

RAS 3690

Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

Title: Duke Energy Corporation
McGuire Nuclear Station, Units 1 & 2
Catawba Nuclear Station, Units 1 & 2

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

Location: Charlotte, North Carolina

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1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

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4 ATOMIC SAFETY and LICENSING BOARD PANEL

5 LICENSING RENEWAL

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8 In the matter of : Docket Nos

9 DUKE ENERGY CORPORATION : 50-413-LR

10 (McGuire Nuclear Station, : 50-414-LR

11 Units 1 & 2, Catawba Nuclear : 50-369-LR

12 Station, Units 1 & 2 : 50-370-LR

13 -----x

14 Wednesday

15 December 19, 2001

16
17
18 The above-entitled matter came on for
19 hearing, pursuant to notice, at 9:00 a.m.

20 BEFORE:

21 THE HONORABLE ANN MARSHALL YOUNG, Chair

22 THE HONORABLE CHARLES N. KELBER

23 THE HONORABLE LESTER S. RUBENSTEIN

24

25

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Washington, D.C. 20555-0001

ALSO PRESENT:

BOB GILL, Duke Energy Corp.

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

(9:00 a.m.)

JUDGE YOUNG: Judge Kelber wants to say something, but just in terms of the order in which we proceed today, Ms. Olson just said that she would like to do 2.1.1 and 2.1.2 in the morning, so if there's no objection, we can just start with those and then go back through the rest of them in order.

MR. REPKA: That's fine with us.

JUDGE KELBER: I want to ask you about reverted costs of replacement power yesterday, because I realized that it's obvious that the averted costs of replacement costs in an accident are always zero, and I shouldn't have asked you the question.

MR. REPKA: Thank you.

Ms. OLSON: He's given me a new item for research. I don't understand what he just said, but that's okay, I'll follow it up at a different moment.

JUDGE YOUNG: Are you moving, Ms. Olson, so Mr. Riley can do these contentions?

MS. OLSON: We filed an appearance for him and he will be doing these two points

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1 only, although I would like to make one comment.
2 We received the reply to our motion to suspend
3 because of the final safety analysis report, and
4 at this time we appreciate the offer to have
5 access to those documents under an agreement,
6 however, we will wait until the panel rules on
7 contentions, and if these contentions go forward,
8 then we'll pursue such an agreement.

9 Thank you.

10 JUDGE YOUNG: Are there any -- before
11 we get started, are there any other preliminary
12 matters that anyone has? Yes.

13 MR. MONIAK: The end of the day is
14 scheduled for discussing that issue?

15 JUDGE YOUNG: Yes, we did, we put
16 that aside, we can talk about that to whatever
17 extent we need to at this point, but obviously
18 Ms. Olson makes a good point, unless there are
19 any contentions admitted, it becomes sort of
20 moot.

21 MR. MONIAK: Which we'll know --

22 JUDGE YOUNG: But we'll know that by
23 the time we rule.

24 MR. MONIAK: I have one thing to
25 point out on that, though. Can we do that now?

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1 JUDGE YOUNG: Sure, go ahead, if it's
2 brief.

3 MR. MONIAK: Yes. The issue of
4 whether the SARs are available or not, I did a
5 search for final safety analysis reports by
6 document type on the Adams web site, and there's
7 a lot of safety, final safety analysis reports
8 available, not for Duke reactors but for either
9 partials or entire reports are available.

10 For example, the Hatch Nuclear Plant FSAR
11 amendment, 309 pages is available. The millstone
12 Units Number 2 and 3, revision 18, FSAR 300 pages
13 is available. There's just numerous ones
14 available. There's four documents totaling about
15 2000 pages available. For Oconee, the
16 independent spent fuel storage installation
17 updated final safety analysis report is
18 available -- and what I wanted to point out is
19 that how can some FSARs be available and others
20 not be available if this is a big security
21 concern and especially when it comes to
22 nonreactors --

23 JUDGE YOUNG: Is this something we
24 really need to talk about now? I thought you
25 were going to bring up a very minor point.

1 MR. MONIAK: The issue is, I don't
2 see why we would be forced to sign a
3 nondisclosure when this is public information.

4 JUDGE YOUNG: Is there any particular
5 reason we need to deal with this now? I thought
6 you were going to mention a quick thing in
7 passing. If you want to make an argument about
8 that, I think we need to go ahead and take our
9 time on the contentions and then do that at the
10 end.

11 MR. MONIAK: I thought this was
12 quick.

13 JUDGE YOUNG: Pardon?

14 MR. MONIAK: I thought this was
15 brief. Let's wait then.

16 JUDGE YOUNG: It sounds as though you
17 were about to make an argument on something. I
18 think we need to move ahead with the contentions.
19 That's something we can talk about later at the
20 appropriate time.

21 MR. MONIAK: Okay.

22 JUDGE YOUNG: Okay. Mr. Riley, on
23 contention 2.1.1, having to do with the aging and
24 the stud bolts, and you were here yesterday when
25 the discussion of the stud bolt came up and it

1 was pointed out that they were discussed in the
2 Duke application? I think that's probably the
3 first thing that I maybe would like to hear you
4 address because I believe the contention said
5 that they were not addressed in the application
6 and the responses both said that they were in
7 fact addressed.

8 MR. RILEY: That is correct, Judge
9 Taylor --

10 JUDGE YOUNG: Young.

11 MR. RILEY: I'm sorry, Judge Young.

12 JUDGE YOUNG: That's okay.

13 MR. RILEY: I have here copies of the
14 material that we received through the public
15 documents, compact disk, and I believe that when
16 you examine this, you will find that it is, as I
17 say, that there is no reference at all to stud
18 bolts in any of the indicated things I have here,
19 the 27 pages that are involved, printed from that
20 disk.

21 JUDGE YOUNG: Have you looked at
22 table 3.1 dash 1 at page 3.1 dash 5?

23 MR. RILEY: The pagination is
24 different in this. It's 3.1-9. It's a different
25 version, believe me.

1 JUDGE YOUNG: Have you given them a
2 copy?

3 MR. RILEY: I'm going to.

4 JUDGE YOUNG: Okay.

5 MR. RILEY: The word stud bolt and
6 stud bolt do not occur in these 27 pages which
7 cover the area under consideration.

8 JUDGE YOUNG: I believe that
9 yesterday, I think it was Mr. Repka indicated
10 that there was a different term used but it
11 referred to the bolts that attached the closure
12 head dome to the reactor vessel.

13 MR. RILEY: All I can say as a
14 technical person is that was extremely obscure.
15 Perhaps Mr. Repka will point out what it was.

16 JUDGE YOUNG: Probably make it go
17 more quickly if you would do that.

18 MR. REPKA: Yes. The page is 3.1-5
19 of table 3.1-1.

20 MR. RILEY: Excuse me, please, is
21 that on your document or the material I just
22 handed you?

23 MR. REPKA: It's not in the material
24 you just handed me because it doesn't include the
25 page that it's on.

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1 MR. RILEY: There is repudiations.
2 You'll find that 3.1-11 has the beginning of the
3 reactor missile on CRM pressure boundary
4 components, and you'll not find it there.

5 MR. REPKA: The reason for that is
6 because on 3.1-5, the topic heading is exterior
7 surfaces and bolted closures, whereas what you've
8 given us is the section of the table on reactor
9 vessel on CRM pressure boundary components.

10 MR. RILEY: Certainly the pressure
11 bolts are pressure boundary components.

12 MR. REPKA: Under the bolted
13 enclosure section, reactor, stud, comma, nuts,
14 comma, and washers, and it references the aging
15 management programs and activities that are
16 credited.

17 JUDGE YOUNG: Have you got a copy of
18 that page that you can show Mr. Riley?

19 MR. REPKA: Mine has some notes on
20 it, but that's --

21 MR. RILEY: Okay, I have to withdraw
22 my argument that it is a different version and it
23 was simply apparent to me, the reactor vessel and
24 pressure boundary components would include the
25 stud bolts which hold the lid on the reactor, a

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1 notational problem, and I apologize for my error.
2 But I certainly don't apologize for the notation
3 used in these tables, and I'll point out in the
4 remaining pages, there is no single reference to
5 studs, stud bolt or bolt.

6 JUDGE YOUNG: Based upon what
7 Mr. Repka showed you, I understood you to say you
8 agree that they are on the pages -- the page that
9 he showed you?

10 MR. RILEY: Yes.

11 JUDGE YOUNG: So did you say you were
12 withdrawing contention 2.1.1?

13 MR. RILEY: No, I did not. If it
14 please the NSLB, I'm 87 years old, I'm feeble,
15 and I had hardly any sleep last night I suppose
16 in anticipation of this hearing. So I hope that
17 some small allowances will be made in
18 deficiencies in my participation.

19 JUDGE YOUNG: I don't think you need
20 to apologize, but certainly we can make some
21 leeway for you. Go ahead.

22 MR. RILEY: I do think the main
23 matter in this is after the reference in the
24 table that Mr. Repka just showed me, there are no
25 further references to stud bolt or bolt, and I

1 think that is highly significant because a stud
2 bolt is the most highly stressed part in the
3 entire reactor system. And as stud bolts go,
4 there's a breach of containment as a possibility.

5 Now, as the staff scientist for Celanese
6 Corporation Fibers division, I was called on to
7 investigate an explosion in which in a mixing
8 vessel there had been an explosion in which all
9 stud bolts sheared off. When the first one goes,
10 its neighbors get an extra load. And when they
11 go, their neighbors get an extra load, and the
12 result is an unzipping. So the notion that
13 just one stud bolt will be nice enough to break
14 and leave the other ones intact can be quite
15 misleading.

16 So I think the unsparing effect is a very
17 important thing.

18 JUDGE KELBER: Mr. Riley, has this
19 contention been before another board?

20 MR. RILEY: I'm not sure, sir. I was
21 an intervenor at the initial construction permit
22 and operating license proceedings for both
23 McGuire and Catawba.

24 JUDGE KELBER: Would that have been
25 in 1982, sir?

1 MR. RILEY: 1982. The other one in
2 '71 or '72, and I'm sorry to say my memory has
3 undergone degradation and I cannot bring that
4 material back, though I would like to.

5 JUDGE RUBENSTEIN: Mr. Riley, would
6 it be appropriate at this time to ask you a
7 little about your calculation?

8 MR. RILEY: Perfectly appropriate,
9 sir, if it doesn't foreclose my opportunity to
10 finish my initial discussion, I would be glad to
11 respond at this point.

12 JUDGE RUBENSTEIN: You talk about
13 loads on the stud bolts.

14 MR. RILEY: Yes, sir.

15 JUDGE RUBENSTEIN: So I have two sort
16 of general questions: One, what was the
17 initiating event which created these loads?

18 MR. RILEY: When you say two loads on
19 the stud bolt, I don't understand you, sir.

20 JUDGE RUBENSTEIN: Well, you've done
21 a stress capability calculation on the stud bolts
22 remaining intact under high loads. Where do
23 these loads emanate from? Do they emanate from
24 some sort of an accident?

25 MR. RILEY: The load on the stud

1 bolts is a load, one, in initially inserting
2 them, tightening them, and compressing the gasket
3 at the shared load for the pressure against the
4 reactor vessel lid. Now, a thousand PSI is
5 reasonably in the area that we're talking about
6 here. I sought further detail as the contention
7 states from people who presumably would have
8 recourse to this information.

9 I was told the only way I could get
10 specifics would be by working through the ASLB
11 chair. For some reason or another, that seemed
12 to be too burdensome at the time.

13 JUDGE RUBENSTEIN: If I may, may I
14 paraphrase it? So your initial load is from the
15 torquing down of the bolts?

16 MR. RILEY: Part of it, the initial
17 load, yes.

18 JUDGE RUBENSTEIN: Are there any
19 subsequent loads?

20 MR. RILEY: Yes, the load due to the
21 thrust of steam pressure inside the reactor
22 against the lid.

23 JUDGE RUBENSTEIN: Okay. Normal
24 operation?

25 MR. RILEY: In normal operation.

1 Now, I want to point out something about normal
2 operation that seems to be overlooked here, and
3 that is that there is a range of pressures in
4 normal operation. We're talking about X bar
5 which represents the average pressure, but we're
6 not talking about the range and we're not talking
7 about the standard deviation of the pressure, and
8 we're not talking about multiple sigma events
9 which can occur with lower probability.

10 JUDGE RUBENSTEIN: So this goes to
11 the design basis calculation that Westinghouse
12 initially made on the bearing capability of the
13 stud bolts?

14 MR. RILEY: I have no idea. It's a
15 reasonable presumption but I do not know.

16 JUDGE RUBENSTEIN: Well, at the
17 appropriate time we'll -- well, I guess now,
18 would Duke or the Staff care to address this?

19 MR. REPKA: Maybe you could restate
20 the question. Is the question whether this issue
21 goes --

22 JUDGE RUBENSTEIN: He's basically
23 questioning the original design and load
24 capability of the stud bolts in an initial
25 torquing done under cold status and then

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1 subsequently under normal operation. We won't
2 deal into the scope right now.

3 MR. REPKA: Yes, and I agree that
4 that would be an issue that goes to the current
5 design and the licensing basis, and as Judge
6 Kelber alluded to, that's the issue that has been
7 raised several times in the past by Mr. Riley.

8 JUDGE RUBENSTEIN: Giving Mr. Riley
9 some latitude to explain his model, so to speak,
10 I'll continue for a little while. So do you then
11 also calculate any accident or transient loads
12 beyond a steady state?

13 MR. RILEY: This is what I was
14 getting into. At the time of designing this
15 device, there was no knowledge as to what the
16 standard deviation would be with respect to the
17 average operating pressure. That has to come
18 later. And if this contention is admitted, we
19 will seek on discovery the range of pressures
20 that has been countered and calculate a standard
21 deviation from the range.

22 JUDGE RUBENSTEIN: I believe -- well,
23 I won't make the statement. But ordinarily,
24 common design practice is to use some sort of a
25 bounding load as opposed to a spectrum or a best

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1 estimate load, which has a distribution in one or
2 two standard deviations. However, neither one of
3 us have the original design analysis that the
4 manufacturer did at that time to put bounds on
5 the stud bolts.

6 But we'll hear from Duke and the Staff or
7 perhaps somewhere in an obscure calculation book
8 back in Pittsburgh, they may have this
9 calculation.

10 MR. RILEY: Well, it's not only the
11 calculation, sir, but it's brought out in
12 material yesterday. The operation is going to
13 determine whether the pressure is a thousand PSI
14 or 1500 PSI. And in looking at the possibility
15 of failure of the stud bolt, we have to consider
16 worst case operating events as well as some other
17 intrinsic factors relating to degradation of the
18 bolts themselves.

19 JUDGE KELBER: Do these plants have
20 safety release valves?

21 MR. RILEY: I do not believe they do,
22 sir.

23 JUDGE KELBER: Oh, I'm surprised.

24 JUDGE RUBENSTEIN: They do.

25 MR. REPKA: May I answer that?

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1 JUDGE KELBER: Yes.

2 MR. REPKA: The answer is yes, they
3 do, they are required by Code.

4 JUDGE KELBER: Do you happen to know
5 what technical specification limit is put on
6 them? It's not important at this point, but if
7 you have a quick answer, that's fine.

8 MR. REPKA: They are governed by tech
9 specs. What the tech spec number, or what the --

10 JUDGE KELBER: There are safety
11 relief valves, sir, on all plants.

12 MR. REPKA: I'm just told from the
13 back' that's it's 2500 PSI.

14 JUDGE KELBER: 2500, thank you.

15 JUDGE YOUNG: Mr. Riley, I'm sure
16 that the Staff and Duke, part of their argument
17 will'include the fact that there is a reference
18 made to the stud bolts, and one of the
19 requirements, one of the contention requirements
20 is that you need to make a reference to the part
21 of the application where any asserted deficiency
22 is, and if you're alleging an omission and there
23 is in fact something there, that may be a problem
24 for you. But, Mr. Repka did give you the page or
25 pages in the application that do make reference

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1 to the stud bolts by another name and if you want
2 to make any comment about those, what's on those
3 pages or that page, now would be the appropriate
4 time to do that.

5 MR. RILEY: Well, under -- in putting
6 a person in contact with a document like an
7 application document, which is very voluminous, a
8 table which is perhaps ten or more pages in
9 length, it is very important to put items under
10 the proper heading. And as I mentioned a little
11 earlier, these are a part of the reactor pressure
12 containment boundary.

13 JUDGE YOUNG: And what's the heading
14 of the page?

15 MR. RILEY: Perhaps Mr. Repka will
16 supply it.

17 MR. REPKA: They are grouped under
18 exterior surfaces and bolted closures, because
19 they are grouped with all the closures.

20 JUDGE RUBENSTEIN: Okay. We've
21 established that you do reference the stud bolts.
22 The hearing has somewhat narrow jurisdiction in
23 that one has to address the aging phenomenon on
24 the stud bolts themselves. If we for a second
25 assume that the calculation was correct and that

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1 it could or could not sustain loads, and I think
2 that would be a subject for the original
3 licensing hearing, do you have anything to say
4 upon the change of structure, basically the
5 metallurgy or the aging effect? Are you
6 suggesting that there is some precipitation
7 phenomenon, some thermal annealing phenomena
8 through this fairly low remote temperature
9 exposure or some creep phenomenon?

10 MR. RILEY: Thank you, that's the
11 area I want to get into. We have no idea what
12 the actual load on the bolt is absent the effect
13 of torquing it down, and we know it is torqued
14 down from the application. If it's over-torqued,
15 that's bad. Now, the second thing is, the bolt
16 is not straight once the reactor gets up the
17 pressure, the bolt has a slight bend in it. The
18 head is slightly cocked. It is not a 90 degrees
19 to the shank as it was when it was manufactured.
20 All these things contributed to a stress pattern
21 that is rather unusual.

22 But perhaps the most striking thing there
23 is is that there is a small temperature gradient
24 across the bolt. And I would like to bring you a
25 little material that may at first appear

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1 extraneous but it is related and I don't want to
2 do this twice.

3 JUDGE RUBENSTEIN: Could I help you
4 refocus? Respectfully, the current hearing is
5 about the change in the status of the stud bolt
6 due to an additional 20 years of exposure.

7 MR. RILEY: Right.

8 JUDGE RUBENSTEIN: Could you sort of
9 focus on that somewhat?

10 MR. RILEY: That's what I'm trying to
11 do, sir, but my lead into it was not anticipated
12 in your thinking. And if I may be indulged until
13 the point is clear to you, let me give this
14 example.

15 Visualize now a pipe like the nozzle at
16 Ocone or McGuire or Catawba. And that pipe is
17 very hot on the inside and is relatively cool on
18 the outside. The result is that there is a
19 temperature gradient across that pipe. Now, the
20 hot part is going to expand. There's the
21 phenomenon of thermal expansion. And reaction to
22 that expansion is a cooler outer part which is
23 put under stress by that thrust transmitted
24 through the material.

25 Now, this thing that the NRC Staff has if

1 I may say bundled around about on the nozzles is
2 related to that. It's not stress corrosion
3 cracking, it is stress cracking. The crack
4 begins on the outside, which is placed under
5 stress for the reasons that I've just described.

6 Now, that is the reason that you see
7 pinholes, circumferential cracks, longitudinal
8 cracks now from the stud bolts, that affect it
9 through there. There's also temperature
10 gradient. It is a smaller gradient.

11 Why are the steam generator tubes falling
12 apart? This very effect. Why are we concerned
13 about the reactor vessel itself? The very same
14 effect. This should be top, front and center in
15 the NRC's consideration.

16 JUDGE RUBENSTEIN: Can you discuss a
17 little bit about time dependency?

18 MR. RILEY: About time dependency?
19 Certainly. I mean, we're concerned now with the
20 growth of cracks --

21 JUDGE RUBENSTEIN: Not crack
22 propagation or nucleation, but the effect of an
23 additional 20 years. So far, the thrust of your
24 discussion has been on the current licensing
25 basis and the stress analysis for the, quote,

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1 stud bolts.

2 Now, would you talk somewhat about the
3 incremental addition of 20 more years of pressure
4 on stud bolts? Is there a morphological change,
5 is there a stress change in the environment on
6 the loading of the stud bolt? Can you address
7 that?

8 MR. RILEY: Yes. I do not claim that
9 there will be a morphological change. What I do
10 say is that any processes that were occurring in
11 the first four years will continue. And the only
12 result of the continuation of these processes
13 will be further weakening.

14 Now, I feel the Westinghouse people were
15 pretty competent people in designing this thing,
16 and for participating in this McGuire/Catawba
17 thing from its inception, I can say that at that
18 time we were told that the reactors were designed
19 for 25 to 30 years. Now, I don't know that they
20 were over-designed to the point where they were
21 supposed to be equally viable at 60 years. I
22 would say that 40 years is sort of stretching it.
23 So I would say the sorts of degradation such as
24 were anticipated at the design stage will be
25 progressing and that we will be in worse shape at

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1 41 years, or 39, or if we came up to 60, which I
2 doubt we'll do.

3 JUDGE RUBENSTEIN: Have you taken the
4 surveillance maintenance and in-service
5 inspection program that Duke references into
6 account in your considerations?

7 MR. RILEY: I don't take them too
8 seriously. The stud bolts get a visual
9 inspection and a volumetric inspection. I
10 really can't see their relevance to the sort of
11 events that I am considering.

12 JUDGE KELBER: Are those inspections
13 of the type mandated by the AMSE pressure vessel
14 code?

15 MR. RILEY: Precisely.

16 JUDGE KELBER: And you're saying that
17 the AMs pressure vessel code is -- that can be
18 answered no?

19 MR. RILEY: I would answer no, it's
20 not sufficient.

21 JUDGE KELBER: It's not sufficient?

22 MR. RILEY: Not sufficient.

23 JUDGE YOUNG: Let me ask you to wrap
24 up, because we've already gone about a half hour
25 and we've got to go through a number of

1 contentions, so I do want to hear responses and
2 you'll have an opportunity for short rebuttal
3 after that. So go ahead and explain your answer.

4 MR. RILEY: We've already discussed
5 some of the material under the second contention.
6 We are having a learning experience. The very
7 existence of GAL, lessons learned, says we didn't
8 know before this happened and we learn about the
9 things that happen in 60 years by going out 60
10 years. But the biggest thing that can happen, we
11 don't want to learn about, we don't want to have
12 reactor breach and containment failure. And the
13 whole thrust of this containment is the extension
14 of a license, we are getting into very dangerous
15 territory.

