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License Renewal

Docket Number: 50-255-LR; ASLBP No.: 05-842-03-LR

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UNITED STATES OF AMERICA

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BEFORE THE NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

+ + + + +

NUCLEAR MANAGEMENT COMPANY
PALISADES NUCLEAR GENERATING STATION

Regarding the Renewal of Facility Operating
License No. DPR-20 for a 20-Year Period

Docket No. 50-255-LR
ASLB No. 05-842-03-LR

THURSDAY

NOVEMBER 3, 2005

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1555 PHOENIX ROAD
SOUTH HAVEN, MICHIGAN

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The above-entitled matter commenced pursuant to
Notice before Ann Marshall Young, Dr. Anthony Baratta, Dr.
Nicholas Trikouros, Administrative Judges.

NEAL R. GROSS (202) 234-4433

PRESENT:

For the Office of Commission Appellate:

Administrative Judges:

Ann Marshall Young

Dr. Anthony Baratta

Dr. Nicholas Trikouros

NRC STAFF:

Michael J. Morgan - Project Manager

Susan Uttal

Michael Spencer

Counsel for NMC, Applicant:

Paul A. Gaukler

David R. Lewis

Counsel for the Petitioner/Intervenor:

Terry Lodge

Kary Love

Paul Gunter

Debra Wolf - Law Clerk

I-N-D-E-X

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| 2 | May 27, 2004 memo from the Executive Director of Operations | 130 |

P R O C E E D I N G S

(9:00 A.M.)

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2
3 ADMIN. LAW JUDGE YOUNG: My name is Ann
4 Marshall Young. I am the Chair of the Licensing Board for
5 this proceeding, and I'm going to ask -- I'm the legal
6 judge on the Board. I'm going to ask my colleagues to
7 introduce themselves and then I'd like to ask all the
8 parties to introduce yourselves and who you have with you.
9 Dr. Baratta?

10 ADMIN. LAW JUDGE BARATTA: I'm Anthony Baratta,
11 I'm one of the technical judges.

12 ADMIN. LAW JUDGE TRIKOUROS: Nick Trikouros,
13 technical judge.

14 ADMIN. LAW JUDGE YOUNG: And we have our law
15 clerk, Debra Wolf, over here. Let's start with the NRC.

16 MS. UTTAL: Thank you, your Honor. Susan
17 Uttal, the NRC, representing the NRC Staff. To my
18 immediate right is Michael Spencer. He's with OGC but he
19 is not entering an appearance in this case. To his right
20 is Michael Morgan who is the project manager for renewal on
21 the safety side. And behind me is Robert Schaaf who is the
22 project manager on the environmental side.

23 MR. LEWIS: I'm David Lewis, and with me is Mr.
24 Paul Gaukler. We're with the law firm Pillsbury, Winthrop,
25 Shaw & Pittman, representing Nuclear Management Company in

1 this proceeding.

2 ADMIN. LAW JUDGE YOUNG: All right. And Mr.
3 Lodge?

4 MR. LODGE: Thank you. I'm Terry Lodge, and
5 seated with me is Kary Love who is a Michigan attorney who
6 is not entering an appearance but will be assisting me.
7 Also with me is Paul Gunter who is one of the named
8 designees of one of the organizational Petitioners that
9 would be the Nuclear Information Resource Service, and
10 Alice Hirt who is another named designee here I believe on
11 behalf of Don't Waste Michigan. We are expecting a couple
12 of the other actual personal representatives but we are
13 prepared to proceed.

14 ADMIN. LAW JUDGE YOUNG: All right. Before we
15 get started, are there any preliminary matters from anyone?
16 Okay. Let me tell you what our plan of action is and we'll
17 proceed from there. We thought the most appropriate thing
18 to do would be to start with any argument that the parties
19 might have on the motions to strike. Then we would move
20 into hearing argument on the contentions one by one.

21 We will have the most questions for all of you
22 on Contention 1, and so we'll start with that and then
23 proceed as appropriate through the day. If we have any
24 short periods and we know that there will be less time
25 required for argument on any particular point, we can

1 change the order. But unless something like that happens,
2 that would be the order that we would plan to go with.

3 On the motions, we can either take a short
4 amount of time or a long amount of time depending upon what
5 all of you would like to do. The way we are approaching
6 this is to consider the motions as effectively asking us
7 not to consider anything in the Petitioner's reply that
8 does not focus on the matters raised in the answers. And
9 we would do that based on case law to that effect.

10 If all of you are in agreement with that
11 approach and don't wish to make any further argument, there
12 is no need to do so. That would be the way that we would
13 handle the objections essentially raised in the motions.
14 If any of you would like to make any argument that we
15 should go further than that or do anything different than
16 that, we're glad to hear your argument on that. What we
17 would probably get into, if we take that route, we'd be
18 looking at the actual reply in comparison to the answers
19 and have you argue to us which portions should or should
20 not be considered.

21 Let me just, I think the first motion was filed
22 by -- would you prefer I just, I call you NMC? As a party
23 to NMC?

24 MR. LEWIS: NMC is fine, Judge Young.

25 ADMIN. LAW JUDGE YOUNG: So, why don't we start

1 with you, Mr. Lewis?

2 MR. LEWIS: I guess I need a clarification of
3 what your contemplated ruling is. If by -- we argued in
4 our answer that the contentions did not have bases and did
5 not address the portions in the applications that were
6 deficient. We think that that information had to be in the
7 original contention and if it is submitted in the reply, it
8 required a showing that there was good cause and the other
9 lateness factors have been met.

10 So, we not think it's appropriate in a reply to
11 submit an answer that says yes, we have no basis in the
12 original contention but here's 50 pages of bases.

13 ADMIN. LAW JUDGE YOUNG: Right.

14 MR. LEWIS: And so, our position is that in our
15 legal arguments where we say they haven't discussed the
16 application, they haven't provided the basis, they don't
17 dispute what's wrong with our programs, not appropriate to
18 then cure that in a reply, that the reply should be a legal
19 explanation of why their original contention was
20 appropriate and not a cure. And we believe that is
21 consistent with what the Commission directed in the LES
22 decision.

23 ADMIN. LAW JUDGE YOUNG: That is, and I guess
24 the only thing that I would add is that in your answer, for
25 example, you did include some argument in effect about what

1 you did, in effect going beyond saying there is no basis or
2 there is no genuine issue, et cetera. You actually talk
3 about what you did and you raise, you make reference to
4 certain NRC regulations. What the Commission has said is
5 that the replies must be narrowly focused on what's raised
6 in the answer. So, if we without argument find that
7 anything in the reply focuses on what is raised in the
8 answer, we would be likely to consider that but we would
9 not consider anything in the nature that you discussed that
10 would be in effect filling in blanks that you asserted were
11 present in the original contention.

12 Now, there may be, drawing that line may not be
13 completely black and white in all instances, but that would
14 be the approach that we would take. And so, if you want to
15 make any argument, we're glad to listen to it.

16 MR. LEWIS: Let me just add that, in our
17 answer, we pointed to the sections in our application that
18 addressed embrittlement, not to address the merits of the
19 embrittlement issue but to show that the application
20 included discussions that simply had not been addressed or
21 challenged in the original petition. So, it was not our
22 intent to address the merits of the issues but simply to
23 indicate that in fact this was a topic that was addressed
24 at some length in the application and it simply hadn't been
25 disputed.

1 ADMIN. LAW JUDGE BARATTA: And you're referring
2 to, for example, in your reply to I guess would be page 11
3 and 12, for example on Contention 1 where you state, well,
4 let me just pick the statement on page 12. The application
5 also identifies the steps that NMC gives and will be taking
6 to ensure protection against -- as an example.

7 MR. LEWIS: Yes. In other words, it is a
8 legitimate contention to say an applicant hasn't addressed
9 the topic if there is nothing in the application. But
10 where in fact the application addresses the topic, then the
11 contention has to explain why that is an insufficient
12 response. And so, what we were pointing out is, yes, our
13 application had addressed this topic and it was essentially
14 unchallenged in the original petition.

15 ADMIN. LAW JUDGE YOUNG: But now, you do get
16 into some argument on the meaning of 10 CFR Section 50.61,
17 for example, and also I think, primarily that one, that's
18 the central one on 54.21(c)1 also. So, I mean, if it's
19 not, if our explanation is not clear enough to you, we'll
20 be glad to hear argument from you on it. I guess you can't
21 completely cut off any reply at all.

22 MR. LEWIS: Oh, I agree with that.

23 ADMIN. LAW JUDGE YOUNG: And obviously, one way
24 that a party or participant could reply would be to say no,
25 we did state a basis and this is what the basis was. But

1 when you get into arguments about the meanings of
2 regulations and that sort of thing, it's not as black and
3 white as I think you may have been suggesting earlier. And
4 obviously the reason for the Commission even to have
5 addressed this and to have talked about replies need to
6 focus on the matters raised in the answer is that it is not
7 always completely black and white. We understand the
8 principle that you're talking about and I think probably
9 all counsel do.

10 Do you want to make any further argument based
11 on what we've said?

12 MR. LEWIS: No, I just have to rest on the
13 pleadings and that we're ready if there are specific
14 portions of the reply that you have questions about and
15 think may need to be addressed. I'm going to need to
16 address those during the argument as well.

17 ADMIN. LAW JUDGE YOUNG: Ms. Uttal?

18 MS. UTTAL: Yes. I just have three things that
19 I want to raise. First of all, the Petitioners --

20 ADMIN. LAW JUDGE YOUNG: Excuse me. Could you
21 talk a little more to the microphone?

22 MS. UTTAL: I'm sorry.

23 ADMIN. LAW JUDGE YOUNG: And get closer to it,
24 both for us and the court reporter.

25 MS. UTTAL: The Petitioners in their reply have

1 a discussion about, that there is no prejudice to the other
2 parties. The Commission does not consider prejudice to be
3 a factor and is not in the LES case. It's compliance with
4 the regulations that is the factor. Secondly, and I think
5 I pointed this out in my brief, they rely on outdated cases
6 such as the North Anna case that had been basically
7 overturned by two subsequent changes in the rules.

8 And my third thing is something new. The
9 declaration filed by Dr. Landsman, Dr. Landsman is a former
10 employee of the NRC, recent employee. And as such, he is
11 barred by federal law, I think it's 18 USC 207, from
12 testifying. There are exceptions for expert witnesses but
13 the exception only goes to facts and observations. Dr.
14 Landsman cannot give his opinion on anything.

15 I checked this out with our ethics advisor in
16 OGC and I believe he also talked to Dr. Landsman about it,
17 so he's aware of it. Unfortunately, there were portions of
18 his declaration that contain opinion. And I have prepared
19 a redacted version where I've done a strikeout of what we
20 consider to be his opinion which I'd like to give to the
21 Board and to the other parties.

22 ADMIN. LAW JUDGE YOUNG: Well, let me just
23 address this issue of striking and redacting. I mean, in
24 modern legal practice, you don't strike things from the
25 record in terms of removing them from the record. The

1 record is there. We may not consider them, but if there
2 were an appeal, the only you can maintain a record is not
3 to black out portions of it.

4 MS. UTTAL: Well, I didn't black it out.

5 ADMIN. LAW JUDGE YOUNG: So, redacting a
6 document and substituting it, I don't think would be
7 appropriate.

8 MS. UTTAL: What I've done it is a strikeout so
9 you can read it, what the words are. But I think that the
10 board should be aware of what the problems areas are and
11 what cannot be considered and what he cannot testify to.

12 ADMIN. LAW JUDGE YOUNG: You can certainly
13 submit that and we'll include that in the record.

14 MS. UTTAL: Okay.

15 ADMIN. LAW JUDGE YOUNG: And again, thank you
16 for bringing the statute to our attention. But again, I
17 think in our consideration of all the parties' arguments on
18 the contentions, it should be clear what we have considered
19 and what we haven't considered, and we will not consider
20 anything that is not focused on what has been raised in the
21 answers. That's what we have been directed to do in case
22 law, and that's how we plan to approach it.

23 Did you have anything further, Ms. Uttal?

24 MS. UTTAL: That's it. Nothing else, your
25 Honor.

1 ADMIN. LAW JUDGE YOUNG: Okay. And so, if you
2 want to, I don't exactly have a good -- maybe you could
3 help out by getting things from him. And we'll just make
4 that an exhibit. And could you give enough for us and then
5 one for the court reporter, and we could make that an
6 exhibit to the transcript.

7 Now, Mr. Lodge, what would you like to say on
8 this? Would you like to have any further argument or is
9 our explanation --

10 MR. LODGE: I appreciate your explanation. I
11 would like to make a couple of observations.

12 ADMIN. LAW JUDGE YOUNG: Okay.

13 MR. LODGE: Number one, I wonder if I could
14 request that we defer discussion on the Landsman
15 declaration until we actually discuss that particular
16 contention because I think that's a more appropriate point
17 in time. And also, it will give us an opportunity --

18 ADMIN. LAW JUDGE YOUNG: Can you -- I think
19 someone is not able to hear you.

20 MR. LODGE: Pardon me. It will give us an
21 opportunity to digest the strikeout version of this
22 declaration. And I at least want to examine the
23 possibility of resolving that matter if it is acceptable to
24 the Petitioners.

25 Secondly, I will confess that I have practiced

1 before the NRC several times over the years, but not in a
2 license renewal proceeding involving the revised
3 regulations. I would like to say for the record that we
4 understood the rules basically to require the contentions
5 to be a succinct statement of our contentions, of our
6 points. And we did take the responsive pleadings to be
7 analogous to a Civil Rule 12 motion to, essentially a
8 procedural attack on the method pleadings which then
9 contained in the case of NMC and the Staff, contained
10 argument going into matters of evidence and substance
11 beyond the mere procedural attack to which we then
12 responded in detail.

13 It was and remains our position that we were
14 fleshing out at best or worst the originally articulated
15 contentions. And in effect, I believe your Honor may have
16 identified that as being the process we went through. We
17 were responding to that sort of secondary more substantive
18 side of the motions to strike. Thank you. That's all I
19 have.

20 ADMIN. LAW JUDGE YOUNG: Okay. I guess maybe
21 we can make it a little bit more clear how we're going to
22 approach this. I think the inclination would probably be
23 where you provided additional, and I'm not sure that it is
24 that similar to a Rule 12 situation but where you would
25 provide additional evidence if you will that that would

1 generally be the sort of thing that I think the Commission
2 has said we would not consider in deciding whether to admit
3 a contention.

4 If on the other hand you made argument in
5 response to the example I gave before on the interpretation
6 of a regulation that would be relevant to the contention
7 that you raised in the first place, that might be another
8 sort of situation. If as we go through the contentions
9 anybody wants to raise, and I guess we would expect you to
10 raise specific points that you think we should or should
11 not consider, that would be fine. And if you want to make
12 your argument about the Landsman document, I don't see any
13 problem with doing that when we get to that contention.

14 Anyone else? All right. Okay, anything
15 further on the motions? And so, basically what we're
16 saying is what our approach will be and we would not intend
17 to make a formal ruling on the motions given the
18 explanation that we've provided. We're not going to strike
19 the entire reply. We're going to consider it in the manner
20 that you've described. And as we go to the contentions,
21 you can make any additional argument you wish to make on
22 that.

23 All right. I guess also, as we go through
24 argument on the contentions, we would start with the
25 Petitioners and then go to NMC and then the Staff. And

1 then, if we have any further argument, we will have a lot
2 of questions I think and we want to make sure that everyone
3 gets out their points. We would ask that you not just
4 repeat what you have written in your pleadings and address
5 the concerns that's explained after that. And I'll tell
6 you in advance, we will probably be interrupting to ask
7 questions as we go.

8 Any questions or anything further before we
9 move on to Contention 1? All right. Mr. Lodge, actually
10 if you could just give me one second?

11 All right, go ahead.

12 MR. LODGE: Before getting into the substance
13 of things, I would like to indicate, if it is acceptable to
14 the panel, I think this is more a request, that from time
15 to time, I hope you will indulge me in consulting with some
16 of the Petitioners. A lot of our drafting and filings were
17 essentially done and accomplished in a committee type of
18 fashion which I'm sure is probably true with the other
19 parties. In any event, I hope you will indulge my need
20 from time to time to interrupt.

21 ADMIN. LAW JUDGE YOUNG: That's fine.

22 MR. LODGE: Our first contention respecting
23 embrittlement is noteworthy in that it is the type of
24 contention that was identified by the Commission itself in
25 the Turkey Point decision that was referenced by this panel

1 in its initial, I believe the initial scheduling order, the
2 CLI-01-17 Turkey Point Units 3 and 4 decision wherein the
3 panel discusses Part 54, 10 CFR Part 54, and specifically
4 mentions among adverse aging effects metal fatigue,
5 erosion, corrosion, thermal and radiation embrittlement.

6 The gist of our contention is actually quite
7 simple: that the longer the Palisades nuclear reactor is
8 allowed to operate with the occasional necessary use of
9 fast shutdown types of technologies, the greater the risk
10 that embrittlement is an ongoing degenerative process, and
11 ultimately the enhanced possibility that a pressure thermal
12 shock will occur that causes a rupture of the reactor
13 vessel itself. We believe that this is an admissible
14 contention because of the obvious fact that we're talking
15 about a 34-year-old, I believe, or a 34-year-operation
16 record that has among other things left Palisades as unique
17 in the Byzantine part of the nuclear industry as a plant
18 that must be watched and must be closely and carefully
19 considered for its embrittlement potential.

20 As was indicated in our possibly forbidden
21 reply on the contentions, we note a distinct history of
22 'all over the map' computations using multiple computer
23 programs. We understand that there is no longer available
24 real time metal samples, so-called surveillance capsules or
25 coupons that are available to be removed from the reactor

1 vessel upon refueling and to be analyzed for the
2 embrittlement characteristics that they may or may not
3 portray. We understand that that is probably the case
4 since the ninth refueling which was well back into the
5 1990's.

6 We understand that the --

7 ADMIN. LAW JUDGE YOUNG: Excuse me. Ma'am, I'm
8 sorry, but you're really going to have to leave that in a
9 stationary position. I think that --

10 MS. CAREY: And you say the microphones are on?

11 ADMIN. LAW JUDGE YOUNG: They should be on,
12 yes.

13 MS. CAREY: Thank you.

14 ADMIN. LAW JUDGE YOUNG: Mr. Strasma, is
15 that --

16 MR. STRASMA: Yes, stationary position. As
17 long as it's not distracting, it's fine.

18 ADMIN. LAW JUDGE YOUNG: Right. I think moving
19 around may be a little bit too distracting. Go ahead, Mr.
20 Lodge, I'm sorry.

21 MR. LODGE: Thank you. We understand from our
22 review of the Palisades embrittlement history that the
23 anticipated estimated dates at which there would be a
24 critical problem with the reactor vessel range from 1995 to
25 the present utility projection of 2014 which of course is

1 several years into the projected 20-year extension period.
2 In other words, if a 19-year chunk of time during which it
3 has been projected and anticipated, estimated or guessed,
4 that there would be the potential for a severe crisis under
5 the right circumstances from pressure thermal shock.

6 We, in short, believe that (a) the subject
7 matter jurisdiction if you will of this panel clearly
8 encompasses this particular aging degenerative problem; and
9 secondly, that the data as summarized in our originally
10 filed contentions but certainly as amplified in our reply
11 shows that this issue must be subjected to hearing. As I
12 say, we anticipate from the public domain documents that we
13 have reviewed prior to even filing the contentions, that
14 the history is so mixed, so troubled, and frankly,
15 technically controversial, that the Palisades plant has to
16 be put under a microscope as a poster child for the
17 embrittlement problem.

18 ADMIN. LAW JUDGE YOUNG: Let me just ask you,
19 obviously it would have been good to have the, from your
20 standpoint, to have the additional information that you
21 provided in the reply in the original contention. But just
22 looking at the original contention, do you want to make any
23 further argument on it alone as meeting the contention
24 admissibility standards in 10 CFR 2.309(f)?

25 MR. LODGE: Beyond the reply that we made in

1 the motion to strike, I don't believe so.

2 ADMIN. LAW JUDGE YOUNG: Okay.

3 MR. LODGE: Is your Honor getting at a
4 particular point?

5 ADMIN. LAW JUDGE YOUNG: No. I mean, you did
6 make arguments on that and we've understood them basically.
7 As I understand your argument, well, for example, on the
8 issue that Mr. Lewis raised a minute ago, that I believe
9 you said in your reply that you're alleging a failure to
10 include information rather than -- let's see. Your
11 response to the claim that you haven't included references
12 to specific portions of the application was, as I
13 understood it, that your belief is that the application
14 fails to contain information on a relevant matter. And the
15 critical fact that you're alleging to support your
16 contention is the identification of the Palisades Plant as
17 prone to early embrittlement. Am I understanding that
18 correctly?

19 MR. LODGE: Yes. Yes, correct.

20 ADMIN. LAW JUDGE BARATTA: Could I ask a
21 question with regards to the -- 309(f)2 requires you to
22 provide a brief explanation of the basis for your
23 contention. Could you, in reference to your original
24 filing, point to where that statement adheres in Contention
25 1?

1 MR. LODGE: Well, I reread this with an eye to
2 that, your Honor, in responding to the motion to strike. I
3 think that the basis is the implied in that the
4 embrittlement issue is of course explained and discussed at
5 length in the application, and we believe that, as I've
6 indicated, that the law clearly, the law on the subject
7 clearly envisions that embrittlement is a type of
8 degenerative process that's within the scope of the
9 proceeding. If you're saying, if you're questioning us,
10 did you use the word 'here is our basis', no, we did not.
11 I believe that it is implicit and we were anticipating with
12 the expertise of this panel would probably acknowledge that
13 it is the type of problem that is covered in the
14 application and therefore can be challenged.

