract, authors state reactor pressure vessels of
8 the commercial nuclear power plants are subject to
9 amendment due the expose of high energy neutrons
10 from the core, etcetera, etcetera. 5-3 is report 10
11 years of neutron dosimetry for Kozloduy nuclear
12 power plant reactor vessels metal ageing assessment
13 by Apostolov, et al, 5-3 also begins with the
14 wording, the reactor ing pressure vessel
15 embrittlement caused by the impact of neutron
16 irradiation and neutron and fluence from the reactor
17 core during the NPP operation could be the reason of
18 the dangerous break of vessel integrity, thermal
19 shock, etcetera, etcetera.

20 Duke also raises that beyond those issues
21 I have just addressed that our contention Number 5
22 is inadmissible because it challenges the Nuclear
23 Regulatory Commissions regulations on reactor vessel
24 embrittlement lacks any specificity to aging
25 management programs described in Duke's licensing

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1 renewal application and the event's not supported by
2 an adequate basis. In their -- in Duke's response
3 to our contentions dated December 13th, they
4 raise -- they cite several code of federal
5 regulations, 10 CFR 50-61 and they point to Section
6 442 of the license renewal application.

7 What we are saying here is that our
8 contention is not regulatory challenge, it's based
9 on the specifics within the Federal Rules. For
10 example, the LRA Section 421, upper shelve energy
11 refers to guidance and regulatory guide 199 revision
12 two, which --

13 JUDGE YOUNG: Where are you reading
14 from now?

15 MR. ZELLER: Right now the LRA
16 section, this is from --

17 JUDGE YOUNG: Is this one of
18 documents you provided us too?

19 MR. ZELLER: No, that's in the LRA.

20 JUDGE YOUNG: 421.

21 MR. ZELLER: Upper shelf energy, they
22 directed considerable -- well, I guess I should go
23 back a little bit. In their response to our
24 contentions they point out to some of the existing
25 regulations including 421 in terms of regulatory

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1 guidance for reactor embrittlement of reactor vessel
2 materials, that they use regulatory guide 1.99
3 revision two for example, in their analysis.

4 JUDGE YOUNG: This is the same thing
5 that you have given us? Which one?

6 MR. ZELLER: No, I've not given you
7 this, this is simply in the LRA, that is on page
8 license renewal application 421.

9 JUDGE YOUNG: Let me -- and what is
10 your purpose in this?

11 MR. ZELLER: My purpose here is to
12 show that we have addressed the -- some of the
13 specifics here in these issues that were raised by
14 Duke in their response to our contentions, and in
15 fact within -- going back to the handout which is
16 the abstract by Eason and Odette, talks about
17 updated -- in fact, the purpose of that work done by
18 Eason and Odette which is the cover sheet, their
19 work was on reactor pressure vessels in commercial
20 nuclear plants subject to embrittlement, and as I
21 stated before, and the purpose of the work was to
22 improve on the correlation models in RG1.992 using
23 broader database now available, the point of all
24 this is that some of the information which was to be
25 used in the LRA is outdated, better methods exist

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1 and there are specifics to the contention that we
2 are raising.

3 JUDGE YOUNG: And what are those
4 specifics in the contention itself?

5 MR. ZELLER: Okay, I'm getting to
6 that.

7 MR. ZELLER: I believe what Duke has
8 tried to do in their response to our contentions is
9 to kind of smooth over the issues of reactor vessel
10 integrity and metal fatigue, and in the application
11 to renew the operating license, it states the
12 following, the requirements of 10 CFR 5061, are to
13 protect against pressurized thermal shock changes in
14 pressurized water reactors, and the emphasis I've
15 added is to the screening criteria established for
16 plates forging an axial welds, it is specific to
17 plates forging an axial welds, and what we raised in
18 our contention is the fact that we are addressed
19 bolts within the reactor vessel which are subject to
20 --

21 JUDGE YOUNG: Let me interrupt you on
22 bolts. But it's in response to this or to the NIRS
23 contention about the stud bolts. I believe either
24 the Staff or Duke pointed out that there is section
25 in the application that addresses stud bolts.

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1 integrity.

2 MR. ZELLER: Well, maybe perhaps
3 Nearson would like to address that further, but I'm
4 not addressing that right here.

5 JUDGE YOUNG: Well, what are you
6 saying the deficiency is with regard to the
7 application?

8 MR. ZELLER: Okay, the -- what Duke
9 has said in response and in their application is to
10 say that they did look at these issues, but I don't
11 see that anywhere.

12 JUDGE YOUNG: So you are saying that
13 the application has no mention of issues of
14 embrittlement, metal fatigue, reactor vessel
15 integrity?

16 MR. ZELLER: With regard to those
17 stud bolts.

18 JUDGE YOUNG: With regard to the stud
19 bolts?

20 MR. ZELLER: Correct.

21 JUDGE YOUNG: Correct me if I'm
22 wrong, but we might be able to short circuit this,
23 isn't there a section in the application that
24 addresses the stud bolts?

25 MR. REPKA: Yes, there is, it's

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1 addressed in table 3.1-1 if my recollection serves.
2 The other point I would make is that the
3 embrittlement issue relates to the reactor vessel
4 and internals, it relates to the belt line region.
5 The bolts are not within the belt line region, so
6 this embrittlement issue in the bolts are mixing
7 apples and oranges. But the bolts themselves are
8 subject to aging management programs as described in
9 the application.

10 UNIDENTIFIED SPEAKER: If I may, Your
11 Honor --

12 JUDGE YOUNG: Why don't you identify
13 yourself and since you are not represented we will
14 give some leeway.

15 UNIDENTIFIED SPEAKER: I'm Jess Riley
16 and I am with NIRS, and there is a response to our
17 contention with respect to stud bolts by both the
18 Staff and the applicant, and we have as basis for
19 our applicant, this CD that was sent to us by the
20 public document room, what I have here and wish
21 permission to distribute --

22 JUDGE YOUNG: Let's hold off on
23 distributing anything, because we will be discussing
24 your contention in a moment, but what I would like
25 do here to maybe try to get us all focused at least

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1 somewhat on the same page and that is a
2 contention -- if you are saying that an application
3 has omitted something completely, then you don't
4 have to refer to a particular section of the
5 application, if you are saying there is a
6 deficiency, you need point to the part of the
7 application.

8 UNIDENTIFIED SPEAKER: This is the
9 part --

10 JUDGE YOUNG: Hold on, Mr. Riley, you
11 need to point to the part that you are alleging is
12 deficient.

13 MR. ZELLER: I understand.

14 JUDGE YOUNG: With regard to your
15 contention, I don't see any, maybe I'm missing them,
16 but I don't see any references in the contention to
17 specific sections of the application, and I do
18 recall that in one of the responses there is a
19 reference, there is citation of a particular part of
20 the application that does address the stud bolt
21 issue, and I believe that the statement has also
22 been made that the applications address the
23 embrittlement issues in the metal fatigue issues, so
24 if you are saying that they are insufficient, I
25 guess I'm not seeing anything at this point, just to

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1 help you out in terms of addressing our concerns and
2 if judge Rubenstein or judge Kelber disagree with
3 this, they can speak up, but I'm not seeing anything
4 specific here that talks about deficiencies in the
5 application.

6 MR. ZELLER: Right, okay, I
7 understand. What we have done here is to move from
8 what Duke Energy has said on December 13th in the
9 response to our contentions which were about the
10 fatigue, metal fatigue in the stud bolts saying that
11 contention five is inadmissible, Duke goes on to
12 raise the issues -- to recite the parts of the
13 federal regulations namely 50.61, to which we went,
14 to chase this rabbit down to where it was going to
15 end up.

16 MR. RUBENSTEIN: I'm a little
17 confused. Are you talking to the active vessel belt
18 line radiation challenge or are you talking the stud
19 bolt loads and the fact that they didn't mention
20 them properly? What particular subject are we on
21 because in my mind you can't jump back and forth
22 between stud bolts and irradiation embrittlement at
23 the belt line.

24 MR. ZELLER: Judge Rubenstein, I
25 guess that's my point exactly and maybe that's why

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1 this seems a little bit complicated because when we
2 were talking about the stud bolt problem in our
3 contentions, the response we got back was addressing
4 the plates forgings and axial wells in 5061.

5 JUDGE KELBER: Excuse me, but did
6 they not in their response recite chapter and verse
7 to where they addressed the stud bolts and other
8 vessel components, and did not Mr. Repka just refer
9 to that again.

10 MR. ZELLER: Is that in their
11 response of December 13th.

12 JUDGE KELBER: I believe so, sir,
13 it's also in the report -- in the application, I beg
14 your pardon.

15 MR. ZELLER: If that's true then I
16 would stand corrected.

17 JUDGE YOUNG: There are references
18 back and forth between this, and I think it's NIRS
19 contention 2.1, but I think what you need to address
20 for us is, when we are talking about specificity,
21 you are raising various problems, but I don't see
22 any specific pointing to a part of the application
23 that you are saying is deficient, or any support
24 that would connect or tie those -- tie your
25 allegations to the specific application we are

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1 talking about.

2 MR. ZELLER: Right, well, as I said
3 before, this is my reading of the response. And
4 going back to the federal regulations to see what
5 the regulations actually say.