16 JUDGE YOUNG: Thank you. Mr. Repka?

17 MR. REPKA: I'll try to be brief. I
18 think the first point I would make is that the
19 basic thrust of what Mr. Riley is speaking to
20 this morning really is a current licensing basis
21 challenge. The alleged catastrophic failure of
22 the stud bolt related to pressure events is a
23 current design basis issue. It's inherently
24 addressed in the design by -- as Judge Kelber
25 referred to safety relief valves, the

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1 calculations on the design pressure for the
2 reactor in the bolts to begin with, as well as
3 the fact that there are routine pressure
4 operating limits that address those issues.

5 The second point I would make is that the
6 focus of this particular proceeding is aging and
7 managing aging effects related to the stud bolt;
8 and as I've said before and this board has
9 recognized, the reactor stud bolts are included
10 within the aging management review and aging
11 management programs referenced in the license
12 renewal application. And Mr. Riley has not
13 identified anything that would effectively
14 challenge the adequacy of those programs. They
15 are at the in-service inspection program that
16 relates to the enclosure studs, is consistent
17 with the SAME code for class 1 components and
18 does manage the aging effects for that equipment.

19 JUDGE YOUNG: Is there a particular
20 rule? Can you give me the cite to the rule that
21 adopts or incorporates the ASM --

22 MR. REPKA: The rule that I generally
23 incorporate is the SAME code requirements is
24 50.55 A.

25 JUDGE YOUNG: 50.55 A? Okay, thanks.

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1 MR. REPKA: Now, the other thing this
2 morning we heard a little about was the issue
3 with the control rod, CRDM mechanisms at Oconee,
4 and somehow that is equated to the stud bolts.
5 That particular issue at Oconee I think we would
6 discuss in connection with the next contention,
7 really does have no relationship. That's an
8 alloy 600 issue. The reactor stud bolts are not
9 alloy 600 and not such a good same aging
10 mechanism.

11 The point here is we're also hearing
12 postulated morphological changes related to that
13 might occur with respect to the stud bolts. The
14 aging mechanisms of course are not at issue in
15 this proceeding and not at issue in the license
16 renewal rule. What is at issue is the aging
17 effects and the fact of the matter is, again, the
18 license renewal application references those
19 programs that are credited for managing aging
20 effects, and again that includes the in-service
21 inspection program.

22 Just to wrap up, there really is no basis
23 here for inadmissible contention, there's no
24 challenge to the programs that are specifically
25 referenced and credited in the application other

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1 than to say that the SAME code is insufficient,
2 which I don't think is a viable challenge.

3 JUDGE YOUNG: Ms. Utile?

4 MS. UTTAL: The Staff has nothing to
5 add other than what we previously said in our
6 brief.

7 JUDGE YOUNG: Do you have any
8 rebuttal to what Mr. Repka said? You've read the
9 Staff's response? Okay.

10 MR. RILEY: Mr. Repka says there's no
11 commonalty. I pointed out there's a very basic
12 commonalty and the commonalty is a temperature
13 gradient, a gradient across a piece of metal,
14 whether it be a pipe or a bolt. Now, the
15 omission of this very important consideration and
16 the fact of the stress developed on the cool
17 side, I think, is a major deficiency. This may
18 not be the format according to regulation to
19 address it, but it is a real significant thing
20 and it should be mentioned.

21 JUDGE YOUNG: Let me ask you, that's
22 addressed by the SAME code that you're
23 challenging?

24 MR. RILEY: I haven't seen the word
25 temperature gradient in the code.

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1 JUDGE RUBENSTEIN: Well, have you
2 examined the original calculation --

3 MR. RILEY: I've not been privy to
4 them. I have sought to find out the number of
5 stud bolts, their dimensions and so forth. Thus
6 far, I have not obtained it. If this contention
7 is admitted in discovery, I shall seek that
8 material.

9 JUDGE RUBENSTEIN: So your stress
10 calculation is on a single bolt, making a variety
11 of assumptions that seem reasonable to you?

12 MR. RILEY: That is correct.

13 JUDGE RUBENSTEIN: Thank you very
14 much.

15 JUDGE YOUNG: Anything further on
16 Contention 2.11?

17 MR. RILEY: If I may further respond
18 to Judge Rubenstein.

19 JUDGE YOUNG: Go ahead.

20 MR. RILEY: I assume 20 bolts. I
21 divided the total load by 20 and simply had a
22 specimen bolt there. So I don't think there's
23 the problem that perhaps underlied what you just
24 asked me.

25 Now, Judge, you say next contention?

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1 That's the aging contention.

2 JUDGE YOUNG: And I know you said
3 there was some relationship between the two.

4 MR. RILEY: That is right.

5 JUDGE YOUNG: 2.1.2.

6 MR. RILEY: I want to exercise my
7 right for free speech and say a little outside.

8 JUDGE YOUNG: Within the bounds of
9 time, we'll give you a little leeway.

10 MR. RILEY: Thank you. I will not
11 stretch the time. The reason there is an NRC is
12 the recognition that a really serious accident, a
13 breach of containment, a breach of reactor, would
14 be devastating. We all want to avoid it. Now,
15 the NRC has done its best to set up a -- may I
16 use the word bureaucratic device, to regulate
17 utilities with these reactors so the devastating
18 type of accident will not occur.

19 In doing so, they have created a rule
20 structure and the rule structure is very
21 inhibiting with respect to getting new material
22 into the system. I think this is a great
23 deficiency. The fact that lessons have been
24 learned and it's acknowledged by the NRC that
25 lessons have been learned makes the point that

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1 not all is known. We are getting into new
2 territory. And the basic idea in the aging
3 discussion is, we are playing with an enormously
4 dangerous proposition. The level of risk that we
5 tolerate should be vanishingly small because of
6 the consequences, if we permit something to go on
7 that should not go on but that we don't know
8 enough about to say stop on.

9 What I'm trying to say is we've been
10 lucky thus far, let's say stop at 40 years.
11 Nobody saw these operations going on longer than
12 that, let's not try for 60.

13 JUDGE YOUNG: Earlier, I asked you
14 whether you had any comments on the actual table
15 that addressed the stud bolts, and I'm just
16 looking to see in the responses whether there was
17 another reference with regard to the penetration
18 nozzles, to give you the opportunity to address
19 the substance of what's in the application.

20 MR. RILEY: I'm sorry, I really don't
21 understand your -- would you give the number of
22 the question again?

23 MR. REPKA: Would it help if I
24 pointed out the page?

25 JUDGE YOUNG: Yes.

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1 MR. REPKA: The reference in the
2 license renewal application to the reactor vessel
3 head penetrations and nozzles, they are grouped
4 under the reactor coolant system.

5 JUDGE YOUNG: So that's in the
6 materials you gave us, and then the other page, I
7 think you make reference to the stud bolts in
8 this 2.1.2 also. I guess what I was encouraging
9 you to do, is if you had problems with the table
10 3.1-1, either with regard to the penetration
11 nozzles or the stud bolts, and if you don't have
12 that in front of you, maybe you could get it.

13 MR. RILEY: I have it in front of me.

14 JUDGE YOUNG: If you are challenging
15 some parts of these tables, go ahead and discuss
16 that for a few moments.

17 JUDGE RUBENSTEIN: And please try and
18 focus on the relationship of the Oconee events to
19 the Westinghouse reactors and with some
20 specificity to the control rod drive mechanism
21 housings.

22 MR. RILEY: Yes. There are
23 temperature gradients in all -- not only Oconee
24 reactor penetration nozzles but there are
25 temperature gradients at the belt line and

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1 throughout the reac bottom and top. There is a
2 temperature gradient through the stud bolt. The
3 commonalty is temperature gradients and the
4 resultant tension in the cool part of the exposed
5 material.

6 Does that answer your question, sir?

7 JUDGE RUBENSTEIN: I believe the
8 thrust of your argument is that the stress
9 analyses in the original licensing basis
10 calculations did not take into account thermal
11 gradients?

12 MR. RILEY: As far as I know it did
13 not, but I cannot say it with certainty.

14 JUDGE RUBENSTEIN: And you also say
15 this is the same case for the control rod drive
16 housing mechanisms or the penetrations?

17 MR. RILEY: Wherever you've got a
18 temperature gradient throughout metal.

19 JUDGE RUBENSTEIN: Throughout the
20 reactor, thank you.

21 JUDGE YOUNG: And you're saying that
22 the inspection plans and the reactor vessel
23 integrity program and the chemistry control
24 program, what you're saying is that those are
25 inadequate to bring out or elucidate these

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1 problems that you're describing to do with the
2 temperature gradient?

3 MR. RILEY: I'm saying lacking an
4 awareness of those mechanisms, I cannot see a
5 competent job being done with respect to the
6 activities you refer to.

7 Now, as for --

8 JUDGE RUBENSTEIN: Excuse me, let me
9 rephrase that, Mr. Riley.

10 MR. RILEY: Sir?

11 JUDGE RUBENSTEIN: So the thrust of
12 your argument are the thermal gradient effects
13 have not been modeled in stress analysis
14 throughout the reactor?

15 MR. RILEY: As far as I know, sir --

16 JUDGE RUBENSTEIN: And specifically,
17 the change between 40 and 60 years produces what,
18 an additional load or --

19 MR. RILEY: Further deterioration in
20 the metal that is placed under stress. There's
21 the phenomenon of creep that occurs to metals, to
22 plastics, you name it.

23 JUDGE RUBENSTEIN: I have papers in
24 that area.

25 MR. RILEY: The very fact that we

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1 have cracks says there has been something going
2 on and that something is a failure due to the
3 stress resulting in the opening up of the crack.

4 JUDGE RUBENSTEIN: Thank you.

5 JUDGE YOUNG: Have you finished what
6 you wanted to say on 2.12? We can move to
7 Mr. Repka on that and then you can have a short
8 rebuttal to that.

9 MR. RILEY: No, I certainly haven't.
10 I have a detailed response to everything that the
11 Staff and the applicant said on --

12 JUDGE YOUNG: On 2.12?

13 MR. RILEY: Yes.

14 JUDGE YOUNG: Okay, just go through
15 that briefly and then we'll hear from Mr. Repka
16 and the Staff.

17 MR. RILEY: If I may, Judge Young, I
18 would like to respond to a question you asked
19 earlier, and that is what about the programs and
20 activities. Well, if you look at all of the
21 things in table 3.1-1, you'll find that they are
22 absolutely lacking in specificity, chemistry
23 controlled program. For God's sake, all things
24 go on under the name of chemistry. Just what is
25 this program, what does it do? What about the

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1 in-service inspection plan? Again, a general cap
2 which doesn't enable an NRC Staff or an
3 interested member of the public to find out what
4 is going on. It's just a cover word. This is
5 full of cover words that are essentially
6 meaningless.

7 JUDGE KELBER: Is the chemistry
8 control program covered by a technical
9 specification?

10 JUDGE RUBENSTEIN: No.

11 JUDGE KELBER: Is the in-service
12 inspection program covered by technical
13 specification?

14 JUDGE RUBENSTEIN: No.

15 JUDGE KELBER: Mr. Repka.

16 MR. REPKA: I think the answer is
17 aspects of those programs are; there is not
18 necessarily a program that covers the programs
19 per se.

20 JUDGE RUBENSTEIN: Let me ask you,
21 has the Westinghouse owners group and the nuclear
22 industry in conjunction with NRC established
23 chemistry, water chemistry guidelines?

24 MR. REPKA: Yes, they have and that
25 is discussed in the license renewal application.

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1 JUDGE RUBENSTEIN: And do these four
2 plants follow them?

3 MR. REPKA: Yes, that's described in
4 the appendix to the license renewal application
5 where the programs that are credited are
6 specifically described.

7 JUDGE RUBENSTEIN: And the guidelines
8 within your organization have what force, maybe
9 not a tech spec, but --

10 MR. REPKA: Well, the industry
11 guidelines are the IPE guidelines, but -- yeah,
12 and they are governed internally by procedures
13 and management commitment.

14 JUDGE RUBENSTEIN: And these
15 procedures were reviewed and approved by both the
16 management and to some degree by the NRC?

17 MR. REPKA: Yes.

18 JUDGE RUBENSTEIN: And followed
19 through by the site rep?

20 MR. REPKA: Yes, true, that would be
21 followed, and with the additional fact that it's
22 driven by the code and 10 CFR 50.50 A.

23 JUDGE KELBER: This is part of the
24 current licensing basis?

25 MR. REPKA: Yes.

1 JUDGE YOUNG: You said the programs
2 are described in appendices to the application,
3 the chemistry control program and the in-service
4 inspection plan and the reactor vessel integrity
5 program, all the things that are under the
6 category of aging management programs and
7 activities?

8 MR. REPKA: Yes, they are. Every
9 program or activity credited in the table column
10 6 is described in appendix B to the application.

11 JUDGE KELBER: B as in boy?

12 MR. REPKA: B as in boy, bravo.

13 JUDGE KELBER: Thank you.

14 JUDGE YOUNG: Have you looked at
15 those?

16 MR. RILEY: I have not looked at
17 those. I can say as a member of the public that
18 what is given is really quite insufficient.
19 That's where we, the public, are.

20 JUDGE YOUNG: Now, I believe -- and
21 if necessary, I'll ask Ms. Olson, you did have
22 the whole application?

23 MR. RILEY: I did have the whole
24 application.

25 JUDGE YOUNG: Okay. Anything further

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1 on 2.12? If not, Mr. Repka, do you have any
2 response you would like to add on that?

3 MR. REPKA: I would say just a couple
4 of points in addition to what I already said.
5 The basic thrust of the contention as written is
6 that the application hasn't addressed the
7 unforeseen, and that in our view is an inherently
8 impossible standard to address and impossible
9 contention to address. But the fact of the
10 matter is the unforeseenness is addressed by
11 these programs and by the very nature going
12 forward by the continued regulatory processes, so
13 it's a very vague contention the way it's
14 drafted, addressed to the unforeseen; but I think
15 basically the unforeseen is addressed through
16 normal operating reviews and normal oversight.

17 The only thing I would add to what we
18 already said, to the extent this contention
19 relies on the Oconee reactor head penetration
20 issue as an example of unpredicted or unforeseen
21 development, I think it's important to me that
22 one of the programs specifically credited for
23 the -- this, the CRDM housing issue is the alloy
24 600 aging management review that we discussed
25 yesterday. That's -- this issue is an alloy 600

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1 issue and that review activity by its very nature
2 is intended to go back and look at how effective
3 the programs have been based upon accumulated
4 experience, prior to the period of extended
5 operation.

6 So that's a program or activity
7 specifically designed to address the unforeseen
8 going forward.

9 JUDGE YOUNG: Ms. Uttal.

10 MS. UTTAL: The Staff has nothing to
11 add beyond what Mr. Repka has stated.

12 JUDGE YOUNG: Okay. Mr. Riley, I'll
13 give you a short rebuttal. I just noticed one
14 question that I -- a minor one that I wanted to
15 ask. There's a note 17 that says see note number
16 5, and note number 5 talks about terrorism. Was
17 that the correct reference?

18 MR. RILEY: I'm not sure, I'll defer
19 to Ms. Olson on that.

20 JUDGE YOUNG: Your note 17 refers
21 back to note 5?

22 MS. OLSON: Umm --

23 JUDGE YOUNG: I just want to make
24 sure we're not missing anything that by a
25 mis-cite there.

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1 MS. OLSON: Sorry, I'm just trying
2 to --

3 JUDGE YOUNG: While you're looking,
4 Mr. Riley, do you have a short closing rebuttal?

5 MR. RILEY: I want to say with
6 respect to contention 2.1.2, it's very
7 interesting to contrast the summaries of our
8 contention as seen through these two sets of
9 eyes. The NRC I think did a credible job of
10 understanding and stating what we have said.

11 They note that Duke has not addressed
12 things that are presently unknown or unforeseen,
13 a proposition that by its very nature lacks
14 specificity. And to require specificity in this
15 frame of reference, where it is what hasn't
16 happened yet that we are concerned about, is a
17 bit on the absurd side. Duke says that our
18 contention was vague. I believe after this
19 discussion it will be realized our contention was
20 not particularly vague. There's a statement, as
21 yet uncountered mechanisms are speculative in
22 nature and for this reason cannot be addressed
23 precisely because they are unanticipated. Well,
24 that is the whole point. Things like this do
25 happen. We don't anticipate them and if they are

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1 serious, we suffer.

2 Then there's another statement,
3 nonetheless these new failure mechanisms reveal
4 themselves. Sure, we'll pick up the study on
5 them then. But if the they are catastrophic, it
6 is too late.

7 MS. OLSON: Judge Young, if I -- I'm
8 sorry.

9 MR. RILEY: Well, the truth is, Judge
10 Young, that I have a lot more to say but I know
11 there is not a lot more time. So I would finish
12 at this point.

13 MS. OLSON: But I would like to
14 address one minor factor that I believe is the
15 mis-note in the text; however, something has just
16 been raised by Mr. Repka that I wanted to make a
17 brief response to, and that is on the category of
18 unknown and unforeseen is to us the information
19 that the in-canal aging 600 is not going to be
20 available at any time that we know of.

21 JUDGE YOUNG: I'm sorry, the
22 information available in what?

23 MS. OLSON: In-canal aging 600
24 analysis that was discussed yesterday is news to
25 us that it is not going to be available

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1
2
3 in the time frame that would be relevant to the
4 nozzle concerns that Mr. Riley is raising. So
5 I'm just noting that this dialogue here and the
6 issue that Mr. Repka raised about in-canal 600
7 and the information brought yesterday about the
8 timeliness of the aging review on that, I'm
9 making a note about that. I'm not arguing the
10 contention because it's just not something I can
11 do.

12 MR. RILEY: If I may, Judge Young,
13 just one last word. In those 27 pages which you
14 have in front of you, you will find no reference
15 to stud bolt. Yes, there was a reference I
16 missed under a heading that I think was entirely
17 misleading and inaccurate. But, aside from that,
18 there is no further reference to stud bolts and
19 it's perfectly obvious that stud bolts are an
20 extremely critical part of a reactor. Thank you.

21 JUDGE YOUNG: Okay. Just a couple of
22 things I want to say. First of all, I think I
23 said it in the order that we issued denying the
24 suspension, but with regard to materials for
25 future reference, if there's something,

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1 especially if someone says you need to take this
2 to the board, at least an effort should be made
3 to contact the board, because with the daily
4 event reports, those were handled very quickly
5 and you had them in a matter of a few days and no
6 effort was made to do that with regard to the
7 FSARs or any other materials that you may have
8 wanted at that point.

9 So for future reference, that's the kind
10 of thing that we look at when we are looking at
11 whether you've made a reasonable effort to obtain
12 materials that you are complaining you don't have
13 access to.

14 MS. OLSON: Judge Young, I would like
15 to make record that it was Thanksgiving week and
16 people were on holiday, and then it was
17 contention filing deadline and we needed to bring
18 this issue forward. We did not have time for
19 teleconferences and lots of things like that. I
20 apologize but we have spent a lot of time in this
21 proceeding getting access to documents that were
22 previously unavailable to the public without all
23 of those procedural --

24 JUDGE YOUNG: We understand that.
25 But you can call other parties, request telephone

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1 conferences. I was out of town but I had left a
2 phone number where I could be reached. We could
3 have had a quick telephone conference and handled
4 that very easily.

5 Then secondly, let me just make sure I
6 understand, that the basic -- make sure I'm not
7 missing something, the basic challenge that
8 you're making with regard to the stud bolt and
9 the penetration nozzles is that a certain
10 analysis having to do with the thermal gradient
11 has not been taken into account. There's no
12 other action that you are asserting should have
13 been done other than to take these issues into
14 account in the aging management program; is that
15 correct?

16 MR. RILEY: That's correct, but it is
17 only part of it. Part of it is our human
18 incapability of anticipating certain events
19 before they occur. And when the events are
20 sufficiently catastrophic, we do well to avoid
21 the situations in which they might happen. That
22 is a basic thrust of the 2.1.2. Yes, there are
23 these mechanisms, I put them in to point out the
24 credibility, point out the overlooking of these
25 mechanisms by various parties here, how easy it

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1 is to overlook things.

2 JUDGE YOUNG: And your point about to
3 prevent is that you don't think that the license
4 renewal should be granted; there's no other
5 particular action you're suggesting in saying
6 prevent?

7 MR. RILEY: That is precisely right.

8 JUDGE YOUNG: Okay. All right.
9 Thank you very much.

10 MR. RILEY: You're very welcome.

11 JUDGE YOUNG: The next one I believe
12 on the list, if we go back to the start, would be
13 1.1.2, and we can take a short break now or try
14 to go ahead with this one and then take a break.

15 MS. OLSON: I would appreciate it
16 now.

17 JUDGE YOUNG: Okay. Let's take a
18 five-minute break now and then come back and be
19 ready to start on 1.1.2.

20 (Brief recess).

21 JUDGE YOUNG: Going back to 1.1.2,
22 and obviously Ms. Olson, the first thing that I
23 think I would like to hear you address are the
24 issues I think raised by both of the parties
25 about the scope with regard to security issues

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1 and then 50.13. And I think probably we'll ask
2 both parties to address the issue of whether we
3 should or should not consider certifying this as
4 has been done in another recent case having to do
5 with terrorism issue.

6 MS. OLSON: Thank you, Judge Young.

7 I want to acknowledge that Paul Gunter did try to
8 come here yesterday, but his U.S. Airways flight
9 was canceled due to the security problem at
10 Charlotte-Douglass Airport. So it seemed rather
11 too big a sign for him to -- in any case, he
12 dropped his effort after that.

13 And in addition, I have a written
14 statement from him which I am prepared to take
15 answers on, but if it would be possible, because
16 it has a number of responses to direct comments
17 from both Staff and Duke, will take less than ten
18 minutes for me to simply read it, I would really
19 appreciate being able to do that and then engage
20 in dialogue.

21 JUDGE YOUNG: Okay.

22 MS. OLSON: Okay. The first point is
23 in response to an NRC Staff response, and I'm
24 going to read what we're responding to. Quote,
25 when the design basis of systems, structures and

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1 components can be confirmed either directly by
2 inspection or directly by verification of
3 functionality through test or operation, a
4 reasonable conclusion can be drawn that the CLV
5 or current license basis is or will be
6 maintained.

7 This conclusion recognizes that the
8 portion of the CLV that can be inspected by the
9 detrimental effects of aging is limited to the
10 design basis aspects of the CLV. All other
11 aspects of CLV presence, e.g., quality assurance,
12 physical protection, in presence, security, and
13 radiation protection requirements, are not
14 subject to physical aging processes because --
15 excuse me, physical aging processes that may
16 cause noncompliance with those aspects of the
17 CLV, end quote. So that's what we're responding
18 to.