15 ADMIN. LAW JUDGE BARATTA: Okay.
16 Unfortunately, well, because of Turkey Point, isn't the
17 Board constrained though from filling in, so to speak? You
18 know, you used the word implied in what you just said, and
19 I think in light of Turkey Point, there is some language in
20 there that says that the Board could not fill in
21 information. Could you reply to that? I'm struggling, you
22 can see what I mean.

23 MR. LODGE: I have seen, and I know the wording
24 you're referring to, I think that, frankly, that the
25 Commission's statement in that regard certainly sets no

1 objective standard unless it is that this panel is to read
2 the contention and decide if it articulates what we call a
3 justiciable issue.

4 I think that, I guess I'm filling in, I think
5 that the Commission expects that the panel is going to
6 exercise a certain amount of discretion, and also to start
7 from a certain operative framework, i.e., the presumptions
8 that the panel is aware of the contents of the application
9 and essentially measures the contention alongside of what
10 the application states on the subject. I guess our
11 position as Petitioners is that it's not filling in but,
12 because otherwise, you're talking about this panel being
13 constrained to make a rote determination that a checklist
14 has been followed or not and the contention is allowed in
15 or not. And I believe that the policy of the NRC
16 historically has been, when possible, to make
17 determinations based upon merits, not upon simply
18 procedural defects and deficiency.

19 ADMIN. LAW JUDGE YOUNG: Could you -- did you
20 have anything to add?

21 MR. LODGE: No, thank you.

22 ADMIN. LAW JUDGE YOUNG: Could you address the
23 Staff's argument that the statements you make in support of
24 your contention are generic? You said earlier that --

25 MR. LODGE: Right.

1 ADMIN. LAW JUDGE YOUNG: You referred to what
2 made the Palisades unique and you're alleging that the
3 identification is prone to early embrittlement.

4 MR. LODGE: Right.

5 ADMIN. LAW JUDGE YOUNG: But the Staff is
6 arguing that what you have provided is generic and applies
7 to, in effect applies to all plants.

8 MR. LODGE: I believe what your Honor is
9 referring to is the more embrittled a plant becomes -- the
10 longer it operates, the more embrittled it becomes. That
11 is generically true. The issue is whether there are
12 decreasing safety margins in the event of initiation of
13 emergency operating procedures which can be kind of a
14 generic truism. But I don't think the Utility nor the
15 Staff are admitting that that is a generic truism by a long
16 shot.

17 And please forgive me, I'm not trying to say
18 that the panel is quibbling over a sentence structure, but
19 we succinctly point out that our expert opinion is that
20 that is true as to Palisades. So, yes, it's plucking from
21 the land of generic truisms a statement that is then
22 applied to Palisades. And we do believe that that
23 adequately articulates an admissible contention, that the
24 longer it operates, the more dangerous it is, and that an
25 expert has analyzed the facts, an expert that presumably at

1 this point is familiar enough with the plant has made that
2 statement, offered that opinion as to Palisades.

3 This plant does not have a thermal shield and
4 we also believe that that is one of the facts that makes
5 Palisades truly unique, as I say a poster child for the
6 embrittlement problem.

7 ADMIN. LAW JUDGE YOUNG: I guess what I would
8 like you to focus on, I mean, what I took, reading your
9 contention and the basis or the support, I'm reading your
10 contention as being the bolded, let's see, the bolded
11 statement after the number one, and then the support for it
12 being the paragraph that follows that.

13 MR. LODGE: Right.

14 ADMIN. LAW JUDGE YOUNG: And when I look at
15 that, the thing that strikes me as the unique thing that
16 you're alleging is that the Palisades Plant has been
17 identified as prone to early embrittlement.

18 MR. LODGE: Right.

19 ADMIN. LAW JUDGE YOUNG: And you raise the
20 issue of timely by reference to, by use of the word
21 untimely and continuing crises.

22 MR. LODGE: Correct.

23 ADMIN. LAW JUDGE YOUNG: So, could you address
24 that a little bit more? I mean, maybe I'm overlooking
25 something, but the uniqueness that you appear to be

1 alleging is the early, being identified as prone to early
2 embrittlement presumably
3 and in comparison to other plants.

4 MR. LODGE: Yes. Several questions there.
5 Please let me organize my thoughts. Number one, while the
6 assertions may appear to be generic, the response and the
7 numerous Staff meetings, pardon me, conferences with the
8 Utility, between Staff and Utility engineers and other
9 experts has been very plant specific. It may have, the
10 result of how the embrittlement problem is handled at
11 Palisades might have replicability within the industry.

12 ADMIN. LAW JUDGE YOUNG: I'm really not, I
13 don't necessarily see any problem with -- if you raise some
14 facts that may be true for other plants, that is not
15 necessarily a reason to throw out a contention. What I'm
16 trying to get you to focus on though is the one thing that
17 you allege that, appears to be alleging that Palisades is
18 different is the reference to the timing and the being
19 prone to early embrittlement. And the Staff is arguing, as
20 I understand it, that that in addition to the other things
21 that you're talking is generic.

22 MR. LODGE: And of course --

23 ADMIN. LAW JUDGE YOUNG: What is the
24 significance of it being prone to early embrittlement?

25 MR. LODGE: May I discuss things briefly

1 please?

2 ADMIN. LAW JUDGE YOUNG: Okay.

3 MR. LODGE: Thank you.

4 ADMIN. LAW JUDGE YOUNG: But just before you
5 confer any further, let me ask another question that I was
6 going to ask, and you might refer to the first one in this
7 context. NMC talks about, under 54.21, that it intends to
8 demonstrate that the effects of aging on the intended
9 functions will be adequately managed for the period of
10 extended operation, and then gets into a discussion of
11 50.61 in addition. In your reply, you made reference to
12 50.61 as well.

13 And so, what I'm trying to get you to focus on
14 is in that context and in the context of your alleging that
15 the Palisades Plant is prone to early embrittlement, what
16 is important about your allegation or your allegations that
17 makes this an issue that should be admitted for litigation?
18 What is unique in response to the Staff's argument?

19 MR. LODGE: Thank you.

20 (Whereupon, Mr. Lodge confers with
21 the other Petitioners.)

22 ADMIN. LAW JUDGE YOUNG: Another way to look at
23 this, Mr. Lodge, another way to look at this --

24 MR. LODGE: Yes?

25 ADMIN. LAW JUDGE YOUNG: I know you've referred

1 to some types of evidence that were this contention -- you
2 would present, but obviously if this contention were to be
3 admitted, it wouldn't make sense for you to just come and
4 give a lesson on what are the effects of embrittlement
5 generally.

6 MR. LODGE: Right. Yes. I agree wholly with
7 you on that point, your Honor. Pardon me.

8 One of the unique factors about Palisades is
9 that it has been lost to the shifting sand dunes of time.
10 The mix of copper and nickel in the reactor vessel --

11 ADMIN. LAW JUDGE YOUNG: Let me stop you, okay?

12 MR. LODGE: Okay.

13 ADMIN. LAW JUDGE YOUNG: Because I do not want,
14 by my question, to invite you to provide additional facts.

15 MR. LODGE: Right.

16 ADMIN. LAW JUDGE YOUNG: What I'm trying to get
17 you to do is provide a legal argument in the context of the
18 contention admissibility standards and in the context of
19 the contention and basis or support that you provided in
20 your original petition to respond to the Staff's concern
21 about everything being alleged in the contention and in the
22 support for it being generic. In other words, I don't want
23 you to just give me additional facts that weren't there
24 originally. But looking at your original contention, the
25 thing I see that stands out as sounding as though it's

1 unique is the identification of the Palisades Power Station
2 as being prone to early embrittlement.

3 MR. LODGE: One moment.

4 (Whereupon, Mr. Lodge confers with
5 the other Petitioners.)

6 MR. LODGE: From the application, we believe
7 that the copper and nickel content, and I understand your
8 hesitation that I venture into that, is higher than other
9 plants which makes the Palisades reactor vessel unique.
10 Furthermore, as to the 10 CFR 50.61 issue, the alternatives
11 that are portrayed in the application are not exactly
12 properly explained by the Utility. The Utility
13 references --

14 ADMIN. LAW JUDGE YOUNG: Now, again, I don't
15 want by my questions to invite you to say things that you
16 might have said in your original contention. What I'm
17 trying to get you to focus on is your original contention
18 and how the original contention raises issues that should
19 be admitted through litigation. And one of the things that
20 the Commission said in Turkey Point was that the purpose of
21 the -- hold on just a second. "The hearing should serve
22 the purpose for which they are intended to adjudicate
23 genuine substantive safety environmental issues placed in
24 contention by qualified intervenors. While intervenors
25 need not be technical experts, they must knowledgeably

1 provide some threshold level of factual basis for their
2 contention."

3 Now, you have identified an expert who is
4 retired from the NRC, and presumably that expert would be
5 able to say things other than just give us a lesson on the
6 dangers of embrittlement. The only thing I read in your
7 contention, and not to say that the other facts that you've
8 alleged aren't sufficient to support a contention on their
9 own, but the thing that you have identified as unique is
10 identification of the plant as being prone to early
11 embrittlement.

12 Why is that an issue that is substantive enough
13 that we should admit a contention on it? Without getting
14 into specific facts, why is that issue, one, how does that
15 raise a substantive that makes this contention admissible?

16 MR. LODGE: Excuse us.

17 (Whereupon, Mr. Lodge confers with
18 the other Petitioners.)

19 MR. LODGE: What your Honor is getting at, I
20 gather, is that we have articulated an expert opinion, a
21 conclusion without the underlying factual basis.

22 ADMIN. LAW JUDGE YOUNG: No.

23 MR. LODGE: No? I'm sorry.

24 ADMIN. LAW JUDGE BARATTA: Are you referring
25 to, I mean, the rule that your clients have spelled out in

1 here, is this sufficient information --

2 ADMIN. LAW JUDGE YOUNG: No, no. What I'm
3 getting at is if we were to admit this contention --

4 MR. LODGE: Right.

5 ADMIN. LAW JUDGE YOUNG: You have an expert,
6 the expert can talk about what happened at the Palisades
7 Plant.

8 MR. LODGE: Right.

9 ADMIN. LAW JUDGE YOUNG: Okay. What's the
10 impact of that? What difference does that make considering
11 the standard that, if we look at, for example, 10 CFR
12 2.309(f) Subsection 4, "You must demonstrate that the issue
13 raised in the contention is material to the findings the
14 NRC must make to support the action that's involved in the
15 proceeding."

16 Now, the findings that we must make are defined
17 at 10 CFR 54.29, Standards for Issuance of a Renewed
18 License. "A renewed license may be issued by the
19 Commission up to the full term authorized by 54.31 if the
20 Commission finds that actions have been identified and have
21 been or will be taken with respect to the matters
22 identified in paragraphs (a)1 and (a)2 of this section such
23 that there is a reasonable assurance that the activities
24 authorized by the renewed license will continue to be
25 conducted in accordance with the current licensing basis

1 and at any changes made," and so forth. And then it refers
2 to certain matters which are managing the effects of aging
3 during the period of extended operation on the
4 functionality of structures and components that have been
5 identified to require review under 54.21(a)1 which is
6 referred to by NMC in their answer.

7 So, I'm asking you not to discuss the facts but
8 what's the legal impact of whatever facts you would present
9 in support of your contention were it to be admitted?
10 Because we don't just, I mean, if we were to admit it, we
11 wouldn't just decide based on what we think. We would look
12 to the rule that governs what are the standards for renewal
13 of a license in determining what the significance of those
14 facts were and whether they demonstrated that the license
15 should not, I would assume your argument would be, should
16 not be granted. And what we would look to in determining
17 whether NMC has shown that it should be granted or whether
18 you have shown that it shouldn't be granted is 54.29 and
19 the standards set forth there.

20 In addition to that, NMC has made arguments
21 based on 50.61 in terms of what it plans to do. So, I'm
22 really asking you to focus your argument on the legal
23 impact of the facts that you have alleged and how that is
24 substantive, how that is material to the findings that we
25 need to make.

1 MR. LODGE: Among the findings that the Board
2 has to make are that the timing of aging analyses offered
3 by the utility company are adequate essentially to protect
4 the public health and safety.

5 ADMIN. LAW JUDGE YOUNG: Well, now, I really
6 want you to focus on the actual standard which is 54.29.
7 That, we don't just say, we don't just make a general
8 finding on the public health and safety.

9 MR. LODGE: Right. If you'll indulge me for a
10 moment, within that finding is that the earlier analyses
11 that are rendered by NMC will remain valid for the 20-year
12 extension period. We don't believe that the application
13 provides that kind of assurance. Certainly the history
14 doesn't. But even the facts as articulated in the
15 application show that Palisades' management plan is behind
16 the curve, if you will, in terms of getting a grasp on the
17 embrittlement problem --

18 ADMIN. LAW JUDGE YOUNG: Okay. Now, you're
19 getting back into the facts. And what I'd really like you
20 to do is look at the facts that you've alleged in support
21 of your contention and the fact that you are alleging that
22 this plant is identified as prone to early embrittlement.
23 How does that relate to the findings that we need to make?
24 How does that relate to whether or not a renewed license
25 should be granted, whether or not the effects of aging are

1 going to be managed for the term, for the extended term of
2 the license?

3 MR. LODGE: Are you saying if the panel accepts
4 for purposes of argument that it is prone to early
5 embrittlement --

6 ADMIN. LAW JUDGE YOUNG: Right.

7 MR. LODGE: Then, well, if it's prone to early
8 embrittlement, it means that it underscores our contention
9 that Palisades is unique, that Palisades is in essence
10 cutting edge, and that the very close scrutiny needs to be
11 given to the analysis offered by the Utility as to how it's
12 going to manage that problem during the 20-year period of
13 license extension.

14 ADMIN. LAW JUDGE YOUNG: And you're saying that
15 that analysis is inadequate?

16 MR. LODGE: Yes.

17 ADMIN. LAW JUDGE YOUNG: Because, why?

18 MR. LODGE: Well, if I say why, that gets into
19 the factual --

20 ADMIN. LAW JUDGE YOUNG: Well, why in the
21 context of the standards that we must follow in making a
22 determination in 54.29?

23 ADMIN. LAW JUDGE BARATTA: What is it that's
24 unique about it that makes this the appropriate form for
25 litigation of that issue? Because I, at least that's the

1 question that I'm trying to get answered.

2 MR. LODGE: Is what your Honor is asking what
3 does the contention say is unique?

4 ADMIN. LAW JUDGE BARATTA: Well, I don't want
5 to climb on Judge Young's issue. I have my own questions
6 with respect to that. I was just trying maybe to give you
7 something to think about.

8 ADMIN. LAW JUDGE YOUNG: You would be arguing
9 presumably, if this contention were admitted, okay, you'd
10 be presenting facts to illustrate how Palisades is prone to
11 early embrittlement.

12 MR. LODGE: Right.

13 ADMIN. LAW JUDGE YOUNG: And then, you would
14 presumably make some legal argument as to the relevance of
15 that to the standards that we need to apply in determining
16 whether NMC has shown that the renewed license should be
17 issued based on actions having been identified that have
18 been or will be taken with respect to managing the effects
19 of aging during the period of extended operation, et
20 cetera. Now, what would your legal argument be assuming
21 that you have shown that Palisades Plant is prone to early
22 embrittlement and taking into account the legal argument
23 made by NMC that under 50.61, they will be submitting
24 information to show, they will be providing information to
25 the NRC three years in advance of the projected date that

1 the plant will exceed the PTS criterion?

2 So, what legal argument would you make to say
3 these facts show that the standard defined in Section 54.29
4 has not been met by NMC with regard to the Palisades Plant?
5 You couldn't just rely on the facts and say it shows it --
6 so you need to demonstrate to us that the legal standard
7 set in 54.29 which refers back to 54.21 I believe which is
8 cited by NMC in its argument, what legal argument would you
9 make to support denying the renewed license based on the
10 standards in 54.29? Do you need a copy of that to look at?

11 MR. LODGE: If you have it, please.

12 ADMIN. LAW JUDGE YOUNG: And if you want to
13 look also at 54.21 and 50.61?

14 MR. LODGE: Right. We have that, thank you.
15 Our legal argument would be to pose the question: How can
16 the Utility presume to say that they will have a plan three
17 years ahead of its implementation based on the fact that
18 the Utility cannot demonstrate at this point that it
19 understands, has it arms around the problem of
20 embrittlement? Our legal question is what's going to
21 change between now and that indeterminate point in the
22 future whereby the utility can demonstrate that it finally
23 does have a grasp?

24 As I've indicated, the facts are going to show
25 some very deleterious problems that tend to undermine the

1 credibility of projections. And we're at a loss to
2 understand how the Utility has explained in this
3 application that it's going to be able to come up with
4 credible science and engineering based projections on which
5 to base its three-year advance notice.

6 The embrittlement problem in some hasn't been
7 managed to date. And if history is any indicator, it's not
8 going to, the Utility is not postulating any means by which
9 it proposes to really manage the problem. It's just saying
10 we'll be fine, we'll give you three years advance notice,
11 we'll select among the options and come up with some sort
12 of combined strategy. They really haven't articulated what
13 that management strategy is. They have explained in the
14 application what their options are.

15 We already, and I know, I just want to give you
16 a for instance. We know that they say annealing is in
17 there and it's one of the things we could do. But we also
18 happen to know off the record between us that they aren't
19 going to anneal, possibly because of the cost of doing so.
20 We don't know. But the point is the Utility is actually
21 saying we plan to have a plan.

22 ADMIN. LAW JUDGE YOUNG: And so, you're arguing
23 that that does not constitute an action that's been
24 identified that has been or will be taken --

25 MR. LODGE: Exactly.

1 ADMIN. LAW JUDGE YOUNG: -- with respect to
2 managing the effects of aging during the period of extended
3 operation?

4 MR. LODGE: Yes. Yes, your Honor.

5 ADMIN. LAW JUDGE BARATTA: But what is the
6 basis for that not being an action though? I mean, if I
7 say that I'm going to do something that I have identified
8 an action, what is the legal basis for that not being an
9 action I guess is what I'm saying.

10 MR. LODGE: We would have no case if the
11 Utility could credibly argue that it has managed the
12 embrittlement problem today. We don't believe the Utility
13 can make that argument. This is an evolving analysis.
14 What you're watching, and again, I'm not going to plough
15 deeply into the facts, but if you're looking at a
16 circumstance where the original anticipated danger, you
17 know, red lights, bells going off date was 1995, yet now
18 it's 2014, that's a generation estimate.

19 ADMIN. LAW JUDGE YOUNG: But let's say, let's
20 just assume for the sake of argument that there haven't
21 been any problems up to this point, because you don't
22 really allege that in your contention. What you allege is
23 that it's subject to, or it's been identified as being
24 prone to early embrittlement.

25 MR. LODGE: Right.

1 ADMIN. LAW JUDGE YOUNG: And then, in response
2 to that, NMC has said, well, what we're going to do is
3 we're going to do what 50.61 requires and we're going to do
4 that, we're going to provide the information three years
5 before the PTS criterion is exceeded which I believe, I
6 don't think there is any dispute that that would be 2014.

7 MR. LODGE: Right.

8 ADMIN. LAW JUDGE YOUNG: So, I think what Judge
9 Baratta is asking is how is identifying the action of
10 providing information to the NRC, and I guess it would be
11 2011 with regard to what they're going to do in 2014, how
12 should that be evaluated under 54.29?

13 MR. LODGE: I would just make the observation
14 first that 2011 is the expiration year for the current
15 license. So, 2014 is three years into the extension
16 period. So, the fact that the Utility is saying at the end
17 of our current license we'll provide you with a plan, the
18 Utility has not demonstrated the capability of managing the
19 embrittlement to date and is essentially in its application
20 saying --

21 ADMIN. LAW JUDGE YOUNG: But what I ask you,
22 let's assume that it has. Let's assume that it has. Is
23 there anything wrong with saying we're going to tell you in
24 2011 what we're going to do in 2014?

25 MR. LODGE: Assuming the Utility has managed it

1 to date?

2 ADMIN. LAW JUDGE YOUNG: Right.

3 MR. LODGE: Or that there simply has not been a
4 crisis to date?

5 ADMIN. LAW JUDGE YOUNG: Let's assume there is
6 no problem to date. Let's assume what you have alleged,
7 that it's been identified as being prone to early
8 embrittlement.

9 MR. LODGE: All right.

10 ADMIN. LAW JUDGE YOUNG: That's the unique
11 situation that you allege here to support your contention
12 that the application is untimely and incomplete for failure
13 to address the continuing crisis of embrittlement.

14 MR. LODGE: We are alleging that the Utility
15 itself has identified a proneness to early embrittlement.
16 We're taking public domain facts and essentially saying
17 that that is not enough. As I was saying, the plan to have
18 a plan, the fact that the Utility has not yet
19 articulated --

20 ADMIN. LAW JUDGE YOUNG: Why is the plan to
21 have a plan not enough?

22 MR. LODGE: Because the Utility carries the
23 burden of demonstrating, of running the problem to earth,
24 of having actual facts instead of multiple inconsistent
25 projections about the embrittlement problem in order to

1 have a plan. And they do not, they cannot articulate that
2 at this point.