6 JUDGE YOUNG: Okay.

7 MR. RUBENSTEIN: Subject to your
8 contention five which is the assessment of reactor
9 vessel integrity with regard to embrittlement is
10 insufficient and incomplete, and you are going to
11 reference some specifics in the safety report where
12 they are deficient?

13 MR. ZELLER: Right, I did want to
14 bring up this -

15 MR. RUBENSTEIN: I think we can
16 stipulate that radiation damage causes some
17 embrittlement and lowering of the upper shelf energy
18 and move on from there.

19 MR. ZELLER: Right, I did find in my
20 investigations that with regards to the need for
21 replacement of reactor vessel internal baffle bolts
22 because of stress corrosion that another nuclear
23 utility, Framatone, found it necessary to replace 23
24 percent of the 26,000 bolts that they inspected in
25 plants both in the United States and in Europe.

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1 JUDGE YOUNG: What does that have to
2 do with the Duke plant or with the Duke license
3 renewal application?

4 MR. ZELLER: Goes to show that there
5 is a problem with these bolts, and --

6 JUDGE YOUNG: But what does that have
7 to do with the Duke application and how they propose
8 to deal with the bolts?

9 MR. ZELLER: Well, again if there is,
10 if this is addressed and I have simply missed it
11 then I stand corrected.

12 JUDGE KELBER: Well, in their
13 response, and I will read from the Duke response,
14 maybe it will refresh your memory, it says the
15 thermal fatigue management program credited for
16 McGuire and Catawba is also described in Section 4.3
17 of the license renewal application. This program
18 specifically includes thermal fatigue of class one
19 components which addresses stress fatigue, stress
20 fatigue being in quotes, LRA at 4.3-1, contention
21 does not acknowledge the program or claim any
22 specific deficiency.

23 And what we are asking from you is what
24 specific deficiency exists in that program?

25 MR. ZELLER: I would have to go back

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1 and check on that.

2 JUDGE KELBER: Well, this is your
3 chance to do that.

4 MR. ZELLER: Huh?

5 JUDGE KELBER: This is your chance to
6 do that.

7 JUDGE YOUNG: Mr. Zeller, this
8 contention is very much like NIRS's contention 2.1.1
9 with regard to the stud bolts in any event, to that
10 degree. And in the response to that, there is a
11 reference to table 3.1-1 at Page 3.1-5 of the
12 application, that talks about stud bolts.

13 And so are you saying that -- were you
14 aware of that section and are you saying --

15 MR. ZELLER: Pressurizer manway cover
16 bolts and studs. Well, this is with regard to aging
17 management review results, correct, what that is,
18 table 3.1-1, aging management review results where
19 these bolts are listed, but the license renewal
20 application under 4 on Page 4311 under detection of
21 aging effects states that no action are taken as
22 part of this program to detect aging effects.

23 JUDGE YOUNG: I think that we are
24 understanding that you are raising some issues that
25 are obviously significant issues in general, but

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1 with regard to the Duke application, license renewal
2 application, and how they are approaching the stud
3 bolts and the embrittlement, I think that they are
4 saying that they do address those things, and you
5 haven't pointed to a specific place or a specific
6 deficiency in what they are doing. So just raising
7 a general problem without tying it to the
8 application --

9 MR. ZELLER: I understand.

10 JUDGE YOUNG: Unless you are saying,
11 that something was completely omitted in which case
12 if Duke comes back and says we did not omit it, it's
13 right here, then that sort of gives you a problem.

14 MR. ZELLER: Right, right. Well, I
15 would say that one of the problems that we have
16 found is that in the assessment of reactor vessel
17 integrity, embrittlement and metal fatigue is that
18 the reactor stud bolts are exposed to greater stress
19 than the reactor vessel.

20 JUDGE YOUNG: But have you challenged
21 the way that Duke is handling the stud bolts, have
22 you looked at how they are handling the aging
23 management of the stud bolts?

24 MR. ZELLER: Once again, within the
25 license renewal application, I don't see the

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1 specificity there which allows one to determine that
2 the kind of analysis we should be given with regard
3 to the fatigue factors and other effects on reactor
4 internal parts are adequate to determine that it can
5 be operated safely.

6 JUDGE YOUNG: Have you pointed to any
7 particular parts of the application that you contend
8 are inadequate?

9 MR. ZELLER: I guess I'm missing the
10 mark here a little bit with regard to where they
11 are, but I thought I had done that.

12 JUDGE YOUNG: Where?

13 MR. ZELLER: Within the, for example,
14 the license renewal application 4311.

15 JUDGE YOUNG: Where are you reading
16 from?

17 MR. ZELLER: Pardon?

18 JUDGE YOUNG: Where are you reading
19 from?

20 MR. ZELLER: These are my notes here,
21 license application 4311.

22 JUDGE YOUNG: What I'm asking you to
23 tell me is where in your contention you say these
24 things?

25 MR. ZELLER: Well, we -- I don't

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1 know.

2 JUDGE YOUNG: I don't think anybody
3 disputes that you are talking about some significant
4 issues, but they have to be -- they have to relate
5 to the application. Maybe it would be helpful if we
6 let Duke respond and then after you hear Duke's
7 responsibility and the Staff's response if you have
8 anything, maybe that will clarify sort of what their
9 position is and you can come back and have the last
10 word, okay.

11 MR. ZELLER: Well, one thing that I
12 read in the notice which went out with regard to
13 this proceeding was that I thought we were to extend
14 or address the contentions which were raised and the
15 responses to them.

16 JUDGE YOUNG: Right.

17 MR. ZELLER: So in extending them --

18 JUDGE YOUNG: Well, you were to
19 address your remarks to the particular issues raised
20 by the response. So in other words, if the response
21 says you haven't -- the contention does not
22 acknowledge the program or claim any specific
23 deficiency, then what you have to do is show where
24 the contention does that, not bring in new material
25 that the contention does not encompass.

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1 The issue is whether the contention itself
2 acknowledges the program that Duke has or claims a
3 specific deficiency with regard to Duke's
4 application. You are defending your contention.

5 MR. ZELLER: Okay, well, just maybe I
6 should just finish this one point. With regards to
7 the license renewal application 4311, under
8 preventative action, which the applicant states that
9 quote, cracking due to thermal fatigue of location
10 specifically designed to preclude such cracking is
11 prevented by assuring that the thermal fatigue basis
12 remains valid for the period of extended operation,
13 end quote.

14 And what we are saying is that the actions
15 outlined by Duke under that thermal fatigue
16 management program are delimited by the scope of the
17 license renewal application to locations designed to
18 preclude such effects, that is reactor coolant
19 system class one respondents to the replacement
20 steam generators -- this is the list which is in
21 there -- the components falling within the inservice
22 inspection plan that contain flaws detected during
23 inservice inspection and four nonclass one heat
24 exchangers for Catawba.

25 JUDGE YOUNG: You are saying that

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1 now. Does your contention say that?

2 MR. ZELLER: This is based on our
3 contention.

4 JUDGE YOUNG: But where in your
5 contention does it say that?

6 MR. ZELLER: Well, we were talking
7 about the fatigue, the differences between fatigue
8 and the effects on aging of metal within the reactor
9 component parts including the stud bolts as compared
10 to the reactor vessel itself. But the license
11 renewal application Section 4311 is limited in its
12 addressing of that --

13 JUDGE YOUNG: But you did not say
14 that in your contention, Mr. Zeller.

15 MR. ZELLER: Well, we -- well, I'm
16 sorry, we did not include everything there, but
17 again I thought oral arguments were to develop those
18 contentions further --

19 JUDGE YOUNG: No, not to develop --

20 MR. ZELLER: -- with more
21 comprehensive explanation referring to the license
22 renewal application, Code of Federal Regulations.

23 JUDGE YOUNG: Okay. You need to read
24 the requirements for contentions. Your contention
25 itself needs to contain enough to satisfy the

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1 contention requirements along with the scope
2 requirements of this particular type of proceeding.
3 And this is a time for you to come in and if the
4 licensee makes an argument that you disagree with,
5 what you go back to is your contention, and say no
6 we did say this, and we said it in paragraph X.
7 It's not an occasion to add to the contention.

8 And I think we have -- the Commission and
9 we have tried to make that clear from the start. So
10 again if you want to just conclude your argument and
11 then we will hear from Duke and the Staff and give
12 you a little time for rebuttal at the end, and I
13 think we need to move on.

14 MR. ZELLER: Okay. Well, all right,
15 maybe one final word then. We did outline in BREDL
16 contention five that the reactor stud bolts are
17 exposed to greater stress than the reactor vessel,
18 and unlike the reactor vessel, coupons which we
19 mentioned in our contention have not been exposed to
20 stress fatigue.

21 MR. RUBENSTEIN: Have not been
22 analyzed for stress fatigue?

23 MR. ZELLER: Correct

24 MR. RUBENSTEIN: Not exposed,
25 analyzed for stress fatigue?

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1 MR. ZELLER: For stress fatigue
2 specifically. That was the point of departure for
3 this whole exercise.

4 JUDGE YOUNG: And I think the issue
5 of the use of coupons, I think with either the Staff
6 or Duke, maybe I should just leave it to them, raise
7 the issue of that challenging -- okay, I will leave
8 it to you to make the argument and then you can
9 respond to it. Mr. Repka.