19 And the response is it is simply common
20 sense to recognize that aging management is the
21 performance of two functions. The first,
22 identifying and understanding the aging issue for
23 the particular system structure and component,
24 and secondly, the management of the aging of
25 those system, structures and components. NIRS

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1 argues that age management not only references
2 the detrimental effects of aging process and
3 mechanisms, but the effective management of those
4 detrimental effects through regulation testing
5 and inspection, to provide a reasonable assurance
6 of the functionality and performance of the
7 system, structure and component.

8 The Catawba and McGuire station security
9 system and its security force on force response
10 team, depend in part on the reliability and
11 operability of system, structure and components
12 that are sufficient to aging degradation. The
13 current NRC security testing and evaluation of
14 licensee force on force response capability,
15 contains elements for inspecting through field
16 testing of the functionality of these vulnerable
17 physical structure systems and equipment,
18 including but not limited to perimeter detection
19 devices, camera and alarm systems, doors and
20 locks, definitive weapons, and all its associated
21 power and control and instrumentation. The
22 security response capability of the licensee
23 depends in part on the inspection, testing and
24 verification of the functionality and performance
25 of this equipment and personnel, in conjunction

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1 with the licensee security skills, marksmanship
2 and planning of the licensee's security or
3 contractor.

4 Nuclear Regulatory Commission's
5 operational safeguard response evaluation, or
6 OSRE, which I will refer to it as from here on,
7 was established to perform the necessary level
8 testing inspecting and evaluating, to show
9 regulatory compliance for Catawba and McGuire
10 security.

11 Fact: Prior to September 11th, 2001, the
12 operational safeguard response evaluation, OSRE,
13 a significant element in the security management
14 program, had been being problematic. Both the
15 Commission and industry are seeking to phase out
16 the current NRC led inspection and evaluation
17 program because of recognized problems. While
18 industry will argue that the current 47 percent
19 to 50 percent failure rate is an indication of a
20 fundamentally flawed program, a differing
21 professional opinion, DPO filed by Captain David
22 Warwick, NRC expert an OSRE coordinator, cost
23 margins, keep security on an industry average at
24 a dangerously unacceptable level. The DPO remains
25 open and unresolved.

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1 Another fact: Since September 11, 2001,
2 the OSRE program has been canceled and all MOX
3 force on force security evaluations are
4 suspended.

5 Another fact: The industry led pilot
6 security evaluation program, known as SPA, which
7 stands for Safeguards Performance Assessment, is
8 currently under a, quote, postponement.

9 Therefore, no alternative for the canceled OSRE
10 is in place or in pilot stage to determine its
11 effectiveness.

12 One more fact is that McGuire nuclear
13 generating station was scheduled for the NRC to
14 conduct an OSRE during 2002, that as a direct
15 result of September 11th attacks has now been
16 indefinitely canceled. The first security
17 contention need not govern security. The NRC
18 security contention may not argue that Duke
19 reveals specific details of Catawba and McGuire
20 security systems, structures, and components.

21 NIRS is merely pointing out the fact that
22 within the context of license extension, without
23 an NRC OSRE program or an accepted industry led
24 alternative program in place, neither NRC nor
25 Duke can ascertain or demonstrate with reasonable

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1 assurance that Catawba and McGuire are or will be
2 in compliance with the design bases of their
3 current license bases -- excuse me, design bases
4 aspects of their current license basis, for the
5 age related management of security systems,
6 structures and components.

7 And I have one more -- no, a couple more
8 points that we're responding to. NRC Staff
9 argued, and this is their text, quote, while the
10 Commission has begun considering -- has begun
11 consideration of its regulations and requirements
12 in light of the September 11th events, its
13 existing regulations continue to govern the
14 consideration of license renewal applications,
15 end of quote -- no continue quote. As discussed
16 above, physical protection issues are excluded
17 from consideration in license renewal proceedings
18 because physical protection systems are not
19 subject to aging processes, end of quote.

20 NIRS's rebuttal. NIRS calls to the
21 attention of the atomic safety licensing board
22 that the current regulation governing the NRC led
23 force on force at Catawba and McGuire, is
24 indefinitely suspended. The industry led pilot
25 initiative stipulated to satisfy NRC security

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1 regulations has been postponed. The NRC OSRE
2 schedule for 2002 is indefinitely suspended.
3 NIRS argues that safety accounts, namely the
4 periodic testing and inspection of security
5 systems, namely equipment, systems and structures
6 related to force on force response capability
7 necessary to satisfy existing regulations
8 governing security at nuclear power stations, are
9 either suspended, OSRE, or undeveloped by pilot
10 program, SPA.

11 A third point we would like to respond
12 to, again, reading the NRC Staff statement,
13 quote, in addition, 10 CFR 50.13 specifically
14 states that an applicant for an operating license
15 or for an amendment to such license, is not
16 required to provide design features or other
17 measures for the specific purpose of protection
18 against the effects of, A, attacks from --
19 attacks and destructive acts including sabotage
20 directed against the facility by an enemy of the
21 United States. That's a quote within our quote.
22 And that ends, dot, dot, dot. As a result, such
23 measures are not in the CLV for McGuire or
24 Catawba. Therefore, under 10 CFR part 54,
25 consideration of such matters is beyond the scope

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1 of this proceeding. In addition, under current
2 licensing requirement, licensees are required to
3 establish and maintain a physical security plan,
4 and the citation given is 10 CFR 50.53 C and 10
5 CFR part 73. End of Staff comment.

6 Our response reads, NIRS is not arguing
7 that Catawba or McGuire safety system design
8 features be publicly disclosed. NIRS restates
9 its arguments that the comprehensive management
10 system for inspecting, testing and verifying that
11 the germane aspects of the current licensing
12 basis are and will be in compliance. NRC has
13 canceled all OSRE and no alternative program has
14 been approved nor in pilot stage.

15 A fourth point that NRC Staff makes,
16 quote, NIRS provides no support for its view that
17 types of attacking enumerated in its contention
18 constitute events that are required to be
19 included in the license renewal application,
20 either based on aging issues of part 54 or the
21 environmental consideration of 10 CFR part 51,
22 subpart A, appendix B, or 10 CFR 51.71 D and
23 51.95 C; therefore, the contention should not be
24 admitted, end of NRC Staff quote.

25 And the first response, we argue that the

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1 types of attacks enumerated in the first
2 contentions are germane to the license extension
3 proceeding if in fact NRC and the industry have a
4 program in place to demonstrate regulatory
5 compliance within 10 CFR against the design basis
6 threat.

7 And I would also add my own point here
8 and then we have one point that we're responding
9 to for Duke.

10 But there is a difference between a
11 target which persists for 20 more years from now
12 in our current state of the world today and
13 target that exists for 40 more years from now and
14 we must acknowledge that again, these sites
15 remain problematic even after the end of the
16 operating license, license are terminated. But
17 in other words, surely the extension of time.

18 Now, point 6, Duke argues, quote, NIRS's
19 security related contentions are in reality
20 present day generic issues currently under review
21 by the Commission. And a second quote, there is
22 no nexus to license renewal. Protection against
23 terrorist threats is a current and continuing
24 process and not uniquely related to license
25 renewal. End of second quote from Duke's

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1 comments.

2 And this is our last comment that I'll
3 read: Our response to Duke is that NIRS
4 disagrees with Duke's assessment that NIRS's
5 security contentions have no site specific impact
6 and that there is no nexus to license renewal.
7 The NRC field testing of the functionality and
8 reliability of security programs, security
9 systems, structures and components, both
10 vulnerable to aging and vital to the, quote,
11 protection against terrorist threats, has in fact
12 been suspended and is not a current and
13 continuing process, including the OSRE for
14 McGuire that was scheduled for 2002. The
15 independent suspension of the OSRE program and
16 the current postponement of unproven industry
17 pilot program, SPA, presents both a significant
18 and a unique situation to the verification and
19 testing of age management for security systems,
20 structures and components in the Catawba and
21 McGuire license extension application.

22 Thank you for bearing with me.

23 JUDGE YOUNG: Anything further?

24 MS. OLSON: Well, you know, we could
25 get into a long belaboring of the consequence of

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1 an attack, and I'm not going to do that here, but
2 I think we want to emphasize that this is the one
3 issue that we have been receiving the greatest
4 demand for our Staff time as an organization
5 since September 11th. It has totally dominated
6 all the demand on us, and I'm sure if you check
7 the media, you will see the amount of attention.
8 USA Today recently did a cover story, I mean,
9 it's absolutely of great concern to the public
10 and to many of our colleagues in many
11 disciplines.

12 JUDGE YOUNG: When you say it, you're
13 referring to the terrorist issue as it relates to
14 nuclear plants, obviously, but you're not
15 including within that the specific issue of
16 license renewal as I understand it?

17 MS. OLSON: Yes, indeed, I mean, I
18 can't tell you how many people I've heard from in
19 North Carolina who were aware of the license
20 renewal program, and South Carolina also, but
21 particularly in North Carolina, but only
22 contacted me about this proceeding after the
23 September 11th. But we've been telling people
24 that we would be involved in this all summer. So
25 yes, there's a nexus in that concern to this

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1 proceeding.

2 JUDGE YOUNG: Let me just -- in terms
3 of tying this to the application, I want you to
4 tell me if I've missed anything. I see on page
5 10 of your contentions that you say, given the
6 clear and present danger, the license renewal
7 application does not provide a complete or
8 reasonable analysis and evaluation on containment
9 structures for the Catawba and McGuire units with
10 regard to impact by postulated external hazard.

11 Was there anything else in your
12 contention that I'm missing right this minute as
13 I look through it, that makes the reference to
14 the application and any asserted deficiency in
15 the application?

16 MS. OLSON: Most of it is by
17 omission. And, oh, yes, there is one more. The
18 whole question -- and I admit, I haven't really
19 opened this up as far as I should because I don't
20 know if Lake Clinton is currently closed, but
21 Exxon Corporation and the State of Illinois and
22 the Nuclear Regulatory Commission together, I
23 don't have the record of that, closed Lake
24 Clinton for security reasons. And I'm not
25 particularly advocating anything here, but I

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1 don't really know the basis upon which Lake
2 Norman and Lake Wiley are open is Lake Clinton is
3 closed. And it was closed for several months.
4 Whether it's open now, I don't know. And I think
5 that that needs to be analyzed in terms of a
6 great number of factors, but socioeconomic is
7 what is coming to the foray in Illinois.

8 JUDGE YOUNG: Let me see if I can
9 raise a question here for you. Reading through
10 your contention, I reread it last night and tried
11 to get a sense of, giving you the benefit of the
12 doubt in terms of the general contention
13 requirements and the scope issues that we're
14 limited to, on page 6 of your contention, I see
15 three --

16 MS. OLSON: We may have different
17 paginations, so could you tell me the subitem?

18 JUDGE YOUNG: It's the 1.12, the
19 security concerns, the -- one, two, three, fourth
20 and fifth paragraphs under that.

21 MS. OLSON: Thank you.

22 JUDGE YOUNG: And I think this is
23 actually the one you mailed in, so at any rate,
24 the first thing I see is you're saying the issues
25 that were never considered in the original

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1 license proceeding as such constituted an age
2 related issue adversely affecting public health
3 and safety, and then 10 CFR 51, I think you mean
4 point 53, subsection C 3, small Roman numeral
5 four, stating that the environmental report must
6 contain any new and significant information
7 regarding the impacts of license renewal of which
8 the applicant is aware.

9 Then secondly, you say in the next
10 paragraph that this issue pertains to license
11 renewal since the duration at a target exists
12 impacts of probability and risk that it will be
13 hit; and then in the same paragraph, you say with
14 the overall acceleration and terrorism in
15 targeting nuclear facilities in particular, this
16 means that the overall risks of an attack are
17 increasing over time. And then back over on page
18 10, under 1.1.2, subsection L, the third
19 paragraph, you say, given the clear and present
20 danger, the Duke Energy license renewal
21 application does not provide a complete or
22 reasonable analysis and evaluation on containment
23 structures for the Catawba and McGuire units with
24 regard to the impact by postulated external
25 hazard. I guess the questions that go through my

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1 mind is with regard to the environmental report,
2 I think we discussed yesterday if there's new and
3 significant information, and unless something is
4 already in Category 2 under 51.53, I think it's
5 appendix B --

6 JUDGE KELBER: Appendix B to subpart
7 A.

8 JUDGE YOUNG: To subpart A. The way
9 to approach that issue of the new information
10 would be either through a request for rule waiver
11 or a rule making.

12 JUDGE RUBENSTEIN: Certification.

13 JUDGE YOUNG: Either of which could
14 be done -- well, I'm not sure if rule making
15 could be done through certification, but I asked
16 earlier about the possibility of certification.

17 So let's assume that -- well, let's put that one
18 aside for a moment. The other two have to do
19 with overall acceleration in terrorism and the
20 duration that a target exists and the increasing
21 risks of an attack over time. This is all tied
22 in the part on page 10 to the application by
23 virtue of your reference to the analysis and
24 evaluation on containment structures.

25 The contention rule requires you to point

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1 to a particular part, section of the application.
2 You're saying it does not provide a complete or
3 reasonable analysis and evaluation suggests to me
4 that you're not saying -- you're not making a
5 reference to an omission, you're describing the
6 quality of the analysis and evaluation that's
7 done in the application on the containment
8 structure.

9 MS. OLSON: And indeed, I will
10 acknowledge that the development of points across
11 the contentions rather than within the con --
12 each contention is something that I can see at
13 this moment, but yesterday we were hearing
14 BREDL's work on the issue of the San Dia report
15 and vulnerability to early containment failure
16 and our concern, and we site in contentions here
17 is that an attack can certainly create station
18 blackout even if it does not breach containment
19 itself. And so analyzing that sufficiently in
20 our view has not been done.

21 Now, the question of sufficiency, perhaps
22 I dug my own hole but I did withdraw our
23 contention on that issue yesterday; however, I
24 certainly commend Blue Ridge Environmental
25 Defense League's work on that contention

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1 yesterday and I believe that's the argument we
2 were wanting to make. I acknowledge it's not
3 fully made there.

4 JUDGE YOUNG: So you don't have any
5 particular references to specific parts of the
6 application that you would challenge as not being
7 complete or --

8 MS. OLSON: It would be in the SAMA
9 analysis of each of the reactors, particularly
10 McGuire, particularly the question of event
11 occurrence and containment failure related to
12 that probability.

13 Now, this gets very compounded by the
14 issue of a malicious act. And I want to go on
15 record here saying that while we can make no
16 argument about whether September 11th was an act
17 of war from an enemy of the United States, our
18 President tells us the Unibomber was not
19 classified as an act of war. And I'm just
20 bringing forward the fact that human nature is
21 such that copycats are out there. And deranged
22 individuals cannot be put in the same category.
23 So we're dealing with an unknown future,
24 I admit that; however, there's certainly ample
25 record to attest to the fact that one type of

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1 malicious act can trigger another type of
2 malicious act, and I regret I don't have an
3 expert here to tell you that in a more complex
4 and reasoned way, but I'm just saying that we're
5 in a new phase of time. Something has happened
6 that has changed everything.

7 JUDGE YOUNG: What I was really
8 trying to get at was to get us to the specific
9 requirements for contentions. With regard to
10 certifying and with regard to 50.13, it talks
11 about an applicant for a license, and the license
12 is defined in the definitions as including a
13 license renewal, and this includes an enemy of
14 the United States, whether a foreign government
15 or another person.

16 As I said, a terrorism contention has
17 been certified to the Commission in another type
18 of proceeding. My concern --

19 MS. OLSON: -- that concern.

20 JUDGE YOUNG: Public storage, it was
21 just in the last week or two. But my concern,
22 and what I was trying to direct you to, is if the
23 contention -- let's put 50.13 aside for a moment.
24 Your contention would still need to meet the
25 requirements of 27.14, and I guess I was giving

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1 you an opportunity to address that and I think I
2 heard you say you concede that it didn't because
3 you haven't given us specific sections of the
4 application that you contend are unreasonable,
5 it's more of a broad stroke?

6 MS. OLSON: It is, and I only
7 received what Paul Gunter said to me in time to
8 read it, not to analyze it and work on it. And
9 this is the deficiencies of an effort made but,
10 you know, anyway, he's not here to help respond
11 to your question and I acknowledge that.

12 JUDGE YOUNG: So with regard to what
13 you want from us, I asked the question earlier,
14 are you asking us to certify the question, and if
15 so, do you want to make a brief argument on that
16 before we go to Duke and the Staff?

17 MS. OLSON: Yes, I do ask the board
18 to certify the question, because it seems to me
19 that Mr. Gunter's argument this morning would
20 require essentially a 2.206 action enforcement
21 action on our part to get the NRC to do something
22 about not having OSRE. And we have had, I think,
23 one hearing total granted on 2.206, granted from
24 a member of the public, so I do believe this
25 issue is of great significance and we do ask that

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1 this question be certified.

2 JUDGE YOUNG: Now, I should say, if
3 it was not made clear yesterday, and I can't
4 recall whether anyone made reference to this or
5 not, but you are aware that the Commission is
6 going through a -- I think the Chairman referred
7 to it as a top-to-bottom review of all its rules
8 with regard to security issues. And presumably,
9 there will be a rule making and opportunity for
10 public comment on those, so I encourage you
11 obviously to take advantage of that.

12 Do you have any questions?

13 JUDGE RUBENSTEIN: No.

14 JUDGE KELBER: No.

15 JUDGE YOUNG: Mr. Repka.

16 MR. REPKA: Let me start with, from
17 the proposition that Duke Energy certainly does
18 not dispute that security is an important issue
19 today. We're certainly aware of the fact that
20 this is a generic issue that the Commission is
21 looking at, as Judge Young just alluded to.
22 We're aware that Chairman Meserve has asked for a
23 top-to-bottom review of security regulations by
24 the agency. The management of Duke Energy has
25 had conversations and been involved in that

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1 process and will continue to do what is deemed
2 necessary by the regulators in that area.

3 The point in this proceeding, the
4 question in this proceeding, however, is a
5 different one. The question here is whether
6 these issues are appropriately addressed in the
7 context of a license renewal application and in
8 this proceeding, and the answer to that question
9 is no. Let me just start with the basic
10 proposition of the regulatory philosophy of
11 license renewal as explained by the Commission in
12 issuing the final rule on license renewal.

13 And I'm quoting here from the Federal
14 Register, Volume 60, at page 22463. Given the
15 Commission's ongoing application to see the
16 safety and security of operating reactors, issues
17 that are relevant to current plant operation will
18 be addressed by the existing regulatory process
19 within the present license term rather than
20 deferred until the time of license renewal.
21 Consequently, the Commission formulated two
22 principles of license renewal. The first
23 principal of license renewal was that with the
24 exception of age related degradation unique to
25 license renewal, possibly a few other issues

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1 related to safety, only during the period of
2 extended operation of nuclear power plants, the
3 regulatory process is adequate to ensure that the
4 licensing bases of all currently operating plants
5 provides and maintains an acceptable level of
6 safety so that operation will not be inimical to
7 public health and safety or common defense and
8 security, end of quote.

9 The point here is that the Commission has
10 amply demonstrated its responsiveness to this
11 issue of security, and is addressing that through
12 the ongoing regulatory process that applies today
13 and will continue to apply through the entire
14 license term of the reactors, whether that's a
15 40-year term or 60-year term.

16 I think what we heard this morning from
17 NIRS, reading from Mr. Gunter's contributions, I
18 think only makes it more clear that the issue
19 that NIRS was raising was really a present-day
20 issue, not a license renewal issue.

21 I think I heard this morning some attempt
22 to draw security equipment within the scope of
23 part 54. I think that's clearly and overly
24 expansive reading of part 54 and there's no basis
25 for that. I think that we also -- Duke quoted in

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1 that regard a very specific quote from the
2 Commission, 1991 statement of considerations on
3 license renewal and the Federal Register, that's
4 56 Federal Register at page 64967, where the
5 Commission specifically concluded that a review
6 of the adequacy of existing security plans is not
7 necessary as part of the license group renewal
8 review process. So to try to read security
9 equipment within the scope of license renewal
10 would be patently inconsistent with that
11 Commission intent.

12 With respect to other issues related to
13 license renewal, if this is evaluated somehow as
14 a parts 51 issue, the environmental consequences,
15 we think that those effects and the Commission's
16 position on that is really subsumed in the
17 general philosophy of license renewal and it's no
18 different, it's beyond the scope of this
19 proceeding. These are not issues uniquely
20 related in any way to license renewal and
21 therefore would not be evaluated in this context.

22 In particular, the impacts of terrorist
23 attacks on nuclear facilities are not identified
24 as either category one or two issue for license
25 renewal and therefore they are not, absent some

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1 action by the Commission, not within the scope of
2 review here.

3 Finally, I think as both we and the Staff
4 point out, there is the existing design basis for
5 the nuclear
6 power plant's security is dictated by 10 CFR 50,
7 CFR part 73, again, any attempt to change those
8 regulations and increase security requirements is
9 really addressed through the ongoing regulatory
10 processes, including rule making, so it's not
11 appropriate here.

12 To the extent that NIRS alleges that this
13 is -- security is somehow a SAMA issue through --
14 that needs to be evaluated through the severe
15 acts and mitigation alternatives, two points:
16 One, again, that would be an intent to bootstrap
17 security in through the part 51 SAMA process, and
18 there's no basis for that given that it would be
19 completely inconsistent with the statements that
20 I've just read about the scope of a license
21 renewal proceeding.

22 But beyond that, I think as NIRS
23 themselves acknowledge, when we start talking
24 about terrorist attacks and sabotage risk, we're
25 talking about something fundamentally different

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1 than accidents and the kinds of things that would
2 be addressed in a severe accident mitigation
3 alternative.

4 The SAMA requirement stems from the
5 National Environmental Policy Act and the NEPA
6 review, but the Third Circuit in the case of
7 Limricky College Action versus the NRC, 869 F2d,
8 719, a 1989 decision, specifically addressed the
9 question of whether the NRC needed to evaluate
10 worst case scenarios, including sabotage risks in
11 the licensing proceeding, and they determined
12 that that was not necessary. And the primary
13 reason with respect to sabotage was that these
14 acts involve unpredictable, unquantifiable human
15 elements that defy, quote, any meaningful
16 analysis, end quote, of the risk. So given those
17 constraints, it's simply not something conducive
18 to a risk-based SAMA evaluation. And consistent
19 with that decision, would not be within the scope
20 of the required SAMA review in this proceeding.

21 JUDGE YOUNG: Let me just ask one
22 question. Giving NIRS the benefit of the doubt
23 on the reference to the containment structures
24 with regard to impact by the postulated external
25 hazard, is there anything in your SAMA analysis

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1 that does address the containment structure
2 issue, protection of that? I know there has been
3 discussion, obviously, about the difference
4 between the standard containment and the type of
5 containment in ice condenser plants.