3 ADMIN. LAW JUDGE TRIKOUROS: This question is
4 for Mr. Lodge and Mr. Lewis, but please feel free to chime
5 in. You state in your reply that, and I'll read it for
6 you, "Flux reduction of the magnitude required at Palisades
7 would require far more extraordinary measures such as the
8 installation of neutron shields on the exterior of the core
9 support barrel. It is unlikely that a plant modification
10 of this magnitude would be cost effective." That's quoting
11 from the application. And then you go on to say --

12 MR. LODGE: What page are you in, sir?

13 ADMIN. LAW JUDGE TRIKOUROS: Page 6 of your --
14 reply. You go on to say that "The Petitioners submit that
15 an effective and reliable management plan for a 20-year
16 extension must begin with the incorporation of all NRC
17 management strategies as outlined in 50.61 including
18 fluence reduction efforts, not just the company's perceived
19 cost effective ones." And you just mentioned a few moments
20 ago a comment regarding annealing and cost.

21 It appears that your interpretation of 50.61 is
22 such that cost should not be a consideration or should be a
23 minimal consideration. I'd like to understand more about
24 that and I'd like to hear what others have to say as well.

25 MR. LODGE: Well, our understanding of the

1 Atomic Energy Act is that sheer economics are not an
2 appropriate rationale when the issue is to protect the
3 public health and safety.

4 ADMIN. LAW JUDGE TRIKOUROS: The word
5 practicable in 50.61 is included. In fact it says
6 reasonably practicable, if I remember correctly.

7 ADMIN. LAW JUDGE YOUNG: You say on page 9, if
8 you don't mind my sort of amplifying on that, you say on
9 page 9 of your reply, "There is a grave issue of law here,
10 whether the economically dictated priority of Palisades or
11 the health and safety concerns of the Petitioners conform
12 to NRC regulations." Which regulations -- I assume that
13 you're referring to 50.61?

14 MR. LODGE: Yes. Correct.

15 ADMIN. LAW JUDGE YOUNG: And the licensing
16 renewal regulations. And I think the term reasonably
17 practicable is where the --

18 MR. LODGE: Can you tell me please what
19 subsection that is in?

20 ADMIN. LAW JUDGE YOUNG: That is in 50.61.

21 MR. LEWIS: (B)3 and (b)4.

22 ADMIN. LAW JUDGE YOUNG: Right. (B)3 is where
23 it first appears and then (b)4. I mean, in effect, what we
24 have here is that as explained in NMC's answer, what they
25 plan to do and what they rely on is their action that would

1 demonstrate that they will adequately manage the effects of
2 aging during the extended period of operation under any
3 renewed license is that they will comply with 50.61. And
4 it seems like you're raising an issue, one, as to whether
5 the plan to have a plan meets the license renewal criteria,
6 but also you're raising a question about what reasonably
7 practicable means and whether cost concerns can be taken
8 into account in looking at what's reasonably practicable.
9 Is that --

10 ADMIN. LAW JUDGE TRIKOUROS: Yes. I mean, in
11 essence, they have not identified what will be in their
12 plan, but they have in at least one instance in the
13 application identified what will not be in the plan. And
14 what will not be in the plan or at least what is unlikely
15 in their own words to be in the plan is the addition of
16 neutrons shields on the core support barrel. You seem to
17 be taking exception to that interpretation of 50.61 that
18 allows them to make that assertion. I'd like to understand
19 more about that interpretation of 50.61.

20 MR. LODGE: Please give me a moment.

21 ADMIN. LAW JUDGE YOUNG: Would it be useful to
22 take a break at this point and give you some time to --

23 MR. LODGE: That would be fine. Thank you.

24 ADMIN. LAW JUDGE YOUNG: Okay. Then, let's
25 take a ten-minute break, 15 minutes. Come back at 10:30.

1 (Off the record.)

2 ADMIN. LAW JUDGE TRIKOUROS: Should I repeat
3 the question I asked prior to the break?

4 MR. LODGE: If you'd like.

5 ADMIN. LAW JUDGE TRIKOUROS: The question dealt
6 with the statement in the application regarding the, that
7 it was not cost beneficial to install the modification --

8 MR. LODGE: Correct.

9 ADMIN. LAW JUDGE TRIKOUROS: -- that would be
10 sufficient to mitigate the consequences of the
11 embrittlement, namely, neutron absorption plates on the
12 core support barrel. And I was asking the question
13 regarding your interpretation of 50.61 in which you
14 indicated that such considerations are not to be made.

15 MR. LODGE: I agree somewhat that 50.61 and the
16 reasonably practicable wording in the 50.61 would certainly
17 seem to allow some consideration to be given to economics.
18 And we, therefore, I believe agree that, yes, that's within
19 the panoply of options. However, 50.61 is rather, in our
20 estimation as Petitioners, ahead of the game. The Utility
21 has the burden of demonstrating that they have a right to a
22 license extension. The 2014 date that we've been talking
23 about is a date that's been moved back four or five times.
24 The Utility has never demonstrated before and we believe
25 it's going to have great difficulty demonstrating presently

1 the basis, the justification even for the 2014 date.

2 The fact issue for hearing is establishing the
3 early embrittlement, when it began or where it is or what
4 degree embrittlement has set in at Palisades. That isn't
5 the Petitioners' burden at hearing. We believe that,
6 again, the plan to make a plan is the argument looking
7 through the application. The Utility has essentially made
8 the statement that it's probably unlikely that we're going
9 to do a technological fix or correction, the shields, the
10 core barrel, which is a signal now to the Licensing Board
11 that there is at least that option off the table in all
12 likelihood.

13 We believe that since the Utility is not going
14 to be able to establish a date certain, can't establish it
15 now, that the Utility is going to have to explain that at
16 hearing. That is the issue of fact. Our arguments about
17 50.61 are essentially academic until the license extension
18 has been determined to be grantable.

19 ADMIN. LAW JUDGE TRIKOUROS: Are there any
20 other comments regarding the use of cost effective
21 arguments?

22 MR. LEWIS: We believe that reasonably
23 practicable implies consideration of cost, and what is
24 practical necessarily includes what can you do and how does
25 it cost and is it reasonable. Reasonably practicable has

1 been used in other context by the NRC to include
2 consideration of economics. There is a Seabrook case,
3 ALAB-422, 6 NRC 33 where the --

4 ADMIN. LAW JUDGE YOUNG: You've cited that,
5 right? I think you have already --

6 MR. LEWIS: I'm not sure we have.

7 ADMIN. LAW JUDGE BARATTA: Could you give that
8 citation again please?

9 MR. LEWIS: It's Public Service Company of New
10 Hampshire, Seabrook Station, Units 1 and 2, ALAB-422, 6 NRC
11 33, 1977. Now, that's a case where the Appeal Board was
12 considering whether certain mitigation measures, not for
13 pressurized thermal shock but just to mitigate
14 environmental impacts was reasonably practicable and
15 indicated that standard, you know, let's just say in
16 consideration of costs.

17 In addition, when the Commission was
18 establishing the pressurized thermal shock rules, there
19 were a number of SOCE papers that led up to it which
20 considered what were reasonably practicable measures for
21 reducing flux reduction. The SOCE paper is SOCE paper
22 8379, February 25th, 1983. It was actually cited in the
23 statement of consideration for the pressurized thermal
24 shock rule and this is replete with references to the
25 consideration of how much different options would cost.

1 ADMIN. LAW JUDGE YOUNG: What's the citation
2 for the SOC?

3 MR. LEWIS: It's 49 Federal Register at 4500.
4 I don't know what the first page of the Federal Register is
5 but it's at page 4500.

6 ADMIN. LAW JUDGE YOUNG: Thank you. Thanks.

7 MR. LEWIS: So, we think clearly reasonably
8 practicable requires consideration of economic. And we
9 believe that Petitioners just submitted that also. We
10 would agree.

11 ADMIN. LAW JUDGE TRIKOUROS: Do you consider
12 annealing also too costly at this point?

13 MR. LEWIS: No, it's one of the options under
14 the rules, both the pressurized thermal shock rule and the
15 annealing rule three years before you exceed the screening
16 criteria and you have to submit an analysis if you want to
17 operate past that screening criteria. And you need to
18 submit a nealing plant if you want to anneal. Those are
19 both options that are identified in our license renewal
20 application as part of our program. And so, we intend to
21 follow the regulations and make those submittals and
22 determinations at that time.

23 ADMIN. LAW JUDGE TRIKOUROS: So, you're not
24 ruling out the issuance of an annealing report three years
25 prior to 2014?

1 MR. LEWIS: No, we're not.

2 ADMIN. LAW JUDGE YOUNG: Do you want to add
3 anything on that?

4 MR. LODGE: I would just like to stress that,
5 again, we don't vociferously at this point disagree that
6 reasonably practicable includes economic balancing. The
7 point is look at the regulatory environment right now.
8 There is no NRC rule on PTS. There is not a binding one.
9 There's one that has been under discussion and is out there
10 and is being revised. But there is not a standard that
11 this Board can apply and you're faced with an applicant
12 that's saying, reading between the lines, we can't tell you
13 very accurately that there is embrittlement, only the
14 degree of embrittlement, we can tell you there is
15 embrittlement. And that's why we are very skeptical,
16 looking very askance at this 2014 date because it's about
17 as established as the earlier screening dates were.

18 So, who is to say in 2011 that the then
19 projected date isn't 2032?

20 ADMIN. LAW JUDGE YOUNG: You made a statement
21 earlier that what they have is a plan to make a plan. And
22 I think you were arguing that that doesn't meet the
23 standards for license renewal.

24 MR. LODGE: Right.

25 ADMIN. LAW JUDGE YOUNG: Can you point me to,

1 or sort of spell out for me your argument on that? What
2 authority? I mean, we need to make any findings that we
3 make based on the standards set forth in the rules.

4 MR. LODGE: Sure.

5 ADMIN. LAW JUDGE YOUNG: So, could you tell me
6 what authority you would rely on in those rules or
7 elsewhere to support your argument that a plan to make a
8 plan, taking all your other arguments and your facts as
9 alleged to be true? How does that, what impact does that
10 have on the findings that we would need to make ultimately,
11 the legal conclusions that we would need to draw
12 ultimately?

13 MR. LODGE: Well, the requirements in the
14 54.21(c)1 as to the analyses that must be demonstrated by
15 the applicant, and I would say that the --

16 ADMIN. LAW JUDGE YOUNG: I think what NMC is
17 relying on is 54.21(c)1(iii), that they are going to
18 demonstrate --

19 MR. LODGE: Right. Right.

20 ADMIN. LAW JUDGE YOUNG: -- through the
21 information to be provided to the NRC.

22 MR. LODGE: That's correct.

23 ADMIN. LAW JUDGE YOUNG: That the effects of
24 aging on the intended functions will be adequately managed
25 for the period of extended operation.

1 MR. LODGE: That's correct.

2 ADMIN. LAW JUDGE YOUNG: And what's your
3 argument on that and with regard to the standards of 54.29?

4 MR. LODGE: That the Utility historically has
5 not, and again, I'm sort of delving into facts a moment,
6 that the history up to this point, up to the time of the
7 hearing in effect is that the Utility has not demonstrated
8 any ability to manage the embrittlement problem and we
9 believe the issue of fact is that the Utility has to
10 demonstrate what's changed, how firm is the 2014 date,
11 based upon what as opposed to the past.

12 ADMIN. LAW JUDGE YOUNG: And if the 2014 date
13 is correct, what's your argument?

14 MR. LODGE: That's the issue of fact that would
15 have to be decided and adjudicated by the Board.

16 ADMIN. LAW JUDGE YOUNG: Let's say we find that
17 that date is correct just for the sake of argument, what is
18 your argument as to how that affects the legal conclusions
19 that we would need to draw? And I guess what I'm getting
20 to, you say, you characterize the argument of NMC as being
21 a plan to make a plan?

22 MR. LODGE: Correct.

23 ADMIN. LAW JUDGE YOUNG: What's wrong with
24 that, under the legal standards of 54.21 and 54.29?

25 MR. LODGE: What's wrong with what? The

1 uncertainty in our estimation is the, is the issue of fact.
2 If you're saying what's wrong with a plan to make a plan
3 the requirement by the Board is to find there is a
4 demonstration that the effects of aging will be adequately
5 managed in the renewal term.

6 In essence, you will be making a finding that,
7 that they might be managed in the renewal term but there
8 will not be the requisite degree of certainty that they
9 will be, you will be granting an open season type of
10 license.

11 You'll be allowing the utility to continue
12 operating under the current ages of no PTS standard, no,
13 it's under revision and the ad hoc generation long setting
14 and resetting of the date that the screening criteria are
15 breached or surpassed.

16 ADMIN. LAW JUDGE BARATTA: From a regulatory
17 standpoint, you seem to apply that this is ad hoc but the
18 regulations, specifically the EDS regulations and NMC
19 statement that they will comply with those, I don't quite
20 understand where the uncertainty comes in. I mean, that
21 rule, EDS rule does allow some, different courses of
22 action.

23 MR. LODGE: Right.

24 ADMIN. LAW JUDGE BARATTA: But they're all very
25 specifically described.

1 MR. LODGE: Right.

2 ADMIN. LAW JUDGE BARATTA: And their indication
3 is that they will comply with the rule. How is that any
4 different than, for example, statements which they might
5 make with respect to say complying with Appendix B criteria
6 or a quality control system? Or complying with Part 20 for
7 the dose?

8 MR. LODGE: All the utility is saying by
9 promising to comply with the regulation is that whatever
10 requirements we have to follow in, let's say 2011, we will.
11 And we'll postulate our 50.61 option and our choices.
12 We'll make our decision then.

13 The issue of fact is what will have changed
14 from the point in time that the Board and the Commission
15 issue a license extension until --

16 ADMIN. LAW JUDGE YOUNG: Let me stop you there.
17 Don't assume what the Board's going to do.

18 MR. LODGE: No, no. I'm saying, for purposes
19 of discussion that --

20 ADMIN. LAW JUDGE YOUNG: If the Board were to
21 grant the renewal license then --

22 MR. LODGE: I can correct, I mean no disrespect
23 at all.

24 ADMIN. LAW JUDGE YOUNG: Okay. Now continue
25 your --

1 MR. LODGE: That was kind of implicit in my
2 point of argument. The problem is is that the issue of
3 fact here is, is a gaping issue of fact. And that's why we
4 believe that it is up to the Board to establish whether or
5 not the embrittlement management history warrants and
6 conjectures by the utility as to the near term, whether
7 that warrants a license extension.

8 Not, I think it is this, the panel cannot
9 simply pass on the adequacy by saying, well they've
10 committed to following the regs that might be in effect at
11 that time. We don't even know if there will be a PTS
12 revision, a final one even by then.

13 So, in essence, we think that the issue in one
14 respect is that the utility is requesting continuation of
15 the status quo. They've already said we aren't going to
16 make a technological fix in all likelihood, so we're going
17 to continue to rely on the paucity of data and the
18 proliferation of computer projections and inferences.

19 And maybe occasionally we can get some data on
20 embrittlement problems at other reactors and maybe we will
21 use surveillance capsules that have some stepped up
22 accelerated embrittlement features to them. All of which
23 we'll use to try to figure this out. But they cannot
24 explain that they have figured it out, that there's
25 certainty that they are working essentially from a rather

1 hard science and a hard engineering basis.

2 ADMIN. LAW JUDGE YOUNG: So what you're saying
3 is that the licensee may demonstrate the effects of, that
4 the effects of aging on the embrittlement issue will, that
5 the licensee can demonstrate that it may be adequately
6 managed but not that it will be adequately managed?

7 MR. LODGE: Correct.

8 ADMIN. LAW JUDGE YOUNG: That's what your
9 argument is and then that --

10 MR. LODGE: Yes.

11 ADMIN. LAW JUDGE YOUNG: All right. Do you
12 have any questions for him?

13 ADMIN. LAW JUDGE BARATTA: I'd like to reserve
14 coming back after I --

15 ADMIN. LAW JUDGE YOUNG: We may have more.
16 Okay.

17 ADMIN. LAW JUDGE TRIKOUROS: I think there are
18 more questions.

19 ADMIN. LAW JUDGE YOUNG: You want to ask now?

20 ADMIN. LAW JUDGE TRIKOUROS: I do have one
21 question --

22 MR. LODGE: Yes, sir.

23 ADMIN. LAW JUDGE TRIKOUROS: -- regarding your
24 statement that NMC has not properly managed the
25 embrittlement effect. Can you elaborate on that? The, I

1 mean certainly they haven't introduced flux reduction
2 programs where, what have they not done?

3 MR. LODGE: They've never established and
4 apparently cannot establish the precise mix of copper and
5 nickel, that data is lost to time.

6 The surveillance coupons or capsules were used
7 up, we believe, as of the ninth refueling which was in the
8 early 1990's. I'm sorry. And in essence they are delaying
9 the, they're using fuel bundles to try to reduce the
10 irradiation effects on the reactor pressure vessel.

11 I don't know, so far as I understand, those are
12 at least three of the facets that we question in terms of
13 management practices.

14 I, perhaps I should frame it as we, it's the
15 petitioner's contention that the problem, yes, there are
16 management measures being taken. But, once again, there's
17 a, it's guess work, it's based upon paucity of information.

18 There's an argument in fact that, based upon
19 one of the conclusions the Board could reach is that based
20 upon the history that the only certain way of meeting the
21 standard is for replacement of the RPV.

22 ADMIN. LAW JUDGE BARATTA: In light of 50.61
23 though --

24 MR. LODGE: Right.

25 ADMIN. LAW JUDGE BARATTA: The way, does not,

1 doesn't that dictate the way that you can manage the
2 effects of embrittlement?

3 MR. LODGE: Indeed it does. And as I indicated
4 earlier, we don't particularly dispute the reasonably
5 practicable wording but I think that that is, that's a
6 determination that gets made, is allowed to be made only
7 after the 54.29 determination is made.

8 The utilities previously pledged, in about
9 1996, that they would nail the reactor vessel and have not
10 done so. We don't know why, but that again is one of the
11 facets of this that would be explored we believe at a fact
12 hearing.

13 But yes, sir, you're correct, 50.61 says what
14 it says. And it does allow for the selection, the
15 outlining and selection of options. But that is not a
16 determination that's being made right now.

17 ADMIN. LAW JUDGE BARATTA: All right. Well
18 let's take this a step further then though. The
19 determination now is whether or not they will manage the
20 effects of aging?

21 MR. LODGE: Right.

22 ADMIN. LAW JUDGE BARATTA: That's 54.20,

23 ADMIN. LAW JUDGE YOUNG: 21.

24 ADMIN. LAW JUDGE BARATTA: 21. 54.21.60.

25 ADMIN. LAW JUDGE YOUNG: Well actually, 54.29.

1 ADMIN. LAW JUDGE BARATTA: Okay. 54.21 and
2 54.29 require. Now I guess I'm still at a loss to
3 understand why a statement that I will comply with the
4 apple requirements for PTS screening criteria which is
5 50.61 is not satisfy that I will manage, the statement I
6 will manage the detrimental effects of aging.

7 Because again if I use your argument that a
8 statement that I will comply with the regulations is
9 insufficient to demonstrate that I've taken an action which
10 will deal with the detrimental effects then any statement
11 that I will comply with any other part of the regulations
12 would come into question as well.

13 And seems that to lead to an illogical
14 conclusion.

15 In other words, I'm trying to get back to the
16 issue of, we have to, when we're all said and done on this
17 license renewal, we have to come to a conclusion that
18 they've met the regulations. And the regulations are 54.21
19 and 54.29, require that they have a plan.

20 MR. LODGE: Um-hum.

21 ADMIN. LAW JUDGE BARATTA: Okay. And how, what
22 is it that, in the regulations that says a statement that I
23 will comply with the regulations is not a plan?

24 You know what, where in all of the, you know,
25 the part 50 would that not satisfy?

1 MR. LODGE: I think that what the utility is
2 actually saying is we intend to comply, we think, with the
3 regs that might be in affect at the time.

4 The company's operating from a lack of actual
5 data based upon surveillance capsules or coupons. We
6 believe that the standards in part 54 require a much higher
7 degree of actual knowledge, actionable knowledge than that.

8 And that, again, to state that you intend to
9 make decisions seems to abrogate what this Board's, the
10 scope of this Board's responsibility is. That in essence,
11 I mean I take that to suggest that why couldn't just
12 ongoing regulatory powers of the NRC address this
13 embrittlement problem.

14 Well, there is not an external NRC defined
15 standard and the utility keeps moving its own goal posts
16 back based upon what amounts, in some respects, to
17 speculative inference, not hard data.

18 I, it's the petitioner's position that at some
19 point and especially when they're making projections now,
20 several years into the anticipated 20 year extension period
21 that it, the buck has to stop, the determination has to be
22 made here, in 2005 or '06 as to exactly what are they
23 operating from when they say 2014, when they, when there's
24 any representation made as to the decision.

25 ADMIN. LAW JUDGE BARATTA: Well, let me take

1 that point that you just made though. If you're taking
2 issue with their statement, which they are currently
3 operating on, under, that PTS is not a problem, isn't that
4 a challenge to the existing licensing basis and therefore
5 is specifically excluded from this license renewal hearing?

6 MR. LODGE: No, sir. Because they're making a
7 representation to the Commission that we believe we're
8 going to be able to manage this and here's how.

9 When you examine the basis for their
10 assumptions, it starts to come apart, the wheels start to
11 fall off. But that's the basis under which they're
12 currently operating.

13 It's the basis under which they propose to
14 continue operating until 2014, perhaps.

15 ADMIN. LAW JUDGE BARATTA: See, my problem is
16 I'm bound by what the Commission said in Turkey Point,
17 okay.

18 MR. LODGE: Right.

19 ADMIN. LAW JUDGE BARATTA: I mean that's --

20 MR. LODGE: Yes.

21 ADMIN. LAW JUDGE BARATTA: -- you know,
22 anything that we do has to be consistent with that. That's
23 our governing, one of our governing case logs. And one of
24 those, the aspects is I can't challenge the existing
25 licensing basis in a license renewal here.