10 MR. REPKA: Okay. Thank you, I think
11 this contention is a bit of a moving target and a
12 bit of mixing of apples, oranges and now today
13 bananas. The apples would be the embrittlement
14 issue, the oranges would be the stud bolts, and the
15 bananas would be the core of apple studs as a third
16 thing, and there really all mixed up and don't
17 fairly capture what is addressed in the application.

18 Let me kind of take those one thing at a
19 time and I think all except the last one, the core
20 of apple studs are addressed in our papers, the last
21 is not because it hadn't been raised before today.
22 But the first issue, and I think we read 305 as
23 being a reactor vessel embrittlement issue, and I
24 think any fair read says that that is what the
25 contention appears to be on first read, and the

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1 embrittlement issue is addressed in the license
2 renewal application in Section 4.2.2. It
3 specifically addresses the Commission's rule on
4 pressurized thermal shock, NCR 50.61. And there's
5 been no basis presented to suggest that in any way
6 that a McGuire Catawba vessels don't meet the
7 Commission's rules, certainly not the information
8 that's presented here.

9 What we have gotten handed this afternoon,
10 for example, the Eason & Odette report on improved
11 embrittlement correlations would appear to be first
12 reading to simply be some research information on
13 the embrittlement issue and again no correlation to
14 Duke or license renewal at McGuire or Catawba, and
15 if anything it would appear to be something as part
16 of an ongoing regulatory oversight perhaps a
17 rule-making issue. I'm not sure where the research
18 is going without having read it.

19 But that's the embrittlement issue,
20 embrittlement is addressed in the license renewal
21 application. There's been no showing that the
22 company -- with any basis that the company hasn't
23 complied with that rule, and to the extent this was
24 a challenge to the rule it would be an inadmissible
25 contention on that basis.

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1 So that's the apples. The oranges would
2 be the stud bolts, and the issues are sort of raised
3 in the very tail end of the BREDL contention about
4 reactor stud bolts, and this crosses over to the
5 NIRS stud bolt contention and really our answer to
6 stud bolts can be found more fully and discussion in
7 our December 13th response, but the answer to that
8 is that the stud bolts are included within the aging
9 management programs. They are specifically
10 referenced in the license renewal application in
11 table 3.1-1. They are subject to aging management
12 programs, including the ISI program, the inservice
13 inspection program governed by the SME code, the
14 class one components, and just as a practical matter
15 what that means is that there is a volumetric type
16 inspection of the stud bolts.

17 Now the issue for stud bolts is not
18 embrittlement. It's a fatigue issue, a thermal
19 fatigue issue and that's the purpose of the ISI.
20 The contention seems to mix issues by bringing
21 embrittlement back into the stud bolts, but the stud
22 bolts are not within the belt line region and they
23 are not within the scope of the PTS Rule 5061. The
24 aging effect that's being managed is not
25 embrittlement, it's fatigue.

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1 There is a statement made that the coupons
2 don't adequately deal with stress or thermal fatigue
3 issues but the coupons are not intended to that.
4 The coupons relate to the embrittlement issue on the
5 belt line, so there is the apples being mixed with
6 oranges, so the long and short of it is that the
7 stud bolts are addressed in the application, and
8 addressed by the ISI program.

9 We also on that related to that point, we
10 did make the point in our response, the thermal
11 fatigue management program is also addressed in the
12 license renewal application because TLA, time limit
13 ageing analysis, that goes specifically to the issue
14 of terminal fatigue, and no specific deficiency has
15 been identified with respect to that program. That
16 program does apply to SME code class one components
17 which is explained in the application, and as we
18 have said before, reactor stud bolts are SME class
19 one components, so they are subject to that program
20 or that time limit aging analysis, as well as the
21 ISI aging management program.

22 If I didn't say it that was addressed in
23 the license renewal application in Section 4.3. Now
24 the last thing that we heard about today is core
25 baffle bolts, those are -- which I believe which was

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1 what was put up on the slide show here. Those are
2 reactor vessel internals, that's the banana here,
3 because those are not the stud bolts, reactor
4 enclosure studs, which are around the reactor head.
5 These are reactor internals. Those two are also
6 included within the scope of license renewal
7 application. We didn't reference this in our
8 response because it wasn't raised before but it's
9 specifically again, it's table 3.1-1 on Page 3.1-19,
10 and those components are subject to particular aging
11 management programs that are listed there, which I
12 believe includes the ISI program again.

13 So the long and short of it is -- the ISI
14 program as well as the reactor vessel internal
15 inspection program are also subject to chemistry
16 control program because they are in reactor vessel.
17 So the long and short of it is here is we have a
18 contention that seems to be a moving target, there
19 has been nothing raised either orally or in the
20 contention itself that isn't addressed in some
21 length in the application, and certainly there has
22 been no omission identified that hasn't been
23 addressed in the license renewal application. So
24 there is no basis for an admissible contention here.

25 MR. RUBENSTEIN: The care baffle

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1 bolts, which are reactor core internal, and any
2 failure would be picked up on an acoustical noise
3 analysis and are not a threat to reactor vessel
4 integrity, is that your opinion?

5 MR. REPKA: Well, my opinion is
6 probably not worth a whole lot, so I will discuss it
7 with my technical experts.

8 MR. RUBENSTEIN: This is the generic
9 you.

10 JUDGE YOUNG: Sort of like mine.

11 (Laughter.)

12 JUDGE YOUNG: On science issues any
13 way.

14 MR. REPKA: Okay. The answer from
15 the collective brain trust is that the reactor
16 vessel internal bolts are subject to ISI inspection
17 programs which looks for any cracking, but beyond
18 that the bolts are captured so that they would not
19 come lose and rattle around the reactor vessel.

20 MR. RUBENSTEIN: And if they did you
21 would pick them up immediately?

22 MR. REPKA: That's certainly
23 possible.

24 MR. RUBENSTEIN: Just another thing
25 banging against the lower core support plate?

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1 (Laughter)

2 MS. UTTAL: Other than the baffle
3 bolts I don't think there is anything raised here
4 today that wasn't addressed in the Staff's brief,
5 and as Mr. Repka said the baffle bolts are addressed
6 in table 2.1-1, so staff has nothing to add to this
7 discussion other than to stand by our brief.

8 JUDGE YOUNG: Okay, just to sort of,
9 well -- I'm sorry, let's go back to you, and I want
10 to bring up just a house keeping matter of what to
11 do with the various documents that we have been
12 given today and how to handle those on the record.

13 JUDGE KELBER: Mr. Zeller, were these
14 documents that you handed up today sent to us
15 earlier in the email.

16 MR. ZELLER: One of them was, yes,
17 one of them is in fact our contention Number 5,
18 which was emailed.

19 JUDGE KELBER: The others are new
20 today?

21 MR. ZELLER: The others are new
22 today, correct.

23 JUDGE YOUNG: Do you want to give
24 your final rebuttal statement on BREDL contention
25 five.

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1 MR. ZELLER: Okay, yes, we are
2 looking here at the license renewal application
3 under 4.3.1.2, fatigue environmental effects here.
4 This is on Page 4.3-5 which states that -- in which
5 Duke says that it's selecting method two, the
6 fatigue assessment using environmental factor, Duke
7 will follow the steps in every method two,
8 paraphrase, and adjust it as follows. I guess one
9 of the problems here is that we have not gotten
10 every data, we have no access to that, and we would
11 like to see that.

12 JUDGE YOUNG: You had the application
13 right?

14 MR. ZELLER: The application.

15 JUDGE YOUNG: And you had this
16 particular part of it?

17 MR. ZELLER: Right.

18 JUDGE YOUNG: Okay, and I don't find
19 any reference to that in your contention.

20 MR. ZELLER: That's also correct.

21 JUDGE YOUNG: Okay. Anything
22 further?

23 MR. ZELLER: Nothing further.

24 JUDGE YOUNG: All right, just a
25 housekeeping matter that I mentioned, we received

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1 some documents from Mr. Moniak and Mr. Repka earlier
2 on the preservice inspection and also the documents
3 5-1 through 5-4, I'm thinking that just for purposes
4 of the record, it might be good to put all of these
5 as exhibits to today's transcript, and obviously we
6 will take your rulings under advisement but for -- I
7 mean your objection under advisement but for
8 purposes of the record they need to be put in the
9 record in one manner or another, so if anybody has
10 any other suggestions I will entertain them.

11 MR. MONIAK: Clarifications, I don't
12 remember an objection to the --

13 JUDGE YOUNG: I don't think there is
14 any objection to yours but there was an objection to
15 these, the 5-2 through 5-4 as not having been
16 provided before, I think the earlier lones you and
17 Mr. Repka sort of combined yours and I don't think
18 there was any objection about those.

19 MR. REPKA: And certainly subject to
20 the process objection earlier we have no objection
21 to including them in the record either by binding
22 them in the transcript or whatever form you would
23 like to do.

24 JUDGE YOUNG: And the process
25 objection earlier, what are you referring to?

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1 MR. REPKA: With respect to raising
2 those documents in connection with BREDL 5 today.