6 MR. REPKA: Let me take one minute to
7 consult on that question.

8 JUDGE YOUNG: Okay.

9 (Brief pause.)

10 MR. REPKA: Let me attempt to address
11 your question. The original design of the
12 containment addresses external risks such as
13 severe weather and tornado-generated missiles,
14 not necessarily the risk of external events
15 related to sabotage and terrorism attacks. In
16 the context of the SAMA review, some review and
17 consideration was given to the specific risks
18 related to external factors related to severe
19 weather and tornados. No particular SAMA
20 alternatives were identified in that area or
21 in -- because they were determined to be not risk
22 beneficial.

23 JUDGE YOUNG: And I'm assuming from
24 what you said earlier, that having had
25 communications on the top-to-bottom security

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1 review, that your argument would be that this
2 would be one of the generic issues that would be
3 considered in the NRC's top-to-bottom review of
4 the security rules which -- for which there will
5 be presumably opportunity for public input, and
6 also I direct that to you, Ms. Utile.

7 MS. UTTAL: That would be correct,
8 but in the context of the way this is raised,
9 raised in terms of a jetliner crashing into a
10 containment, and NIRS acknowledges that what they
11 are specifically asking for is not required by
12 our regulation.

13 JUDGE YOUNG: They are
14 specifically --

15 MS. UTTAL: This kind of jetliner
16 crash that they are talking about is not required
17 to be analyzed by our regulations, therefore they
18 are outside -- it's generally attack on the
19 regulations --

20 JUDGE YOUNG: I wasn't really getting
21 to that at this point. I was really still on the
22 point that I had asked Mr. Repka about, which was
23 giving them the benefit of the doubt, what is
24 being discussed and then I'm taking what
25 Mr. Repka said earlier to mean that the generic

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1 top-to-bottom review of all of the security
2 issues, including robustness of various
3 containments, will be covered or there will be
4 opportunity for public comment in the
5 top-to-bottom review on all these issues.
6 Correct?

7 MR. REPKA: And I would answer that
8 by --

9 JUDGE YOUNG: That's what I was
10 asking you and Ms. Uttal as the NRC Staff
11 counsel.

12 MR. REPKA: Let me answer it by
13 agreeing with your summation of the issue, yes,
14 that would be considered in that review.

15 JUDGE YOUNG: And that was my only
16 question to you.

17 MS. UTTAL: I think that -- I don't
18 know the exact parameters of what will be
19 determined, but the need to enhance the
20 robustness of the containment would probably be
21 covered under the top-to-bottom review if there
22 is any.

23 JUDGE YOUNG: Right. My point was
24 just to say, and to make sure to get the
25 agreement of the Staff, that this is an ongoing

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1 process, there will be opportunity for public
2 input, and that public input could obviously
3 raise these types of issues.

4 So I wanted to make that clear to all
5 present so that whatever the outcome on this
6 contention, you're not without recourse with
7 regard to these issues, the NRC is addressing
8 them, and I wanted to just confirm with you, if
9 there are any nuances that I'm not aware of or
10 haven't made reference to so far.

11 MS. UTTAL: Your Honor, I don't know
12 the exact form that the top-to-bottom review will
13 take, I don't know whether there will be
14 subsequent rule making, but within the parameters
15 of our regulations, the appropriate comments or
16 participation will be permitted. But because I
17 don't know the exact form it will take, I cannot
18 speculate at this point how many.

19 JUDGE YOUNG: I guess what I was
20 trying to get at is whatever opportunity there is
21 for public participation, it might be helpful in
22 this hearing to inform the petitioners of that.
23 If you're not aware of that, then -- if that's
24 what you're saying, you're not aware of the form
25 of public participation --

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1 MS. UTTAL: No, I'm not aware of what
2 will happen as a result of the review. If there
3 is rule making, yes, there's public
4 participation. If there are other kinds of
5 events that occur or other kinds of things that
6 happen, there may be other opportunities. But
7 because I don't know what form whatever the
8 Commission is going to do, I can't say that there
9 will be this, that and the other thing. If
10 there's a rule making, there will be an
11 opportunity to comment on it.

12 MS. OLSON: I would like just a short
13 reply.

14 JUDGE YOUNG: Is this rebuttal
15 generally?

16 MS. OLSON: Yes.

17 JUDGE YOUNG: If it's general
18 rebuttal, let's make sure we're finished here
19 with Mr. Repka. Were you finished?

20 MR. REPKA: I think I'm finished.

21 JUDGE YOUNG: And Ms. Uttal, did you
22 have anything you wanted to add?

23 MS. UTTAL: I think Mr. Repka covered
24 most things, I think -- this is a current
25 licensing issue that the Commission is looking

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1 at, doesn't belong within a license renewal
2 proceeding, and it is then specifically placed
3 outside the scope of a license renewal.

4 JUDGE YOUNG: And I don't think
5 either of you mentioned this, but with -- well,
6 let me not assume what your argument will be.
7 Let me just ask you both: What is your position
8 on certifying the terrorism slash SAMA issue to
9 the Commission, without assuming what your answer
10 will be, let me just ask you to give it.

11 MR. REPKA: Let me try to answer that
12 first. My -- the first thing I would say is
13 effectively BREDL has put that issue before the
14 Commission in their motion to suspend, which we
15 responded to, and in our response to that, we
16 urged the Commission to look at that issue and to
17 decide that issue. So I think consistent with
18 that, we would have no objection to the board
19 certifying the question here.

20 However, we would ask that the board rule
21 and determine that it's outside the scope
22 consistent with the regulations and the federal
23 registers and the arguments we've made prior to
24 certifying it.

25 MS. UTTAL: Well, Your Honor, I think

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1 that in the Commission's order that referred this
2 to the licensing board, the Commission stated
3 that if the licensing board determines to admit
4 issues that are outside the scope or that are
5 policy issues, that it should be certified. And
6 the Staff's position, if you -- we would like a
7 decision that is outside the scope, that is our
8 position. If the board determines to decide
9 anything else, then we would ask that it be
10 certified, yes.

11 JUDGE YOUNG: Well, do you agree with
12 Mr. Repka that if we decide that it's outside the
13 scope, that -- do you have an opinion on whether
14 it should be certified?

15 MS. UTTAL: If the board decides it's
16 outside the scope, I don't think it has to be
17 certified.

18 JUDGE YOUNG: Go ahead.

19 MS. OLSON: I'll be brief. The first
20 thing I do want to say, again, though, is that in
21 Mr. Repka's reply this morning, he brought up two
22 passages that state that security is outside of
23 the scope because current regulatory process is
24 sufficient. He also cited the Federal Register
25 notice that said that existing security plan is

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1 the basis for not putting security in the renewal
2 question.

3 . And we don't dispute that it's a current
4 issue or that it's under current regulation.
5 We're simply bringing forward the fact that the
6 current regulations review or no review, are not
7 functioning, they are not in place, they have
8 been suspended, a huge piece of it. And so it's
9 hard to accept the scope argument based on stuff
10 that's not currently happening.

11 So I guess we're saying yes, certify to
12 the Commission, but yes, also rule on our concern
13 that security is excluded from license renewal on
14 the basis of regulations which are currently in
15 suspense. And reflect on this process of renewal
16 proceeding given that fact. I mean, that is why
17 BREDL asked for a motion to either dismiss or
18 hold in abeyance, in part, is because of the
19 whole assumption that these processes should go
20 forward while such major determinations are being
21 made.

22 So I'm not withdrawing the contention
23 because I agree there should be a ruling on it.

24 JUDGE YOUNG: What about the fact
25 that BREDL's motion is before the Commission,

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1 raising similar issues or the same issues, does
2 that take care of the concerns relating to
3 terrorism?

4 MS. OLSON: No.

5 JUDGE YOUNG: In terms of getting a
6 ruling from the Commission?

7 MS. OLSON: No, because the
8 specificity of our contention and our argument
9 this morning are not reflected in their petition.

10 JUDGE RUBENSTEIN: Is your point that
11 the current regulations are in suspense or that
12 they don't adequately address the threats that
13 you're postulating?

14 MS. OLSON: We have made both points
15 in contentions. We argued that there are threats
16 that were previously viewed outside of the realm
17 of possibility which we must now admit happened.
18 Probability equals one.

19 JUDGE RUBENSTEIN: What do you mean
20 the current regulations are in suspense?

21 MS. OLSON: OSRE has been suspended.
22 SPA has not been developed.

23 JUDGE YOUNG: Do you care to respond
24 to that latter statement, that regulations are in
25 suspense?

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1 MR. REPKA: Yes, I will respond to
2 that. I clearly -- clearly, the regulations are
3 not in suspense. I can't comment on the status
4 of the OSRE program, but clearly the regulations
5 related to security are not in suspense, and
6 clearly the processes, the regulatory processes,
7 NRC to oversee those, are not in suspense. And
8 clearly the regulatory processes related to the
9 adequacy of the requirements themselves are not
10 in suspense, as evidenced by Chairman Meserve's
11 directions to conduct a review in this area.

12 JUDGE RUBENSTEIN: Within the
13 currently defined threat within the regulations,
14 they are operable and it's the contention that
15 the threat is not proper.

16 MR. REPKA: They most certainly are
17 operable.

18 MS. UTTAL: I would agree with
19 Mr. Repka, the regulations are not in suspense.
20 There's exercises that are in suspense, part 73
21 is still in force and effect, the other
22 regulations.

23 JUDGE YOUNG: Okay.

24 MS. OLSON: I had two very brief
25 items that I wanted just to add. One is that it

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1 was mentioned that SAMA has to do with accidents.
2 This would cut obviously to the future review,
3 but I want to mention that the type of SAMA
4 analysis of events that are termed accidents if
5 they happen for sort of random reasons or whether
6 acts of God or whatever, are perfectly capable as
7 secondary tertiary events stemming from acts of
8 terrorism.

9 For instance, bombing the dam on Lake
10 Norman, loss of coolant for the reactor. I'm not
11 saying it would but it's something you could
12 think about. I admit they don't fully argue the
13 case, but I wanted to make that point.

14 And the last thing I'm going to say is
15 that I have a deep concern and it cuts in every
16 possible direction, I cannot tell you how
17 personally distressing this whole situation has
18 been working for the organization I work for and
19 being asked to comment on the possibility and
20 consequences of a direct terrorist attack to a
21 site. I have refused to take interviews
22 initially because I did not want to participate
23 in a public dialogue on this point myself before
24 other experts had come forward.

25 I waited and then the atomic --

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1 International Atomic Agency head was the one who
2 opened the door on these issues and there's been
3 a lot of dialogue since. So I firmly support the
4 fact that there should be a limitation on
5 information; on the other hand, how can we have
6 an open public dialogue on these issues when
7 information is limited? So I don't have a great
8 degree of confidence that in fact there will be a
9 public process that will include credentialed
10 experts and other legitimately concerned
11 individuals from outside of either of these
12 institutions, or their brother and sister
13 organizations that make up that which is defined
14 as, you know, the nuclear licensees and their
15 regulator.

16 So I'm raising that in this record since
17 we are deferring to other processes, I have a
18 deep concern as to how that's going to be
19 accomplished.

20 JUDGE YOUNG: Judge Kelber just
21 pointed out and he's correct that we are really
22 running tight on time. I went through and
23 calculated all the numbers of minutes for the
24 contentions that are left, and I would suggest
25 that we do one of two alternatives, and I want to

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1 hear from all of you on this.

2 Ms. Uttal, you in particular, because I
3 know you had one person who was concerned about
4 the timing of the lunch hour, just looking at the
5 contentions that were originally scheduled for
6 the morning, 1.13, 1.17 and 1.18, well, I'm
7 sorry, 1.13 and 1.17 were scheduled for 30
8 minutes each --

9 MS. OLSON: May I interrupt? I'm
10 actually -- we haven't done this yet, I'm
11 actually withdrawing three of the contentions
12 that remain. So that's going to make the
13 scheduling issue easier.

14 JUDGE YOUNG: Why don't you go ahead
15 and tell me which ones.

16 MS. OLSON: 1.1.7, we recognize the
17 arguments yesterday and support the work that
18 BREDL has done, support their contention because
19 I'm not going to argue it again today.

20 And the other two that I'm pulling are
21 4.1 and 5.1.

22 JUDGE YOUNG: 4.1 and 5.1. Okay,
23 that gives a little more leeway.

24 MR. REPKA: One other request was
25 just that we were going to ask that we cover 1.15

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1 next because of the availability of people that I
2 have.

3 JUDGE YOUNG: Okay. That was the
4 other alternative was to go to 115 next because
5 that would probably take up until the lunch hour.
6 And if there's no objection, why don't we do
7 that.

8 MR. REPKA: That's fine.

9 MS. OLSON: Judge, I have a question.
10 Is it possible to withdraw any further argument
11 and leave the contention in for ruling, or do I
12 have to withdraw the contention to not have the
13 argument?

14 JUDGE YOUNG: When we get to the
15 contention, you certainly don't have to make any
16 argument.

17 MS. OLSON: Yes, but I just had a
18 question from my colleague here about, for
19 instance, 1.1.7. You know, we very much support
20 BREDL's arguments yesterday on their Contention
21 Number 1, so they are suggesting that we leave it
22 for decision but not argue it. Is that a
23 possibility?

24 JUDGE YOUNG: Any objection?

25 MS. UTTAL: No objection.

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1 JUDGE YOUNG: Just briefly.

2 MR. MONIAK: I advised Mary that I
3 wasn't sure she was aware, you don't have to
4 argue your contention.

5 JUDGE YOUNG: I don't think anyone
6 objects to it, so we'll consider that 1.1.7 is
7 left in, but that you waive any arguments on it,
8 verbal argument on it.

9 And there's been a request to do 1.1.5
10 next and that seems reasonable to me, so if you
11 are ready to start on that one, Ms. Olson.

12 MS. OLSON: Okay.

13 JUDGE YOUNG: Just a quick question
14 before you start. In your 1.1.5, I believe you
15 make reference back to 1.1.4.

16 MS. OLSON: Yes.

17 JUDGE YOUNG: So you might want to
18 clarify for us which portions you're relying on,
19 because you did withdraw 1.1.4 and to the degree
20 you wanted to maintain any reference back to it
21 in 1.1.5, make that clear to us as you give your
22 argument. And I'm going to try to keep you as
23 close as possible to the ten-minute time we had
24 scheduled.

25 MS. OLSON: Okay, that's fine.

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1 Although I neglected to mark the question, I may
2 not be able to answer that question and so I may
3 have to ask that we give 1.1.4 a similar
4 treatment, that you rule on it so that you have
5 it, but I don't argue it, if that's an
6 alternative. In any case, I will give you what I
7 have this morning.

8 JUDGE YOUNG: Okay.

9 MS. OLSON: We didn't feel that we
10 had developed our Contention 1.1.4 sufficiently
11 to argue it, and we appreciate the work that the
12 Blue Ridge Environmental Defense League has done,
13 and they addressed many of our concerns in terms
14 of the information from the San Dia laboratory
15 study. And I similarly feel that this contention
16 is not as developed as I would like it to be, but
17 quite frankly, September 11th was a brain-drain
18 on our pool of expertise and I do not have the
19 work that I had expected on this one.

20 Nonetheless, in the spirit of a recent
21 teleconference between NRC Staff and
22 representatives of the industry held on December
23 12th after the filing of contentions, where the
24 whole question of scoping on station blackout was
25 being explored and a reading of the regulations

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1 that talks about the restoration of off-site
2 power as being significant to license renewal,
3 that coping is predicated on that restoration,
4 this contention that we're offering I believe is
5 a remedy that has not been considered and should
6 be considered.

7 I was given quite a bit of support for
8 this idea by Dr. Edwin Lyman who did not
9 contribute to it, but he was quite amazed that he
10 hadn't thought of it, and really encouraged me
11 not to drop this contention but go ahead and
12 bring it forward today. But his comment was,
13 late comment was that it shouldn't be limited
14 only to the hydroelectric option, and certainly
15 we heard during the Y2K time, which thankfully
16 the electrical grids held and the station
17 blackout was not a multiple site event on New
18 Years Eve, but nonetheless there was conversation
19 at that time about dedicated backup power from
20 other generating facilities besides
21 hydroelectric.

22 So I'm just bringing this forward as an
23 issue that may be addressed in a different arena.
24 However, I will point out, I don't believe there
25 are any other ice condenser reactors that may or

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1 may not have a sufficient SAMA analysis on their
2 station blackout -- which is why this contention
3 referred to the previous one, and I think it
4 still needs to -- that have hydroelectric or
5 other generating facilities right next to them.
6 I mean, there are the Sequoia reactors in
7 Tennessee and I honestly don't know how close the
8 hydro stations are, but I think it may be unique
9 to Catawba and McGuire that such a possibility is
10 so eminently available.

11 JUDGE YOUNG: Mr. Repka?

12 MR. REPKA: Let me start out by
13 saying I agree with NIRS completely that neither
14 Contention 1.1.4 or 1.1.5 is particularly well
15 developed or particularly well supported, and
16 therefore lacks basis. I really don't want to
17 argue 1.1.4, I don't -- I'm not sure what its
18 particular status is, but if it's still presumed
19 and we would ask that it be excluded for the
20 reasons addressed in our papers.

21 With respect to 1.1.5, the issue here
22 seems to be based upon the new reg and the
23 vulnerability identified for ice condenser plants
24 related to early containment failure in a station
25 blackout event. The contention in 1.1.5 seems to

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1 be a very narrow one, that Duke ought to have
2 identified an additional SAMA, severe accident
3 mitigation alternative, to evaluate in the SAMA
4 analysis. And that alternative was the
5 alternative of providing the dedicated electrical
6 line from the hydro projects, the nearby hydro
7 projects.

8 And our response to that particular
9 contention is that it really, there is no basis
10 for the suggestion that that's a credible
11 alternative that needs to be included in the SAMA
12 analysis.

13 JUDGE YOUNG: Let me stop you there
14 and just ask you in your argument to address
15 this: The contention requirements as interpreted
16 by the Commission require either facts, expert
17 opinion or a fact-based argument. Considering
18 this is a fact-based argument and somewhat
19 self-evidence that a way to get power would be to
20 use the dedicated electrical line rather than
21 just discount it outright, I would like to ask
22 you to address the actual issue raised in terms
23 of whether a genuine dispute has been raised with
24 regard to whether this would be an appropriate
25 SAMA mitigation alternative.

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1 Also in your written argument, you say
2 this would not be permitted by 10 CFR 60.53 and I
3 wanted you to explain that a little more fully.

4 MR. REPKA: That's precisely what I
5 would like to do.

6 JUDGE YOUNG: Okay.

7 MR. REPKA: While it is a fact-based
8 position, it's a fact-based position that on its
9 face really is not a credible alternative, and
10 I'll tell you why.

11 JUDGE YOUNG: Okay.

12 MR. REPKA: The issue here, the risk
13 issue here is a station blackout event. A
14 station blackout is an event that by definition
15 assumes no availability of off-site power and no
16 availability of the diesel generators, so you're
17 relying on your batteries, consistent with the
18 rules 10 CFR 50.63.

19 JUDGE YOUNG: So you include this in
20 off-site power, is that what you're --

21 MR. REPKA: That so would be -- the
22 point is this particular mitigational alternative
23 that's been identified is another source of
24 off-site power that you're already presuming in
25 this particular scenario won't be available, so

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1 that's number one.

2 Number two is, in addition, even if you
3 had this scenario, if you had power from the
4 hydroelectric facilities, you would be relying on
5 the transmission system to get that power to the
6 plant, which would include the switch yard and,
7 again, you're assuming that that system is not
8 available. So you have a scenario that this
9 won't help.

10 The way the SAMA analysis that's included
11 in the license renewal application addresses this
12 particular risk scenario is addressed in table
13 4-2, which is a list of top SAMAs considered to
14 reduce core damage frequency, and perhaps the
15 most significant to the issue is SAMA Number 4,
16 which is install a third diesel generator.
17 That's a relevant -- that's a relevant SAMA that
18 goes to the issue that there is no loss of
19 off-site power, so we can provide additional
20 power, additional diesel generator to provide
21 power.

22 We also have identified on there as SAMA
23 Number 5, install automatic swap to the other
24 unit. That's a way of cross-tying,
25 cross-powering units to try to address a loss of

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1 off-site power.

2 So the bottom line here is that we think
3 the issue, the fundamental issue has required --
4 identified in the new reg and addressed to be
5 required in SAMA, has been addressed by means
6 that make the most sense, not just from a risk
7 perspective but also when read in the context of
8 what the station blackout really is.

9 JUDGE YOUNG: Let me just clarify one
10 thing. You referred to the definition for
11 station blackout including lack of off-site
12 power. Is that a written definition or is --
13 where is that?

14 MR. REPKA: I believe a station
15 blackout would be defined in 1050.63, if you give
16 me one minute. Yes, actually it's in the
17 definition section of part 50.52, and it states,
18 I'll read, station blackout means the complete
19 loss of alternating current AC electric power to
20 be essential and nonswitch gear buses in nuclear
21 plants, i.e., loss --

22 THE COURT REPORTER: Excuse me --

23 MR. REPKA: -- concurrent with turbine
24 trip and unavailability of the on-site emergency
25 AC power system. It goes on at some great

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1 length.

2 JUDGE YOUNG: Did you get the
3 beginning of that, loss of off-site electric
4 power system concurrent with, and then he
5 continued.

6 MR. KELBER: Just as a point of
7 information, you did mention cross-ties. I was
8 under the impression that one -- either the
9 Catawba -- are the Catawba units cross-tied?
10 Either of them?

11 MR. REPKA: The answer to your
12 question, Judge Kelber, is yes, they are. It
13 requires a manual action of the SAMA,
14 particularly looking at as an automatic swap.

15 JUDGE RUBENSTEIN: And this takes
16 about two hours?

17 MR. REPKA: I'm told less than an
18 hour.

19 JUDGE RUBENSTEIN: Less than an hour.
20 I have a --

21 JUDGE KELBER: That's Catawba?

22 MR. REPKA: Both.

23 JUDGE KELBER: Oh, both are
24 cross-tied? So what's the argument?

25 JUDGE RUBENSTEIN: To clarify the

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1 station's power capability, each unit has two
2 EDGs, emergency diesel generators, they have an
3 inter-unit capability, cross-tied?

4 JUDGE KELBER: That's what he just
5 said.

6 JUDGE RUBENSTEIN: Or no?

7 MR. REPKA: Not between diesels
8 presently.

9 JUDGE KELBER: But between the
10 plants.

11 JUDGE RUBENSTEIN: So you don't have
12 swing diesels. But I have a clarifying
13 question --

14 MR. REPKA: And I think that's the
15 SAMA, the third diesel would be the swing diesel.

16 JUDGE KELBER: Well, let me ask one
17 more question. Can either plant operate on hotel
18 load, that is, furnish its own internal power
19 needs while it's generating and not transmit to
20 the outside?