1 And it sounds like that's what you're doing.

2 MR. LODGE: Well.

3 ADMIN. LAW JUDGE BARATTA: Could you explain to
4 me how that isn't?

5 MR. LODGE: Sir, the Turkey Point also says,
6 left unmitigated, the effects of aging can overstress
7 equipment, unacceptably reduce safety margins and lead to
8 reduction of required plant functions, including the
9 capability to shut down the reactor and maintain it in the
10 shut down condition.

11 And, and that's in the same paragraph that
12 mentions embrittlement as a, certainly a legitimate topic
13 as an adverse aging effect.

14 That's why we believe, yes, it is a current
15 operating circumstance but the utility is also telling you
16 that we're going to maintain the status quo for the rest of
17 our current license and perhaps even into the license
18 extension period.

19 It is up to this Board to examine the adequacy
20 of that proposition as a management plan.

21 ADMIN. LAW JUDGE BARATTA: Okay. I think I
22 understand now what you're saying. Thank you.

23 ADMIN. LAW JUDGE TRIKOUROS: Your assertion
24 that there had been different analyses leading to different
25 conclusions over time, all of these, I assume, have been

1 done with approved methods under the auspices of the
2 Nuclear Regulatory Commission or is that, is there
3 something missing there?

4 These are just different analyses with using
5 different methods?

6 MR. LODGE: I don't know if the NRC has
7 promulgated a very clear guideline for what are approved
8 methods.

9 I guess I'm not prepared to answer that unless
10 you have, can help me a little bit.

11 ADMIN. LAW JUDGE TRIKOUROS: Well within the
12 allowances of say regulatory guides, specific regulatory
13 guides that identify methods. I'm trying to understand if
14 what you said regarding the various analyses is implying
15 something that we should be considering of this was a new
16 part of the normal plant licensing basis.

17 MR. LODGE: Um-hum. One moment, please. In
18 our reply to the motions to strike we point to, repeatedly
19 to an NRC staff memo that suggests that the staff itself
20 does not necessarily concur with the 2014 date.

21 So the question of whether or not these are,
22 the deliberations that have been ongoing since the late
23 '80's or even earlier are an acceptable practice, which I
24 take to be your question.

25 Pardon me. We questioned whether or not an

1 appropriate confidence level has been established through
2 all of that, all of the computations and projections. The,
3 again, the problem is that there's a PTS revision out there
4 that is not yet promulgated into formal policy.

5 This is very much an ad hoc circumstance
6 dealing with a plant that has unique engineered and lack of
7 engineered features, if you will, the radiation shield.

8 And incidently, it, I actually suppose maybe
9 the answer to your question, sir, is that maybe it is, it's
10 up to the Board to make the determination because of the ad
11 hoc nature of this ongoing technical dialogue that has been
12 going on now for a generation as to whether for another
13 generation it's going to be adequate to provide the
14 assurances that the Board has to find the utility to have
15 made.

16 ADMIN. LAW JUDGE TRIKOUROS: I was unaware that
17 2014 was in question. At least from all of the reading
18 that I have done, I could not see the 2014 was in question.

19 MR. LODGE: We actually recount the contents of
20 a staff memo at page 15 of our reply to the motion to
21 strike. I think it's mentioned, one or two times later.
22 It's mentioned at page 20.

23 It's also in our, yeah, it's in our appendix of
24 evidence that was provided to the actual memo, as an
25 exhibit, accompanying the same response.

1 ADMIN. LAW JUDGE YOUNG: Do you --

2 MR. LODGE: Yes?

3 ADMIN. LAW JUDGE YOUNG: Do you have anything
4 further you want to add?

5 MR. LODGE: No, sir. Or no, ma'am. Sorry.

6 ADMIN. LAW JUDGE YOUNG: All right.

7 MR. LODGE: Sorry.

8 ADMIN. LAW JUDGE YOUNG: If there are no more
9 questions now, should we move, all right. Let's move on to
10 you, Mr. Lewis and/or Mr. Gaukler.

11 MR. LEWIS: Thank you. Let me start by
12 addressing the assertion I heard a number of times that
13 we're working under ad hoc standards. And I think I heard
14 petitioner say at one point that there's no rule on
15 pressurized thermal shock, that there's no standard, that
16 everything's under revision.

17 It is true that there is an NRC effort under
18 way to consider revising the pressurized thermal shock rule
19 and about a half of what the petitioners cite in their
20 reply are ACRS statements that relate to potential changes
21 in the future of the pressurized thermal shock rule.

22 But we're not relying, in our license renewal
23 application, et al., on a potential revision to the rule.
24 There is a current rule and that's at 10-CFR-50.61 and
25 there's current interpreting guidance in Reg Guide 1.9 that

1 explains how you apply the rule.

2 And we are applying and being judged under the
3 current standard, not on any potential future revision. So
4 this is not an ad hoc approach.

5 We are demonstrating that we're managing aging
6 in accordance with very precise, current regulations. The
7 number of questions about the significance of the early
8 embrittlement assertion that is in the petitioner's reply,
9 let me try and address that and make a number of points.

10 First is that the plant's not unique. There
11 are other plants that will reach the screening criterion
12 before the period of extended operations. So this is
13 not --

14 ADMIN. LAW JUDGE YOUNG: I'm sorry. I thought
15 I had turned that off. Go ahead.

16 MR. LEWIS: We're not the only plant that has
17 this circumstance. And there was a May 27th, 2004
18 memorandum from the executive director of operations to the
19 Commission that identified how the license regulations
20 would apply to plants that would exceed the screening
21 criterion before the period of --

22 ADMIN. LAW JUDGE YOUNG: Repeat that statement,
23 please?

24 MR. LEWIS: There was a May 27th, 2004
25 memorandum from the executive director of operations to the

1 Commission that explained how the license regulations would
2 apply to a plant that would exceed the screening criterion
3 before the period of extended operations had expired.

4 In other words, would not be able to show that
5 they would meet the screening criterion for the entire
6 extra 20 years of operations. And that memorandum
7 identified other plants that were in the same circumstance.

8 ADMIN. LAW JUDGE YOUNG: With, just to, on the
9 prone to early embrittlement, that, as compared to the
10 other plants is this Palisades earlier or you're saying
11 it's not, I mean, there's, there would seem to be a
12 difference between three years into a term and say 18 or 19
13 years into a term, is there?

14 MR. LEWIS: I don't know the answer to that
15 question. I don't know when the other plants would expire.

16 With respect to early embrittlement, 54.21(c)1
17 gives three methods for managing a time limit aging
18 analysis. One is to show the current analysis extends
19 through the period of operation.

20 The second one is to revise the analysis to
21 make it extend. And the third is to establish a program to
22 manage aging.

23 The petitioners have suggested we're just
24 saying we're going to comply with the rules. That's not
25 really correct.

1 The pressurized thermal shock regulation is a
2 regulation that tells you exactly what you have to do at
3 every step of the way. It says, here's exactly how you
4 determine what your reference temperature for -- transition
5 is and if you're going to exceed it, here's exactly what
6 you're going to do.

7 So to a certain extent we are saying we're
8 following the rule. But we're saying we're following the
9 rule because it tells us what you do at each step to ensure
10 that the plant is safe.

11 And by saying that we meet each of these steps
12 that are specifically required by the rule, we are in fact
13 showing that there is no safety issue in the period of
14 extended operation. Because the rules do allow you to
15 operate in exceedance of the screening criterion without a
16 further NRC approval, either of annealing or further
17 analysis three years, you know, to be submitted three years
18 before the screening criterion has exceeded, demonstrating
19 that pressurized thermal shock is not a safety concern.

20 ADMIN. LAW JUDGE BARATTA: Could I, I'd just
21 like to interrupt you. I just want to ask a quick question
22 because we had some discussion about this, on the point of,
23 if you exceed, if your calculations show that you are going
24 to exceed it and, hypothetically at this point, okay, that
25 you do some new calculations and you're still going to

1 exceed it at some point, be it 2014, 2016 or whatever.

2 And you then had to come in under the rule to
3 request continued operation. Would that result in a
4 modification to your tech specs and as a result a, you'd
5 have to apply for a license modification?

6 And I'd like to ask that both of NMC and also
7 the staff.

8 ADMIN. LAW JUDGE YOUNG: And I guess going
9 along with that, if it would then that would mean that
10 there would be the right to a hearing because you would be
11 essentially proposing to amend your license.

12 ADMIN. LAW JUDGE BARATTA: That was my next
13 question to.

14 ADMIN. LAW JUDGE YOUNG: Is that a situation?

15 MR. LEWIS: Yes.

16 ADMIN. LAW JUDGE YOUNG: Is that the situation?

17 MR. LEWIS: I would like to, I'll give you what
18 I believe the answer is but I would like to consult later
19 on and if I've said something wrong I will come back.

20 But I believe that that revision would change
21 your pressure temperature curves that I think are part of
22 your tech specs and as a result, I believe there would be a
23 need for a license amendment.

24 ADMIN. LAW JUDGE YOUNG: Just. Did we want to
25 take a break at this point and see if the staff agrees with

1 that? I mean, not take a break but switch over to the
2 staff at this time.

3 ADMIN. LAW JUDGE BARATTA: If you don't mind.

4 ADMIN. LAW JUDGE YOUNG: Yes.

5 MS. UTTAL: I'm trying to find out right now.

6 ADMIN. LAW JUDGE YOUNG: Okay.

7 MS. UTTAL: I don't know if we have an --

8 MR. LEWIS: Shall I proceed or?

9 ADMIN. LAW JUDGE YOUNG: If we can get an
10 answer from the staff quickly, otherwise --

11 ADMIN. LAW JUDGE BARATTA: Or we could come
12 back to this in two minutes, or whatever you'd like to do.

13 MS. UTTAL: It will take us a couple of
14 minutes.

15 ADMIN. LAW JUDGE YOUNG: Okay. We'll, do you
16 want to take a break?

17 ADMIN. LAW JUDGE BARATTA: Why don't we give
18 you about five minutes and you can consult and then we'll
19 get the answer to that. Okay? Is that all right?

20 MR. LODGE: May I just for record purposes do
21 something to get something accomplished here for you. Mr.
22 Trikouros the memo I was referring to is Exhibit 1-G in the
23 appendix of evidence that we provided along with our reply
24 to the motions to, the combined reply to the motions to
25 strike.

1 It's a memo from Stephanie Coffin to Stephen
2 Hoffman who are NRC staff people, dated 11/24/2004.

3 ADMIN. LAW JUDGE TRIKOUROS: Can, I'm sorry,
4 can, I'm having trouble. Could you --

5 MR. LODGE: I'm very sorry. My apologies.
6 It's Exhibit 1-G, a memorandum, an internal NRC memorandum
7 from Stephanie Coffin, C-o-f-f-i-n to Stephen Hoffman dated
8 November 24th of 2004.

9 ADMIN. LAW JUDGE YOUNG: All right. Let's take
10 a five minute break. Looks like we might be able to get
11 that information.

12 (Off the record.)

13 ADMIN. LAW JUDGE YOUNG: Yes, thank you. Okay.
14 Let's get started.

15 MS. UTTAL: There's no direct requirement in
16 that, in 50.66 but if you --

17 ADMIN. LAW JUDGE YOUNG: In, I'm sorry?

18 MS. UTTAL: In 50.66.

19 ADMIN. LAW JUDGE YOUNG: 61?

20 MS. UTTAL: 61, excuse me. But if you have to
21 change the analysis and change the dates, this would
22 require several things.

23 You'd probably have to change the power
24 distribution limits which would affect the safety limits.
25 You would have to change the level of power, the license

1 condition that delineates the power level that the plant
2 operates on and if there are any new material property, any
3 new material property data, then you would have to do a
4 tech spec change for all those things.

5 So that it is likely that a license amendment
6 or several license amendments would be required on that
7 data.

8 ADMIN. LAW JUDGE YOUNG: Which would involve a
9 notice and opportunity to request a hearing on those at
10 that point, right?

11 MS. UTTAL: Yes.

12 ADMIN. LAW JUDGE YOUNG: Okay.

13 MR. LEWIS: And Judge, I'm, I did ask and
14 consult my understanding what I said was correct about
15 changing the pressure temperature groups and the license
16 which are based on RDNDT.

17 ADMIN. LAW JUDGE YOUNG: And so you're saying
18 that that would involve --

19 MR. LEWIS: There would be a license amendment
20 also.

21 ADMIN. LAW JUDGE YOUNG: Right. Okay. Before
22 you continue on, let me just as another question for you to
23 put in the mix.

24 Basically what, well let me back up. Clearly
25 the no regulation can be challenged in an adjudication

1 proceeding, there are other avenues to petition for rule-
2 making and so forth.

3 And clearly during, during the time that a
4 plant is licensed, if they follow 50.61, then that takes
5 care of the issues addressed under 50.61 during that period
6 of licenseship.

7 What's at issue in this proceeding is whether a
8 new, a renewed license should be issued for an additional
9 period of licenseship for 20 years.

10 And as I understand at least part of the
11 argument of the petitioner's, what you're proposing in
12 saying that you will, in 2011 I think it would be, provide
13 information to the NRC as to whether you'll be annealing or
14 whether you are going to be doing a recalculation which I
15 think everyone now agrees would involve a, the necessity
16 for a license amendment and a new hearing.

17 But apart from that, what you're saying is that
18 at that point, in 2011, you would provide that information
19 to the NRC as to what you propose to do in 2014 and that's
20 been characterized as a plan to make a plan.

21 And the argument is that the plan to make a
22 plan would not demonstrate that the effects of aging would
23 be adequately managed throughout the term of the renewed
24 license.

25 Which is sort of a different issue than whether

1 you will be complying with 50.61 by not providing that
2 information until 2011.

3 That issue is whether, assuming the
4 contention's admitted, the licensed, the renewed license
5 that, which you seek for 20 years should be granted based
6 on your demonstration that the effects of aging will be
7 managed during, throughout the entire term.

8 And from what I understand you saying, you're
9 not sure what information you'll be providing in 2011. And
10 so it's really not known what will take place after,
11 starting in 2014.

12 Can you address that argument? And I think it
13 also gets into the, to whether that's a sufficient action,
14 identification of an action that will be taken, that has
15 been or will be taken.

16 And as I understand your argument, you're
17 saying that the action that will be taken is that you will
18 tell the NRC in 2011 what you intend to do in 2014?

19 MR. LEWIS: That's correct. I would take a
20 little issue with saying this is just a plan to make a
21 plan. I mean, this is a program and we've described the
22 steps that we would do.

23 What we have not stated is what would be the
24 technical solution in 2014. What we have described is, the
25 reasonably available options that we could pursue and I

1 believe that's all that was required by the rules.

2 ADMIN. LAW JUDGE YOUNG: It's all that's
3 required by 50.61.

4 MR. LEWIS: I believe it's all --

5 ADMIN. LAW JUDGE YOUNG: But in terms of --

6 MR. LEWIS: -- that's required by --

7 ADMIN. LAW JUDGE YOUNG: -- in terms of 54.21
8 and 54.29, demonstrating that the effects of aging will be
9 adequately managed during the extended period of operation.
10 In other words, during the whole 20 years that you're
11 sinking.

12 That I think raises a different question which
13 is not quite so simply resolved by saying we will comply
14 with 50.61 by telling the NRC at that point which of these
15 two options we we're saying at this point we might take.

16 MR. LEWIS: I understand your question, Judge
17 on, I would say several things. First I would refer you
18 back to the May 27th, 2004 memorandum from the EDO to the
19 Commissioners.

20 ADMIN. LAW JUDGE YOUNG: Do you have a copy of
21 that with you?

22 MR. LEWIS: I do have a copy of it with me.
23 Can I find it at a --

24 ADMIN. LAW JUDGE YOUNG: Sure.

25 MR. LEWIS: -- on break?

1 ADMIN. LAW JUDGE YOUNG: Sure.

2 MR. LEWIS: In describing what would be an
3 adequate program under 50.21(c)3, that memorandum
4 specifically refers to the fact that these reports are only
5 required to be submitted three years before the screening
6 criterion is exceeded.

7 Second one is an adequate program I think
8 should be judged in, you know, what protects the public
9 health and safety. Here you have a hard limit screening
10 criterion that cannot be exceeded without a Commission
11 approval, so there really is no safety issue.

12 And there's a requirement for a determination
13 later that these, whatever the technical solution is has to
14 be effective.

15 So this is a program that ensures safety. And
16 if it's a program that assures safety, I would submit to
17 you that it is an adequate program under 54.21(c)1.III.

18 ADMIN. LAW JUDGE YOUNG: Well, so are you
19 saying if you get to 2011 and you, for example, may have
20 decided that you're not going to do the annealing, you
21 proposing as an alternative that you'll do a recalculation
22 and, and am I correct in assuming as part of that, that if
23 you cannot show that you can extend that date to X date
24 that you will no longer operate after X date?

25 MR. LEWIS: You're asking me what is the safety

1 analysis that would be submitted in 2011? If we could
2 extend the screening, not extend that screening criterion,
3 if we could extend our RTPTS by further flux reduction
4 measures or modifications or better defined methods of
5 calculating fluids, you know, those are all permissible and
6 they extend the, when the screening criterion is exceeded.

7 The analysis that is permitted by 50.61, I
8 believe is more in the nature of a fracture or -- analysis
9 that shows there's a lot of conservatism in the pressurized
10 thermal shock rule and you could come in with analysis that
11 showed that in fact that your reference temperature
12 measured by other methods is better than that is predicted
13 by the PTS rule.

14 Or you could do other types of analyses to show
15 that even exceeding this, the screening criterion that
16 there's no safety issue.

17 ADMIN. LAW JUDGE YOUNG: Well, but the issue
18 I'm trying to get you to address is, that would either show
19 that you could continue operations safely or theoretically
20 it might show that you could not.

21 MR. LEWIS: And --

22 ADMIN. LAW JUDGE YOUNG: In which case you
23 would agree to shut down, basically.

24 MR. LEWIS: Not just agree to shut down, we
25 would not be permitted to operate.

1 ADMIN. LAW JUDGE YOUNG: Right. Okay.

2 MR. LEWIS: We could not operate past the
3 screening criterion without NRC approval. So it's --

4 ADMIN. LAW JUDGE YOUNG: Right. Okay. So,
5 however we want to put it, you would, you could not break
6 past that point. So I guess the point I'm trying to get
7 you to address is, at this time, you don't know what that
8 calculation would show.

9 You're saying, basically you're saying you have
10 a program but the part of the program that's at issue in
11 this contention is that part in which you say in 2011 we'll
12 tell the NRC we'll provide information to the NRC whether
13 we will do the annealing or whether we'll do this
14 calculation.

15 And at this point, you don't know whether any
16 calculation that you would do, should you go in that route,
17 would take you throughout the 20 year term, is that
18 correct?

19 MR. LEWIS: I believe that's correct. I think
20 there's a lot of confidence that these options are
21 available. I think there's --

22 ADMIN. LAW JUDGE YOUNG: Well I'm not --

23 MR. LEWIS: -- annealing is possible.

24 Annealing has been demonstrated in other countries. It's
25 been demonstrated in Russia and Eastern Europe.

1 ADMIN. LAW JUDGE YOUNG: Right. But what I'm
2 trying to get you to address is the sort of essence of what
3 the petitioners are saying in saying that it's a plan to
4 make a plan. That you don't really know at this point what
5 will occur after 2014 and yet you're asking for a license
6 for 20 years, starting in 2011.

7 And so I guess the question of whether your
8 intent to provide the information to the NRC in 2011, how
9 that really does jibe with the requirement that you have to
10 identify actions. I don't know. I mean, in a, the
11 argument that action implies more than later telling the
12 NRC what you will do and managing the effects of aging
13 during the extended, period of extended operation.

14 Now I understand the memo that you referred to,
15 which I haven't read, obviously would be something that we
16 could refer to for guidance and that would be entitled to
17 some differences as, just as any policy type statement or a
18 similar document would be entitled to.

19 But apart from that, just in the normal, plain
20 English understanding of the terms, managing the effects of
21 aging during the, during the period of extended operation I
22 think suggests something more than saying how you would,
23 what, that you will later give the NRC information on what
24 you will do three years later than that.

25 And when that's, but that's year one and year

1 three of a proposed 20 year term of operation. I mean, I
2 think you can see what I'm saying. That, I think the
3 normal understanding of those words implies more than
4 telling the NRC something later, doesn't it?

5 MR. LEWIS: No, I would respectfully disagree.
6 I believe that actions are one of the measures and steps
7 that you're going to take to make sure that this aging
8 mechanism, embrittlement is being managed in a way that
9 protects the public health and safety.

10 And we are saying that we will continue to
11 apply the screening criterion and we will no operate past
12 the screening criterion without meeting the submittals and
13 getting NRC approvals. And these submittals, you know, do
14 address options that are permissible under the, NRC
15 regulations and are reasonably available.

16 ADMIN. LAW JUDGE YOUNG: But isn't there
17 reasonable interpretation of the rules that says you need
18 to say at this point what you will do to ensure you can
19 operated the entire 20 years?

20 MR. LEWIS: I don't think it would be a
21 reasonable interpretation because it would be saying that
22 the current regulations which assure a public health and
23 safety in the current terms somehow aren't good enough for
24 the renewal term when it's the same effect that's being
25 managed in both.

1 If the, if this structure in 50.61 and 50.66
2 which is the annealing rule, is, protects public health and
3 safety in the current term as it does, as you must accept
4 you know, by, you know, accepting the NRC regulations.