3 JUDGE YOUNG: These documents, okay,
4 yes.

5 MR. REPKA: BREDL 5, not the BREDL 3
6 documents.

7 MR. RUBENSTEIN: Granted without
8 prejudice.

9 JUDGE YOUNG: Either -- probably the
10 simplest way is to just give copies of all of them
11 to the court reporter and you can put them as
12 exhibits to the transcript and then they will be in
13 the record.

14 THE REPORTER: Yes.

15 JUDGE KELBER: May I suggest that the
16 documents be marked whose exhibit they are and what
17 exhibit number.

18 JUDGE YOUNG: The 5-1 through 5-4 are
19 pretty self-explanatory. The ones we got earlier
20 from Mr. Moniak and Mr. Repka were sort of a
21 combination I think, and if you all want to put
22 these -- I had four documents, I had an April 23rd,
23 2001, letter and attachments, a May 4th, 2000 letter
24 and attachments -- well, the April one was to Mr.
25 H.B Baron, from Richard Elms, junior chief project

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1 director.

2 MR. RUBENSTEIN: This is the safety
3 evaluation report?

4 MR. MONIAK: Yes.

5 JUDGE YOUNG: And May 4th was from
6 Mr. Baron to the NRC, and then there is the voltage
7 based alternative repair criteria, NUREG 1740, and
8 the July 20th, 2000 -- whose that from -- you are
9 getting all this, right?

10 THE REPORTER: Oh, yes.

11 JUDGE YOUNG: -- from Mr. Baron to
12 the U.S. NRC, did you all want to distinguish which
13 ones of you submitted which parts of that? I
14 think --

15 MR. REPKA: I don't think it matters,
16 if you want to label them as Board Exhibit 1, 2 and
17 3, that would be sufficient.

18 JUDGE YOUNG: Well there are four of
19 them I think, but in any event, these went with
20 contention 3, was it?

21 MR. MONIAK: Yes.

22 MR. REPKA: Relief request was BREDL
23 3.

24 JUDGE YOUNG: So there is a fourth
25 part exhibit to contention 3 and we will just name

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1 that Exhibit-contention 3 four parts of it, okay,
2 and then the, there are contention -- add to the
3 word contention BREDL before contention, and then
4 BREDL contention 5-4 part exhibit and I will give
5 you my copies and I can get copies from Judge Kelber
6 for later, so don't let me forget to give you those.
7 Okay.

8 Now, Ms. Olsen, you had wanted to -- which
9 one was it that you wanted to put off until
10 tomorrow.

11 MS. OLSON: Security.

12 JUDGE YOUNG: That was 1.1.2, but you
13 were ready to go forward on 1.1.1.

14 MS. OLSON: Yes, although I had a
15 request.

16 JUDGE YOUNG: Yes.

17 MS. OLSON: The replies that I
18 received to that contention 1.1.1 are all
19 procedural, and in fact, I have to admit that we are
20 in a learning curve as to this process. I have
21 never been in a licensing process before myself, and
22 Paul has been severely challenged at this time, so
23 at the time of our November filing, we filed as you
24 know a motion to suspend based on documents, there
25 was to have been a second point in that on MOX but

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1 for too many reasons to go into here we decided to
2 forestall until today or after today, and I would
3 like the opportunity to address this issue
4 understanding that there are these two parts,
5 procedural part and also address a substantive oral
6 argument on our contention.

7 And in this regard, I have some things
8 that I want to pass out on the procedural, and
9 seeing what you've just been through I even offered
10 to mail them to everybody formally after today if
11 that would make it more acceptable but I have some
12 documents that I brought in terms of the procedural
13 part, not in terms of the substance of the
14 contention. May I distribute them?

15 JUDGE YOUNG: Go ahead and distribute
16 them at this point, and then why don't we take a
17 break, let people read them and come back and hear
18 your argument on this one. And I know we are going
19 to have some questions for you based on some of the
20 law that the Staff in particular has cited and --
21 well, any way, go ahead and distribute them, we will
22 take a break and come back and hear the argument.
23 We do again have to end at 5:30, so let's make this
24 break short. We have to actually be out the door no
25 later than 6:00 so that doesn't give us a lot of

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1 time, the court room will not be -- you can go off
2 the record.

3 (Off-the-record discussion.)

4 (Brief recess.)

5 JUDGE YOUNG: Just something that you
6 raised right before we went on break, I want to take
7 about two minutes to address and that is we
8 appreciate that you are new to this, you are not
9 attorneys, and the Commission has recognized in some
10 of its decisions that certain leeway can be given to
11 unrepresented parties, but I think if I may
12 paraphrase, we can look at what you filed and see if
13 it can be fairly read to say X Y Z, but if X Y Z is
14 not there we cannot put it in.

15 So the only other thing I would say is
16 when we do issue orders, when the Commission issues
17 orders that says you have to comply with the
18 requirements of a particular rule or a particular
19 case, it's very important to read those and follow
20 what they say very carefully and closely, because
21 this is the -- these are the rules and the law that
22 we have to go under. And this is how -- this stage
23 of the proceeding is to determine whether there are
24 issues that have been raised in such a way that they
25 are susceptible of litigating issues that are not

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1 just general but that are specific to the type of
2 proceeding it is, the type of facility that's
3 involved, and that establish that a petitioner can
4 actually contribute something to the process in a
5 particular case. So with that said, go ahead Ms.
6 Olson.

7 MS. OLSON: I would like to also
8 appreciate that over time this set of regulations
9 governing license renewal has clarified, shall we
10 say or limited perhaps, the scope of what is
11 admissible for the Board's consideration. And I
12 want to clarify also that it's the intersection of
13 plutonium fuel which Duke Energy is certainly
14 pursuing at this time, and license renewal, that is
15 a determining factor for Nuclear Resource and
16 Information Resource to join this case at all. And
17 I want you to understand that in this part of my
18 pleading I'm addressing the procedural issues, and I
19 think what I have decided is to in that very
20 question of what am I asking the Board to do, what
21 is the Board's role to this certify, to certify the
22 questions on MOX and license renewal to the
23 commission.

24 BREDL has already filed a motion to
25 dismiss or hold in abeyance including the plutonium

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1 fuel issue, we have supported that petition, but we
2 also felt that the intersection between aging, which
3 is clearly what license renewal is focusing on, and
4 plutonium fuel was so great that we needed to offer
5 at least one contention. And I want to be clear
6 that paper I have handed out today is not really
7 pertaining to that contention, and I want to in a
8 few minutes come to substance with that contention
9 because I have a little more to unfold on those
10 points, but it is in support of our -- I don't know
11 I have the motion here, I will probably passed it
12 out, but I would also probably at this point say
13 that it's dated November 22nd and it's a written
14 form of the pleading I'm going to give you because I
15 think it's more appropriate to ask the Board to
16 certify these questions. And in any case I have
17 given you --

18 JUDGE YOUNG: Let me ask you
19 something right there.

20 MS. OLSON: Yeah.

21 JUDGE YOUNG: By asking us to certify
22 the questions are you withdrawing them from our
23 consideration on whether to admit or deny -- or not
24 admit the contention?

25 MS. OLSON: No.

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1 JUDGE YOUNG: So you are arguing it
2 in the alternative --

3 MS. OLSON: Two separate issues,
4 because I think over arching is a question of
5 whether MOX is going to be considered at all and
6 that's the one I'm asking you to certify, but within
7 that, I think there is a contention having to do
8 with aging, and I am not withdrawing that, no.

9 JUDGE YOUNG: Well, I'm not exactly
10 sure I followed all of that, but maybe it will
11 become clear as you go forward.

12 MS. OLSON: Okay. I just want to
13 make sure that I'm making clear that the background
14 I'm providing basically that we have been concerned
15 about plutonium fuel since 1996 as an organization,
16 the first alert we put out actually raised most of
17 the issues that we continue to be concerned with.
18 Our member organizations and allied organizations
19 worldwide, over 200 of them, have expressed public
20 concern about plutonium fuel, and I want this to be
21 understood in this context so that we are clear that
22 it is not only the members of Nuclear Information
23 and Resource Service who raise these concerns in the
24 broader dialogue, and so the reason this is
25 important is there are not rules and regulations.

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1 I'm not challenging rules because there are no
2 rules. We get to collectively make this up at this
3 point, and I'm trying to let you know that there is
4 a lot of organizations and individuals who have a
5 great degree of interest in it.

6 We agree with what both the NRC staff and
7 Duke Energy said, that plutonium fuel used in
8 Catawba and McGuire is not certain. We have a large
9 organizational investment in making sure that it's
10 not certain, so of course we agree with that.

11 However, we don't agree that it's speculative. And
12 we would rather read that Duke Energy has met the
13 requirements of 10 CFR 54.13E and has notified the
14 Commission that information for the regulated
15 activity that would have a significant implication
16 for public health safety or the common defense is in
17 play. And thanks to Don Moniak I have an number of
18 documents but they are easily available of the times
19 that Duke has been briefing the Nuclear Regulatory
20 Commission all the way back to 1997 when they joined
21 the Commonwealth Edison in the project piece
22 promotion of the whole idea, so this is a clearly a
23 large dialogue and we are all in it.