21 MR. REPKA: It sounds like the answer
22 to that question is no, although --

23 JUDGE KELBER: I know there's some
24 plants that are set up so they cannot operate on
25 hotel loads and some are.

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1 MR. REPKA: And I believe the design
2 intent was to be that way; whether we would take
3 credit for that is a different story.

4 JUDGE KELBER: I would suggest to you
5 that the plants can operate on hotel load and the
6 cross-ties exist, this issue gone away. So it
7 would pay you to look into it.

8 MR. REPKA: Thank you.

9 JUDGE RUBENSTEIN: I have a
10 clarification question for probably the Staff. I
11 think Ms. Olson said that the other ice
12 condensers don't have a station blackout
13 analysis. Aren't all plants required to have an
14 IPE and aren't all plants required to address
15 station blackout?

16 MR. FERNANDEZ: As I have been
17 recently informed, all plants are supposed to
18 meet the SBO rules of 63.

19 JUDGE YOUNG: The what?

20 MR. FERNANDEZ: Station blackout
21 rule, S-63, so these are like any other part 50
22 lessons, and they have PRAs and IPEs pursuant to
23 the procedures that went into doing that for the
24 Commission at the time that the IPE process was
25 done.

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1 JUDGE RUBENSTEIN: Thank you.

2 JUDGE YOUNG: Ms. Uttal, did you have
3 anything, or Mr. Fernandez?

4 MR. FERNANDEZ: Nothing.

5 JUDGE YOUNG: Rebuttal, Ms. Olson.

6 MS. OLSON: Only a small comment that
7 I seem to have forgotten to mention earlier, but
8 of all utilities to bring this forward to, Oconee
9 has hydroelectric for their backup. So I think
10 they have some experience in this regard.

11 JUDGE YOUNG: Well, let me ask
12 Mr. Repka then, if that -- one, is that true?
13 And two, if that's true, are there circumstances
14 in which you would have other off-site power go
15 out and have the -- a backup?

16 MR. REPKA: At Oconee, there's
17 underground power from Kiwi Dam to Oconee, and
18 that's part of the accredited licensing basis.
19 That's not the case for McGuire and Catawba where
20 you have underground lines. You know, could you
21 conceivably rely on power through the
22 transmission system? The answer is yes. That's
23 a different question.

24 Oconee has a capability that McGuire and
25 Catawba don't have which is the underground line.

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1 JUDGE YOUNG: And even given the
2 definition with the parenthetical reference to
3 the loss of off-site power, does that address the
4 SBO issue at Oconee more effectively than other
5 McGuire and Catawba?

6 MR. REPKA: Well, what the dedicated
7 line is relied on at Oconee is in place of diesel
8 generators, so it's serving a different
9 functions. It's serving as an on-site power
10 source, which is what the diesel generators do at
11 McGuire and Catawba.

12 JUDGE YOUNG: And if there were a
13 problem with the diesel generators, you talked
14 about having a second diesel generator but if
15 there were a problem with those, theoretically
16 having this same type of third type of or second
17 type of on-site power through the underground
18 line could --

19 MR. REPKA: And that issue is
20 effectively addressed through the SAMA by looking
21 at the possibility of a third diesel generator.
22 If you wanted to create an additional source of
23 on-site power, and you're looking at two
24 alternatives; one is an underground line from the
25 dams that may come a significant distance, or a

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1 third diesel generator on site, you know, there's
2 no doubt which would be lower cost and therefore
3 in a SAMA analysis, the third diesel generator is
4 the alternative you're going to look at.

5 JUDGE RUBENSTEIN: The third diesel
6 generator would be available to both units?

7 MR. REPKA: That would be the idea.

8 JUDGE RUBENSTEIN: I just want to
9 clarify the record.

10 MR. FERNANDEZ: One clarification:
11 We're talking about two sets of diesel
12 generators, emergency diesel generators and
13 station blackout diesel generators. We're
14 talking about two sets of components here.

15 So the station blackout --

16 JUDGE RUBENSTEIN: I think you may
17 want to consult your staff.

18 MR. FERNANDEZ: I'm just repeating
19 what was just said to me.

20 As far as I understand in the station
21 blackout situation, you wouldn't have access to
22 your emergency diesel generators or off-site
23 power and be relying on blackout to diesel
24 generators.

25 JUDGE KELBER: A station blackout

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1 with a loss of off-site power risk a -- rather,
2 damage can occur if the emergency diesel
3 generator does not start. That's why the
4 reliability of emergency diesel generator is an
5 issue, and we understand from yesterday's
6 discussion that Duke has done considerable work
7 to improve the reliability of the diesel
8 generators at McGuire. Am I remembering
9 correctly what you said?

10 MR. REPKA: That's true.

11 JUDGE KELBER: And that's perhaps the
12 source of the confusion.

13 MR. FERNANDEZ: I keep being told --

14 JUDGE KELBER: Station blackout,
15 there's a danger in station blackout, the danger
16 -- the danger in station blackout occurs when the
17 emergency diesel generator or other source of
18 emergency power does not activate.

19 MR. FERNANDEZ: That is a true
20 statement, Your Honor.

21 JUDGE RUBENSTEIN: Just to clarify
22 the record, there are two emergency diesel
23 generators per unit, four per site, at Catawba
24 and McGuire?

25 MR. FERNANDEZ: Yes, Your Honor.

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1 MR. REPKA: That's true.

2 JUDGE RUBENSTEIN: They have a
3 compound reliability which is derived from the
4 individual reliability of start and I think the
5 Staff requires, regulations require a 95 percent
6 start capability?

7 MR. FERNANDEZ: Yes, Your Honor.

8 JUDGE RUBENSTEIN: And the units at
9 Catawba or McGuire have greater than that, do
10 they approach 99 percent? Just --

11 MR. FERNANDEZ: We don't have that
12 information available right now.

13 JUDGE RUBENSTEIN: It's not your
14 main -- I was just interested. Thank you.

15 MR. REPKA: Let me make one other
16 point about Oconee, to just make sure the record
17 is perfectly clear. The dedicated line from the
18 dam takes place of the diesel generators, but in
19 the station blackout event where you're assuming
20 loss of off-site power and the diesel generators,
21 in a station blackout for Oconee, you're assuming
22 the loss of the dam as well as the loss of
23 off-site power. So I just want to make sure that
24 that's reflected in the definition of station
25 blackout.

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1 JUDGE RUBENSTEIN: A loop would
2 encompass that.

3 MR. REPKA: Well, not for Oconee.

4 JUDGE RUBENSTEIN: Not generally,
5 okay.

6 MR. REPKA: Not generally but for
7 Oconee it would.

8 JUDGE YOUNG: If you lost the dam and
9 lost off-site power, maybe I'm missing something,
10 but where would the underground -- where would
11 the power through the underground line come from?

12 MR. REPKA: At Oconee, there would be
13 none, so that would be a station blackout, so
14 you're relying on your batteries and your coping
15 capability.

16 JUDGE YOUNG: Okay. Any final words
17 on this one?

18 MS. OLSON: Just that we fully
19 support the NRC's Staff identification of
20 restoration of off-site power as part of this
21 whole picture and the coping is defined in terms
22 of the restoration of off-site power. Clearly
23 there's a big discussion about whether a dam
24 would be on-site power or off-site power, we
25 won't pursue that, but we support the fact that

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1 this dialogue is happening and we may well find
2 ways to do it.

3 JUDGE RUBENSTEIN: Excuse me, I had
4 an ultimate and not pentlandite question, is the
5 restoration from the second unit tech spec?

6 MR. REPKA: There are no tech specs
7 on restoration.

8 JUDGE RUBENSTEIN: Just as sort of --
9 okay. I'll -- no remark.

10 MR. REPKA: You have assumptions in
11 your station blackout analysis and you have
12 station procedures designed to deal with
13 restoration.

14 JUDGE YOUNG: Anything further on
15 1.15? Okay. It's 25 to 12:00. We might be able
16 to fit in 1.13, for which we had scheduled a half
17 an hour, before lunch. Do you think we could
18 make that?

19 MR. FERNANDEZ: Yes, Your Honor.

20 JUDGE YOUNG: All right.

21 MS. OLSON: I'LL be ready in a
22 moment.

23 MR. FERNANDEZ: Are we taking a
24 break?

25 JUDGE YOUNG: I wasn't going to

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1 announce it, that way I figured it would be
2 shorter, but if you'll hurry up.

3 MS. OLSON: If that's the case, I'll
4 be very quick.

5 JUDGE YOUNG: Five-minute breaks have
6 a way of turning into 10- or 15-minute breaks,
7 though.

8 (Brief recess.)

9 JUDGE YOUNG: I think we're all back
10 in the room now, so if we could get started on
11 1.13.

12 MS. OLSON: In the spirit of
13 yesterday's exhibits, I did not offer this as a
14 further contention, just I can't help it, I'm an
15 educator.

16 (Off-the-record discussion).

17 JUDGE YOUNG: We've just been given a
18 document, and I guess what we can do with this
19 and also the one this morning, if you want, is
20 have them put in the record in the same manner as
21 we put the documents in the record yesterday,
22 just to show what was provided, not to indicate
23 any approval or admissibility of them.

24 So remind me and I'll give them to you at
25 the break.

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1 Okay.

2 MS. OLSON: Okay. I think I will
3 acknowledge not a problem with the regulation,
4 not an attack on them, but a little bit of a
5 puzzlement because 10 CFR 54.13 B talks about the
6 applicant notifying the Commission about
7 information that is significant and significant
8 in terms of health, safety, common defense, I
9 think that's the language or close to it. But it
10 doesn't really say what the NRC has to do about
11 it once they get this information.

12 And I'm not entirely sure that we can
13 call full page ads in major publications
14 notification; however, I think that Duke's
15 participation in Nuclear Energy Institute, and
16 its admission in their membership, certainly
17 attests to the fact that we agree that climate
18 change is an issue in the world.

19 I think also the regulations in both part
20 54 and part 51 talk about the period of extended
21 operation. And just for a moment, I want to beg
22 your forgiveness, I am a biologist and I will
23 tell you right now that you cannot only be an
24 engineer and talk about these issues. The period
25 of extended operation is a discrete period of

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1 time in the future. It is not the far distant
2 future, we're not arguing up the mountain here,
3 we're talking about something in the next couple
4 of decades. We may not assume that we know
5 nothing about that time and that the changes that
6 may occur in that time are not relevant to the
7 questions of aging and the environmental impacts
8 of extended operation.

9 So I concede that the regulations do not
10 require explicitly this licensee to bring this
11 and I concede that this is likely a generic
12 concern, although it will have site-specific
13 consequences when and if it is defined.

14 So I'm basically arguing, I guess, that
15 somebody should ought to have done this rule
16 making already, I guess that's what this argument
17 comes down to. I want to reference Duke Energy's
18 response to us on this that we did not disagree
19 with them about nuclear power being the answer to
20 climate change, we certainly do not agree with
21 them, but we certainly did not take this to be
22 the venue to argue remedy. We're arguing impact.

23 And to this effect, I brought you this
24 document that came out since these contentions
25 were filed by the other NRC, the National

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1 Research Counsel, and it may be fodder for a
2 future consideration of climate change, licensing
3 and license extension in part because it brings
4 forward new treatment of these questions.
5 Previously it's been assumed that there would be
6 gradual change in response to accretion of carbon
7 in the atmosphere, and this report references the
8 fact that there are threshold phenomenon in
9 abrupt climate change, there is a history of
10 abrupt climate change and there is study an
11 should be study of it.

12 So I'm basically bringing this forward as
13 a concern that came into focus for me as I
14 addressed license renewal and Duke's license
15 renewal in particular. I guess I understand that
16 the arena for which it probably most specifically
17 resides is rule making, but I also believe that
18 under the license renewal process, there is this
19 requirement that the licensee bring information,
20 there is no requirement of NRC as to what they
21 are to do with it, but it certainly puts a huge
22 burden on public interest organizations to have
23 to be the ones to say, you know, to invest all of
24 this information. And I think it should be --
25 should become a process at whatever level.

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1 JUDGE YOUNG: Let me interrupt you
2 for a second. Correct me if I'm wrong, but
3 Mr. Repka, I think that a little while ago you
4 said that your SAMA took into account hurricanes
5 and tornados, one of your mitigation
6 alternatives?

7 MR. REPKA: What we said was that the
8 containment of structures are designed to deal
9 with external weather events and including
10 tornado generated missiles, and that the concept
11 of Samos related to containment structure based
12 upon external events like severe weather and
13 tornado missiles was evaluated in the SAMA arena.

14 JUDGE YOUNG: The reason I asked that
15 question was because, I guess, is there a place
16 in your application where you mention that
17 specifically? And the reason I'm asking that is
18 because the specificity issue with your
19 contention in terms of what part of the
20 application is relevant and what you're --

21 MS. OLSON: It would be the severe
22 weather portion, however, in Duke's reply we
23 found out for the first time that they used data
24 supplied by the Nuclear Regulatory Commission in
25 their analysis. We did not know that. So that,

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1 without further time for investigation, since the
2 replies came in, would say to me that it is
3 something that is beyond the scope of the
4 licensee in a more generic thing. But at the
5 time I wrote this contention, I did not know that
6 the NRC supplies --

7 JUDGE RUBENSTEIN: And further,
8 you're talking about environmental impacts?

9 MS. OLSON: Yes.

10 JUDGE RUBENSTEIN: Exclusively?

11 MS. OLSON: No, I'm talking about
12 both severe weather as it should be analyzed --

13 JUDGE RUBENSTEIN: Not severe
14 weather; climate change.

15 MS. OLSON: And increasing severe
16 weather.

17 JUDGE YOUNG: She said both.

18 JUDGE RUBENSTEIN: Okay.

19 MR. REPKA: Let me try to address
20 Judge Young's question about what is in the SAMA
21 analysis. There is a discussion, and I'm looking
22 at the McGuire, I see there's a parallel for
23 Catawba. Page 5, that's attachment K, it talks
24 about the various -- this is in summarizing the
25 various probabilistic risk based inputs that have

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1 been done for McGuire and are input into the SAMA
2 analysis.

3 There's a discussion of the McGuire
4 IPEEE, which is the Individual Plant Examination
5 of External Events, for severe accidents that was
6 previously submitted to the NRC. And in just a
7 summary there, it doesn't get into the detail
8 here, but the summary, the IPEEE process in
9 supporting McGuire PRA include a comprehensive
10 systematic examination of severe accident
11 potential resulting from external initiating
12 events. And then goes on and says that the IPEEE
13 identified the severe accident sequences,
14 sequences of significance resulting the external
15 initiating events with quantitative respectives
16 on their likelihood, and then the idea as it goes
17 on to say those particular insights were used to
18 identify the set of Samos included on the tables
19 in this report.

20 Beyond that, I -- and I don't know if
21 it's time for my statement or not, but I'm a
22 little confused because we read NIRS 1.1.3 as a
23 part 54 issue, which is the effect of severe
24 weather on -- as an aging issue, whereas we read
25 contention 1.2.2 as the part 51 severe accident

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1 SAMA type issues, but that particular contention
2 we understood to be dropped. So with respect to
3 this issue, we construed it as an attempt to be
4 an aging issue.

5 JUDGE YOUNG: The reason I asked
6 that, really, was to lead to a question to
7 Ms. Olson, and that is if the application
8 addresses a subject area that you're challenging,
9 there's something about that subject area that
10 you believe to be significant enough to raise a
11 challenge in a contention, then the contention
12 rules require you to point to that part of the
13 application. And I think one of the problems
14 that I think you need to address here is the lack
15 of a specific reference in the contention to a
16 part of the application. And I just asked
17 Mr. Repka because I had a recollection that he
18 had mentioned some of the same types of things
19 that we're raising in contention 1.1.3.

20 And some of what you're saying seems to
21 indicate to me that you're not pushing this very
22 hard at this point.

23 MS. OLSON: Well, it's hard for me to
24 argue that it is specific to Duke, for one thing,
25 that's hard for me to argue, and then when I --

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1 this contention ties it to station blackout and
2 coping and issues around that, and that's where
3 I'm saying in the reply that I received it says
4 that they use information supplied by NRC,
5 suggests to me that the problem's higher up the
6 pipeline in terms of how and when will this issue
7 become part of question of renewal. And so, you
8 know, is it a question in this case or is it how
9 do we -- how do we insert it into the question of
10 renewal. I believe it is a renewal question, it
11 does pertain specifically to the period of
12 extended operation. I also understand that
13 there's nothing telling me what the NRC has to do
14 about it.

15 JUDGE KELBER: Have you reviewed
16 Duke's footnote 66, which describes in detail --

17 MS. OLSON: In what?

18 JUDGE KELBER: In their reply to you,
19 in their response. You're supposed to be
20 replying at this point to their response, and I
21 think this footnote 66 sets out in some detail
22 where they get their weather data for their --
23 for, for example, their station blackout.

24 MS. OLSON: Yes, and that's what I
25 was referencing, this footnote, when I said -- it

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1 says here was provided by the NRC, so I am --
2 that footnote suggests to me that therefore the
3 issue is at a higher level than this particular
4 applicant.

5 JUDGE YOUNG: Okay. Let me just say
6 something and I want to hear quickly from Duke
7 and the Staff, but maybe it's worth just saying
8 on the record at this point, Mr. Riley is gone
9 but it seems to me that a lot of -- without
10 making any suggestion on how we're going to rule
11 on your individual contentions, it does seem to
12 me that a lot of your concerns are the type of
13 concerns that would be appropriate for rule
14 making petitions, which is one of the avenues
15 that the Commission specifically set out in
16 the -- I think it was in the Turkey Point case;
17 but in any event, I mentioned it at the beginning
18 of the proceeding that there are other avenues
19 and I probably should have mentioned rule making
20 petition, I think it's 28.02, section 28.02 --

21 JUDGE KELBER: Yes.

22 JUDGE YOUNG: -- when I was speaking
23 earlier about the security issues as well. So
24 Mr. Riley seemed to be somewhat perturbed by some
25 of the limitations that a proceeding like this

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1 necessarily entails, which is adjudicative as
2 opposed to legislative and rule making, and the
3 rule making route is the route that you might
4 want to go if you want to approach these issues
5 from a broader standpoint.

6 And so it needs to be clear that there
7 are other avenues for bringing a broader types of
8 issues and I think I hear you saying that this is
9 sort of a broader, one of those broader issues.

10 MS. OLSON: Yes, thank you.

11 JUDGE YOUNG: Any reply, further
12 reply, Mr. Repka?

13 MR. REPKA: I'm not sure one is
14 really warranted I think given the tenor of this
15 conversation, but I would just like to make the
16 point about 54.13 B, which is referenced here
17 about bringing new information to the Commission.
18 And that's a reporting requirement that applies
19 to new information that the applicant as
20 identified as having a significant implication
21 for public health and safety or common defenses
22 and security, and certainly Duke Energy does not
23 put climate change in that category.

24 With respect to the material handed out
25 this morning, the report from the National

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1 Academy of Sciences on the possibility of abrupt
2 climate change, just I want to read one sentence
3 from the fourth paragraph of that. This material
4 provided by NIRS states, there is no need for
5 undue alarm, however, about the possibility of
6 sudden climate change because societies have
7 learned to adapt to these changes over the course
8 of human history, said the committee that wrote
9 the report, end quote.

10 The point being that to the extent
11 climate change issues manifest themselves as real
12 issues, those would certainly be in a category of
13 issues that the Commission I'm sure would address
14 through the normal ongoing regulatory processes.

15 Apart from that, there certainly has been
16 no link made in the contentions or today to any
17 specific aging issue in the scope of license
18 renewal.

19 JUDGE KELBER: A somewhat similar
20 contention did arise in Turkey Point with respect
21 to hurricanes of increased strength, although
22 this last year all the hurricanes have missed the
23 East Coast completely.

24 Is there any evidence for a storm surge
25 under hurricane conditions in either of the

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1 lakes?

2 MR. REPKA: We don't have a ready
3 answer for that. Perhaps we could think about it
4 over lunch and come back.

5 JUDGE KELBER: That's fine by me.

6 MS. OLSON: I'm sorry, did I miss a
7 question?

8 JUDGE YOUNG: Do you want to repeat
9 your question for her?

10 JUDGE KELBER: Is there any potential
11 for a storm surge in a hurricane which travels
12 along the Eastern Coast of the United States in
13 either of the lakes, Lake Norman, what is the
14 other one, Lake --

15 MR. REPKA: Lake Wiley.

16 JUDGE KELBER: I think a storm surge
17 in Lake Norman would empty it.

18 MR. REPKA: We'll get back to you on
19 that.

20 JUDGE KELBER: Thank you.

21 MS. OLSON: I would like just one
22 final comment, that I agree entirely with the
23 sentence that Mr. Repka read about no need for
24 alarm and the adaptation of society. I'm simply
25 saying this is -- we have a potential need for

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1 adaptation and we need to evaluate it. That's
2 the purpose of my bringing this argument today.
3 We are part of that adaptive response.

4 JUDGE YOUNG: If there's nothing --
5 did I ask the Staff if you had anything further
6 to say?

7 MR. FERNANDEZ: We have nothing to
8 add, Your Honor.

9 JUDGE YOUNG: Then we'll come back
10 after lunch and if Mr. Repka has anything to add
11 on that, we can take that up, and then it looks
12 to me as though all we have left after lunch will
13 be contentions 1.1.8, 1.2.4, and 3.1.

14 MS. OLSON: I've lost the my list.
15 Here we go.

16 JUDGE YOUNG: If I'm incorrect --

17 MS. OLSON: I have 1.1.8, 3.1, and
18 what am I missing?

19 JUDGE YOUNG: 1.2.4.

20 MS. OLSON: Yes, 1.2.4, yes.

21 JUDGE YOUNG: All right. Very good.
22 Let's say 1:15, okay.

23 (Lunch recess)

24 JUDGE YOUNG: Okay, I think Ms. Olson, on
25 1.1.8, you probably need to address primarily the

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1 contention rule factors.

2 MS. OLSON: And indeed because of
3 that, I'm withdrawing it, but I wanted to do so
4 with a moment to comment. We have come to this
5 proceeding against all of our previous
6 assessments of license renewal, which in our view
7 has been foreclosed in terms of meaningful impact
8 by an organization such as ours. However, as I
9 told you before, the intersection between
10 plutonium fuel and license renewal is such that
11 we engaged this process and offered our
12 contention, I'm withdrawing this item, but as a
13 testimony of the fact that the rules are designed
14 to ensure that continued operation is the primary
15 factor at the exclusion of nearly every other
16 factor.