5 There's also an acceptable approach and program
6 to implement during the period of extended operations.

7 ADMIN. LAW JUDGE YOUNG: I think you're, in
8 terms of 50.61 and following that, during a period when
9 you're already licensed, there's no question you'd follow
10 that.

11 But what I'm trying to get you to look at is
12 not just following 50.61 during a period when you're
13 licensed but the different question of the determination of
14 whether you should be granted an additional 20 years in a
15 renewed license when the standards for that suggest perhaps
16 something more substantive than saying we will say later
17 how we're going to handle something.

18 And I guess the other concern I have is, we're
19 talking about a context that's probably, if not the,
20 certainly an extremely significant aging issue which the
21 Commission has over and over said is the very type of issue
22 that licensed renewals are to address.

23 Back in 1991, the Commission talked about the
24 types of measures that needed to be demonstrated with
25 regard to pressurized thermal shock, for example.

1 And talked about situations needing to be
2 analyzed for the period of extended operation as a basis
3 for determining any additional aging management actions
4 that may be required for license renewal.

5 I mean, in Turkey Point the Commission talks
6 about detailed, let's see if I can find this, detailed, I
7 can't find the exact language it was talking about, but
8 detailed plans for how the effects of aging are going to be
9 managed.

10 Now, the Commission did, in a footnote in
11 Turkey Point, talk about some aging related issues being
12 adequately dealt with by regulatory processes. Which
13 therefore might not need to be subject to further review
14 during the license renewal proceeding.

15 But the example they gave in footnote two were
16 structures and components were that already must be
17 replaced at mandated specified time periods. And isn't
18 pressurized thermal shock relating to the reactor vessel of
19 a fundamentally different sort than the example given by
20 the Commission at that point?

21 I mean, isn't this the exact type of issue that
22 is within the scope of licensed renewal?

23 MR. LEWIS: Well I agree that embrittlement's
24 within the scope of license renewal. I simply disagree
25 that in order to establish an acceptable program that

1 manages aging a way that protects public health and safety
2 that it's necessary to provide a technical solution out of
3 several available options at this juncture.

4 The regulations allow you to submit those
5 programs and proposals three years before you even reach
6 the screening criterion because, quite frankly that's the
7 more appropriate time to do it.

8 You have better data.

9 ADMIN. LAW JUDGE YOUNG: Right.

10 MR. LEWIS: You're much more able to determine
11 what is, I --

12 ADMIN. LAW JUDGE YOUNG: But wouldn't you need
13 to show us, I mean if your analysis is correct, pressurized
14 thermal shock and embrittlement are aging issues that are
15 within the scope of review in a license renewal proceeding.

16 And yet, you can address them by saying we
17 will tell you what we're going to do when the time comes,
18 namely three years before we exceed the PTS criterion, if
19 I'm saying that right.

20 I mean would, doesn't that sort of give with
21 one hand take away with another?

22 MR. LEWIS: Well, Judge, it is more than that.
23 I mean there is a program of surveillance and, you know,
24 calculating when the screening criterion will be exceeded
25 and --

1 ADMIN. LAW JUDGE YOUNG: Right.

2 MR. LEWIS: -- implement flux reduction
3 measures. I mean this is --

4 ADMIN. LAW JUDGE YOUNG: But --

5 MR. LEWIS: -- parcel of the whole program.

6 ADMIN. LAW JUDGE YOUNG: But as to a situation
7 which you said was not unique, namely that a plant would
8 reach that point of exceeding the criterion, what you, what
9 I hear you saying is that even though aging of the reactor
10 pressure vessel is a legitimate issue within the scope of
11 license renewal that as to that period, starting at the
12 point that the criterion is exceeded, that that period can
13 adequately be addressed by an applicant by saying we will
14 follow 50.61.

15 And three years before that date we'll deal
16 with it by telling the NRC what we're going do to at that
17 point. And I'm not following how we --

18 MR. LEWIS: Judge?

19 ADMIN. LAW JUDGE YOUNG: -- reach any other
20 result?

21 MR. LEWIS: Judge, I would say this is not
22 unique and it's not the only example of how regulatory
23 established programs manage aging, environmental
24 qualification presents a very similar example. There is --

25 ADMIN. LAW JUDGE YOUNG: But let's stay on

1 this --

2 MR. LEWIS: I could --

3 ADMIN. LAW JUDGE YOUNG: Let's, before you, no,
4 before you get into other examples, let's stay on this one.
5 That, isn't, wouldn't it be possible for any plant to do
6 exactly what you're doing and argue that that takes it out
7 what could be an admissible contention on the issue of
8 aging of the reactor vessel?

9 I mean, how else, what other result could there
10 be on this particular issue? This particular issue of
11 aging?

12 MR. LEWIS: What I would say is a very
13 important factor in this is that the regulations don't
14 permit you to operate exceeding the screening criterion.

15 So this isn't a matter of just saying trust us,
16 we'll do something right and it never gets looked at again.

17 ADMIN. LAW JUDGE YOUNG: But if it doesn't --

18 MR. LEWIS: This is a hard limit that prevents
19 operation past the screening criterion without NRC approval
20 and therefore prohibits you from ever being in a situation
21 that --

22 ADMIN. LAW JUDGE YOUNG: But I don't, I don't
23 think --

24 MR. LEWIS: -- endangers the public health and
25 safety.

1 ADMIN. LAW JUDGE YOUNG: I don't think you're
2 answering my question. My question is this, the Commission
3 has said that these types of aging issues are the only
4 thing that are relevant in a license renewal proceeding.

5 And aging of the reactor vessel is clearly a
6 significant aging issue that's within the scope and you
7 agree with that. But what you seem to be saying is that,
8 what you're saying with regard to the Palisades plant, that
9 your identification of the action that will be taken to
10 manage the effects of aging during the period of extended
11 operation, in other words, during the entire 20 years, is
12 that three years before you exceed the criterion in 2011,
13 you'll tell the NRC which course of action you intend to
14 follow.

15 And at that point, you'll provide the
16 calculation, if that's the road you intend to follow.

17 What I'm not seeing is how any contention could
18 ever be admitted on aging of the reactor vessel and
19 pressurized thermal shock if all an applicant has to do is
20 say we will follow 50.61 in the future. That's what I'm
21 not seeing because it seems like you let it in but as soon
22 as you let it in it's out by what you've identified as
23 something that should be considered a sufficient action.

24 And what the allegation in this contention is,
25 and I'm just speaking of the original contention, is that

1 the application is not complete because it doesn't address
2 the continuing issue of embrittlement.

3 And that this plant has been identified as
4 prone to early embrittlement. I'm not seeing how any
5 contention could ever come in if a licensee simply says
6 we're going to comply with 50.61 by providing information
7 three years before we are now projected to meet the, or
8 exceed the PTS criterion.

9 So if you could address that issue, I would
10 appreciate it. Thanks.

11 MR. LEWIS: The reports that are submitted
12 three years before the screening criterion are, is exceeded
13 is one part of the program. And there are other aspects of
14 the program --

15 ADMIN. LAW JUDGE YOUNG: Right. But those,
16 we're just -- it's pass --

17 MR. LEWIS: I'm saying you can have contentions
18 that address them, they haven't been challenged in this
19 proceeding.

20 But, you know, there are aspects, other aspect
21 of the program that can be challenged with a proper basis.

22 The only issue is when do these additional
23 reports have to come in. And what I am saying is those,
24 the rules say that those reports only have to come in three
25 years before and that is sufficient to protect the public

1 health and safety --

2 ADMIN. LAW JUDGE YOUNG: Assuming you've
3 already got a license.

4 MR. LEWIS: -- because you can't operate, you
5 know, beyond the screening criterion without approval.

6 ADMIN. LAW JUDGE YOUNG: Well it's, but that's
7 assuming you already have a license. If you've already got
8 the license, clearly all you have to do is follow 50.61.

9 And all you have to do under that, after you've
10 done the surveillance and fluence reduction and all the
11 other things that you can do, when you get to the point
12 where you know you're going to exceed or the current
13 calculations say you're going to exceed the criterion on X
14 date.

15 Then in that situation, you're saying all you
16 have to do in order to show that you should be granted a
17 new license for 20 years, even though those 20 years might
18 go well beyond the date at which you are projected to
19 exceed the criterion, that all you have to do it say we
20 will provide information to the NRC three years in advance
21 of our projected date.

22 MR. LEWIS: I am saying that a contention that
23 asserts that these, that you have to make a demonstration
24 now on how you would address the situation is a challenge
25 to the rule, it is not a permissible contention in this

1 proceeding.

2 ADMIN. LAW JUDGE YOUNG: But why would you
3 need to assume that the things that you would need to
4 demonstrate, at this point let's say, taking the
5 petitioner's argument, that the things that you would need
6 to demonstrate at this point to show that you will
7 adequately manage the effects of aging would be exactly the
8 same type of information or the exact same extent of
9 information, let's say that you would need to provide the
10 NRC three years in advance.

11 I mean, couldn't there be, wouldn't, couldn't
12 there be an argument made that even though you might not
13 provide the complete calculation that you would provide
14 later with benefit of state of the art information and so
15 forth, that you would at least need to show something to
16 demonstrate that you actually will manage the effects of
17 aging during the entire period of extended operation,
18 rather than just saying, well, if we don't, then we won't
19 operate anymore?

20 But then the question arises then why are you
21 asking for a 20 year license now and saying that the only
22 demonstration you have to provide is we'll tell the NRC in,
23 three years before we exceed the criterion?

24 MR. LEWIS: Because with respect to this
25 pressurized thermal shock issue and how this matters, there

1 really is not a difference between the license renewal term
2 and the present term. And the current term embodies those
3 measures and actions that are necessary to protect the
4 public health and safety and -- on basis to distinguish the
5 license renewal term.

6 I believe that the provisions of the current
7 rule, you know are indicative of what protects the public
8 health and safety and must be accepted as sufficient.

9 ADMIN. LAW JUDGE YOUNG: Well then you seem to
10 be agreeing with the staff that this is outside the scope
11 of license renewal because this is one of those things that
12 falls under footnote two?

13 MR. LEWIS: No. Again, I think there are, as I
14 said there are a number of other aspects of the
15 embrittlement issue that are addressed by different
16 programmatic steps, they just haven't been challenged in
17 this case.

18 ADMIN. LAW JUDGE YOUNG: Right. But --

19 MR. LEWIS: But I'm saying, the portion I'm
20 saying is not a legitimate issue is the assertion that you
21 have to submit an annealing plan now, nine years before the
22 screening criterion is exceeded.

23 ADMIN. LAW JUDGE YOUNG: Well, but that's not
24 the question.

25 MR. LEWIS: And commit to annealing now.

1 ADMIN. LAW JUDGE YOUNG: But that's not what,
2 that's not the situation I posed to you to consider which
3 is that you might not need to submit everything that you
4 would need to submit three years prior to exceeding the
5 criterion, but that you would need to demonstrate something
6 more than just saying you're going to comply with the rule.

7 Now, you raise another point and that is you're
8 saying other parts, other aspects of embrittlement could be
9 challenged. But really the most significant one, isn't it,
10 the point at which you are expected to exceed the
11 criterion? That's the most critical point in the --

12 MR. LEWIS: I'm going to accept that it's the
13 most critical because you can't operate past that term, as
14 far as protection of the public health and safety --

15 ADMIN. LAW JUDGE YOUNG: Doesn't that make it
16 the most critical?

17 MR. LEWIS: -- that's certainly, without --

18 ADMIN. LAW JUDGE YOUNG: The fact that you
19 can't operate past that time, doesn't that make it the most
20 critical?

21 MR. LEWIS: What it means is that in fact there
22 is no safety issue because you can't operate that, past
23 that limit and before you can continue to operate, you will
24 have to submit to the NRC a solution which will be approved
25 at that time.

1 ADMIN. LAW JUDGE BARATTA: All right. Let me
2 pose a slightly different, came at it from a slightly
3 different aspect.

4 Suppose, hypothetically that you own a plant
5 that based on your calculations and such is good for
6 another 50 years and you're coming in for a 20 year renewal
7 and that you won't, you calculate you won't exceed the PTS
8 criteria and you say that and you say that you'll just
9 comply with 50.61.

10 Couldn't an intervenor in that case use the
11 same argument that they're using to challenge that
12 statement, that you don't have a specific plan to deal with
13 it? If we accept this that an action to comply with the
14 regulations at some future date is not an action?

15 MR. LEWIS: I think the intervenor, if you have
16 an analysis that shows that you won't meet the screening
17 criterion for 50 years, the intervenor could challenge that
18 analysis. They can only challenge the analysis on grounds
19 that it doesn't comply with the NRC regulations that govern
20 how the analysis is done.

21 For example, the method of calculating what the
22 reference temperature of PTS is, is established in an
23 equation and it provides a number of parameters and you
24 have to determine the chemistry factor of the samples as
25 one of the inputs to that, the calculation.

1 A contention that says you've got to do
2 something else beyond what's in that formula would
3 challenge the rules.

4 And for example, the intervenors in their reply
5 refer to uncertainties in the flaw distribution on the
6 vessel and they refer to uncertainty in the frequency of
7 over-cooling events.

8 Those assertions are irrelevant because the
9 current PTS --

10 ADMIN. LAW JUDGE YOUNG: Irrelevant or
11 relevant?

12 MR. LEWIS: Irrelevant.

13 ADMIN. LAW JUDGE YOUNG: Thanks.

14 MR. LEWIS: Because the current PTS rule and
15 the calculation assumes the worst case flaw and assumes
16 that over-pressure event, over-cooling event will occur and
17 gives this equation which kind of establishes the screening
18 criteria, which if you're below, you're safe.

19 So those kind of assertions would not be
20 legitimate contentions. But one that says you do have the
21 wrong chemistry factor for some specific reason, you know,
22 would be a good contention. Or one that says you've got
23 the wrong fluence estimated with a real technical basis
24 would be a good contention.

25 So yes, there are ways that, simply saying, you

1 know, we're going to follow the regulations on estimating
2 when the screening criterion will be exceeded is not immune
3 from challenge.

4 ADMIN. LAW JUDGE YOUNG: But what you're
5 talking about and what you say is not unique. You don't
6 know that where during 20 year periods all the various
7 plants would fall. But what you are saying is not unique
8 is that plants would exceed the PTS criterion during the
9 term.

10 And in your situation, it's three years into
11 the term. And what you're saying is that with regard to
12 that situation, which is sort of the last, the last thing
13 that comes in a succession of events, you're saying that,
14 saying that the company will notify, provide information to
15 the NRC down the road is sufficient.

16 MR. LEWIS: When it's coupled with the
17 requirement that you cannot operate with the screening
18 criterion being exceeded, you know, without an approval of
19 these measures by the Commission, yes, that's sufficiently
20 protective of the public health and safety.

21 ADMIN. LAW JUDGE YOUNG: So I guess there could
22 be a couple of different ways of looking at this. The
23 license renewal rule says that the license can be issued up
24 to the full term, if the Commission finds et cetera, et
25 cetera.

1 So you could just say, well, right now we can
2 only show that we're going to operate up to, up through, up
3 to 2014, sometime in 2014. So we want a renewed license
4 for that period.

5 Alternatively, I think what I'd heard earlier
6 is that if you reach, if at the point of having to provide
7 that information, 2011 in your case, you decide that
8 instead of annealing you're going to do a recalculation
9 and, well, you're going to do a recalculation.

10 What you're saying is at that point there would
11 be another right to a hearing to challenge how, to
12 challenge your calculation at that point? If it extended
13 the date further on down the line?

14 MR. LEWIS: I think it depends on what you mean
15 by a recalculation.

16 ADMIN. LAW JUDGE YOUNG: Well.

17 MR. LEWIS: The reference temperature PTS is
18 determined under the rule by a very specific formula and
19 it's based on, you know, specific data entries and one of
20 them is fluence.

21 ADMIN. LAW JUDGE YOUNG: Well I mean doing a
22 calculation --

23 MR. LEWIS: If we --

24 ADMIN. LAW JUDGE YOUNG: -- with new
25 information.

1 MR. LEWIS: Yes. But for example, we could, if
2 it were possible to further reduce fluence, you know, we
3 could extend the screening criterion, that wouldn't be a
4 license amendment, that would simply be operating under the
5 current rule.

6 The, what would require approval is the
7 analysis that would be required if you were going to exceed
8 the screening criterion, if your reference temperature for
9 -- transition is, at any point, in excess of the screening
10 criterion.

11 ADMIN. LAW JUDGE YOUNG: So what you're saying
12 is if you discover some additional means of reducing
13 fluence that you don't know about now, and then you provide
14 that information in 2011, such that that would extend the
15 date, the 2014 date to a later date, then there wouldn't
16 need to be a hearing.

17 If you couldn't further reduce fluence, that
18 would involve the types of power distribution limits, power
19 level of operation, there, the information that we talked
20 about earlier, that those things would involve a licensed
21 amendment such that there would be a right to a hearing at
22 that point, right?

23 MR. LEWIS: Yes. If you submit analysis that
24 shows that it's safe to operate even though the screening
25 criterion is exceeded.

1 ADMIN. LAW JUDGE YOUNG: So are there any other
2 things that would fall within the same categories, further
3 reducing the fluence, such that there would not be the
4 right to a hearing at that point?

5 MR. LEWIS: The reference temperature of
6 pressurized thermal shock is determined by an equation in
7 50.61(c), 50.61(c) and the, it is a factor of the
8 unirradiated reference temperature for -- temperature of
9 the material, the chemistry factor of the material and the
10 fluence that material has received.

11 Any one of those three inputs, if there was new
12 information, you know, could affect when the screening
13 criterion will be exceeded.

14 ADMIN. LAW JUDGE YOUNG: The fluence in the
15 chemistry and what was the first one?

16 MR. LEWIS: The initial unirradiated reference
17 temperature for the material.

18 ADMIN. LAW JUDGE YOUNG: Could that change?
19 Doesn't sound like it could but maybe I'm, I don't --

20 MR. LEWIS: I don't know how it would --

21 ADMIN. LAW JUDGE YOUNG: Okay.

22 MR. LEWIS: I'm sorry. You're asking now a
23 technical question that I don't know the answer to.

24 ADMIN. LAW JUDGE YOUNG: You and me both. I
25 guess what I'm getting at is, if we're talking about

1 changes in the chemistry or further reducing the fluence,
2 that would seem to me, especially if there's no right to a
3 hearing on that later, that would seem to me to be the type
4 of thing that, while you might not provide information in
5 the level of detail that 50.61 would require you provide
6 three years prior to the exceeding date, 2014 in this case,
7 that you should be able to provide some information on
8 that, at this point, sufficient to demonstrate that you
9 will adequately manage the effects of aging during the
10 period of extended operation, more than just saying that
11 we're going to tell the NRC that information three years
12 before that date.

13 Does that make sense? Doesn't that make sense?

14 MR. LEWIS: No. And I'm not sure that's even
15 possible. We have, we are, we applied the equation in
16 50.61(c) to determine what the reference temperature --
17 transition is.

18 ADMIN. LAW JUDGE YOUNG: Right. But you said
19 you could, you could further reduce fluence, why wouldn't
20 you be able to have --

21 MR. LEWIS: I'm talking, you know --

22 ADMIN. LAW JUDGE YOUNG: -- some knowledge of
23 that --

24 MR. LEWIS: -- theoretically, I mean, you're
25 asking is there anything you can do. None of those thing

1 we've identified would be reasonably practical.

2 ADMIN. LAW JUDGE YOUNG: Okay.

3 MR. LEWIS: I mean, quite frankly I think you
4 would deal before you would try and do so.

5 ADMIN. LAW JUDGE BARATTA: Yes. I think that's
6 what you application actually says?

7 MR. LEWIS: Yes, it does.

8 ADMIN. LAW JUDGE BARATTA: Because, does it?
9 Because that's the very first paragraph --

10 MR. LEWIS: Yes.

11 ADMIN. LAW JUDGE BARATTA: -- in the, in that.

12 MR. LEWIS: And I was just responding earlier
13 to --

14 ADMIN. LAW JUDGE BARATTA: Yes.

15 MR. LEWIS: -- when the Judge said could you,
16 you know, could you extend the --

17 ADMIN. LAW JUDGE YOUNG: Okay.

18 MR. LEWIS: -- calculations. I mean you can't
19 buy Herculean efforts. But there's no proposal to.

20 ADMIN. LAW JUDGE YOUNG: Okay. So basically --

21 MR. LEWIS: And we have a calculation and it's
22 out to 2014 and we said that is what it is.

23 ADMIN. LAW JUDGE YOUNG: So basically what
24 you're saying is that it's, it's reasonable to assume that
25 if you decided to do anything other than anneal that that

1 would involve changes of the sort that would require the
2 right to a hearing at that point, is that right?

3 MR. LEWIS: I believe that's right. And I
4 think what I was reacting to was your earlier statement
5 that one of the options is simply to recalculate the RTPTS.

6 ADMIN. LAW JUDGE YOUNG: Okay.

7 MR. LEWIS: With the safety analysis that's
8 required in 50.61(b)4 I believe, is not just a
9 recalculation of the RTPTS, it's an analysis that says you
10 can continue to operate even though you're exceeding the
11 screening criterion for the following reasons.

12 And one might be a probabilistic fracture
13 mechanics analysis that says it's still safe. It's not
14 just, you know, I've just sharpened my pencil and I've
15 added, you know, a couple more years to my calculation.

16 ADMIN. LAW JUDGE YOUNG: Okay. I guess later I
17 want to hear more from the petitioners on that as to why,
18 if there would be a right to a hearing at that point, how
19 that impacts your contention.