24 And I understand the narrowness of the
25 commission's position that there has not been a

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1 proposal floated on MOX at this point in time,
2 however, the Commission is clearly investing large
3 amounts of resources into this project and has
4 embraced it, and in that spirit I provided the memo
5 from Andrew Persinko to Eric Leeds, and very
6 specifically this memo because it mentions on the
7 second page under reactors that there will be lead
8 test assemblies inserted into the McGuire reactor
9 that has been delayed at least to January 2002,
10 which is next month. So the intersection between
11 this supposedly not yet ripe project, and the
12 current project which is renewal, we don't buy that
13 it's speculative.

14 We also agree with Duke that plutonium
15 fuel would change their licensing basis, that's in
16 their letter, cover letter to the application, is
17 the fact that they are coming for license renewal
18 under the current license basis, we agree that
19 plutonium fuel use will change that.

20 JUDGE YOUNG: That what?

21 MS. OLSON: That will change current
22 license --

23 JUDGE YOUNG: That what will change
24 it?

25 MS. OLSON: Plutonium fuel use.

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1 JUDGE YOUNG: Okay.

2 MS. OLSON: And we also appreciate
3 the NRC staff for reminding us that current license
4 basis covers the full gamut, the list they give us
5 in the reply was 10 CFR's in plural, 2, 19, 20, 21,
6 26, 30, 40, 50, 51, 54, 55, 70, 72, 73, 100, and
7 dependency is there too, and other documents which
8 we would say would probably include FSAR and
9 technical specifications. So there is really
10 virtually no part of license renewal that one would
11 not have to evaluate in some way.

12 I'm not saying that we can show that
13 plutonium fuel use would impact each of these areas
14 substantially, but I am suggesting that if these
15 reactors were using plutonium fuel now, and renewal
16 was brought, each of these areas would have to be
17 evaluated for whether or not there was an impact
18 that had to be addressed. Quite frankly we don't
19 have the resources to do that, but we certainly
20 think that the Nuclear Regulatory Commission and
21 Duke do.

22 And then further, the generic
23 environmental impact statement, it assumes low and
24 rich uranium fuel and light water reactors. I think
25 I'm going to reserve the rest of that argument for

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1 when we get to the second MOX contention that I did
2 not withdraw, but things like source term, all of
3 the severe accident analysis, all of them would need
4 evaluation. And our biggest concern, and the reason
5 that we are asking for this question to be seriously
6 taken at this time, is that issues like the ones I
7 have just referenced may be artificially foreclosed
8 when Duke Energy comes, we believe, in good faith in
9 the future for a license amendment on plutonium fuel
10 use.

11 JUDGE KELBER: How would that happen,
12 that they would be artificially foreclosed?

13 MS. OLSON: If there are questions
14 about time limited ageing analysis, will we be told
15 these were resolved in license renewal? Will there
16 be bars established with the analysis of MOX, new
17 rules that say, well, it has to be over a certain
18 amount before we are even going to consider it, all
19 the ways in which foreclosure has already happened
20 in license renewal, we believe are subject to the
21 high paid -- I hope they are high paid -- attorneys
22 at the Nuclear Regulatory Commission to come up
23 with. So I don't mean to stress that too hard, but
24 we are in a game with no rules.

25 JUDGE YOUNG: Let me interrupt you

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1 here, we will also be interested to hear all
2 parties' arguments.

3 MS. OLSON: Yes.

4 JUDGE YOUNG: On what issues would be
5 open in any future license amendment process. And
6 so that's something that we will want to be asking
7 all of you.

8 MS. OLSON: Good.

9 JUDGE YOUNG: And as far as your
10 contention goes, I think probably before you close,
11 it would help us to know precisely what it is that
12 you still want us to determine with regard to
13 contention 1, have you withdrawn any -- I'm still
14 not clear on what if any part of it you are
15 withdrawing.

16 MS. OLSON: None, none.

17 JUDGE YOUNG: So, your request to
18 have it certified, I started to ask you before or it
19 got lost in the conversation, but are these
20 arguments what we call as attorneys, in the
21 alternative, you are asking us to rule in your favor
22 but if not to certify it to the Commission, is that
23 what you are asking?

24 MS. OLSON: Well it's a more complex
25 piece than was fully articulated in the contention,

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1 and perhaps I will file it as a motion, but just to
2 tell you what it is, since I may not be fully
3 admitted here is that we do not believe that license
4 renewal process should be conducted in the case of
5 these two reactors unless and until Duke makes a
6 clear determination about plutonium fuel use during
7 the renewal period which according to the regulation
8 begins immediately after granting the renewal
9 because it supplants the old license, so if there is
10 going to be any significant time period in the next
11 40 years that that fuel might be in use, we believe
12 it should be considered here.

13 JUDGE YOUNG: You don't want to be
14 foreclosed from raising any arguments that you might
15 raise in this proceeding in any subsequent license
16 amendment proceeding should that be the outcome of
17 this proceeding that --

18 MS. OLSON: Right, right. And we
19 believe since Duke has another 20 years or more on
20 their current licenses, and because they are clearly
21 on a fast track with the plutonium fuel program, and
22 because taxpayer resources are at risk, in large
23 amounts because one of the things that I just sent
24 you passed out is a letter from Duke explaining that
25 any billing from the Nuclear Regulatory Commission

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1 for the work on MOX which is beginning to cost some
2 money, will be referred to the Department of Energy
3 under the contract which I have also given you
4 excerpts from, and that that money will then be
5 taxpayer dollars, and our concern here is that at
6 the same time Duke has stated, and I have given a
7 declaration as to the individual who told me this,
8 is Dr. Edwin Lyman, in a public meeting, that were
9 ageing factor associated with MOX or any other
10 factor associated with MOX to in Duke's view limit
11 their ability to use their renewed license for the
12 full term, they would withdraw from the MOX program,
13 which calls into question therefore the huge amount
14 of resources being invested in the thing without an
15 analysis of what the impact on renewal is.

16 JUDGE YOUNG: Okay. I think your
17 time is about up. Do you have anything you want to
18 very quickly wrap up with and then we will go to
19 Duke.

20 MS. OLSON: I did not get to any of
21 the substantive portions of defending 1.1.1.1, and I
22 think I got pretty well through the whole pleading
23 on process, except for to say that you know, there
24 is a second issue which if the issues are not
25 foreclosed, which we don't want them to be, but if

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1 they are not, then we agree with Duke on their note
2 38 on Page 15 of the response to our contentions,
3 that many issues would have to be considered twice.
4 And again it's not only the resources of these
5 parties at the table but the issue of the taxpayers
6 as well.

7 JUDGE YOUNG: And just briefly in
8 like one minute, if you can, what are the -- were
9 the substantive issues that you wanted to argue with
10 regard to this contention?

11 MS. OLSON: Basically it has is do
12 with the time limit aging analysis of the reactor
13 pressure vessel which is referenced in 1.1.1.1, and
14 the fact that if the low leakage MOX core management
15 which Duke mentioned is to be used, then the MOX
16 assemblies would have to be placed away from the
17 edges of the reactor vessel, away from the
18 periphery, and that that would tend to contribute to
19 power leaking problems that are associated with low
20 enriched uranium and MOX cores. Forgive me, I
21 understand these ideas but I'm relying on the work
22 on Dr. Ed Lyman here, and he was not able to join
23 us.

24 JUDGE KELBER: You did not supply an
25 affidavit to that effect with your contention, did

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1 you? You have no expert affidavit attached to your
2 contention.

3 MS. OLSON: I have no expert
4 affidavit, and I neglected attribution, which was
5 wrong on my part. It should have been attributed to
6 him.

7 JUDGE KELBER: Aside from what
8 attributed to him -- well, okay. We will proceed
9 then.

10 MS. OLSON: But any way there is a
11 concern about this, you know, whether or not you
12 solve one problem by exacerbating another. So what
13 we are pointing to here is that there are complex
14 issues that really need to be addressed in terms of
15 the ageing analysis. If they are not foreclosing
16 this process, yes, they can be brought back up in
17 MOX, but then you are doing a duplicate burden of
18 litigation.

19 JUDGE YOUNG: Okay. Mr. Repka,
20 before you start, let me just ask you if you could
21 address this whole issue of the argument that you
22 make that this -- the MOX, the use of MOX fuel, if
23 it is, will be put forth in a license amendment
24 request, is there anything in that type of
25 proceeding -- well, is there any limitation in that

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1 type of proceeding -- could there be any limitation
2 in that type of proceeding of consideration of
3 ageing issues, back fit issues, is there any --
4 would potential petitioners or actual petitioners
5 today lose any opportunity to litigate issues they
6 could litigate here in a license amendment
7 proceeding?

8 MR. REPKA: In other words, would
9 anything be foreclosed?

10 JUDGE YOUNG: Exactly right, thank
11 you.

12 MR. REPKA: The answer is no. To the
13 extent that they can show consistent with -- if you
14 are in proceeding 2174 and the basis and specificity
15 and standards and it's relevant to a MOX effect, the
16 answer is no, nothing is precluded from being
17 litigated.

18 JUDGE YOUNG: So you would not come
19 back and say that's an ageing issue, that was taken
20 care of in the license renewal proceeding? Or you
21 would not come back and say, well, we should not be
22 held to the back fit rule on this particular issue?