17 So I withdraw the contention, but it is
18 our protest to the current renewal rule that we
19 wrote in.

20 JUDGE YOUNG: Okay. And again the
21 2802 Proceedings is something that's only open --

22 MS. OLSON: I was not aware of the
23 waiver opportunity and perhaps in the future that
24 will be entertained more seriously.

25 JUDGE YOUNG: All right, then that

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1 takes us to 1.2.4.

2 MR. REPKA: Would you like for me to
3 answer Judge Kelber's question before we do that?

4 JUDGE YOUNG: Pardon me, thank you
5 for reminding me. We are back on 1.1.3, you had
6 a --

7 JUDGE KELBER: Storm surges.

8 MR. REPKA: And that was related to
9 1.1.5, and the question was whether there had
10 been any analysis of storm surges, and the answer
11 is yes, the maximum surges and seiche flooding,
12 seiche is S-E-I-C-H-E, flooding have been
13 addressed as part of the licensing basis of the
14 plant, a seiche is an equivalent of a tidal wave
15 of a lake, and the essence of those analyses show
16 that with the volumes of water in Lake Wiley and
17 Lake Norman, and the maximum probable wind
18 velocities of a hurricane the plant design would
19 not be overwhelmed from a flooding perspective.

20 JUDGE KELBER: Thank you.

21 JUDGE YOUNG: Were there any comments
22 from -- either from the Staff or Ms. Olson with
23 regard to that?

24 MS. OLSON: Only to remind us that the
25 mammoths that were found encased in ice had small

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1 mammals in their stomach that had green grass in
2 their stomach, sudden and abrupt climate events
3 may or may not be foreseen in the current
4 calculations.

5 JUDGE YOUNG: All right. 1.2.4.

6 MS. OLSON: And I want to perhaps
7 anticipate your question of what I would like the
8 Board to do with regard to this, and say that I
9 think this is something that should be certified
10 by the Board as a question or an issue rather to
11 the Commission. I don't need to reopen all of
12 our conversation of yesterday, but there is a
13 point in this contention that is not addressed in
14 yesterday's pleading. On direct question within
15 the last year, I can't provide the date right now
16 but I could, Chairman Measer answered when asked
17 whether a MOX use license amendment would result
18 in a full-scale environmental impact statement in
19 the negative, and in his view it would not. And
20 I'm not saying that that's a final decision but
21 it's an indication that it's not clear whether a
22 MOX use license would trigger NEIS.

23 And therefore we have a concern about
24 when or whether the environmental impacts to the
25 renewal period given plutonium fuel if it is used

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1 in these reactors would ever be evaluated, and in
2 that regard it's particularly the assumptions in
3 the generic environmental impact statement on
4 license renewal that assume low enriched uranium
5 use in light water reactors that does not
6 consider plutonium use in light water reactors
7 for the assumptions in that GEIS.

8 And I'm not going to labor us with lots
9 of examples but one, actually two in particular,
10 one is 100 year off-site radiological impacts
11 that the GEIS, you know, is a category one issue
12 in this proceeding. We believe that those would
13 have to be reevaluated. This is just giving you
14 two examples, it's not an exhaustive list of what
15 would have to be evaluated. Because you look at
16 the light water reactor and look at the mining
17 and the milling and all of the operations
18 associated with the fuel production and all of
19 that to come up with the conclusion that there
20 would be 12 latent cancers per 20 years of
21 reactor operation, and that's what is reported.

22 But in this case we have plutonium that
23 is derived from nuclear weapons but was
24 previously processed to make those weapons and
25 was previously produced in reactors and there is

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1 a whole different chain of events. And so that
2 calculation is not reflective of that chain of
3 events.

4 JUDGE KELBER: Excuse me, does the
5 Department of Energy's surplus plutonium
6 disposition environmental impact statement,
7 SPDEIS, cover much of the territory you are
8 referring to.

9 MS. OLSON: No, and I regret that I
10 did not last night review it again, so I'm a
11 little bit slow in being able to address that for
12 page numbers and all that kind of thing, but I
13 can tell you that we were very unhappy during
14 that process in terms of not only what was and
15 was not evaluated but also the willingness of the
16 department to include the affected communities.
17 There was not a single meeting or effort to
18 include the reactor communities in any --

19 JUDGE KELBER: Well, okay, I just
20 wanted to know in general.

21 MS. OLSON: I just wanted to finish
22 my second point and then I will be done. The
23 second point dates back to the announcement of
24 the surplus plutonium field program and MOX as
25 one of the alternatives in '97 by Secretary

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1 O'Leary, there was a public press conference only
2 two or three questions were taken, one was my
3 question about what impact plutonium fuel use
4 would have on the so called low level waste
5 stream, and at that point the word (inaudible) --

6 JUDGE YOUNG: The word what?

7 MS. OLSON: I was told by the
8 secretary that there would be NEPA processes to
9 address this, and this is one of the processes
10 that has not been addressed. And it's not clear
11 to me how it will ever be addressed if it's not
12 here and there is no assurance that there will
13 EIS on a MOX use amendment. So I'm just closing
14 up by saying that that is the question, when and
15 whether these impacts would be analyzed.

16 JUDGE YOUNG: Mr. Repka.

17 MR. REPKA: In yesterday's discussion
18 of the MOX contention related to safety effects
19 of MOX fuel use, I think we covered much of the
20 same ground that's raised by this contention
21 related to the environmental effects of the MOX
22 fuel use, and our position is the same with
23 respect to the environmental impacts as with
24 respect to the safety impacts. The environmental
25 issues will be evaluated in conjunction with any

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1 license amendment application for Catawba and
2 McGuire that would actually authorize the use of
3 MOX fuel, whether in a lead test assembly form or
4 a batch assembly in batch assembly amounts. That
5 does not mean that there will be an environmental
6 impact statement with respect to either of those
7 amendments but certainly there would an
8 environmental review conducted in accordance with
9 the NRC's regulations in part 51.

10 That environmental review would look at
11 the environmental impacts of using MOX fuel at
12 McGuire and Catawba for whatever period of time
13 MOX fuel use is contemplated, and whether that's
14 in the current license term or the renewed
15 license term. So from an environmental
16 prospective just like from a safety perspective,
17 nothing will escape environmental review.

18 With respect to Judge Kelber's question
19 related to the DOE, environmental impact
20 statements on the MOX fuel use program, that
21 environmental impact statement does include among
22 other things the actual use of MOX fuel. So that
23 environmental review work has been done and is
24 ongoing as represented in that environmental
25 impact statement. That may form part of the

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1 environmental review with respect to any license
2 amendments at McGuire and Catawba, it may not.
3 The point is, they will be reviewed appropriately
4 at that time right time.

5 With respect to the issue of does this
6 somehow need to be evaluated under NEPA at this
7 time, I think that's a question that has been
8 raised to the Commission in BREDL's petition to
9 suspend the petition. We responded in that
10 context. In our view nothing in NEPA requires
11 that the projects be defined together. In fact,
12 the current posture of the MOX program with
13 respect to the use at Catawba and McGuire suggest
14 quite the contrary, that there is no reason to
15 link these two projects at the present time, but
16 the two projects license renewal and MOX fuel use
17 are clearly independent of each other, they have
18 separate and independent utility.

19 With a license renewal, we can operate
20 the plant for a 60 year term under a renewed
21 operating license without ever using MOX fuel,
22 and that's why we are pursuing the license
23 renewal application separately. So just the sum
24 up, there is no requirement in NEPA, just as
25 there is no requirement in part 54 to address MOX

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1 fuel use issues at this time in this present
2 context.

3 JUDGE YOUNG: Is there any difference
4 in the level or extent of the environmental
5 assessment that would be done in the EIS and in
6 what you were describing with regard to the
7 license amendment proceeding?

8 MR. REPKA: With respect to what Duke
9 Energy does there is no difference.
10 Environmental review, we would conduct -- of MOX
11 fuel use would be the same reflected in an
12 environmental report. When it's submitted to the
13 NRC, it's subject to the hearing. Whether the
14 NRC captures the results of that in an
15 environmental assessment in a finding of no
16 significant impact or requiring a full
17 environmental impact statement is a decision they
18 will make consistent with the rules in part 51,
19 but that would not change the fact that whatever
20 form that might take that would not change the
21 fact that the environmental review conducted by
22 Duke Energy would be submitted as an
23 environmental report and be subject to any
24 required NRC hearing process.

25 JUDGE YOUNG: So you are saying there

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1 would not be any difference in what you would
2 supply. Is there any difference in what the NRC
3 would do in this proceeding as opposed to a
4 license amendment proceeding? And maybe Ms.
5 Uttal is a better person to ask.

6 MR. REPKA: Perhaps. Certainly with
7 respect to what we do there is no difference in
8 either form or content. With respect to what the
9 NRC does, I would let the NRC speak for
10 themselves on that issue. Certainly, in the
11 context of license renewal, it would be captured
12 within the confines of a supplemental
13 environmental impact statement. What form it
14 might take with respect to a batch assembly, I
15 don't want the prejudice. But the fact of matter
16 is they would have to make the same kinds of
17 conclusions and assessments regardless of what
18 the ultimate form is.

19 JUDGE YOUNG: Ms. Uttal.

20 MR. FERNANDEZ: Just to add on what
21 Judge Young asked, as far as would there be a
22 difference between both types of reviews, and it
23 would be different to the extent that there is no
24 prior programmatic environmental impact statement
25 prepared for that license, for example. So the

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1 guide is not specifically involved in that case
2 but although it maybe used some findings in that
3 guide may be used during the process of preparing
4 the environmental review for the license
5 amendment with regard to MOX.

6 I would like to refer the Board to
7 section 5120 and 5121 which established the
8 criteria that the Staff looks to in making its
9 determinations with regard to whether an action
10 is significant enough to require an EA or an EIS.

11 The Staff of course doesn't have all of
12 the information right now with regard to
13 irradiation of MOX fuel at these facilities or
14 any other facilities, so until we don't have all
15 of that information, we won't be able to
16 determine what type of document will be generated
17 by that environmental review.

18 And in that vein I would like to address
19 any statements that the chairman may have made, I
20 mean given that I don't know what context they
21 were made in, or what the source of those
22 statements were, we can't comment on them, only
23 as far as to say that the agency has not
24 prejudged this issue and we will conduct a full
25 environmental review at the time it becomes a

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1 proposal under part 51 of the NEPA juris
2 prudence.

3 JUDGE YOUNG: Anything further?

4 MR. FERNANDEZ: No, Your Honor.

5 MS. OLSON: Yeah. On rough
6 calculation it seems possible that if all of the
7 processes, and I know this is just making an
8 example, but if all of the processes go forward
9 that possibly 30 out of the 40 years, maybe even
10 a little more, of this renewal period could be
11 plutonium fuel instead of low enriched uranium.
12 So I guess I'm still puzzled over how license
13 renewal as it is being pursued right now, you
14 know, I guess the question comes are the renewal
15 issues foreclosed in that case? Yesterday we
16 were worried that MOX pertaining issues might be
17 foreclosed and now the question is, are the
18 environment impacts of renewal foreclosed by
19 making the decision based on LEU and then in fact
20 pursuing plutonium.

21 And I guess the other thing that is not
22 clear to me is that -- I'm coming down with a
23 cold rather rapidly so I'm a little fuzzy right
24 now, but we are having an adjudicate to the
25 process under a particular part of the code, and

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1 it's not clear to me that the license amendment
2 is under the same part of the code. And so it's
3 not clear to me that in fact members of the
4 public who might bring these concerns have access
5 to the same processes. And may be that could be
6 clarified for me.

7 JUDGE KELBER: I think the Staff
8 should comment on what part would be applicable
9 to a license case. I would like to say the
10 decision as to how, the rule under which a
11 hearing is held is reserved to the Commission.
12 However, there are some general practices, and we
13 could ask the Staff attorneys to comment on what
14 they understand is the general practice with
15 respect to license amendment cases.

16 MS. UTTAL: License amendment cases
17 would be heard under subpart G.

18 JUDGE KELBER: Subpart G similar to
19 this one?

20 MS. UTTAL: Yes.

21 JUDGE YOUNG: My question, and thank
22 you, Mr. Fernandez, for pointing me to these two
23 sections, it does appear reading 5120 and 5121,
24 that a license amendment other than foreclosure
25 of a land disposal site, transfer of a license to

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1 the disposal site owner, or a termination of a
2 license would not require an EIS, would only
3 require environmental assessment, which I
4 understand to be a less extensive process.

5 MR. FERNANDEZ: Your Honor, if I
6 remember correctly, once the EA is done, the
7 printing of the impacts identified in the EA, the
8 Staff would go on with the EIA depending on the
9 severity of the impacts, let me double check
10 that, I think that's correct.

11 JUDGE YOUNG: But what I'm asking is,
12 looking at 5120, license amendment is not listed
13 whereas license issuance or renewal of the full
14 power or design capacity license to operate a
15 nuclear power reactor, etcetera, is listed.

16 MR. FERNANDEZ: I mean, I would refer
17 the Board to 5120 A1, and if the proposed
18 action --

19 JUDGE YOUNG: Okay, and I see what
20 you are saying, you are saying if it's determined
21 that it's significant enough then an
22 environmental impact statement would be done, but
23 the point is, you don't have to go through that
24 step in order for an environmental impact
25 statement to be done during a renewal proceeding.

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1 MR. FERNANDEZ: Because the
2 Commission determined that de facto that license
3 renewal was a major action and it had a
4 significant impact, so de facto they took that
5 consideration out of the proceeding.

6 JUDGE YOUNG: Right, and the point in
7 asking is Ms. Olson has raised the issue of what
8 might be foreclosed in a license amendment
9 proceeding as opposed to a license renewal
10 proceeding and it does look as though there is a
11 possibility that there would be no environmental
12 impact statement done.

13 MR. FERNANDEZ: There is that
14 possibility, it depends on the environmental
15 review and the information provided at that time.

16 JUDGE YOUNG: Right.

17 MR. REPKA: And I would add to that
18 what's driving the factors that there is an
19 environmental in this license renewal case is the
20 fact that it's a license renewal case, it's not
21 MOX issues that would drive the environmental
22 impact statements. So the fact that this
23 proceeding already involves an automatic EIS
24 really has nothing to do with MOX whatsoever, and
25 the fact of the matter is, to the extent that MOX

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1 has some environmental effects that are
2 significant enough to require an environmental
3 inspect statement of its own accord, that would
4 happen under the rules.

5 JUDGE YOUNG: I guess what Ms. Olson
6 has said has raised in my mind looking back to
7 the previous argument about what constitutes a
8 proposal, that was briefed by the Staff. And
9 that -- this may be something that might warrant
10 certification to the Commission because this does
11 appear to be a difference between the two
12 proceedings whereas everything else by Duke
13 stating that you know, you are not going to --
14 that you would not object to anything being
15 brought into the license amendment proceeding,
16 and presumably including this but that would not
17 necessarily follow that there would be an
18 environmental impact statement. This looks like
19 it's the only difference unless I'm missing
20 something.

21 MR. FERNANDEZ: Just to add something
22 to that Your Honor, the fact that an EIS may not
23 be conducted, it may -- the outcome of the
24 environmental review maybe an environmental
25 assessment and finding of no significant impact,

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1 I mean, that still is afforded the same review
2 within the licensing board proceeding. I mean,
3 the petitioner would still be able to challenge
4 the environmental analysis proposed by the
5 applicant pursuant to that type of review. They
6 would -- regardless of what type of document the
7 Staff would end up preparing, the petitioner's
8 rights to challenge the information submitted by
9 the applicant is not limited. So I don't
10 think --

11 JUDGE YOUNG: It would be automatic
12 in one case, they would have the right to argue
13 in the other.

14 MR. FERNANDEZ: I didn't understand
15 that.

16 JUDGE YOUNG: In the license renewal
17 proceeding there would be an EIS. In the license
18 amendment proceeding if the Staff determined not
19 to do an EIS, a petitioner could challenge that
20 in a hearing. Isn't that what you are saying?

21 MR. FERNANDEZ: If I remember
22 correctly they cannot challenge the environmental
23 document prepared by the Staff, initially what
24 they challenge is the information submitted by
25 the applicant as for its sufficiency or --

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1 JUDGE YOUNG: But what you were
2 saying was that in that license amendment
3 proceeding if it was determined that there was no
4 need to do an EIS, the petitioner could challenge
5 that is the proceeding, correct? Isn't that what
6 you just said?

7 MR. FERNANDEZ: No, I mean, it's the
8 same as this proceeding. What the petitioner is
9 challenging is not the Staff's -- combination of
10 the Staff's review of the environmental
11 information. What the petitioner is allowed to
12 challenge is the information submitted by the
13 applicant --

14 JUDGE RUBENSTEIN: In his
15 environmental report?

16 MR. FERNANDEZ: In his environmental
17 report, whether it's sufficient or complete or
18 inaccurate, which they would have the same
19 opportunity to --

20 JUDGE YOUNG: But let's get back to
21 the EIS because that's what I thought you were
22 talking about, because that's what I was talking
23 about before. And my understanding -- the issue
24 that's been raised by Ms. Olson is EIS, and the
25 EIS will be done in a license renewal proceeding,

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1 if I understand this rule correctly. In a
2 license amendment proceeding an EIS will be done
3 if the Staff determines that the actions in a
4 major federal action is significantly affecting
5 the human environment. If the Staff determines
6 that it is not a major federal action an EIS will
7 not be done.

8 I thought what were saying before is that
9 the determination could be challenged by a
10 petitioner at a license renewal proceeding.

11 MR. FERNANDEZ: Let me confer for
12 just one second.

13 (Attorney/Client discussion.)

14 MR. FERNANDEZ: Your Honor, I don't
15 know with certainty the answer to your question,
16 I'm inclined to say --

17 JUDGE YOUNG: Well, all I was asking
18 was what you said before.

19 MR. FERNANDEZ: What I said before is
20 that they could challenges here, just as here
21 they have challenged the ER, they have the same
22 right to do that.

23 JUDGE YOUNG: And to get back to the
24 issue, which we were trying to narrow down and
25 which is raised by Ms. Olson is, there does

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1 appear to be a difference between the right, if
2 you will, the fact that an EIS will be done in a
3 license renewal proceeding and it will not
4 necessarily be done in a license amendment
5 proceeding unless the Staff determines that it's
6 a major federal action etcetera.

7 MR. FERNANDEZ: That is the
8 difference but the hearing rights are not.

9 JUDGE YOUNG: We are not talking
10 about anything other than the difference, we are
11 trying to narrow it down to the one little
12 difference here, everyone on track there?

13 MR. FERNANDEZ: Yes.

14 JUDGE YOUNG: And that's the issue I
15 was trying to get you to concentrate on. Now,
16 earlier, Ms. Olson asked about which things would
17 be foreclosed, and I think Duke agreed that from
18 their standpoint, they would not make any
19 objections such that anything in the license
20 amendment proceeding would be foreclosed,
21 however, the EIS issue is outside the control of
22 Duke. It's in the control of the NRC Staff. So
23 this may be in fact the type of issue that would
24 be appropriate to certify to the Commission
25 especially in view of as I read the Staff's brief

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1 on the earlier MOX, or the Staff's response on
2 earlier MOX issue. I believe whichever one of
3 you wrote that, more or less conceded that the
4 issue of what constitutes a proposal is not
5 totally crystal clear. There is a bit of
6 ambiguity there.

7 And you take into account the Commissions
8 own reference to a tangible plan in the footnote
9 in the Turkey Point case, it appears that there
10 is a difference. It appears that it might be
11 appropriate to certify to the Commission, so I'm
12 saying this to give all of you an opportunity to
13 state whatever you would like to state about it.

14 MS. OLSON: I just want to take one
15 thing that I haven't opened this document but the
16 transcript could clarify, yesterday afternoon
17 when you were talking about we were on the 1.1.1,
18 and you were talking about the possibility if
19 there were concurrent proceedings, a more
20 efficient approach by combining them or
21 late-filed contentions or whatever, and at that
22 point, somebody and I regret to say I don't know
23 who, but either Staff or Duke said that they
24 would be under different parts.

25 So that was the basis for my question

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1 this afternoon about whether they were in fact
2 under the same part of the code, and I just want
3 that clarified because it's the kind of thing
4 that you know, comes up again and again yesterday
5 and today, as to what rules are we supposed to be
6 following.

7 JUDGE YOUNG: Ms. Uttal said that the
8 license amendment proceeding would be under
9 subpart G. Of course, the new rules are not out
10 yet but I guess I'm asking you to address, you
11 raise the issue of the EIS, and it does appear
12 that there is a difference based on what Mr.
13 Fernandez lead us to in pointing to section --

14 MS. OLSON: And my answer to you is
15 yes, I would like the Board to certify that
16 question to the Commission.

17 JUDGE YOUNG: Is there any objection
18 or any reason why that should not be done from
19 Duke and the Staff.

20 MR. REPKA: First with respect to the
21 difference, the distinction that's been drawn
22 with respect to the rules on the environmental
23 impact statement, I think with respect to the
24 hearing process, it's a distinction without a
25 difference for the reasons we have already

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1 discussed --

2 JUDGE YOUNG: Let me stop you there
3 so I can understand. You are saying it's a
4 distinction without a difference because in the
5 hearing process everything in the environmental
6 report can be challenged?

7 MR. REPKA: That is correct, and the
8 relief that could be requested would be that an
9 environmental impact statement is necessary.

10 JUDGE YOUNG: That's what I thought I
11 heard Mr. Fernandez say before, and when I asked
12 him the second time he said that's not what he
13 said.

14 MR. REPKA: Maybe he doesn't agree
15 with me, I don't know. From our standpoint,
16 there is a distinction really without a
17 meaningful difference in terms of the public
18 process.

19 JUDGE YOUNG: But you would agree
20 that the difference would be that in a renewal
21 proceeding EIS would be an automatic thing. In
22 the amendment proceeding it would not be
23 automatic.

24 MR. REPKA: That's true, driven in
25 the renewal proceeding by the fact that this is

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1 license renewal. In MOX or in any amendment case
2 it would be driven by what are the environmental
3 consequences of the proposed action.

4 Now, with respect to the certification
5 question, my answer to that would be the same as
6 it was yesterday, I think, with respect to the
7 same issue on the safety side, or maybe I'm
8 getting my contentions mixed up, but the issue is
9 effectively already before the Commission in
10 connection with the BREDL petition to suspend.
11 In that context we took a position, we urged the
12 Commission to exercise its inherent supervisory
13 authority, so certainly we would not object to
14 this board putting the issue there as well.

15 However, we do think that MOX is outside
16 the scope of license renewal, and for the reasons
17 we have stated here today and in our papers and
18 in our response to the BREDL motion to suspend we
19 would ask the Board to issue a decision that says
20 that the MOX fuel issues are not in scope.