20 Unless you want to say something quickly,
21 briefly right now?

22 MR. LODGE: A hearing --

23 ADMIN. LAW JUDGE YOUNG: I mean that may --

24 MR. LODGE: -- a hearing in 2014?

25 ADMIN. LAW JUDGE YOUNG: Well, I guess if

1 you're proposing to, the information would need to be
2 provided in 2011.

3 MR. LODGE: Right.

4 ADMIN. LAW JUDGE YOUNG: And if they're
5 proposing to do anything other than anneal, then that would
6 involve the proposal to amend the license such that there
7 would be a right to a hearing at that point. Am I right,
8 Ms. Uttal?

9 MS. UTTAL: It depends on what the new analyses
10 touches upon.

11 ADMIN. LAW JUDGE YOUNG: But based on --

12 MS. UTTAL: Whether it's change --

13 ADMIN. LAW JUDGE YOUNG: -- what Mr. Lewis just
14 said, it sounds as though --

15 ADMIN. LAW JUDGE BARATTA: It's highly unlikely
16 that it wouldn't require.

17 ADMIN. LAW JUDGE YOUNG: Right.

18 MS. UTTAL: Okay. But, of course I have no
19 technical knowledge --

20 ADMIN. LAW JUDGE BARATTA: I mean, we can't say
21 for certain, but.

22 MS. UTTAL: -- of anything. Yes. But the, the
23 aspects that I spoke about before, if any of those are
24 changed then there would be a license amendment required.

25 ADMIN. LAW JUDGE YOUNG: Okay. And you may

1 want to consult on that. But I'm just wondering what that
2 does to the, this contention and to your interests in the
3 subject matter of this contention, based on what you said
4 earlier.

5 MR. LODGE: We're prepared to respond now.

6 ADMIN. LAW JUDGE YOUNG: Okay. Go ahead. I
7 mean, do you mind, Mr. Lewis?

8 MR. LEWIS: No. I do have other points in the
9 argument I want to come back to later.

10 ADMIN. LAW JUDGE YOUNG: Sure. We do want to
11 come back to you.

12 MR. LODGE: Right.

13 ADMIN. LAW JUDGE YOUNG: But I just thought if
14 we'd gotten to a point that might provide some resolution,
15 maybe we could just, go ahead.

16 MR. LODGE: The regulation 50.61(b) subsection
17 6 only requires that the utility apply to, if they're about
18 to exceed the criterion, that they essentially communicate
19 with the director of NRR, not, in other words, it's a sub-
20 licensing, it's less than license modification.

21 I understand that the counter to that is, well,
22 there will be some effects for the licensing parameters.
23 My concern is, number one, if this panel finds that this is
24 not currently a -- issue, isn't there a -- problem for
25 intervenors in 2011 or '14 or '16 or whenever to try to get

1 around.

2 ADMIN. LAW JUDGE YOUNG: You mean that they
3 wouldn't have the right to a hearing then based on --

4 MR. LODGE: They wouldn't be able to, they
5 wouldn't be able to raise the type of challenge to the
6 adequacy of the basis at that point. They wouldn't be able
7 to --

8 ADMIN. LAW JUDGE YOUNG: The adequacy of the?

9 MR. LODGE: They wouldn't be able to attack the
10 lack of hard engineering or scientific knowledge about the
11 state of embrittlement.

12 ADMIN. LAW JUDGE YOUNG: Well I guess, when you
13 raise that, I mean, the problem you've got is that you
14 didn't do that in the initial contention. You provided
15 additional information subsequent to that.

16 And it used to be that we always allowed
17 amendments to petitions to flush out contentions. But
18 we're operating under new rules now which you understand
19 and obviously the whole basis of our integrity as a board
20 is that we rule based on the law and regulations, not on
21 our personal viewpoints or influence or whatever.

22 And so under the current rules, the Commission
23 has said that you have to submit the contentions full blown
24 at the outset and that the only thing that you can include
25 in a reply is information that's specifically focused on

1 issues raised in the answer.

2 So I'm not sure that your statement about what
3 petitioners can or cannot do at this point --

4 MR. LODGE: At a future point.

5 ADMIN. LAW JUDGE YOUNG: With -- at a future
6 point based on what's happening now with regard to data and
7 so forth would be affected at all. I mean it, because you,
8 because in your initial contention you didn't make
9 reference to those. Did not make reference to those.

10 And it, you know, you don't have to, you don't
11 have to give an answer right away. And if it's anything
12 other than a quick answer, maybe we should just go back to
13 Mr. Lewis --

14 MR. LODGE: All right.

15 ADMIN. LAW JUDGE YOUNG: -- at this point and
16 then later --

17 MR. LODGE: Let's do that.

18 ADMIN. LAW JUDGE YOUNG: Okay. We'll probably
19 have to break for lunch before you come back in any event.
20 So maybe we could finish up with Mr. Lewis, then break for
21 lunch and then continue on with the staff.

22 And then obviously as I said before, we don't
23 expect that the other contentions will take anywhere near
24 this amount of time. But we did want to focus on this one
25 because it does deal with an aging issue, a significant

1 aging issue that we think deserves the time to consider it
2 fully.

3 Go ahead, Mr. Lewis.

4 MR. LEWIS: Just to address a number of other
5 points. One is with respect and -- issue. The petitioners
6 asserted that, and this is a variation of the issue that
7 Judge Trikouros raised that you have to do whatever you can
8 without regard to cost.

9 They've also asserted that you have to maintain
10 the largest margin possible below the PTS screening
11 criterion. And I would submit that that's simply
12 inconsistent with the pressurized thermal shock rule that
13 the Commission has in fact explained that the pressurized
14 thermal shock screening criterion is not a safety limit,
15 it's a trip wire which triggers a plant specific safety
16 analysis.

17 It defines which licensees need to do that
18 analysis and when it should be done. And I'm citing 56
19 Federal Register 22.300 at page 22,302. This statement's
20 also in the Yankee Atomic case, CLI91-1134NRC3 at page --

21 ADMIN. LAW JUDGE YOUNG: I'm sorry. At, the
22 last one, repeat again?

23 MR. LEWIS: Yankee Atomic case CLI91-1124NRC3
24 at page 10. Similarly the NRC has said in promulgating the
25 pressurized thermal shock rule that generic PTS studies

1 already performed provide reasonable assurance that
2 operation of PWR pressure vessels with RTNDT values below
3 the screening criterion does not result in undue risk to
4 the public health and safety. That's 50 Federal Register
5 29937 at 29939.

6 And finally, the PTS rule establishes a
7 screening criterion with conservative margin to allow for
8 uncertainties below which the Commission has concluded that
9 PTS risk is acceptable for any PWR 50 Federal Reg, 50
10 Federal Register 29937 at 29941.

11 ADMIN. LAW JUDGE TRIKOUROS: So let me
12 understand. You're defining safety margin or margin of
13 safety differently. The, on the one side, the petitioners
14 are saying that the margin of safety is above the RTPT or
15 the screening criterion.

16 You're saying that even if I were at the
17 screening criterion, there's a margin of safety that's
18 built into that point.

19 MR. LEWIS: Absolutely right. And the
20 Commission has unequivocally said as long as you're below
21 that screening risk is acceptable.

22 In fact, they said the risk may be acceptable
23 without that screening criterion, but that's what requires
24 further analysis.

25 The petitioners have said a number of times

1 that we've demonstrated an inability to manage the
2 embrittlement to date and therefore what we're saying is
3 all subject to questions.

4 They have not provided any basis for that
5 assertion and in fact that wasn't even part of the original
6 contention.

7 But if you do consider it, I would submit that
8 there is no basis. In fact, the changes in our RTPTS
9 demonstrate that we have managed the issue. And there are
10 a number of things that have changed the date over time.

11 One is that the chemistry factor that is
12 applied in the equation is under the NRC regulations
13 determined by the mean of the average of industry data for
14 the way it weld with the same heat.

15 In other words, in determining what the
16 chemistry factor is, you don't just look at your own
17 specimen, you look at the specimens that are obtained by
18 other licensees and you do an average of what are the
19 chemistry factor and you apply that. And that is
20 prescribed by the regulations.

21 There is an NRC database that has the day that
22 that should be used. And when additional data is collected
23 and there was additional data that was collected when
24 Palisades did some additional analyses of steam generator
25 welds, it affects the average, that is affects the PT, the

1 RTPTS. So that could lower the PTS and did in the past.

2 In addition, the company has been extremely
3 aggressive in reducing flux over the life of the plan is to
4 reduce the fluence by a factor of three, an enormous
5 amount.

6 It has been very effective that fluence
7 reduction methods. And has, you know, spent a very large
8 sum doing so and has applied a lot of state of the art
9 methods.

10 That has move the reference temperature back
11 up. And in addition there are also some refinements to how
12 fluence was calculated.

13 So the fact that there has been different
14 estimates of when the screening criterion would be exceeded
15 at different times, in no way suggests that we are unable
16 to manage the embrittlement issue. It simply means that
17 over time there have been different changes including very
18 effective fluence reduction.

19 And the extent that the intervenors are saying
20 at one time it looked like it was going to be 1995 and now
21 it's 2014, you know, their implication is, you know, there
22 must be something wrong. I would submit to you that what
23 it means is that we've been very effective at reducing flux
24 in managing this issue. And if intervenors want to suggest
25 that, in effect, there is a problem with our management of

1 embrittlement, they need more than to point to different
2 dates, they need to go back to the very, very many
3 submittals that are on the docket, including NRC safety
4 evaluations that address how we have done the calculations
5 at different point.

6 Our current projection of, that the screening
7 criterion will be exceeded in 2014 is based on an NRC
8 safety evaluation which is on the docket, in Adams, on
9 November 14th, 2000 safety evaluation which approved our
10 method of calculating fluence and approved the chemical
11 properties, the chemical factors that we're using in
12 calculating when, what our RTPTS is.

13 So there is a wealth of information that you
14 could book to the challenge is they wanted to come look,
15 with a basis.

16 That's simply asserting the numbers must have
17 changed and therefore the company can't do its business is
18 not a valid basis.

19 ADMIN. LAW JUDGE YOUNG: Is, just to get back
20 to what you were saying earlier. I think you said earlier
21 that you thought it was extremely unlikely that you would,
22 that that would change again, didn't you?

23 MR. LEWIS: Yes.

24 ADMIN. LAW JUDGE YOUNG: Okay. So, but just to
25 make sure I understand, if it did, if you got new

1 information about the low temperatures in the chemistry and
2 the, or the new fluence reduction methods that that would
3 not lead to a hearing, am I right?

4 MR. LEWIS: I'm not aware of any further data
5 that's going to change the chemistry factor. I mean there
6 are a number of utilities that have weld wire with the same
7 heat and the chemical composition of those weld wires has
8 been examined and they're in a database and the rules say
9 that you use best estimates, which are based on the mean of
10 this industry data to determine what the chemistry factor
11 is for your weld wire.

12 So that's what's been done. So, you know, is
13 it possible, theoretically that somebody could find a lot
14 more weld wire that's never been examined and isn't in the
15 industry database and it could affect the calculation, yes.
16 But I don't know of any basis that that would occur.

17 ADMIN. LAW JUDGE BARATTA: That, looking at the
18 three factors, the only one that could change and I agree
19 with you that in all probability down all the weld wire, so
20 you know the chemistry, originally there was some
21 information on the RTT for the material, so that's null.

22 And the, that's leaves of the three factors,
23 the fluence, estimate of the fluence of the vessel is about
24 the only one that could be, could change at this point in
25 time, with any, that would be the most likely of the three.

1 Not saying that it is likely, but of the three,
2 it would be the most likely.

3 If you were to do that though, but say that
4 some methods out there that you have which leads you to a
5 different estimate of the fluence, okay, it would have to
6 be a pretty dramatic reduction in the fluence to get you
7 from you know, not talking factors of two or three, I'm
8 talking maybe --

9 MR. LEWIS: I think it would have to be, yes,
10 it would be an instance to get you all the way out, I mean,
11 it would be a very significant fluence reduction. I mean I
12 think you'd have to --

13 ADMIN. LAW JUDGE YOUNG: "All the way out"
14 meaning?

15 MR. LEWIS: Another factor of three?

16 ADMIN. LAW JUDGE BARATTA: 20 years.

17 MR. LEWIS: I think you'd have to reduce your
18 fluence by a further factor of three to get out to the end
19 of the period of extended --

20 ADMIN. LAW JUDGE BARATTA: And that type of a
21 recalculation isn't likely based on the state of the art --

22 MR. LEWIS: I can certainly see nothing that's
23 indicated that I believe that are current methodology which
24 was approved in that November 14th, 2000 SAR, really is
25 state of the art at this juncture.

1 ADMIN. LAW JUDGE YOUNG: Is it possible that
2 rather than one that took you all the way out, took you a
3 year to and then a year or two more and so forth?

4 I mean, I guess what, what they're concerned
5 about is that they want an opportunity to raise questions
6 about anything that could have an impact.

7 MR. LEWIS: Judge, all I can say is that we
8 don't have a proposal to, you know, revise our fluence
9 prediction method. We, we stated in our application we
10 have a current calculation and it's good to 2014 and it, it
11 is based on the chemical content of the weld wire and the
12 fluence prediction method that was approved by the NRC as
13 part of our current licensing basis in the November 14,
14 2000 SAR.

15 And we've said that three years before that
16 screening criterion is exceeded we will have to either
17 submit an annealing report or a further analysis. But
18 we're not going to be able to operate, you know, past that
19 screening criterion without being, you know, without NRC
20 approval.

21 That is the proposal, I mean that's what in our
22 application and I guess you're asking is could things
23 change later and is there any possibility, I, yes, but it's
24 not part of our proposal and it's not part of what we
25 addressed in our application.

1 ADMIN. LAW JUDGE BARATTA: It's not part of
2 your management plan as, or is that, your license
3 application.

4 MR. LEWIS: Yes. Yes.

5 ADMIN. LAW JUDGE YOUNG: But you could
6 understand that, you said that would take you to 2014, you
7 could understand that while there might be a right to a
8 hearing with regard to any decision to let you continue
9 operating without those changes, that should there be any
10 changes, major or minor that would just extend the
11 period to --

12 MR. LEWIS: Judge, I'm --

13 ADMIN. LAW JUDGE YOUNG: -- a time that --

14 MR. LEWIS: That's not an issue that can be
15 addressed in the hearing at this juncture either. I mean
16 there is no proposal, there is no revisions --

17 ADMIN. LAW JUDGE YOUNG: Well I understand
18 that, I understand that. But what I'm trying to get at is
19 the issue of what we're supposed to determine is whether
20 you demonstrated that you will adequately manage the
21 effects of aging for the, for the extended term.

22 And the concerns that are raised in contention
23 one have to do with whether you've done that since what
24 you're saying is we'll provide this information later.

25 If there is a right to a hearing later, on

1 anything that would allow you to operate past 2014, then to
2 some degree, as a practical matter, let's say, it sort of
3 mitigates the concern.

4 Whereas if there are changes that could be made
5 that would not lead to the right to a hearing, it doesn't
6 provide the same type of mitigation of the concern as a
7 practical matter, whatever legal significance it may or may
8 not have.

9 You understand what I'm getting at?

10 MR. LEWIS: No, I do understand, Judge.

11 ADMIN. LAW JUDGE YOUNG: Okay. Do you have
12 anything more?

13 MR. LEWIS: I do have other points. If --

14 ADMIN. LAW JUDGE YOUNG: If you want --

15 MR. LEWIS: I probably have four or five and
16 it's probably another, you know, 20 minutes.

17 ADMIN. LAW JUDGE YOUNG: Maybe we should take a
18 break, would you rather go on and finish yours?

19 MR. LEWIS: No. I think, I suspect that it's
20 probably appropriate time for a break.

21 ADMIN. LAW JUDGE YOUNG: What do you think?

22 ADMIN. LAW JUDGE BARATTA: A break is fine with
23 me.

24 ADMIN. LAW JUDGE YOUNG: So, be back at 1:30?

25 (Off the record.)

1 ADMINISTRATIVE LAW JUDGE YOUNG: Mr. Lewis, go
2 ahead.

3 MR. LEWIS: Judge, just for the record we've
4 passed out a copy to each of the judges, to the, wires for
5 each of the parties and to the reporter a copy of the May
6 27th, 2004 memorandum from the Executive Director of
7 Operations, the one we discussed earlier.

8 ADMIN. LAW JUDGE YOUNG: Okay. And this will be
9 Exhibit 2 for the court reporter. Thank you

10 MR. LEWIS: Proceeding there were a number of
11 statements by the Petitioners that Palisades no longer has
12 specimens and does not have samples.

13 Just to correct those statements there are
14 still capsules in the representative surveillance program
15 with base metal and with weld material. I believe there's
16 three capsules left. The, I think what would have been the
17 more correct statement is that the weld material in those
18 capsules is no longer considered representative of the
19 critical welds because of changes in standards and changes
20 in recognition of what that critical weld is over time.

21 But the assertions that we no longer have a
22 representative surveillance specimen for weld material in
23 our program is really irrelevant to the PTS issue for, for
24 this reason.

25 The NRC rules do not require that the reference

1 temperature for neal ductility transition be based on
2 surveillance materials.

3 50.61C establishes the equation that's used to
4 predict what the RT and DT is.

5 50.61 C1 talks about the unirradiated reference
6 temperature for the material and says if a measure of value
7 of that RT and DT, which stands for unirradiated, is not
8 available a generic mean for the class of material may be
9 used and 50.61 C1 ii gives the generic mean to be used for
10 welds. It's minus 56 degrees for the Palisades weld so
11 it's specified in the rules.

12 50.61 C1 iii A through B give the standard
13 deviations that are then used to account for the margin of
14 uncertainty. They're specified in the rule.

15 50.61 C1 iv-A establishes the chemistry factor
16 that is to be used. And it establishes several permissible
17 methods. One is to use the best estimate values which are
18 the means of measure values for weld wire with the same
19 weld wire heat numbers as the critical welds.

20 As I explained earlier there is an industry
21 database with the chemistry factors for the welds that have
22 the same weld wire heat number.

23 So in every step of the equation 50.61 C1
24 specifies the parameters to use in the absence of a
25 surveillance specimen.

1 And that's exactly what we're doing. This is a
2 very conservative approach.

3 There was a statement that Palisades has higher
4 copper content in its weld than other plants. I believe
5 that's incorrect. I think we're in the middle of the road
6 and I don't know of any basis for the Petitioners
7 assertion. Certainly it was, no basis was given in either
8 their original petition or their reply.

9 Finally there was an assertion that our
10 prediction of exceeding the screening criterion in 2014
11 cannot be counted on because of a statement in an NRC staff
12 email by Stephen Hoffman and the assertion in that email
13 was simply that we had indicated that we would exceed the
14 screening criterion in 2014 and the statement was I don't
15 know whether we agree with that.

16 That does not undercut our assertion. It's
17 simply a statement by a member of the staff doesn't know
18 whether that's right or wrong. So I submit that does not
19 provide a basis to contradict our estimate.

20 And as I mentioned earlier our current
21 prediction of when the screening criteria will be exceeded
22 is based on the method of fluids and the chemistry factors
23 that were approved by the NRC in the November 14th, 2000
24 SAR.

25 So the only thing we applied is our approved

1 methodology is in making that statement.

2 By that I would add that the accuracy of that
3 assessment was never mentioned in the original petition and
4 I think was, is one of the areas where it's simply a brand
5 new allegation that's appearing for the first time in the
6 reply.

7 That's all I have.

8 ADMIN. LAW JUDGE YOUNG: All right. Any
9 questions for him before we move on. Okay. Ms. Uttal.

10 MS. UTTAL: Yes. Thank you, your Honor.

11 It's --

12 ADMIN. LAW JUDGE YOUNG: And actually before you
13 start let me ask you to in your remarks please focus on the
14 footnote to, in Turkey point in your argument about whether
15 or not this contention is within the scope.

16 You seem to be basing it on footnote two in
17 Turkey point --

18 MS. UTTAL: I don't know if I have that with me.

19 ADMIN. LAW JUDGE YOUNG: That was the one that I
20 read where they said that some aging related issues are
21 adequately dealt with by regulatory processes and need not
22 be subject to further review during the license renewal
23 proceeding.

24 An example might be those structures and
25 components that already must be replaced at mandated

1 specified time periods.

2 MS. UTTAL: That's the footnote?

3 ADMIN. LAW JUDGE YOUNG: Uh-huh.

4 MS. UTTAL: Well, I guess I should have, we
5 should have been more precise in our brief. I mean what
6 is, what is out of scope is anything having to do with
7 current licensing basis. So that compliance with 50.61
8 would be out of scope.

9 ADMIN. LAW JUDGE YOUNG: But that, I mean in
10 several places the Commission talks about PTS and I mean
11 certainly this is an aging issue. So unless you rest it on
12 footnote two I don't, I don't really quite understand your
13 argument.

14 Because I mean what would not fall within that?
15 I mean isn't virtually everything that could conceivably be
16 related to aging also currently regulated? I mean that
17 seems to be a pretty wide sweeping argument.

18 MS. UTTAL: I think that in terms of what can be
19 attacked in, in license renewal would be the adequacy of
20 the TLAA.

21 ADMIN. LAW JUDGE YOUNG: Okay. And the
22 management of --

23 MS. UTTAL: The management of, of aging issues.

24 ADMIN. LAW JUDGE YOUNG: Right.

25 MS. UTTAL: But what can't be attacked is the,

1 is this Turkey point, the current licensing basis.