23 MR. REPKA: The answer is no. We
24 might come back and say there is no basis for a
25 particular issue, that MOX fuel from four lead test

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1 assemblies or whatever it might be --

2 JUDGE YOUNG: But assuming that was
3 met you are not going to make either of those last
4 two arguments?

5 MR. REPKA: We would not make an
6 argument that it's not in scope. It's very simple
7 on the -- our argument is simply, we are not asking
8 for that authority now, and if we ask for it, then
9 that's the right place to address any issues that
10 that might raise including any issues related to
11 ageing of equipment or the reactor pressure vessel.

12 JUDGE YOUNG: Or any back fit issues?

13 MR. REPKA: Correct.

14 MR. KELBER: Mr. Repka, God willing,
15 I will be on the license amendment case as well, so
16 I will hold you to that, sir.

17 MR. REPKA: God willing, I will be as
18 well.

19 JUDGE YOUNG: I think there is case
20 law that says representations by made by licensees
21 to that effect they will be held to, so I think your
22 statement that you are making is something that will
23 be on the record and that any future petitioners can
24 proceed with.

25 MS. OLSON: It was worth the trip to

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1 Charlotte.

2 MR. REPKA: Certainly to the extent
3 we think that issue is relevant we would address it
4 in the amendment application, and to the extent we
5 don't think it's relevant we might not, but they
6 would be free to argue as to why that should be
7 addressed.

8 JUDGE YOUNG: I mean obviously, by
9 the time this, if it ever is considered,
10 theoretically I suppose we should acknowledge that
11 science and knowledge do change as to ageing as to
12 various things, but the issues would not be
13 foreclosed, and either party could bring in the
14 latest scientific knowledge on that.

15 Does that -- is that pretty clear on that
16 issue? And I'm assuming the Staff would agree with
17 all of these things that are being said? Yes, I see
18 you nodding your heads.

19 MR. FERNANDEZ: Yes, Your Honor.

20 JUDGE YOUNG: Does that address your
21 procedural issue?

22 MS. OLSON: As I mumbled a moment
23 ago, it's worth the trip to Charlotte.

24 JUDGE YOUNG: Okay. In view of that,
25 I mean -- let me just ask you one other question,

1 and this is maybe more appropriately addressed to
2 the Staff, but I will ask it now and you can both
3 address it to whatever degree you want to. And that
4 is the case law that the Staff cites in view of what
5 was just said I'm not sure how relevant it is at
6 this point especially since the recent MOX, the
7 recent decision in the MOX fuel case, did also
8 acknowledge that any use of MOX fuel at the McGuire
9 or Catawba plants would be subject to the license
10 renewal proceeding. I guess one thing that did --

11 MR. REPKA: Subject to the license
12 amendment proceeding.

13 JUDGE YOUNG: Right, thank you,
14 license amendment proceeding, it's getting late. I
15 guess, should that happen prior to this proceeding
16 being over, especially in view of the Commission's
17 footnote about the airport, I think it was footnote
18 18, if something new comes up, such that the
19 proposal is made prior to this proceeding being
20 over, that might be something that would perhaps be
21 appropriate for consolidation or some such efficient
22 manner of handling the issues, and --

23 MR. REPKA: Certainly --

24 JUDGE KELBER: -- it's in Turkey Point

25 JUDGE YOUNG: It's in Turkey Point,

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1 and that's the Commission's reference to an airport
2 in Turkey Point, if a tangible plan for a nearby
3 commercial airport emerges, then that would be a
4 proper subject for a late-filed contention. So just
5 to cover all bases, I'm assuming that you would not
6 disagree with that if the MOX fuel case goes along
7 so expeditiously that it were to be approved, and
8 you were to file your license amendment application
9 prior to this proceeding being over, that's
10 something that could be handled together or possibly
11 be the subject of a late-filed contention?

12 MR. REPKA: I don't know, without
13 knowing what the issue might be, I wouldn't commit
14 to where it might best be addressed. Generally we
15 favor efficiency, and our whole point is just that
16 the MOX issue be addressed in connection with MOX
17 applications.

18 JUDGE KELBER: Often times they put
19 license amendment cases under subpart K, and this is
20 subpart G, so I don't know that you want to mix the
21 two.

22 JUDGE YOUNG: Are there any other
23 issues on this procedural question? I guess I want
24 to ask all of you and then assuming or once we deal
25 with all of these procedural issues, is there

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1 anything further that we need to talk about in terms
2 of the substance of the issue? And I guess I'm
3 directing the first part of that question to all of
4 you, and then the second part of that question to
5 you primarily, Ms. Olson.

6 MR. REPKA: I think on the procedural
7 point there is nothing further for us to discuss. I
8 think I would make the point though, that NIRS 1.1
9 is sort of the ageing technical effects contention,
10 NIRS 1.2.4 is the same issue only MOX affects an
11 environmental space and our argument is the same
12 there. With respect to the technical effects it
13 matters not one bit whether or not it's speculative
14 or not, the MOX application is simply not before us.

15 With respect to the NEEPA issue, that's a
16 different contention but our argument is essentially
17 the same, the environmental affects would be
18 addressed in that context as well. The fact that
19 the Staff has cited some case law, we cited some
20 case law in response to the BREDL motion that is
21 before the Commission on the NEEPA aspects, the fact
22 that the MOX proposals are still speculative at this
23 point is relevant, but the fact of the matter is it
24 really remains the same as the environmental issues
25 are addressed there and not here.

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1 MS. OLSON: I would still like the
2 opportunity to speak to 1.2.4, which is what he was
3 referring to, and I didn't think we were doing that
4 right now.

5 JUDGE YOUNG: No, we are not on that
6 one right now but on --

7 MS. OLSON: And I have another thing
8 to add here. I think it's tremendously important
9 that all parties have heard and gone on record that
10 issues pertaining to MOX, whatever they are, will be
11 open in a MOX license amendment proceeding. That's
12 my understanding of what has been said. And that
13 there will be no MOX-related issue that will just
14 categorically be inadmissible, because of this
15 proceeding. There may be some that are
16 categorically inadmissible, I understand.

17 But at the same time, I am not withdrawing
18 our contention at this point because I think we
19 still get to the resource issue, and big issues of
20 the spirit of NEEPA, the spirit of NEEPA of --

21 JUDGE YOUNG: Are you in 1.2.4 now?

22 MS. OLSON: No, I'm in the question
23 of ageing analysis and whether or not ageing
24 analysis is going to be done now and later. And I'm
25 not going to press as hard because we don't have at

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1 this point a lot of ageing contentions, and we are
2 not putting a lot of resources in, but I want to
3 point out that it does come back to doing things
4 twice, so I think that the question of evaluating
5 the impact of MOX on renewal is still an open
6 question and one which Duke itself has said is
7 substantial in terms of its willingness to pursue
8 the program, and that again goes to the resource
9 issue, it's tax dollars. We are paying a lot of
10 people. Is this a jobs program or something? It's
11 a real question, that in their view if MOX has an
12 impact on renewal they are not going to do it.
13 That's what we have heard.

14 So that's why we are asking you to
15 continue viewing this contention as a real question.

16 JUDGE YOUNG: Okay, you just said
17 something that I'm not sure I followed, that they
18 are saying if MOX has an impact on renewal, I --

19 MS. OLSON: Their ability to operate
20 their reactors for an additional 40 years.

21 JUDGE YOUNG: In other words, if they
22 are not granted the license amendment they would not
23 use MOX, they would use ordinary enriched uranium?

24 MS. OLSON: Well, no, the point is
25 different than that, and it is in Mr Lyman's

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1 declaration, you can read it, and I regret that I
2 gave it to you today, I got it on my way out of town
3 yesterday.

4 MR. FERNANDEZ: Your Honor, I don't
5 mean to interrupt, but the Staff wishes to clarify
6 the nature of these documents, and if they are being
7 offered to supplement the already filed contentions
8 or to add the contentions that are under review, we
9 object to that and we would object to having them
10 being made exhibits and part of the record because
11 these are very voluminous documents and if they were
12 available at the time of drafting the contention
13 they should have been attached there too.

14 JUDGE YOUNG: Let me clarify
15 something. By putting all of these documents in the
16 record, no ruling has been made on their
17 admissibility or what consideration will be taken of
18 them, but even if we were to deny admission of a
19 document, it would still go in the record as a
20 denied exhibit in the nature of an offer of proof,
21 so just so the record will show what was presented,
22 what was considered.

23 MR. FERNANDEZ: Thank you, Your
24 Honor.

25 JUDGE YOUNG: So we have not made any

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1 rulings on them in terms of the -- well, I don't
2 know -- admissibility on the contention issue,
3 except that the ones relating to BREDL contention 3
4 were by agreement, so we will take all objections
5 like that under advisement. Go ahead.

6 MS. OLSON: And Your Honor, I would
7 if it will please everyone in the room I will
8 formally file a motion and use as exhibits
9 supporting my motion and mail it to everybody. I
10 mean it's I think a lot of busy work but I will do
11 it if somebody thinks that that's how I need to
12 bring this question forward.

13 JUDGE KELBER: It's a question of
14 timing, Ms. Olson.

15 MS. OLSON: I understand that and I
16 believe the question of timing is legitimate but I
17 don't believe that it makes the issues less
18 legitimate themselves.