21 JUDGE YOUNG: Okay. What about the
22 Staff.

23 MR. FERNANDEZ: The Staff's position
24 is that the contention is beyond the scope of the
25 proceeding, and the Board should just rule on the

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1 contention and not certify an issue to the
2 Commission.

3 JUDGE YOUNG: And the basis for your
4 opposition to certifying it to the Commission
5 would be?

6 MR. FERNANDEZ: It's not a novel
7 issue, doesn't meet the criteria in the order
8 referring the case to the Board, and it really is
9 unnecessary to certify the issue to the
10 Commission.

11 JUDGE YOUNG: Let me repeat for you
12 the sort of analysis that Ms. Olson's statement
13 triggered in my mind. What it did was, her
14 statement combined with your reference to 5120,
15 lead me to observe that an EIS is automatic in
16 the license renewal proceeding, whereas it's not
17 in a license amendment proceeding. A large part
18 of the basis for the argument from the Staff that
19 the MOX issue is outside the scope has to do with
20 whether the potential future use of MOX in the
21 McGuire and Catawba plants constitutes a proposal
22 at this point.

23 And as I recall the Staff's argument on
24 that, in your response, I believe you indicated
25 that what constitutes a proposal is not

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1 completely crystal clear. Obviously, the MOX
2 issue is a new one to all of us, and whether this
3 would constitute a proposal would add some degree
4 of novelty to the issue such that it might
5 constitute the kind of thing that the Commission
6 would prefer to have certified to it.

7 That was how my analysis went triggered
8 by the combination of Ms. Olson's statement and
9 Mr. Fernandez's reference to 5120 and my
10 recollection of the Staff's argument on MOX with
11 regard to scope and proposal.

12 JUDGE KELBER: I would like to
13 explore before we close this.

14 JUDGE YOUNG: Did you want to respond
15 first --

16 MS. UTTAL: I just want to understand
17 what you are saying, you are saying that the
18 issue you want to refer up is whether MOX is a
19 proposal at this point?

20 JUDGE YOUNG: Well, at the risk of
21 repeating myself too many times, I think the
22 issue that's been raised is the right to an EIS,
23 and in a license amendment proceeding such that
24 everything that could be taken up here were MOX
25 to be found within the scope would not

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1 necessarily be taken up there. And that would
2 hinge to some degree on whether it would
3 constitute a proposal. The impact is in the
4 automatic right to an EIS, which is the issue
5 that Ms. Olson raised.

6 MS. UTTAL: I don't know if it's a
7 right that inures to the intervenors, the right
8 to an EIS.

9 JUDGE YOUNG: Well, I mean the
10 automatic nature of it whether you call it right
11 or not, the fact that it will happen.

12 MR. FERNANDEZ: Just to respond to
13 that real quickly, the question that we are
14 dealing with it would seem to me that arguably
15 it's not ripe for review by the Commission right
16 now, because there is really no licensing
17 amendment that they could look at -- they would
18 be engaging in solving a hypothetical, I mean,
19 whether this licensing amendment came, what would
20 happen, it seems very confusing.

21 JUDGE KELBER: I would like to
22 explore a little bit Mr. Repka's remarks on a
23 distinction without a difference. Because as I
24 have learned in the ongoing case on the MOX fuel
25 fabrication facility, according to the rules, the

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1 environmental reports are tiered. For those of
2 you who have never used tier as a verb before, it
3 means that they are arranged in layers and at the
4 bottom of this layer would be DOE SPDEIS, I
5 assume that coming after that would be the EIS
6 that the Staff will prepare, for the MOX fuel
7 fabrication facility.

8 An EIS if it were required for the use of
9 MOX fuel in the -- under a license amendment,
10 there would be a third tier, and I'm wondering
11 whether that third tier in your professional
12 opinion would be markedly different from what you
13 will find in an environmental review.

14 MR. REPKA: I think what I was
15 getting at between the distinction is certainly
16 the ultimate form of the Staff's and the NRC
17 environmental review of an amendment related to
18 the use of MOX fuel may differ as between if it
19 comes out in connection with a license amendment
20 application versus if it's covered within somehow
21 the supplemental EIS with respect to license
22 renewal, the form will clearly be different.
23 However, in terms of the issues that would be
24 reviewed, our point is that they would be the
25 same, those issues would have to be reviewed

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1 related to use of MOX fuel regardless of the
2 form. And so the review would be the same.

3 And in terms of public process, that
4 process would be the same, public hearing process
5 absent intervening changes in the hearing
6 procedures.

7 JUDGE YOUNG: May be I'm missing
8 something, what is the difference between an EIS
9 and what you just described in terms of the
10 extent or breadth of what is analyzed in an EIS
11 as opposed to environmental assessment.

12 MR. REPKA: I think in either case
13 you are looking at the environmental impacts of
14 the project. In the case of environmental impact
15 statement you are assuming it's a major federal
16 action. In the case of an environmental
17 assessment, you are not assuming up front that
18 it's a major federal action in terms of your
19 presumption of the environmental impacts.

20 JUDGE YOUNG: I guess I'm getting
21 confused because now I hear you saying there is
22 no difference between the two so why do we have
23 two different categories.

24 MR. REPKA: No, what I'm saying there
25 is no difference in terms of the review of the

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1 environmental issues, in either case you are
2 going to review the environmental impacts
3 associated with the project. Now, what those
4 actions that are automatically in the
5 environmental impact statement category are there
6 because they are presumed to be major federal
7 actions.

8 But those things such as an amendment to
9 use lead test assemblies of MOX fuel at the
10 Catawba and McGuire reactors, you would not
11 presume up front that that is a major federal
12 action. You will conduct -- we will submit an
13 environmental report related to environmental
14 impacts of that project. The NRC Staff will
15 review it and determine whether they were
16 significant impacts or not. If there are
17 significant impacts consistent with I believe
18 it's 10 CR 50.30, that would dictate that this is
19 now considered a major federal action for there
20 will be an environmental impact statement.

21 JUDGE YOUNG: Which would be more
22 extensive to what they had done to that point?

23 MR. REPKA: I don't think the review
24 of the issues would necessarily be more
25 extensive. The process might change in terms of

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1 the governmental process and the meetings and
2 agencies that it's circulated, but I don't think
3 the fundamental scope of the environmental issues
4 to be addressed related to MOX fuel use would
5 change in any way.

6 JUDGE YOUNG: I understand what you
7 are saying about the scope of the issues, I guess
8 the differences in the processes and the
9 difference in the depth as opposed to breadth,
10 under which those same issues would be examined,
11 I would presumably differ on some level.

12 MR. REPKA: But if you were in an
13 environmental impact statement space by virtue of
14 the fact that you were coupling it with license
15 renewal for example, and there were no
16 significant environmental impacts associated with
17 use of MOX fuel. There would be no further depth
18 in the review of the MOX fuel issues. There
19 might be further depth in the environmental
20 impact statement related to license renewal
21 because of the license renewal issues. Again
22 that wouldn't be driven by the MOX fuel issue,
23 that would be driven by the fact that this is
24 license renewal, and that has certain review
25 elements.

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1 MS. OLSON: But here we come to the
2 nexus of these concerns, because the review under
3 license renewal would be substantially affected
4 if we were dealing with a MOX source term, if we
5 were dealing with MOX aging issues, the analysis
6 would be different, it wouldn't be the same. The
7 environmental analysis would be different if we
8 had a MOX proposal before us, believe me I would
9 not be representing the Clear Information
10 Resource Service. We would have a NEPA attorney
11 and a lot of experts because we are that
12 concerned and committed, so the fact that they
13 haven't filed it, put it to me to do.

14 But it still raises the concern that how
15 and when do these issues that overlap become
16 addressed at the level of detail that is
17 sufficient to answer the questions about both,
18 about renewal if you have long-term use of
19 plutonium during the renewal period and about MOX
20 in its unique cases. And you know, I don't have
21 the resources to be able to tell you chapter and
22 verse all of the places where those two questions
23 will overlap, but certainly if you go through all
24 of the ways in which MOX may impact current
25 license basis and tech specs and the whole

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1 schmere, you are going to find that those changes
2 in source term, those changes in neutron fluence
3 and the whole constellation of issues would
4 change this process.

5 And so we are just trying to be sure that
6 both halves are covered, and yesterday it was the
7 question of the ageing and today it's the
8 question of the environment and how does come in.
9 Everything that was just stated brings me to the
10 fact that there is certainly is a difference in a
11 NEPA resource, which is given to the public to
12 deal with by the applicant and by the NRC Staff.
13 The difference between EA and an EIS is huge, and
14 we should not be expected to provide --

15 JUDGE YOUNG: Between an EA and EIS.

16 MS. OLSON: Yes, environmental
17 assessment and environmental impact statement. I
18 mean, we can challenge, yes, but if
19 the determination is that it is not a major
20 federal action because it's only these two
21 reactors, I mean, I've been holding back but we
22 have years of sitting in the room with industry
23 people from many different utilities talking
24 about future plutonium fuel use with this as the
25 beginning. The MOX fuel factory where the

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1 Department of Energy says it's a limited program
2 for only 50 tons of surplus plutonium, and yet
3 when it comes to the Nuclear Regulatory
4 Commission to provide the documents to review the
5 license application, they do a standard review
6 plan that is generic for any plutonium fuel
7 factory anywhere.

8 So we are faced with a program that's
9 being billed as only very limited and narrow and
10 only Catawba and McGuire and yet the whole
11 industry is apparently at least to our ears
12 demonstrating this as a major precedent. So how
13 do we found out when a precedent becomes a major
14 federal action, and that's our concern.

15 JUDGE YOUNG: Which to me I guess,
16 and this may have gone on long enough, which to
17 me suggests, and obviously certifying something
18 to the Commission does not suggest a decision one
19 way or the other, and the Commission is perfectly
20 capable of making their own decision on whether
21 they will rule on a certified question, and if
22 they do decide to rule on it what their ruling
23 will be, but I guess I'm a little bit confused to
24 take your word again as to what the objection
25 would be to certifying this kind of question to

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1 the Commission, and I think Mr. Repka you said
2 that you had no real objection to doing that, and
3 the only objection that came was from the Staff.
4 So if you want to just help us put this one to
5 bed and explain again what is your objection to
6 certifying this question to the Commission?

7 MR. FERNANDEZ: Your Honor, there is
8 no novel issue of law here, there is no proposal
9 as the brief stated. There is no proposal before
10 the Commission. This issue is beyond the scope
11 of the proceeding, that is --

12 JUDGE YOUNG: That's your position on
13 it, and but -- that's your argument. Without
14 making a ruling on that argument, the question is
15 whether to certify that issue to the Commission.

16 JUDGE RUBENSTEIN: Perhaps I can
17 clarify the way I see it, it involves two steps,
18 one if we certify it to the Commission looking
19 for guidance on the prospective versus a
20 potential use of plutonium in the four plants in
21 question and they said yes, the schedule suggests
22 that it should be addressed, then the entry of
23 mixed oxide and guidance to adjudicate that would
24 be forthcoming.

25 MR. FERNANDEZ: We believe that

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1 license --

2 JUDGE RUBENSTEIN: Not in the scope
3 now, at least in the model discussion. And you
4 object to which step or both?

5 MR. FERNANDEZ: We object to
6 referring this routine legal issue that licensing
7 boards decide normal --

8 JUDGE YOUNG: Excuse me for a second,
9 are you saying that the MOX issue is a routine
10 issue.

11 MR. FERNANDEZ: Just saying that this
12 has to do with MOX doesn't make it not routine.
13 The true legal issue before the Board is whether
14 the MOX program is a current proposal and should
15 it be considered or not. Just saying the word
16 MOX doesn't make it novel.

17 JUDGE YOUNG: Well, but let me go
18 back.

19 JUDGE RUBENSTEIN: Excuse me, do you
20 object to what you just said that we certify to
21 get guidance on whether it is a current or
22 prospective program?

23 MR. FERNANDEZ: I believe that's
24 fully within the jurisdiction of the Board.

25 JUDGE RUBENSTEIN: Thank you. That's

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1 it.

2 JUDGE YOUNG: Well, let me just
3 finish what I was about to say, and that is
4 yesterday in the MOX proposal, after Duke made
5 its statement that it really was not going to
6 object to anything in the license amendment
7 proceeding that would foreclose the right of the
8 petitioners to raise any issues, anything in that
9 proceeding, I think at that point, what happened
10 was that we really sort of put this issue aside.
11 Because it did not seem to have at that point,
12 much if any impact because the petitioners were
13 assured of getting the same hearing at the stage
14 of license amendment.

15 Therefore we do not really get into any
16 argument on your -- we did not get into any
17 argument on your argument on what a proposal is,
18 and this suggests that possibly we should. Now
19 that's something that we can do certainly, it's
20 also something that we could certify to the
21 Commission since there is a parallel proceeding
22 in which the licensing amendment process has been
23 mentioned, we will talk about this, if any of you
24 want to say anything further on it, now is your
25 chance, and then we will be deliberating on it.

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1 JUDGE KELBER: I have one further
2 question, and this is directed to the Staff. I
3 am aware as I am sure you are that the NRC has
4 entered into certain international agreements
5 primarily using the Capri reactor to test
6 advanced fuels, including I believe MOX fuels.
7 Does that mean that this is a tangible plan? The
8 Commission is investing money in other words as
9 well as manpower, does that make this a tangible
10 plan?

11 MR. FERNANDEZ: All I can say Your
12 Honor is that right now our position is that it's
13 our proposal, situations such as the one you
14 mentioned have been addressed in other cases,
15 case law talks about --

16 JUDGE KELBER: Can you give us
17 citation.

18 MR. FERNANDEZ: If the agency is
19 engaging in research to support whatever, it
20 doesn't necessarily mean that the agency is
21 committed to that particular course of action.

22 JUDGE KELBER: I didn't ask if it was
23 committed to a course of action, because it could
24 easily deny a license amendment, but is it a
25 tangible plan?

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1 JUDGE YOUNG: These are things that
2 fortunately we have law clerks to help us with
3 when we go back to our office.

4 MR. FERNANDEZ: I would refer the
5 Board to the Sally (inaudible) Louisa Mothers for
6 Peace, NRC, 751 F2'd 1287 at 1301 as an example
7 of a case that refers to --

8 JUDGE KELBER: Could you state that
9 more slowly.

10 MR. FERNANDEZ: (Inaudible) mothers
11 for peace versus NRC, 751 F2'd 1287 at 1301.
12 That's one example of a case where just engaging
13 in the research wasn't good enough to trigger a
14 proposal.

15 JUDGE KELBER: Okay, thank you.

16 MR. MONIAK: Could we have that
17 particular citation included as an exhibit to
18 this so that we can obtain a copy of it and not
19 search for it. That was just cited and we have
20 no access to it.

21 JUDGE YOUNG: You can get that in any
22 law library.

23 MR. MONIAK: I'm 50 miles from any
24 law library.

25 JUDGE YOUNG: I mean, normally you

1 would not put a case in as an exhibit.

2 MS. OLSON: I will get it to you.

3 MR. MONIAK: I would be glad the
4 accept it electronically though.

5 MS. OLSON: I will undertake that.

6 MR. MONIAK: Could I raise one issue
7 about MOX given the fact that we have submitted
8 the petition or motion to the Commission?

9 JUDGE YOUNG: Go ahead.

10 MR. MONIAK: I would like to say in
11 terms of whether this is a proposal or not, there
12 is a distinction between the relicensing is a
13 proposal by a private organization. Plutonium
14 MOX fuel proposal is a major federal action, and
15 has been addressed as such generically by the
16 Department of Energy. There are different rules
17 for applying NEPA as to whether it's private or
18 federal. In all cases NEPA is supposed to be
19 applied early in the process. The act of
20 submitting a proposal is the latest point at
21 which NEPA is triggered. That is the point in
22 which something has to be done. There is no
23 requirements in NEPA that say that an agency
24 cannot begin scoping for NEPA at an earlier stage
25 in order to avoid duplication of effort,

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1 unnecessary delay, paperwork, conflict, as we
2 have here, and other things.

3 NEPA is not just -- the reason many of us
4 go to NEPA is because we can understand it. It's
5 one of those elegant laws that is articulate and
6 you don't see very often and it is -- you can
7 really get it.

8 JUDGE KELBER: That's why Mr. Moniak,
9 very often NEPA has been referred to as excellent
10 policy and terrible law.

11 MR. MONIAK: In its implementation,
12 but in bureaucracies it can be a terrible law.
13 However, this is a proposal for which the Nuclear
14 Regulatory Commission, it has plans to spend 3 to
15 4 million dollars in confirmatory research in the
16 next 3 to 4 years using government funds. And
17 this is a proposal in which the licensee is under
18 contract as part of a consortium to the federal
19 government to submit license amendments. They
20 are under contract to the federal government, and
21 I believe contracted with the federal government
22 is a strong enough phrase as it is.

23 JUDGE RUBENSTEIN: Is this merit
24 argument incorporated in your brief?

25 MR. MONIAK: I wanted to point these

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1 things out to say this is a proposal at this
2 point.

3 JUDGE KELBER: Judge Rubenstein asked
4 are these arguments cited in your brief to the
5 commission.

6 MR. MONIAK: Not in those terms
7 because I hadn't really thought of them in those
8 terms, but I'm going to submit an addition.

9 JUDGE KELBER: Thank you for your
10 contribution because I think it would make a
11 useful comment to send it along to the
12 Commission.

13 MR. MONIAK: Thank you.

14 JUDGE YOUNG: Anything else on under
15 MOX?

16 MS. OLSON: No.

17 MR. REPKA: I would like to make one
18 clarification for the record. Judge Kelber was
19 asking about the SPEIS, which is the DOE
20 environmental impact statement related to MOX
21 fuel program. In fact, DOE has two environmental
22 impact statements related to this overall
23 project. One is a programmatic environmental
24 impact statement issued in 1996 and the other is
25 the site specific in 1999 which is the SPEIS.

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1 JUDGE KELBER: Thank you, I forgot
2 that.

3 MR. REPKA: So there is a substantial
4 amount of material out there.

5 JUDGE KELBER: I should have
6 remembered it but I forgot it.

7 JUDGE YOUNG: Are we really down to
8 one, 3.1, let's take a short break and be back at
9 2:30.

10 (Brief recess.)

11 JUDGE YOUNG: Okay, contention 3.1.

12 MS. OLSON: Your Honor, this also was
13 a Paul Gunter lead contention. His response is
14 considerably shorter but I would still like the
15 opportunity to read it in entirety and take
16 questions.

17 JUDGE YOUNG: Okay.

18 MS. OLSON: Thank you. Although I
19 have a little preface that Duke provided a
20 summary of our contention rather than what the
21 NRC Staff did, and their summary however, only
22 references fire wall 50. And our contention
23 actually says fire wall 50 and other brand name
24 materials manufactured by Western Chemical and
25 that's fairly key to our reply.

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1 With regard to the fire barrier
2 penetration fields installed in Catawba and
3 McGuire, the Duke reply provides only a partial
4 response. While Duke acknowledges that fire
5 walls material was in limited applications and no
6 longer installed in applicant units, Duke does
7 not address quote, other brand name materials
8 manufactured by Western Chemical installed as
9 fire barrier penetration seals. Duke does not
10 refute the contention that fire wall 50 was not
11 fire tested for one hour and 3 hour applications
12 or evaluated for the detrimental effects of
13 ageing. And indeed Western Chemical provided no
14 information on ageing.

15 The Duke reply does not refute the
16 contention that quote other brand name materials
17 manufactured by Western Chemical installed a fire
18 barrier penetration seals were similarly untested
19 for fire duration or evaluated for the
20 detrimental effects of ageing.

21 Is Duke Power saying that it has removed
22 all fire wall 50 material and all other brand
23 name materials manufactured by Western Chemical,
24 installed as penetration sealant in Catawba and
25 McGuire units? Is Duke Power saying that the

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1 only remaining material installed as fire barrier
2 material seals are RTV, the letters RTV, silicon
3 foam? If not, RTV silicon foam has been provided
4 in age-related evaluation of 40 years of
5 reliability by the manufacturer Dow Corning. For
6 any fire barrier penetration seals not utilizing
7 RTV silicon foam, Duke must provide a bonifide
8 age reliability analysis for other brand name
9 materials installed by Western Chemical that
10 remain in applicant's units.

11 And then finally and I think this point
12 is perhaps the most important. There is no non
13 destructive inspection method for fire barrier
14 penetration seals, therefore the material going
15 into the seals must be evaluated for
16 functionality and reliability under the
17 detrimental effects of ageing. Current
18 inspection techniques such as walk downs
19 referenced in Duke B 3.12 of appendix B of the
20 application will not necessarily identify an
21 age-degraded penetration seal, cracks, loss of
22 seal adherence to penetration wall, etcetera.

23 I think that's it.

24 JUDGE YOUNG: Did you have anything
25 to add on your own.

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1 MS. OLSON: I think that's it.

2 JUDGE YOUNG: One thing I did want to
3 ask, the challenge to the NRC fire protection
4 regulation change into June of 2000, that appears
5 to be a challenge to the new rules, am I correct?

6 MS. OLSON: Well, I don't think that
7 that's the full scope of what we are bringing --

8 JUDGE YOUNG: I realize that, I mean
9 just that part of it.

10 MS. OLSON: Yeah, I think that we
11 have a little bit of a hang over here. We are
12 not -- we haven't done a renewal before, and I
13 think that Paul has been a lucky man to challenge
14 those current regulations, and I think it may be
15 what you call a knee jerk here.

16 JUDGE YOUNG: And the other thing, I
17 may have said one, but the other thing is Staff
18 points out that you haven't pointed to specific
19 parts of the license renewal application, various
20 references are made to various tests that Duke
21 has done, but while your up so to speak, I want
22 to give you the opportunity to respond to that.

23 MS. OLSON: Well, I did reference the
24 appendix B of the application because that's
25 where they talk about --

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1 JUDGE YOUNG: Tell me where.

2 MS. OLSON: B.3.12 of appendix B.

3 JUDGE YOUNG: No, no, where in your
4 contention?

5 MS. OLSON: Forgive me, today.

6 JUDGE YOUNG: Oh, okay.

7 MS. OLSON: But in what I presented
8 right now from Paul is an example of where the
9 type of inspection is offered and we are
10 challenging that that does not adequately address
11 the question as to whether these seals are going
12 to perform over the license renewal period.
13 Particularly since there is no information
14 provided unless they are Dow Corning.