2 Judge, I don't have Turkey point with me and
3 it's probably a failing on my part not to have reread IT
4 before I got here so. I don't know if --

5 ADMIN. LAW JUDGE YOUNG: Well, let me read you
6 what I'm, in sum, this is, I don't know which page it's
7 from but in sum our license renewal safety review seeks to
8 mitigate the "detrimental effects of aging resulting from
9 operation beyond the initial license term citing 60 Federal
10 Register at 22463.

11 To that effect our rules focus the renewal
12 review on plant systems, structures and components for
13 which current regulatory activities and requirements may
14 not be and that's emphasis of the Commission, be sufficient
15 to manage the effects of aging in the period of extended
16 operation.

17 And then there's footnote two which states:
18 some aging related issues are adequately dealt with by
19 regulatory processes and need not be subject to further
20 review during the license renewal proceeding.

21 An example might be those structures and
22 components that already must be replaced at mandated
23 specified time periods.

24 MS. UTTAL: Okay, well, there's no requirement
25 that this one be replaced at, at mandatory specified time

1 limits. But there is a regulatory scheme for dealing with
2 the embrittlement of the vessel and that's in 50.61.

3 So I guess it's kind of a hybrid. I mean part
4 of is current licensing basis and part of it is, is an
5 aging issue.

6 ADMIN. LAW JUDGE YOUNG: Well, can you give me
7 an example of, of something that would be subject to aging
8 that would not be covered in the current licensing basis?

9 MS. UTTAL: Would you have a copy of Turkey
10 point?

11 ADMIN. LAW JUDGE YOUNG: Yeah. We have a copy
12 of Turkey point if you'd like to look at it.

13 MS. UTTAL: Yeah.

14 ADMIN. LAW JUDGE YOUNG: Thank you.

15 MS. UTTAL: If we could get back to it after
16 I've a time --

17 ADMIN. LAW JUDGE YOUNG: Okay.

18 MS. UTTAL: -- a chance to look at it. It is
19 the staff's position that compliance with 50.61 is
20 sufficient to meet the TLAA and to meet part 54.

21 The licensee has indicated that they will
22 comply with it. They put a program in place that shows
23 the, the steps that they will take and it's our position
24 that nothing more is required under part 54 other than
25 demonstrating compliance with 50.61.

1 They can't operate if they're out of
2 compliance. And 50.61 in addition to having all the
3 specifications of, of how you would do the analysis and
4 things like that also has a requirement that if there are
5 any changes in anything that, that has to be reported and a
6 new analysis has to be done. That's 50.61 1B1 --

7 ADMIN. LAW JUDGE YOUNG: Right. Well, let me
8 ask you the same question I asked Mr. Lewis and that is,
9 that would essentially mean it seems that while aging
10 issues are the only types of issues that can be raised in,
11 and non, non generic environmental issues that can be
12 raised in a license renewal proceeding that when you're
13 talking about PTS and embrittlement and you've got a
14 situation where a plant is projected to exceed the PTS
15 criterion within the license renewal term, which I'm told
16 is not unusual, that the way to exclude a contention under
17 your argument would simply be to say we will provide that
18 information three years before the date we projected, see
19 the criterion.

20 And that would under your argument
21 automatically exclude any contention --

22 MS. UTTAL: Now there, there --

23 ADMIN. LAW JUDGE YOUNG: -- related to that.
24 Related to --

25 MS. UTTAL: Well, probably other contentions

1 that can be formulated. And I don't want to be in a
2 position of giving ammunition to people about contentions.
3 But I suppose someone can say compliance with 50.61 is not
4 sufficient under 54. I mean this is the staff's position.

5 ADMIN. LAW JUDGE YOUNG: It --

6 MS. UTTAL: But we see that as --

7 ADMIN. LAW JUDGE YOUNG: Not sufficient, what
8 do you mean not sufficient?

9 MS. UTTAL: I'm, that there was some, as you
10 were postulating before that there's something else that
11 must be done other than compliance with 50.61 which is not
12 the staff's position.

13 The staff's position is, compliance with 50.61
14 is sufficient to meet part 54. But I guess that a
15 contention could be formulated that would say compliance
16 with 50.61 is not enough to meet part 54.

17 But that's not the contention here.

18 ADMIN. LAW JUDGE YOUNG: Well, in effect, in
19 effect it really is in the sense that what the contention
20 says is that the license renewal application is untimely
21 but incomplete for failure to address the continuing crisis
22 of embrittlement.

23 And that the, in essence what we have here is a
24 situation where the alliation is that, that Palisades is
25 prone to early embrittlement and that the application does

1 not address the continuing crisis of embrittlement.

2 The, the defense to that as it were is well,
3 yes, we do because we address it in 50.61. But the
4 contention is that it's not addressed and, and the, the
5 argument as I understand it is 50.61 under what, what NMC
6 has, has proposed under 50.61 is a plan to make a plan.
7 And that that does not address --

8 MS. UTTAL: Well, I don't agree that it's a plan
9 to make a plan. They've shown, they've shown that they
10 will comply with 50.61. 50.61 has certain requirements.

11 The requirements are that three years before
12 you'll reach the criterion that you tell, that you send
13 your plan in, you send your SE in or tell us that, that
14 you're going to aneal and you, and you comply with the
15 reporting requirements.

16 But I think that the, that in, in posing your
17 question you're reading a lot into this contention that's
18 just not there.

19 I mean they say that the application is
20 fundamentally deficient because it does not adequately
21 address technical and safety issues arising out of
22 embrittlement etcetera etcetera.

23 So where is it, where is it insufficient, what
24 page, what section. Why is it insufficient. What would,
25 you know, what is, what is the allegation.

1 Then they allege that Palisades is prone, has
2 been identified as prone to early embrittlement. Where is
3 it identified? Who identified it? What's the basis for
4 making --

5 ADMIN. LAW JUDGE YOUNG: Is there really any
6 dispute about that though? I mean is there? Every, I mean
7 it's, it's pretty well recognized by everyone here that the
8 date projected to exceed the criterion is 2014.

9 MS. UTTAL: That's true but, you know, the basis
10 for saying it's prone to early embrittlement may be because
11 it's older than a lot of the other plants. I mean the, the
12 statement without, without any support is, is not
13 admissible as a part of the contention.

14 ADMIN. LAW JUDGE YOUNG: Well, now --

15 MS. UTTAL: And that --

16 ADMIN. LAW JUDGE YOUNG: -- let's back up for a
17 second. The contention as I understand it is the bolded,
18 the bolded sentence at the --

19 MS. UTTAL: Right. And the other stuff is the
20 basis.

21 ADMIN. LAW JUDGE YOUNG: Right. And so --

22 MS. UTTAL: That --

23 ADMIN. LAW JUDGE YOUNG: And so what you seem
24 to be arguing is that the basis needs to have a basis.

25 MS. UTTAL: No. What I, what I'm arguing is is

1 that the basis, the contention doesn't meet the contention
2 pleading requirements. And the basis do not, there's
3 nothing in the contention that gives us the factual basis
4 which is required or the basis for this expert's opinion.

5 We don't, I don't know what he's an expert in.
6 He could, he could have been in, in the CIO's office for
7 all I know. I mean there's no, there's no facts that he's,
8 that this expert is basing his opinion on.

9 The, the statement itself is not enough. I'm
10 not saying that the basis needs a basis. I'm saying that
11 the contention and its basis have to meet the contention
12 rule. It has to have facts, expert opinion. It has to be
13 shown to be material etcetera.

14 ADMIN. LAW JUDGE BARATTA: Then so it's your
15 belief that this does not rise above a mere allegation
16 which the Commission has specifically highlighted as not
17 being admissible in, I forget which ruling it was but they,
18 they said that our admissibility rules are strict.

19 MS. UTTAL: By design.

20 ADMIN. LAW JUDGE BARATTA: By design?

21 MS. UTTAL: Yes. This, this contention is, is
22 insufficient under our contention pleading rules and should
23 not --

24 ADMIN. LAW JUDGE YOUNG: Let me see, I'd like to
25 see if you could help me with that a little bit. Let's go

1 through the, the admissibility criteria under 2309F.

2 First the need to provide a specific statement
3 of the issue of law or fact to be raised or controverted.

4 I don't think you dispute that part. Let me
5 get your, right.

6 MS. UTTAL: I don't, I don't see it there, no.

7 ADMIN. LAW JUDGE YOUNG: I'm sorry, what?

8 MS. UTTAL: I don't see anything addressing
9 that.

10 ADMIN. LAW JUDGE YOUNG: In your, in your?

11 MS. UTTAL: In my pleading.

12 ADMIN. LAW JUDGE YOUNG: Okay.

13 MS. UTTAL: Okay.

14 ADMIN. LAW JUDGE YOUNG: Okay. So then we
15 assume that it does do that.

16 Provide a brief explanation of the basis for
17 the contention.

18 You're arguing that this brief explanation has
19 not been provided?

20 MS. UTTAL: Well, it's, it's very brief but.

21 ADMIN. LAW JUDGE YOUNG: It is very brief
22 there's no doubt about that.

23 MS. UTTAL: I mean there's no --

24 ADMIN. LAW JUDGE BARATTA: Could you, could you

25 --

1 MS. UTTAL: There's no requirement of how long
2 the brief one has to do.

3 ADMIN. LAW JUDGE BARATTA: Could you be
4 specific as to what sentence provides that brief
5 explanation of the basis?

6 MS. UTTAL: Well, they don't cite where their
7 problem is with the, the licensee's application.

8 ADMIN. LAW JUDGE YOUNG: Well, let's save --

9 MS. UTTAL: They just say the general --

10 ADMIN. LAW JUDGE YOUNG: -- that for when we
11 got to the part --

12 ADMIN. LAW JUDGE BARATTA: There's another
13 one --

14 MS. UTTAL: Okay. They, they, they make a basic
15 generic statement that the prone to early embrittlement.

16 ADMIN. LAW JUDGE YOUNG: But isn't that a fairly
17 significant statement to make in the context of a license
18 renewal where they're asked where the, what's being sought
19 is a 20 year license renewal and the, and there's an
20 allegation effect that the, that the plant has been
21 identified as prone to early embrittlement to support a
22 contention that says that the application is incomplete for
23 failure to address the continuing crisis of --

24 MS. UTTAL: But it --

25 ADMIN. LAW JUDGE YOUNG: -- embrittlement --

1 MS. UTTAL: It's, it's not sufficient because
2 it has, it doesn't have any support. It's just a statement
3 with no support showing the basis for this, now I'm getting
4 the basis to the basis.

5 But, but to, to say that, that this basis is
6 sufficient because it's, it's, the basis doesn't address
7 the fact that there are no facts or expert opinion --

8 ADMIN. LAW JUDGE YOUNG: Well, any fact --

9 MS. UTTAL: -- to support --

10 ADMIN. LAW JUDGE YOUNG: -- in a, in a
11 contention or in a basis for a contention is alleged,
12 right? I mean it not, it's not proven.

13 MS. UTTAL: Yeah, because it's a contention but
14 there are, there are no facts here. There's nothing here.
15 These are general statements that it's prone to early
16 embrittlement. No --

17 ADMIN. LAW JUDGE YOUNG: Isn't that, isn't that
18 an alleged fact?

19 MS. UTTAL: Not without support. I could say
20 the moon is made out of green cheese. I mean it, it, I'd
21 have to prove that somehow or at least show where I got my
22 information from.

23 ADMIN. LAW JUDGE BARATTA: Well, my question
24 there on that is I've looked at the, those sentences and,
25 and what I'm having trouble with and that's why I asked Mr.

1 -- there is, is how does that act a, a foundation of a
2 theory or process or a principle according to which the
3 hypotheses is, is based.

4 In other words the hypotheses is that the
5 application is untimely and incomplete because it doesn't
6 address embrittlement. And, and the statement that the
7 Palsadies Nuclear Power Station is identified as prone to
8 early embrittlement of the reactor pressure vessel.

9 How does that support or provide a foundation
10 for the hypotheses that the license renewal application is
11 untimely and incomplete?

12 ADMIN. LAW JUDGE YOUNG: I think her --

13 MS. UTTAL: I don't think --

14 ADMIN. LAW JUDGE YOUNG: -- argument is does
15 it.

16 MS. UTTAL: I don't think it does because
17 there's nothing in the basis that shows that this
18 application is untimely. And in fact the licensee has
19 addressed embrittlement in the application so the, the, the
20 contention itself is incorrect.

21 I mean there, there can be no denying that
22 embrittlement is, is addressed in the license application. So
23 this, this statement to begin with is incorrect.

24 Therefore I don't see where there's any support
25 for what they say the contention is.

1 ADMIN. LAW JUDGE YOUNG: Okay. That's your
2 position on, on subsection two. You're arguing that it's
3 not within the scope of the, of the license renewal
4 proceeding for the reasons you gave earlier.

5 ADMIN. LAW JUDGE BARATTA: I'd like to explore
6 that further.

7 MS. UTTAL: Well, let me the read the Turkey
8 point and then.

9 ADMIN. LAW JUDGE BARATTA: Okay. Go ahead,
10 sorry.

11 ADMIN. LAW JUDGE YOUNG: Demonstrate that the
12 issue raised in the contention is material to the findings
13 the NRC must make to support the action involved in the
14 proceeding which takes us to 5429.

15 I think your, I think you argue that it's not,
16 let's see. You may not raise a question about that one.

17 MS. UTTAL: I can't get them all.

18 ADMIN. LAW JUDGE YOUNG: You raise a question
19 about whether an genuine issue, a genuine dispute exists on
20 a material issue of law or fact.

21 MS. UTTAL: Right. Again the, the contention
22 says that they failed to address embrittlement. And they
23 have addressed embrittlement. Therefore there is no
24 material issue because they're, they're incorrect in their
25 initial supposition.

1 Initial thesis is wrong.

2 ADMIN. LAW JUDGE YOUNG: What about the part of
3 the initial thesis that alleges that it's incomplete and,
4 and raises the timeliness issue in conjunction with the
5 allegation that the plant's been identified as prone to
6 early embrittlement?

7 MS. UTTAL: This, there is nothing, first of all
8 there's no explanation about what they mean is untimely.
9 If I see that, something that says the license renewal
10 application is untimely that means it's filed late.
11 There's nothing about that in, in the support for this
12 contention. And incomplete not because they didn't
13 adequately address the continuing crisis of embrittlement.
14 But incomplete for failure to address it. And there is no
15 failure to address here.

16 And then again the, the statements made in the
17 basis are without support. There are no facts to support
18 them. There's no opinion to support them. They don't
19 point to anything specific sources. They're supposed to
20 provide a concise statement of the alleged facts or expert
21 opinion which supports the requestors petition, the
22 requestors position on the issue and how much the
23 petitioner intends to rely together with references to the
24 specific sources and documents on which the requestor
25 intends to rely to support its position. There's none of

1 that in there. So they completely failed on five.

2 And if they fail to meet one of the criterion
3 in 2.309 then the contention is inadmissible. And I think
4 they've --

5 ADMIN. LAW JUDGE YOUNG: No doubt, you're right.

6 ADMIN. LAW JUDGE BARATTA: On, on 309 step six,
7 okay. I heard did you say that you feel their, their
8 statement is that it's incomplete for failure to address is
9 wrong?

10 MS. UTTAL: Yes, because they've addressed
11 embrittlement in their TLAA. In addition to, to that
12 problem they're supposed to provide, the intervenors, are
13 supposed to provide references to specific portions of the
14 application including the applicant's environmental and
15 safety report that the Petitioner disputes and the
16 supporting reasons for each dispute or if the Petitioner
17 believes that the application fails to contain information
18 on a relevant matter as required by law the identification
19 of each failure and supporting reasons for the Petitioner's
20 belief.

21 Well, as to pointing at specific portions of
22 the application that they completely failed to do that and,
23 in, well, it's a requirement under, under --

24 ADMIN. LAW JUDGE BARATTA: Well, there's only,
25 there's only one page in the application that it could be

1 referring to though I mean. That was, I thought that
2 was --

3 ADMIN. LAW JUDGE YOUNG: Okay --

4 ADMIN. LAW JUDGE BARATTA: Yes, that's why I,
5 you know, to me they did.

6 MS. UTTAL: I've, I've been, I've been asked to
7 show why, why --

8 ADMIN. LAW JUDGE BARATTA: Yeah, I understand, I
9 understand --

10 MS. UTTAL: -- it doesn't comply with our, with
11 our regulations.

12 ADMIN. LAW JUDGE YOUNG: Well, now I believe
13 that the reply to that though was that their argument is
14 that this, this involves a failure, a failure of the
15 application. That the application is incomplete. And that
16 it's incomplete because it doesn't address the continuing
17 crisis of embrittlement and, and they tie that to the
18 allegation of fact that it's been identified as prone,
19 being prone to early embrittlement.

20 There is case law that says a petitioner, a
21 petitioner must provide documents, expert opinion or at
22 least a fact based argument.

23 And there's also case law that says the
24 contention rule should not be used a fortress to deny
25 intervention that what you need is enough to indicate that

1 further inquiry is appropriate. That what you need is
2 indication that the purpose of the contention rule which I
3 think was quoted in Turkey point.

4 Basically something to indicate that the
5 petitioners are qualified, able to litigate the issue that
6 they raise.

7 So what we have here is we have an allegation
8 that the application is incomplete for failure to address
9 the continuing crisis of embrittlement supported by this
10 factual allegation about early embrittlement and the
11 identification of an expert who used to work with the NRC.

12 So on the face of that it would seem that that
13 provides something to indicate that further inquiry might
14 be appropriate.

15 Under, under the case law that I've just cited
16 to you, and I understand it's your position that they
17 haven't met any, haven't met these things and, and that
18 there should, but what I'm trying to get you to address is
19 the general issue that they've raised.

20 The brief statement, very brief, but, but it's
21 a concise and brief statement of, of their concern.
22 They're supporting it with the reference to an expert who
23 used to work at the NRC. Whose obviously I, I think it's,
24 can be assumed that they're not going to bring a financial
25 expert in.

1 So let's get past that point.

2 What I hear you saying is that not only have
3 they not satisfy some of the technical requirements of the
4 contention and admissibility rule but that this is not even
5 a significant issue that, that's within the scope of
6 license renewal.

7 And you sort of start to lose me there --

8 MS. UTTAL: Okay.

9 ADMIN. LAW JUDGE YOUNG: -- at least.

10 MS. UTTAL: Even, put aside the issue about
11 outside the scope. And let's just talk about the
12 contention itself because I disagree very strongly with all
13 due respect with what you've said. There is, this is --

14 ADMIN. LAW JUDGE YOUNG: Well, I'm asking you
15 questions so.

16 MS. UTTAL: Oh, okay.

17 ADMIN. LAW JUDGE YOUNG: You don't need to agree
18 or disagree because you can attack everything I'm saying as
19 question and --

20 MS. UTTAL: Okay. Well -- well, this contention
21 as it was submitted in, in the, the first pleading does not
22 contain what is expected, what the Commission expects to
23 see in contentions.

24 It contains a lot or a few unsupported
25 statements. The statement that it's identified as prone to

1 early embrittlement is not supported. It is not up to the
2 Board or even any of the other parties to come in and, and
3 fill in the blanks of who said it and whether it's general
4 knowledge and, and things like that. Then --

5 ADMIN. LAW JUDGE YOUNG: But if you look at the,
6 let's stop right there.

7 If you look at the case law that says a
8 document, documents, expert opinion or at least a fact
9 based argument.

10 I mean in a license renewal proceeding where
11 there's an allegation of a plant being prone to early
12 embrittlement doesn't that at least raise your antenna a
13 little bit --

14 MS. UTTAL: What --

15 ADMIN. LAW JUDGE YOUNG: -- that, that is, that
16 this might be, might warrant further inquiry? And then
17 when you read on and you see we've got an expert who used
18 to work at the NRC.

19 I mean doesn't that even cause you to wonder
20 whether there might be cause for further inquiry?

21 MS. UTTAL: Judge, I think the issue is the
22 burden is on the Petitioner to provide a sufficient --

23 ADMIN. LAW JUDGE YOUNG: Right.

24 MS. UTTAL: -- a sufficient contention --

25 ADMIN. LAW JUDGE YOUNG: But what I'm asking

1 you to do is answer the question I just asked. Based on
2 what's here like I said I don't know who Demitrios Bezdekas
3 is and what his expertise and what his connection with this
4 plant is. So I can't comment on whether he has any
5 expertise and whether this very general statement has any
6 meaning.

7 And I don't think the, the Board can read into
8 it that just because he worked at the NRC that he's an
9 expert in this particular field that we're talking about
10 here because there's no support provided.

11 And the general statement that it's prone to
12 early embrittlement without more is not enough to raise
13 this, this proposed contention to the level that's required
14 by our stringent pleading rules to allow it to be admitted.

15 Now the, the quotes that, that you quoted from
16 the cases are general, are general quotes and, yes, there
17 are cases where you don't rely on technicalities. Some of
18 the cases that were cited by the Petitioners point that
19 out.

20 But when they're talking about technicalities
21 let's say in the Sequoia Fuels case. In the Sequoia Fuels
22 case the technicality was that a another intervenor had
23 copied the contentions from the first intervenor, had not
24 copied the basis in. So the Board allowed them to amend,
25 to put the basis in.

1 That was felt to be a technical thing. There
2 was another one where they failed to sign the pleading and
3 that was felt to be technical.

4 In here there's a complete failure to comply or
5 almost complete I guess, it's not complete but almost
6 complete failure to comply with our pleading requirements.
7 And I don't think that we can pull it up and make it a good
8 contention by, by reading things into it that are just not
9 there.