19 JUDGE KELBER: That may be, but it is
20 still a question of timing.

21 JUDGE YOUNG: And in that regard, I'm
22 not sure, the Staff and Duke can provide whatever
23 argument they want to make on this, but on the issue
24 of late-filed petitions or late filed contentions,
25 there are criteria in 10 CFR 2.7-14 that talk about

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1 the criteria to look at for late filing of
2 contentions and petitions, so to the degree that
3 those may or may not be consulted for guidance on
4 any late-filed document such as this, you might want
5 to pay attention to those.

6 MR. MONIAK: 2.17?

7 JUDGE YOUNG: 2.7-14.

8 MR. FERNANDEZ: Your Honor, can we
9 clarify what motion was the petitioner referring to.

10 JUDGE YOUNG: She was about to tell
11 us that.

12 MS. OLSON: Well, I started with
13 this, and I understand time is a problem, you know,
14 we are up in the holidays and new babies and all
15 kinds of things.

16 JUDGE KELBER: No, ma'am, it's a
17 question of getting your contention properly
18 supported at the start. Read the rules.

19 MS. OLSON: Well, I believe a motion
20 to suspend is different than a contention.

21 JUDGE KELBER: Is that what you are
22 making now?

23 MS. OLSON: I was very happy with the
24 situation until somebody told me I couldn't get
25 these documents, so if I have to make a motion to

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1 give these documents, I will do it. I had this
2 motion written and I didn't file it because we were
3 coming here, and it would have been on the way out
4 the door by the time I had approval from everybody I
5 had to jump through hoops for.

6 JUDGE YOUNG: And what is motion?

7 MS. OLSON: The motion is -- I
8 pleaded it. It's no different than what I pled
9 today. It is saying that license renewal in this
10 case, Catawba and McGuire, should be suspended until
11 Duke Energy makes a clear determination about the
12 MOX fuel issue on the grounds of the points I have
13 argued today.

14 JUDGE YOUNG: But is that any
15 different than the motion that is presently pending
16 before the Commission?

17 MS. OLSON: Yes, it's a motion to
18 you, but I didn't file --

19 JUDGE YOUNG: I mean in content.

20 MS. OLSON: Yes, it's what I have
21 argued today in a written form, and you may have it.

22 JUDGE YOUNG: You can certainly file
23 a motion, I'm just trying to clarify my own
24 confusion on the issue, I thought I heard you say a
25 minute ago you wanted to file a motion to have us

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1 consider these documents.

2 MS. OLSON: I would have. If I filed
3 this when I wanted to, those documents would have
4 been exhibits with my motion, which I know is
5 backwards, but I wanted to provide you with the
6 information some way, and so what I did was I
7 brought you the documents today, and I have made the
8 verbal pleading which is basically embodied in this
9 motion that I never filed, if you would like to have
10 it, then have it and I will pass it around, but I'm
11 really not --

12 JUDGE YOUNG: That's up to you.

13 MS. OLSON: But I'm not at this point
14 making this request. I made the request, I made and
15 asked now that you continue to consider the
16 contention which would force you to answer the
17 question of whether the impact of MOX on ageing is a
18 factor in the license the renewal question.

19 MR. FERNANDEZ: Your Honor, for
20 clarity sake, the Staff would move that the Board
21 ask the petitioner to submit this in writing with
22 the attachments as exhibits so the Staff and the
23 applicant has the opportunity to respond in writing.

24 JUDGE YOUNG: I think that makes
25 sense, and then to the degree that it could be

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1 viewed as asking us to accept something late-filed,
2 again these rules are rules that we need to follow,
3 so you may want to look at the late-filing issues.

4 MS. OLSON: I will.

5 JUDGE YOUNG: But on the issue of
6 whether we should consider the scope -- the
7 substance, even though it may not be at issue now
8 because it's not a proposal now, and especially in
9 view of the fact that Duke has agreed that no issues
10 will be foreclosed in any future license amendment
11 proceeding, I'm not altogether clear on what the
12 value would be of considering the substantive
13 aspects of your MOX contention in this proceeding.

14 MS. OLSON: I guess, and I'm happy to
15 close this soon, I don't think we need to go back
16 over things a lot, I guess the relief to my members
17 that would be, you know, at the level of a
18 contention, requirement for a contention, is only as
19 taxpayers, but that's a real concern to me, our
20 organization has that as a very real concern.

21 JUDGE YOUNG: I'm still not clear
22 what you are saying.

23 MS. OLSON: There is a huge amount of
24 investment in this program, and there is some
25 indication that if --

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1 JUDGE YOUNG: Are you a party -- you
2 are not a party to the MOX fuel case?

3 MS. OLSON: Nono.

4 JUDGE YOUNG: Because that's where
5 the whole -- unless that license is granted then
6 obviously there won't be any use of MOX at the
7 McGuire and Catawba plants. So I guess I'm still
8 not following --

9 MS. OLSON: I hear you it's okay.

10 JUDGE YOUNG: So you are not --

11 MS. OLSON: It's late in the
12 afternoon and I'm tired, so I will simply say that I
13 appreciate what we have clarified today, and make
14 clear in this record that my motion contains nothing
15 that hasn't been stated already in this oral
16 argument. So if I do not file it, it will for all
17 intents and purposes not be something that, you
18 know, contains some big surprise, whatever, so.

19 JUDGE YOUNG: We have got about 15
20 minutes left, I guess I would like to give Mr. Repka
21 and Ms. Uttal or Mr. Fernandez a brief moment to say
22 anything you would like and I guess I want to come
23 back to you and ask you what specifically if
24 anything are you asking us to do.

25 MS. UTTAL: Okay.

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1 MR. REPKA: I think on the
2 substantive point here, should MOX be addressed in
3 the license renewal application, we have already
4 discussed that, and I don't know that we need to
5 discuss it any further. The answer is MOX issues
6 will be addressed in any motion specific license
7 amendment application. With respect to the idea
8 that there should be a motion to suspend or
9 something, I'm just confused as to how that would be
10 any different than the issue that's already before
11 us in this contention. Essentially the argument
12 would be that MOX effects have to be addressed in a
13 license renewal context, and our answer would be
14 precisely the same that they don't have to be,
15 because the MOX issue is not before us. So I think
16 what I'm hearing is we've got essentially the same
17 issue, and it's really the timing issue of when does
18 this need to be addressed. Beyond that there really
19 is no other substantive issue that is ripe. We Duke
20 Energy in our application for license renewal have
21 made no attempt to address MOX issues, and so
22 therefore there is no substantive response. It's
23 simply our position that this isn't the time or the
24 place.

25 Beyond that I really have nothing more to

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1 say other than to say that's not a basis for
2 suspended this proceeding either. Certainly the
3 Board is perfectly capable of going on and ruling on
4 that particular contention.

5 MR. FERNANDEZ: The Staff has nothing
6 to add, Your Honor.

7 JUDGE KELBER: I have one question
8 that may help clarify things in some people's minds
9 at least, when a core has been in the reactor for
10 something like 18 months and is ready for refueling,
11 is there a substantial amount of plutonium in the
12 core?

13 MR. FERNANDEZ: That's what some
14 technical people have said before.

15 JUDGE KELBER: Pardon.

16 MR. FERNANDEZ: Some technical
17 experts have said that before.

18 MR. RUBENSTEIN: I would suggest that
19 there are probably 20 to 30 percent of the fissions
20 come from plutonium on a mature core.

21 JUDGE KELBER: I think it's probably
22 about 40 percent, but I want to hear from the Duke
23 experts.

24 MR. REPKA: The answer was, yes,
25 there is a substantial amount of plutonium in the

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1 core.

2 JUDGE KELBER: So introducing
3 plutonium is not a new thing.

4 MR. REPKA: Certainly having
5 plutonium in the core is not a new thing, having
6 them in the fuel maybe a new thing.

7 MR. RUBENSTEIN: It is in the fuel.

8 JUDGE YOUNG: We are getting into the
9 substantive --

10 JUDGE YOUNG: This clarifies -- to
11 the degree this clarifies the issues, then that's
12 helpful. I guess back to Ms. Olson, is there
13 anything that you are asking us to do other
14 recognize that what Duke has said on the record with
15 regard to any future license amendment proceeding,
16 you mentioned certification earlier, what is it if
17 anything you would like us to certify to the
18 commission? What do you want us to do at this
19 point?

20 MS. OLSON: Well, there is a question
21 in my mind as to when the proposal is before the
22 Commission, I mean --

23 JUDGE YOUNG: Which proposal?

24 MS. OLSON: MOX. Right now we are
25 saying MOX fuel use is not a proposal at this time.

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1 JUDGE YOUNG: So the use of MOX in
2 these plants --

3 MS. OLSON: In these plants is not a
4 proposal at this time, and clearly there is a
5 difference between lead test assemblies and full
6 batch loading, and those amendments will be handled
7 separately, but I guess my last remaining question
8 has to do with if there is overlap as you had said
9 there is some possibility that license renewal and
10 these license amendments on plutonium fuel may
11 overlap, we don't know. At that point, is there the
12 possibility for late filed contentions?