15 JUDGE YOUNG: Is that all you have?

16 MS. OLSON: Yes.

17 JUDGE YOUNG: Mr. Repka.

18 MR. REPKA: Judge, I think it's fair
19 to say that this issue as drafted is not in any
20 way an equipment ageing issue. None of the
21 discussion provided in the contention itself
22 provides any data related to ageing of the fire
23 barrier penetration seals much less any that are
24 already installed at McGuire or Catawba. The
25 discussion in the contention doesn't provide any

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1 awareness of the fire protection program or the
2 inspections credited in the fire protection
3 program description in the license renewal
4 application. Those inspections are specifically
5 geared to addressing and identifying signs of any
6 age-related degradation in fire barrier
7 penetration seals. No basis has been provided
8 anywhere to suggest that those inspections are
9 inadequate.

10 There is a lot of information presented
11 with respect to the original qualification to
12 perform their 1 hour or 3 hour intended fire
13 barrier function. There is information presented
14 related to combustibility, all of which are
15 current licensing basis issues, there really is
16 nothing in this contention as drafted that
17 relates to an ageing issue.

18 Now, this afternoon, we are hearing from
19 Mr. Gunter that a couple of things: Number one,
20 suggesting there is an oversight with respect to
21 our statements limiting our statements to fire
22 wall 50 and excluding other brand name
23 chemicals -- brand name materials manufactured by
24 Western Chemical. In fact, the answer to that is
25 there are none, here is no fire wall 50 or any

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1 other Western Chemical fire bearing material that
2 is relied upon, but apart from that, the fire
3 protection program inspections as referenced in
4 license renewal application are not limited in
5 any way to the brand of fire barrier penetration
6 seal material, they apply to all fire barrier
7 penetration seals, and they are not limited to
8 the Dow Corning material, and there is no basis
9 to suggest there is and oversight in the scope of
10 the ageing management program.

11 I think I heard in that discussion this
12 afternoon a bald assertion that there needs to be
13 a nondestructive examination inspection
14 methodology employed. Certainly that statement
15 wasn't included in any way in the as drafted
16 contention, but in any event, there is no
17 documentary evidence or other expert evidence
18 that would support what it is, what non
19 destructive examination technique might be
20 warranted, why that might be warranted, any
21 evidence of ageing, age-related degradation or
22 effects that warrant nondestructive examination
23 techniques.

24 So the long and the short of it is, there
25 is really an insufficient basis on that issue in

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1 order to have a contention, but apart from that,
2 the contention as drafted is inadequate because
3 its frankly out of scope, it's addressing current
4 day licensing basis issues which are not within
5 the scope of license renewal.

6 JUDGE RUBENSTEIN: I have a question
7 probably to your last part. Are there any ageing
8 or time limit ageing analyses inherent in the
9 materials qualification for the seals in
10 qualifying that? Are there any models which use
11 time?

12 MR. REPKA: No, the license renewal
13 application with respect to fire barrier
14 penetration seals doesn't treat them as a time
15 limit ageing analysis. They are treated as
16 subject to ageing management programs which are
17 described in there that include the inspections
18 that are required by the selected licensee
19 commitment.

20 JUDGE RUBENSTEIN: There is a
21 subtlety to the question, are there age or time
22 limited ageing analyses inherent in qualifying
23 the seal materials? Did they rely on -- not the
24 one in 3R, but in the qualification period.

25 MR. REPKA: The answer is no, we

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1 don't think there is.

2 JUDGE RUBENSTEIN: Thank you. So --
3 well, while the Judge looks for a reference, so
4 surveillance and maintenance assure the period of
5 use in the plant.

6 MR. REPKA: The ageing management
7 program is a surveillance program. Degradation
8 would be specifically looked for, ageing effects
9 such as cracking, deforming, and in which case
10 there would be replacement, managing the ageing
11 effect.

12 JUDGE RUBENSTEIN: Thank you.

13 JUDGE YOUNG: My question is this, in
14 54-4, all systems, structures and components
15 relied on in safety analyses or plant evaluations
16 to perform a function that demonstrates
17 compliance with the Commissions regulation for
18 fire protections, fire protection 10 CFR 5048, I
19 was looking at 5048 to see if that encompasses
20 the fire barriers, is that the correct word?

21 MS. OLSON: Penetration seals.

22 JUDGE YOUNG: Do you have an answer
23 for that, because I guess -- do you have an
24 answer to that?

25 MR. REPKA: The answer is yes, they

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1 are within our fire protection program to meet
2 50.48 and therefore they are subject to the
3 license renewal, and they are considered in scope
4 in table 3.1-1, and subject to an ageing
5 management review and ageing management program,
6 which is the fire protection program and the
7 surveillances explained in that program
8 description.

9 JUDGE YOUNG: The reason I ask that
10 is because I was puzzled as to why you centered
11 your argument on I thought this being out of
12 scope when it seemed like the argument -- your
13 stronger argument had to do with a challenge to
14 the regulation and the absence of citation to
15 specific parts of the application.

16 MR. REPKA: The contention as drafted
17 was out of scope in the sense that it really was
18 addressing the adequacy of the tests to establish
19 a one hour and three hour fire barrier
20 capability, which is a current licensing basis
21 issue, so that's the scope argument --

22 JUDGE YOUNG: Let me stop you there,
23 maybe I'm missing something, but I thought you
24 just agreed that that would be included within
25 the fire protection program which would place it

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1 in scope.

2 MR. REPKA: What is the issue that
3 you are raising about the fire barrier material,
4 is its capability to fulfill its designed
5 function, the 1 hour or 3 hour capability when
6 it's new, the original testing and qualification,
7 that's a current original licensing basis issue,
8 whether it be fire wall 50 or Dow Corning RTB,
9 its capability to fulfill that function is what
10 Mr. Gunter's contention originally was. That's
11 not an ageing issue. The ageing issue is having
12 been installed and been demonstrated to fulfill a
13 3 hour capability for example, will it continue
14 to perform that function over the period of
15 extended operation. That certainly is in scope,
16 degradation -- age related degradation of fire
17 barrier penetration seals are considered in scope
18 for license renewals --

19 JUDGE YOUNG: But you are just saying
20 that the contention was not written in such a way
21 that it referred to the ageing issue
22 specifically.

23 MR. REPKA: That is correct.

24 JUDGE YOUNG: Okay. But -- okay.

25 MR. REPKA: And with respect to

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1 ageing issues, ageing is obliquely mentioned in
2 connection with sub issue A of the original
3 contention. And there was nothing, no
4 specificity provided there, no awareness of the
5 fire protection program, the inspections that are
6 addressed in the license renewal application,
7 that lose reference to an ageing issue is what's
8 unsupported and therefore fails to meet 10C part
9 2.714.

10 JUDGE RUBENSTEIN: If the petitioner
11 could generate a genuine issue then it would be
12 within the scope?

13 MR. REPKA: A genuine issue related
14 to the age related degradation in the sense that
15 is there some ageing -- some way our ageing
16 management program is inadequate with a basis for
17 that, and we feel that really has not been done.

18 JUDGE YOUNG: Let's hear, do you have
19 anything to say?

20 MS. UTTAL: We agree with what Mr.
21 Repka just said that the original contention did
22 not deal with ageing management in any way, it
23 had no relation to the license renewal
24 application, and that what was said today in an
25 attempt to bolster the contention was not

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1 supported by facts of a sufficient basis,
2 therefore there is no contention here that's
3 within scope.

4 JUDGE YOUNG: Well, now again, I'm
5 surprised that you are not mentioning your
6 argument about the specific reference to parts of
7 the application.

8 MS. UTTAL: Well, we were asked to
9 address what is raised here today. I have
10 already said that there is nothing in the
11 contention that refers to the specific parts of
12 the application, and today there was a mention of
13 the B3-12.

14 JUDGE YOUNG: Good point, understood.
15 Ms. Olson.

16 MS. OLSON: Very brief clarification
17 for the record. We are not quarreling with
18 current regulation in terms of advocating
19 nondestructive testing methodology. We are
20 noting that there is none, and therefore we are
21 bringing the fact that RTV silicon foam Dow
22 Corning supplies and ageing analysis for it. It
23 is not clear to us that these other -- this other
24 manufacturer has that information. The reason we
25 brought the issue of destructive versus

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1 nondestructive testing is because penetration
2 seals may be quite deep, and there maybe pockets
3 that form inside there that don't necessarily
4 make cracks on the surface. So we are not
5 suggesting that all of the penetration seals
6 should be ripped out to see if they are cracking
7 in there, we are saying unless you did that you
8 don't know for certain and that we would like to
9 see materials that are -- we wanted to know I
10 guess is the answer.

11 And Duke is telling us now that indeed
12 there are no other materials in these reactors,
13 and that was our question and they have answered
14 it today that indeed it's not only fire wall 50
15 but any other penetration seals by the company
16 that does not provide that level of specificity
17 in relation to ageing. So I just want to be
18 clear that we are not saying that there should be
19 a new testing method, we are simply referencing
20 the fact that walking down the hall and looking
21 at them in our view was not sufficient.

22 JUDGE RUBENSTEIN: You want to add to
23 the response with regard to what Ms. Olson said?

24 MR. REPKA: I would just respond to
25 the fact that there is no basis for that

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1 conclusion presented here today, that what
2 nondestructive examination technique might that
3 be, who supports the idea that it's necessary,
4 what tests back up that argument? There frankly
5 are none.

6 JUDGE RUBENSTEIN: Would you complete
7 your record by giving us some insight about what
8 you do?

9 MR. REPKA: I think the level that I
10 could discuss it here is -- let me refer to what
11 is in the license renewal application itself. It
12 says in terms of -- and this is reading from
13 appendix B at section B.3.12, and I'm not sure
14 which page, but it's under monitoring and
15 trending, it states, and I will quote, ageing
16 effects are detected through visual examination
17 of the fire barrier, fire doors and fire barrier
18 penetration seals. All exposed surfaces of each
19 barrier is inspected at lest once every 18 months
20 per selected licensee commitment 16.9.5. Fire
21 doors are visually inspected and functionally
22 tested every six months, and it goes on, and it
23 says 10 percent of each type of fire barrier
24 penetration seal is inspected at least once every
25 18 months, per 16.9.5. And then there is a

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1 further discussion of specific acceptance
2 criteria, and it states the acceptance criteria
3 for fire barrier penetration seals are no visual
4 indication of cracking, shrinkage or separation
5 of layers or material. In addition the
6 separation from wall and through holes shall not
7 exceed limits as specified in the procedure.

8 The program description also calls for
9 specific corrective action in case any
10 degradation is noted during the inspection, and
11 causes etcetera would be addressed through
12 investigative work through the corrective action
13 program, corrective actions may include repair or
14 replacement, specific corrective actions, as
15 needed are implemented in accordance with the
16 corrective action program. And then also in this
17 description of the program consistent with the
18 license renewal rule, there is a discussion of
19 operating experience from McGuire and Catawba
20 that, quote, confirms the reasonableness and
21 acceptability of the inspections and the
22 frequency in that degradation of the fire barrier
23 was detected prior to loss of function, and there
24 is some further discussion of that issue.

25 JUDGE RUBENSTEIN: And I would assume

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1 that the staff's FSCR, final safety evaluation
2 report, would address the adequacy of this?

3 MR. REPKA: Inherently, yes.

4 MS. UTTAL: Yes.

5 JUDGE RUBENSTEIN: Thank you.

6 JUDGE YOUNG: Anything further on
7 contention 3.1, did you --

8 MR. REPKA: Just to clarify, I think
9 I made the reference in connection with the fire
10 barrier to table 3.1-1, actually as reflected in
11 our written response for this component it's
12 3.5.2, so I just want the record to be clear.

13 JUDGE YOUNG: All right. We set
14 aside time at the end to address the issue of the
15 web site, any web site issues. Now obviously,
16 until rulings are made, our contentions may not
17 be there, so I guess I did that without thinking
18 completely through the idea in response to the
19 Staff's indication that it would be glad to enter
20 into a protective agreement with regard to any
21 materials, so I'm not sure it's necessary to take
22 that up at this point. If appropriate, after we
23 issue our order, depending upon the outcome of
24 that, that's something that we could take up by
25 telephone conference, unless anyone sees any need

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1 to do it now.

2 And then on that, and then after we
3 address that to the degree we need to, if there
4 are any other administrative matters that we need
5 to take up today we can do that, and Mr. Moniak
6 wanted to say something.

7 MR. MONIAK: As asserted this morning
8 and very briefly, final safety analysis reports
9 are available, but not for this facility.
10 Licensing just happens not to be going on. If
11 there is information in final safety analysis
12 reports that quote might be useful to a
13 terrorist, which in and of itself is a statement
14 that is so arbitrary and capricious and
15 subjective, that anything can be cited as such,
16 then why are these final safety analysis reports
17 like the Oconee independent field storage one
18 available and not Duke.

19 Secondly, if they are not on the Internet
20 for the reason that they are unclassified
21 materials that they don't want to make more
22 readily available to just anybody, that's
23 different than that material being sensitive
24 information. It's not been classified as
25 sensitive information therefore nondisclosure

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1 agreement would in and of itself presume that we
2 are guilty of being potential terrorists.

3 JUDGE YOUNG: First of all --

4 MR. MONIAK: That's the way I look at
5 it.

6 JUDGE YOUNG: Let me stop you right
7 there. First of all, what we were opening this
8 to discussion about was anything that needed to
9 be done or addressed by us. Second of all, let
10 me just put your mind at ease, nondisclosure
11 agreements carry no connotation at all with
12 regard to anyone that is asked to enter into such
13 an agreement. In fact, an offer to enter into
14 such an agreement with you would suggest just the
15 opposite to me. So I don't think we need to
16 worry about that, does that --

17 MR. MONIAK: No, because
18 nondisclosure means that we cannot disclose
19 things.

20 JUDGE YOUNG: This is a standard
21 thing that happens in legal proceedings, so it
22 doesn't carry any connotation such as what you
23 are saying.

24 JUDGE RUBENSTEIN: Does the Staff
25 know the status of the FSAR, is it available.

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1 MS. UTTAL: It is not available,
2 that's why we were offering it under
3 nondisclosure until we get further direction.

4 JUDGE RUBENSTEIN: I remember reading
5 this. Is there a problem?

6 MR. MONIAK: Why are other FSAR's
7 available?

8 JUDGE RUBENSTEIN: No, we are dealing
9 specifically with this hearing. Do you have a
10 problem with signing the nondisclosure statement?

11 MR. MONIAK: Yes, we do.

12 MR. ZELLER: Yes, we do, absolutely.

13 MR. MONIAK: We will sign one for
14 proprietary information but not for nonsensitive
15 information.

16 JUDGE YOUNG: Let me suggest
17 something to you, if the Staff makes an offer to
18 you and you have a counter offer so to speak
19 about -- this is something that you would
20 negotiate with each other. You try the figure
21 out how you can come together on something. If
22 you end up with a dispute you bring it to the
23 Board. At this point until we rule on the
24 contentions I'm not sure that there is any need
25 to do this. As a separate matter, should your

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1 having available to you in the future any
2 documents that you could then argue warranted a
3 late-filed contention you would be free to submit
4 that and make your argument that the late-filed
5 contention meets the criteria of 2714.

6 MS. OLSON: Two clarifying questions.
7 On what you just said, there's been the issue of
8 timeliness and what is or is not new information
9 and what is or is not document availability, so
10 you are saying that if we acquire access to
11 documents we don't have access to now and that
12 leads to a contention that was not filed because
13 we didn't have access to the document that that
14 would be a basis for late-filed contention, not
15 that it would be accepted but that we could offer
16 it?

17 JUDGE YOUNG: Right, and then the
18 analysis would be made and arguments would be
19 made by all parties on whether it meets the
20 criteria of the rule, and it's triggered by new
21 information that becomes available, and sometimes
22 the question of what constitutes available is
23 raised, as I understand. But in any event, does
24 anyone see any need to deal with this today?

25 MS. OLSON: I have a second

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1 clarifying question, only that I have been
2 confused about the process, somebody sends me an
3 email and it's copied back to everybody, so if we
4 decided that we wanted to pursue the agreement,
5 before -- do we do so through the whole circuit
6 or do we contact Staff directly?

7 JUDGE YOUNG: The only thing you need
8 to tell everybody about is communications with
9 us, because we are not permitted, no one is
10 permitted have ex parte communications with the
11 judges. In other words, communications about a
12 case with us without everyone else knowing about
13 is being presented by email means or copying
14 anyone. Whatever communications you have with
15 each other, that's up to you, as long we are not
16 involved, it doesn't bring into play the ex parte
17 rule.

18 MS. OLSON: Because we were told we
19 had to come to you.

20 JUDGE YOUNG: Well, in order to
21 get -- my understanding as I read it, the
22 description of it, in your I guess in your
23 contention or motion, was -- no I think you
24 mentioned it in your actual contentions document
25 was that Mr. Riley was told that he had to come

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1 to us in order to get those materials. Our
2 automatic question was, we had fast-tracked your
3 request for the daily event reports before, so we
4 wondered why no one had contacted us on, I
5 believe it was November 16th was the day that you
6 discovered that you didn't have them. You are
7 certainly could have contacted us and we could
8 have set up a telephone conference, talked about
9 it at that point, so that you could very likely
10 could have had access to those prior to your
11 deadline for submitting your contentions.

12 MS. OLSON: Right, but what I'm still
13 trying to clarify, that's the past, now we are in
14 the present and in the near future, we now have
15 an order saying that such an agreement is
16 possible and so I'm now taking it that my
17 communication should I choose to do so with the
18 Staff can be direct, and they will respond now
19 that they are under order, is that --

20 JUDGE YOUNG: Whatever goes on
21 between the parties is up to the parties. If you
22 have a dispute, if you cannot work it out by
23 agreement and you want us to step in and resolve
24 your dispute, that's the time to contact us. And
25 so when someone told you we can't give it to you

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1 contact the Board, my understanding of that is
2 there is a dispute, they don't want to give it,
3 at that point you could have contacted the
4 attorney and Ms. Uttal or Mr. Fernandez might
5 have been able to work something out with you.
6 In any event whenever there is a dispute you need
7 to bring it to us, that's what we are here for,
8 but if you can work it out among yourselves --

9 MS. UTTAL: We are not under an
10 order.

11 JUDGE YOUNG: That's right, I was
12 trying to clarify that.

13 MS. OLSON: So if I call them again
14 they may tell me I have to talk to you, in which
15 case I will.

16 JUDGE YOUNG: You all try to work out
17 everything between you unless there is a special
18 need for it. I would say our emphasis between
19 now and January 23rd, which is the deadline that
20 we have set for ourselves to do this order, we
21 are going to be extremely busy working on this.
22 So we don't see at this point any great need to
23 address any questions about availability of
24 documents between now and that time. Take that
25 however you will.

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1 MS. OLSON: I take it.

2 JUDGE YOUNG: All right, are there
3 any other administrative matters that we need to
4 deal with, Mr. Moniak.

5 MR. ZELLER: I did want to make a
6 clarifying comment on the record with regard to
7 provisions of the document FSAR in that I have
8 not heard yet any basis for not posting that
9 information to the web site, and if I understand
10 what Your Honor has said about this issue, that a
11 request should be filed and negotiations should
12 occur, and in fact I would like to take this
13 opportunity on the record to ask for that
14 information to be provided electronically or in
15 hard copy at the earliest possible date. And I
16 do not understand why that information at this
17 point would not be provided upon request.

18 JUDGE YOUNG: Okay. And to repeat,
19 if you want to make that request, make it to the
20 Staff. If you cannot work that out by agreement,
21 you are free to ask us to resolve any disputes.
22 We will not be terribly inclined to entertain any
23 such requests between now and January 23rd when
24 we are going to be very busy working on the order
25 in the case on the contentions because we don't

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1 see -- unless you convince us otherwise, we don't
2 see any urgency about resolving that matter prior
3 to our deadline, which is going to put us under a
4 great deal of pressure between now and January
5 23rd.

6 MR. ZELLER: I understand.

7 JUDGE YOUNG: Okay, anything else,
8 Mr. Moniak.

9 MR. MONIAK: I want -- there will be
10 no negotiations between us. We will ask for it
11 and if they don't provide it there is no room for
12 negotiations.

13 JUDGE YOUNG: Mr. Moniak, listen to
14 me.

15 MR. MONIAK: Yes.

16 JUDGE YOUNG: There is a rule that's
17 applied in discovery, and this is a rule that I
18 take very seriously and I think probably the rest
19 of the Board takes very seriously as well, and
20 that is in discovery disputes, as a matter of
21 fact many courts have rules requiring that
22 parties engage in good faith negotiation, trying
23 to resolve disputes before they bring them to the
24 Board. So having a point of view that says we
25 are not going to engage in any negotiation is not

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1 conducive to the efficient resolution of disputes
2 I would suggest.

3 MR. MONIAK: Okay.

4 JUDGE YOUNG: I would suggest that
5 however you feel about the issues, and you
6 obviously feel very strongly about it, and I'm
7 not faulting you about that, the Staff has
8 indicated in what I have seen an openness to
9 working with you on availability of documents,
10 and I suggest that you try to work cooperative
11 with them to the degree possible.

12 MR. MONIAK: Okay. One other issue I
13 would like to address that was the commonality
14 throughout this as a clarification issue of
15 reasonable effort to obtain documents. And I
16 just want to be on the record as saying that it's
17 been established in the proceeding so far that
18 the shutting down of the NRC web site has created
19 difficulties, and it goes to the point that we
20 all need to remember that you don't have to be on
21 the Internet and you don't even have to have a
22 personal computer to participate in the process,
23 and there is no regulations that affected you yet
24 but the act today of participating in these
25 process says is in and of itself a very

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1 reasonable effort because the application is not
2 available except in a few locations that are only
3 open at certain times. You have to download the
4 application, print it, decide whether you want to
5 print the whole thing. You have to obtain the
6 generic documents that pertain to it, so just the
7 act of obtaining the documentation to review is a
8 major effort.

9 And then within the document, the
10 application itself, when it refers to other
11 documents that are unobtainable, you have to ask
12 do I want to make the effort to try to obtain
13 that or do I want to just go on, and that's all I
14 wanted to say is it is a huge tremendous effort
15 that didn't have to be made 15, 20 years ago.

16 JUDGE YOUNG: Okay, if you want
17 something, talk to each other, if you can't work
18 it out, bring it to us, but bring it to us at an
19 appropriate time if you want to get a quick
20 response, if you want to us devote our full
21 attention and energies to giving thorough
22 consideration to all of your arguments. Keep in
23 mind that we are going to be spending a lot of
24 time between now and January 23rd to do that.

25 MS. OLSON: We appreciate that the

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1 timing is difficult for all of us.

2 JUDGE YOUNG: All right. It's been
3 nice being here with all of you, and you will
4 hear from us.

5 (Hearing concluded.)

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Name of Proceeding: Duke Energy Corporation

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

Location: Charlotte, North Carolina

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