13 JUDGE YOUNG: That's why I brought up
14 the commission's footnote 18 in the Turkey Point
15 case, just to sort of make sure everyone was aware
16 of it. And the Commission seems to be saying that
17 if something that looks speculative at the time a
18 hearing is conducted later turns out to be a
19 tangible plan, then the late-filed contention can be
20 filed provided that it meets all of the contention
21 requirements including the late-filed criteria in
22 2714 A, I think it is.

23 MS. OLSON: So I think that clarifies
24 what I would want the Board to reflect on at this
25 point, in terms of these questions.

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1 JUDGE YOUNG: And I don't hear any
2 disagreement from Duke or the staff to that.

3 MR. REPKA: Actually having looked at
4 the footnote now, certainly I don't disagree with
5 the idea that there can be late-filed contentions,
6 but I will say that with respect to the basic issue
7 here which is to which proceeding is that relevant,
8 if MOX becomes a true application and something
9 that's filed, issues related to MOX we would still
10 maintain are related to that application, so even
11 though you may always have a right to make a
12 late-filed contention, if there is a proceeding
13 going on on MOX issues that's the right place to
14 make that application, not on the license renewal
15 docket.

16 JUDGE YOUNG: And I guess the reason
17 I had raised it before was the possibility of
18 providing for greater efficiency by consolidating
19 parts of the proceeding, and that's something that
20 can be dealt with later. I think what I hear from
21 NIRS is that they wanted to make sure that it gets
22 litigated somewhere sometime without any issues
23 being foreclosed by not allowing the contention in
24 now. And I think that's been addressed. To the
25 degree it hasn't --

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1 MR. RUBENSTEIN: Is my understanding
2 correct that your petition to the Commission deals
3 with -- also deals with the question of tangible
4 versus speculative loading of MOX in their reactors
5 in requesting our hearing be deferred?

6 JUDGE YOUNG: That's the BREDL
7 motion.

8 MR. RUBENSTEIN: Yes.

9 MS. OLSON: Thank you.

10 MR. RUBENSTEIN: The answer is yes?

11 MS. OLSON: I'm sorry, could you
12 restate the question.

13 MR. RUBENSTEIN: Is your pleading to
14 the Commission for dismissing this hearing based on
15 an argument which deals with the tangle speculative
16 nature of the proposal of MOX for the reactors?
17 Does it adjust that? Refresh my memory.

18 JUDGE YOUNG: What I'm saying is,
19 that was BREDL motion but they adopted it. In
20 BREDL's motion which you are supporting, does that
21 address the tangible versus speculative issue?

22 MR. MONIAK: See the thing is, in the
23 MOX fuel fabrication facility proceeding, the entire
24 program is termed vital to national security
25 interests and international nonproliferation and has

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1 to be fast-tracked.

2 MR. RUBENSTEIN: But it could be
3 alternatively made into glass.

4 MR. MONIAK: A different ceramic, but
5 that's been defunded entirely. It's on the fast
6 track in that process, where as here in this process
7 it's speculative and remote. So we are getting two
8 extremes.

9 JUDGE KELBER: The question was, what
10 is in your petition.

11 MR. MONIAK: What is in our petition
12 is to defer -- I thought it was the issue -- I
13 should know that but it's late.

14 JUDGE YOUNG: One thing you need be
15 careful about, when you say in this proceeding you
16 say it's speculative and remote, you need to say who
17 is making that argument, because no ruling has been
18 made on any of this, obviously, but it --

19 MR. ZELLER: Blue Ridge Environmental
20 Defense League states that -- our petition states
21 that this was filed, draft motion to dismiss,
22 10/11/01, is that what you got? Blue Ridge
23 Environmental Defense League respectfully requests
24 that the Atomic Safety and Licensing Board dismiss
25 this proceeding for the renewal of licensing of Duke

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1 Energy's Catawba and McGuire power plants on the
2 grounds that -- on certain grounds the Staff
3 currently intends to prepare and issue an
4 environmental inspect statement for license renewal
5 without assessing the impacts of plutonium fuel use
6 on ageing, even though Duke Energy has expressed its
7 commitment to submit a license amendment to use
8 plutonium fuel through its existing license period,
9 and has a contract with the Department of Energy.

10 JUDGE YOUNG: Excuse me, are you
11 reading a motion to us or a motion to the
12 Commission.

13 MR. ZELLER: I'm responding to the
14 question.

15 JUDGE YOUNG: Clarify for me.

16 MR. MONIAK: Motion to commission was
17 the license renewal --

18 JUDGE YOUNG: Stop. My question was
19 Mr. Zeller was reading a motion, you said Board, I
20 believe you meant commission, correct?

21 MR. MONIAK: Yes.

22 JUDGE YOUNG: Okay.

23 MR. MONIAK: The basis for the motion
24 to dismiss was the license renewal application is
25 fundamentally deficient because the use

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1 plutonium/MOX fuel from converted military plutonium
2 is not proposed for analysis, because the actual
3 proposed action is missidentified and erroneous,
4 the actual safety of the operations not proposed,
5 that was our motion.

6 MR. RUBENSTEIN: You state that the
7 use of mixed oxide in the Duke reactors is not a
8 speculation, but it has --

9 MR. MONIAK: No, they are
10 contractually obligated to apply for a license to
11 the U.S. government, and they can't withdraw from
12 that without being in default of the contract.

13 MR. RUBENSTEIN: Clarify that.

14 MR. MONIAK: That was our --

15 JUDGE YOUNG: This is not before us.

16 MR. ZELLER: No, it's not before
17 you.

18 MR. MONIAK: No, it's not before you.

19 JUDGE YOUNG: I don't think we are
20 being asked to certify anything.

21 MS. OLSON: No, I clarified that I
22 was not at this point asking --

23 MR. RUBENSTEIN: I stand corrected.

24 JUDGE YOUNG: Do you want to withdraw
25 these exhibits or do you want us to put them into

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1 the record as offers of proof.

2 MS. OLSON: I would as soon you kept
3 them.

4 JUDGE YOUNG: We need to conclude in
5 the next couple of minutes, is there any
6 housekeeping details that we need to talk about
7 today before we adjourn? I think you had your hand
8 up first?

9 MR. REPKA: No housekeeping details,
10 but just to make sure the record is crystal clear,
11 we say on the MOX issues that nothing is foreclosed
12 and that's our position, but by saying that, I said
13 this before but I want to reiterate, we are not
14 waiving the basis requirements of 2.714 in any way.
15 Any issue in the MOX proceeding still has to have a
16 basis.

17 JUDGE YOUNG: Certainly, it would be
18 the same in whichever proceeding.

19 MR. REPKA: Correct, and beyond that
20 I have no further housekeeping.

21 JUDGE YOUNG: Ms. Olson?

22 MS. OLSON: Oh, dear, I wish you
23 hadn't said that. I have all --

24 JUDGE YOUNG: Let me clarify. All he
25 said is in any proceeding in which there are.

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1 contentions filed you have to meet the basis
2 contention requirements. So that would not be
3 different here or there.

4 MS. OLSON: Right.

5 JUDGE YOUNG: Now theoretically, I
6 suppose, if there were any changes in the procedural
7 rules that would make it a different type of
8 proceeding there might be differences in what is
9 required, for example, in an informal proceeding, I
10 don't know of any plans to make license amendment
11 proceedings informal proceedings, but what he was
12 taking about was the generic requirements for all
13 contentions or raising of issues that will apply
14 regardless of the subject matter. And all he was
15 agreeing to in saying that nothing was foreclosed
16 was the subject matter, the scope of what could be
17 included in a contention or issue for litigation,
18 whatever you want to call it, depending upon the
19 circumstances.

20 MR. RUBENSTEIN: Subject to meeting
21 commission standards.

22 JUDGE YOUNG: Did I restate that all
23 right?

24 MR. REPKA: Very well.

25 JUDGE YOUNG: Okay. So you had your

1 hand up before that, though.

2 MS. OLSON: I guess, Mr. Zeller has
3 just indicated that there is reason for us to want
4 the Board to make this a ruling in terms of MOX
5 issues, and I think that's correct, because, you
6 know, as I stated to begin with, we are not
7 challenging any rules because there are no rules.
8 So although this may be an obvious thing that has
9 been agreed to and it's now in this transcript, we
10 would ask that this be reflected in your ruling on
11 1.1.1.

12 JUDGE YOUNG: Okay, and we won't
13 consider that it's been withdrawn, we will make a
14 ruling based on what we have heard today. Your
15 other MOX issues will come up in your subsequent
16 contentions and we will be dealing with those as we
17 go, but to the degree the same principles apply, we
18 don't need to go through this whole thing again each
19 time.

20 MS. OLSON: Right. Housekeeping
21 though, are we going to follow the order that is
22 currently given just removing the contentions that I
23 have --

24 JUDGE YOUNG: Unless there is some
25 reason to combine some that would be more efficient,

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1 and certainly if you think that two would go well
2 together, we can rearrange them on that basis if it
3 would be more efficient.

4 MS. OLSON: That's fine.

5 JUDGE YOUNG: Anything else? Then we
6 will see you tomorrow.

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CERTIFICATE

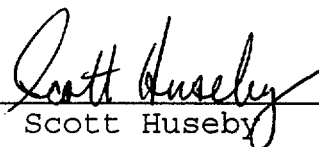
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Name of Proceeding: Duke Energy Corporation

Docket Number: 50-413-LR, et al.

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