10 ADMIN. LAW ADMIN. LAW JUDGE TRIKOUROS: I have a
11 question. The, the, again I'm back on the reasonably
12 practical able question.

13 The applicant said that they were not going to
14 make a modification as we discussed earlier because it was
15 not reasonably practical able.

16 How, do you, does the NRC do an evaluation of
17 that and make a determination that indeed that is not
18 reasonably practical able?

19 MS. UTTAL: I'm not sure we have the person here
20 that can answer that question because it would be done by
21 the, the people that are reviewing the, the request, done
22 by the people that are reviewing the request under 50.61
23 not the people that are reviewing the license renewal
24 because they have not made that, that, they have not sent
25 their program in as we know because we've been discussing

1 it.

2 ADMIN. LAW JUDGE YOUNG: Okay.

3 MS. UTTAL: But I do agree that it involves a, a
4 cost benefit analysis and considering safety --

5 ADMIN. LAW JUDGE TRIKOUROS: Right. And we have
6 this May 27th letter which indicates that the first thing
7 to do is the flux reduction program. That's reasonably
8 practical able. And if that program doesn't prevent the
9 problem then you move on to the, the other two areas that
10 are identified in here.

11 Right now as I see it the, there's only one
12 statement in the application that says it's very costly
13 and, and let's move on. And so that's where I am right
14 now.

15 MS. UTTAL: I think I lost you. I'm going to
16 assume that the staff checks the figures because I've seen
17 things like SAMA analysis where they do cost versus SAMA
18 severe accident mitigation alternatives where they, they
19 measure the cost versus the, the benefit in deciding
20 whether it's worth while to do the SAMA.

21 So maybe that they do something like that. And
22 the staff looks at the analysis. But that's a guess I
23 don't know for sure.

24 ADMIN. LAW JUDGE TRIKOUROS: And again this all
25 comes back for me to the question of reasonable assurance

1 under, under 54.29.

2 MS. UTTAL: Uh-huh.

3 ADMIN. LAW JUDGE TRIKOUROS: Whether or not you
4 can simply put 50.61 and that, and that's reasonable
5 assurance.

6 The May 27th letter does say that.

7 MS. UTTAL: And that is the staff's position.

8 ADMIN. LAW JUDGE TRIKOUROS: And we have that
9 but.

10 ADMIN. LAW JUDGE BARATTA: I'd like, I'd like to
11 just ask a couple questions relating to the concept of cost
12 and benefit.

13 Are there places in the regulations that you're
14 aware of where cost and safety are specifically balanced?

15 MS. UTTAL: No, I'm just, I'm just saying I was
16 aware when they do a SAMA analysis that they do some kind
17 of analysis like that.

18 ADMIN. LAW JUDGE BARATTA: So, so you're not
19 familiar with other parts of the regulation whether they
20 might be done?

21 MS. UTTAL: Well, I think there's a cost benefit
22 analysis that's done in the environmental area.

23 ADMIN. LAW JUDGE BARATTA: But not in the
24 safety, right?

25 MS. UTTAL: I don't know offhand, I'm sorry. I

1 don't know if this is exactly on point but in, in the
2 environmental area cost benefit analysis specifically
3 excluded except for the SAMAs that --

4 ADMIN. LAW JUDGE BARATTA: No, I was looking --

5 MS. UTTAL: -- answer your question at all --

6 ADMIN. LAW JUDGE BARATTA: I was wondering if
7 in the, in the safety area whether there was any, whether
8 it be in part 50 or some other part of the --

9 MS. UTTAL: I, I just don't know, I'm sorry.

10 ADMIN. LAW JUDGE BARATTA: The, with the
11 exception of Appendix K the prescriptiveness of this 50.61
12 the only other place I can think of that I've seen that
13 type of prescriptive requirement is in and is in Appendix
14 K.

15 Is this, am I wrong in that or are there, or is
16 that frequently done where they, they really lay out in
17 detail what you have to do as opposed to providing more
18 general requirements which you then develop a methodology
19 as to how to meet those?

20 MS. UTTAL: I know in decommissioning funding
21 they lay out a formula that you have to follow but that's,
22 you're probably asking from a technical basis for saying --

23 ADMIN. LAW JUDGE BARATTA: Well, even, even in
24 the decommission funding, what I'm trying to get at is, is
25 it, it doesn't seem like this is typical. It seems like

1 this is very prescriptive.

2 MS. UTTAL: Yes.

3 ADMIN. LAW JUDGE BARATTA: The way to put it.

4 And that that's not typical of most of the regulations.

5 MS. UTTAL: I, you, you're probably correct
6 because in a lot, and if you read the, the SRP's in various
7 areas things are, are told this is the way we'd like to see
8 it but if the licensee comes in with a different method and
9 as long as it meets the regulatory criteria then, then
10 that's acceptable.

11 I think that a lot of our regulations are
12 becoming performance based.

13 ADMIN. LAW JUDGE BARATTA: This, this one
14 definitely isn't though. This is not a performance
15 based --

16 MS. UTTAL: Well, you have to meet certain
17 criteria, certain, you have to meet the criterion and they
18 tell you how you're going to get there. What you have to
19 do.

20 I, I would have to ask the staff about, I'm
21 looking here.

22 Well, in terms of 50.61 there's this specific
23 three year time period and that's so that there's
24 sufficient time to review the plan to make sure that it's,
25 it's sufficient.

1 ADMIN. LAW JUDGE YOUNG: Sufficient to what?

2 MS. UTTAL: You don't, to meet, to, so that they
3 will be able to meet the criterion when they finally, so
4 they will not go over the criterion when they, when they
5 finally reach that year.

6 ADMIN. LAW JUDGE YOUNG: So that they'll be able
7 to manage the effects of aging?

8 MS. UTTAL: Yes, exactly. And there are a few
9 other regulations that involve these kind of time limits.
10 Again the decommissioning funding one is one.

11 ADMIN. LAW JUDGE BARATTA: So my point being is,
12 is that, could that possibly, because of prescriptiveness
13 of the regulation could that possibly be something that
14 would fall under that note two that was mentioned earlier
15 in Turkey point?

16 MS. UTTAL: I don't, I'll have to think about
17 that.

18 ADMIN. LAW JUDGE BARATTA: Okay. That's fair.

19 ADMIN. LAW JUDGE YOUNG: Any more questions.

20 ADMIN. LAW JUDGE TRIKOUROS: I want to discuss
21 margin of safety but I don't know if I should do it now or
22 later.

23 ADMIN. LAW JUDGE YOUNG: I think so. Do you
24 have anything more that you want to argue unless we have
25 questions?

1 MS. UTTAL: No, I think that most everything has
2 been covered.

3 ADMIN. LAW JUDGE TRIKOUROS: I'd like to just
4 take a few minutes to make sure I understand if there's a
5 consensus on what margin of safety means.

6 When I read the Petitioners documentation I
7 seem to see the definition of margin of safety as being
8 having a, a temperature that's, that's above or below if
9 you will the screening criterion. And that the margin of
10 safety is that temperature difference from the screening
11 criterion.

12 I, when I, when I hear the applicant's
13 arguments I, I hear a, that the margin of safety is
14 actually embedded at the point of the screening criterion.
15 That even if you were there there's a margin of safety
16 that, that's, that's built into that number.

17 Am I, am I reading incorrectly or is there two
18 different, are there two different margins of safety here
19 that I'm hearing?

20 MR. LODGE: Probably. The --

21 MR. LEWIS: The, sorry.

22 MR. LODGE: Sorry.

23 MR. LEWIS: You're certainly correct in our view
24 and we cited the NRC's statement of consideration where
25 they indicated that the margin of safety was inherent in

1 the screening criterion and as long as you're below the
2 screening criterion the risk is acceptable to those safety
3 issue.

4 ADMIN. LAW JUDGE TRIKOUROS: That's your
5 definition?

6 MR. LEWIS: And that's based on the statement of
7 consideration and explaining the rule.

8 MR. LODGE: We believe that the margin of safety
9 also implicates the concept of confidence levels. I mean
10 is there a 90 percent degree of confidence in that margin,
11 a 25 percent. So, yes, the numerical temperature is a
12 beginning point.

13 But the, the degree with which you can rely on
14 that level is significant.

15 ADMIN. LAW JUDGE BARATTA: Okay. Could you
16 explain that a little bit more. I didn't, because the,
17 the, I understand what you're referring to about confidence
18 level.

19 MR. LODGE: We question the degree of confidence
20 that can be ascribed given the lack of knowledge about the,
21 the mystery metal that the reactor vessel is made of. The,
22 the mix of copper and nickel.

23 The, rather than relying on generic industry
24 standards that may or may not have much direct relevance to
25 the facts at Palisades.

1 ADMIN. LAW JUDGE BARATTA: I, I thought I heard
2 earlier that the, the regulation prescribes what you're
3 supposed to do in that case. And that that's what was
4 done.

5 MR. LODGE: Insofar as --

6 ADMIN. LAW JUDGE BARATTA: In so far as the
7 composition of the material when you don't have the actual
8 material for that particular weld then you are to use
9 values that are contained in the table. And that's
10 dictated by the regulations.

11 MR. LODGE: One moment please.

12 ADMIN. LAW JUDGE YOUNG: 50.61 C1 it's small
13 Roman numeral iii, is that what you're?

14 ADMIN. LAW JUDGE BARATTA: Three.

15 MR. LODGE: Yes. The, we think that the Exhibit
16 2 has, offers a very useful interpretation of what the
17 expectations are of a licensee. And it particularly
18 addresses the 50.61 C1 iii option. The, on the first page
19 it indicates that the third option, which is the C1 iii, if
20 the licensee demonstrates that the effects of aging on the
21 intended functions and systems will be adequately managed
22 for the period of extended operation, which of course is 20
23 years.

24 On the second page it states that the license,
25 is that, the second full paragraph --

1 ADMIN. LAW JUDGE YOUNG: Excuse me, the second
2 full paragraph of?

3 MR. LODGE: The second page, pardon me. Page
4 two of the May 27th 2004 --

5 ADMIN. LAW JUDGE YOUNG: May 27th, letter, okay.

6 MR. LODGE: The, the Exhibit 2.

7 ADMIN. LAW JUDGE YOUNG: Okay, say that again.

8 MR. LODGE: I'm sorry. The, the first sentence
9 of the second full paragraph page two indicates that the
10 license renewal applicant that chooses the C1 iii option
11 must provide an assessment of the current licensing basis
12 TLAA for, for pressure thermal shock, a discussion of flux
13 reduction program, you can read it. I'm, I'm not going to
14 go through all that.

15 And identify the viable options that exist for
16 managing the aging effect in the future.

17 What you've heard, what we've heard today from
18 the applicant is their plan is we'll get you a plan
19 sometime in the future and plan D the plan to provide a
20 plan, plan B is we'll shut down if we exceed the criterion.

21 Then on page three at the top, the first full
22 paragraph it indicates if a reactor vessel is projected to
23 exceed the PTS screening criteria B3 50.61 B3 requires the
24 licensee to implement a flux reduction program that is
25 reasonably practical able to avoid exceeding the PTS

1 screening criteria.

2 The operative word in that sentence to us is
3 implement a flux reduction program not plan to provide a
4 scheme to implement.

5 ADMIN. LAW JUDGE BARATTA: But you're, the
6 second sentence though goes on if the program does not
7 prevent which evidently they've concluded that it's not
8 reasonably practical able to do then, then the licensee can
9 choose between other options.

10 MR. LODGE: Correct, sir. That's --

11 ADMIN. LAW JUDGE BARATTA: And that's what they
12 said they're going to do.

13 MR. LODGE: Well, I, I guess I don't follow
14 your, your logic there. And I --

15 ADMIN. LAW JUDGE BARATTA: Well --

16 MR. LODGE; Well, in the, in the application
17 they state at page 4-10 the flux to the reactor vessel
18 would have to be reduced by an additional factor of three
19 in order to reach March 24, 2031.

20 Mr. Lewis has acknowledged that they're not
21 going to be able to achieve that with current technological
22 capabilities. So --

23 ADMIN. LAW JUDGE BARATTA: So there's, there's
24 no dispute that it's not reasonably practical able to do
25 that.

1 MR. LODGE: Correct. And in fact all they're
2 saying, all the, all the utility is saying to you today is
3 we can get we think to 2014 three, seventeen years short of
4 2031.

5 And so the two options that are specified, your
6 Honor, in, in that sentence you just referred to, are
7 annealing --

8 ADMIN. LAW JUDGE BARATTA: Uh-huh.

9 MR. LODGE: -- or providing safety analysis to
10 determine what modifications are necessary to prevent
11 failure of the reactor vessel.

12 It appears to be taken in context, it appears
13 to us, that that is to be done now. If they, they've
14 admitted now today, 2005, they can't otherwise achieve the
15 flux reduction by a factor of three.

16 ADMIN. LAW JUDGE BARATTA: But I, what I'm
17 getting hung up on is, is I don't understand how that, that
18 doesn't meet, you know, the, first off this letter although
19 it, it should be given deference is not binding.

20 MR. LODGE: I understand, sure, sure.

21 ADMIN. LAW JUDGE BARATTA: Okay. I mean it's
22 not --

23 MR. LODGE: Certainly.

24 ADMIN. LAW JUDGE BARATTA: -- it is not a
25 regulation.

1 MR. LODGE: Right.

2 ADMIN. LAW JUDGE BARATTA: All right.

3 MR. LODGE: But it's, this --

4 ADMIN. LAW JUDGE BARATTA: So we're all clear on
5 that.

6 MR. LODGE: Correct.

7 ADMIN. LAW JUDGE BARATTA: But it should be
8 given deference and I'd like to, I would like to explore
9 your, what you're saying because I, I'm having trouble
10 seeing that.

11 MR. LODGE: Well --

12 ADMIN. LAW JUDGE YOUNG: Can I ask a question to
13 see if I understand it.

14 ADMIN. LAW JUDGE BARATTA: Sure. And if he can
15 help --

16 ADMIN. LAW JUDGE YOUNG: Okay. Let me see if I
17 understand what you're saying.

18 ADMIN. LAW JUDGE BARATTA: All right.

19 ADMIN. LAW JUDGE YOUNG: You're saying that what
20 this letter says on page two is that the selection of which
21 of the other two options they're going to follow needs to
22 be done at this point and that then later details of the
23 approach selected are to be submitted at least three years
24 before the projected date?

25 MR. LODGE: Yes, your Honor.. And --

1 ADMIN. LAW JUDGE YOUNG: And you, I guess notice
2 that, I would assume that you're basing that on the
3 sentence that says details of the approach selected are
4 required to be submitted at least three years before
5 implying that.

6 MR. LODGE: And also the second sentence of that
7 same paragraph, your Honor, that says, if the flux
8 reduction program does not prevent the reactor vessel from
9 exceeding the PTS screening criterion at the end of life.

10 And now is that the projected 2031 end of life?
11 Because we know today, we know now, that the utility admits
12 that they cannot provide that confidence level. And, and
13 it says the licensee can choose between the two options.
14 And, and annealing appears arguably to be off the table so
15 the other analysis --

16 ADMIN. LAW JUDGE YOUNG: Off the table?

17 MR. LODGE: Not, not an option.

18 ADMIN. LAW JUDGE YOUNG: But haven't they said
19 they --

20 MR. LODGE: They said they --

21 ADMIN. LAW JUDGE BARATTA: That's the second
22 time you've said that. I'm, I don't, I specifically asked
23 that question and I was told that it is not off the table.
24 So I don't understand --

25 MR. LODGE: Well, there was a rather resolute

1 assertion made by the utility approximately eight or nine
2 years ago, 1996 or 7 their intention to perform a nealing.
3 And it hasn't happened. No step toward it beyond some
4 public assertion to that effect has been made.

5 ADMIN. LAW JUDGE BARATTA: Well, there is a
6 very clear statement on page 4-10 of the license
7 application.

8 MR. LODGE: Right.

9 ADMIN. LAW JUDGE BARATTA: And it says other
10 alternatives that would be considered would include
11 completion of safety analysis as specified in 50.61 B4 and
12 thermal and nealing treatment as specified in 50.61 B7.

13 And I, i get back to looking at the letter that
14 we're talking about. It says license renewal applicant
15 that chooses to use C13 option for managing must provide an
16 assessment of the current licensing basis which it seemed
17 like they did.

18 They said hey, you know, we're, we can't meet
19 it beyond 2014 a discussion with flux reduction program
20 which is in the beginning section there that they began a
21 low leakage core etcetera and they, they still ran out of
22 room in 2014.

23 And then it goes on, the letter says that an
24 identification viable options exist for managing the aging
25 effect in the future which seems to be what they did in

1 that part I started out with a few minutes ago.

2 So I guess I have trouble understanding why,
3 what they're required to do in this letter or what the
4 staff letter to the chairman said isn't what they're doing
5 which seemed to be what you were saying a few minutes ago.

6 MR. LODGE: Well, the Petitioner's position is
7 that we know today that the utility is not going to be able
8 to implement a flux reduction program that can avoid
9 exceeding the, the PTS screening criteria through 2031.

10 And that the, essentially the utility is saying
11 if assuming things don't change we'll be making some
12 proposal by 2011.

13 We return to our arguments made earlier today
14 that what data, what degree of, of confidence, what, what
15 science, what engineering that is based on relatively firm
16 facts can the utility produce then that they can't produce
17 now.

18 ADMIN. LAW JUDGE BARATTA: But we only have the
19 regulations to go by.

20 MR. LODGE: Right.

21 ADMIN. LAW JUDGE BARATTA: That we are required
22 to follow and I don't see the basis for your claim that
23 they're not doing that particularly in light of this
24 letter.

25 ADMIN. LAW JUDGE TRIKOUROS: This letter is not

1 a regulation and it wouldn't be surprised to be that the
2 timing issue is left out of here that it's trying to make
3 its, whatever point it's trying to make so I, I wouldn't
4 read it as a regulation. I don't think it was meant for
5 that purpose.

6 And there is a three year requirement then that
7 is in 50.61. So --

8 MR. LODGE: Well, that sentence beginning, and I
9 understand this is, this is an interpretation, an
10 enlightened interpretation but, but it's a take.

11 But it says that the license, the license
12 renewal applicant that chooses the C-13 option must provide
13 an assessment of the current licensing basis, discussion of
14 the flux reduction program implemented, implemented not
15 planned to be explained later, in accordance with 50.61 B3
16 and an identification of the options that exist for
17 managing.

18 Yes, they've identified what the options might
19 be but they have not specified, discussed the flux
20 reduction program implemented in accordance with 50.61 B3.

21 MR. LEWIS: May I address that point. The
22 application does specifically address the flux reduction
23 program that's been implemented in the second paragraph in
24 4.2 and specifically the core redesign which went from a --

25 ADMIN. LAW JUDGE BARATTA: Are you referring to

1 where it says Palisades began the use of a low leakage core
2 design?

3 MR. LEWIS: Yes.

4 ADMIN. LAW JUDGE BARATTA: That's again on page
5 4-10 of the --

6 MR. LEWIS: That's correct, I mean we've
7 implemented an ultra low leakage core which took a
8 considerable time and engineering analysis and effort to
9 redesign the core so that new assemblies are, the inside
10 the core instead of around the periphery to further reduce
11 flux by using third and fourth cycle assemblies in the
12 periphery.

13 And further by putting shielding simply, each
14 shielding assemblies in front of each of the six critical
15 axial welds. It's described in the FSAR and in many
16 documents, the shielding assemblies are assemblies where
17 the first four rows are steel tubes, the assemblies are 15
18 by 15 rods.

19 On the other side there's another four rows of
20 steel tubes in the middle are basically depleted uranium
21 tubes. Those assemblies shield each of the critical axial
22 welds.

23 It's a very aggressive and extensive flux
24 reduction program that has been implemented.

25 ADMIN. LAW JUDGE TRIKOUROS: I, I think there's

1 no doubt that there's been a, a, the implementation of a
2 flux reduction program. Not, not an issue in my mind.

3 MR. LEWIS: Right.

4 ADMIN. LAW JUDGE TRIKOUROS: And it says clearly
5 in the application. However, the, the, this issue of
6 reasonably practical able efforts is still, is still out
7 there in terms of additional modifications. Who makes the
8 determination as to what is reasonably practical able and
9 trying to balance that with the comments of the Petitioners
10 that economic factors are perhaps being cavalierly
11 brutalized.

12 That's where I was coming from before. I
13 still, we still don't have closure on that.

14 MR. LEWIS: There, there are two elements of
15 that. It's, it's those measures that are reasonably
16 practical to avoid exceeding the screening criterion during
17 the period of extended operation or during the, before the
18 end of life.

19 So in order to raise a genuine issue here I
20 would submit that the intervenors would have to show that
21 there is some measure that we haven't considered that is
22 both cost effective and capable of getting you all the way
23 out to the period of extended operation and they certainly
24 have not done that.

25 MR. LODGE: We, 50.61 B3 requires the licensee

1 to implement, implement a flux reduction program reasonably
2 practical to avoid exceeding the PTS screening criteria.
3 The utility can get the plant as far as 2014 not 2031.

4 And we believe that there has to be a plan, a
5 plan to fail, a plan to shut down at 2014 or at such point
6 as the criterion is exceeded is not a plan to manage.

7 ADMIN. LAW JUDGE YOUNG: We started out with you
8 answering a question. Do you, or do we need to follow up
9 on that any more at this point or?

10 ADMIN. LAW JUDGE TRIKOUROS: No. I think, I
11 think we have an answer to the question.

12 ADMIN. LAW JUDGE YOUNG: Okay. So you're, you
13 can also respond to any of the other arguments --

14 MR. LODGE: Thank you.

15 ADMIN. LAW JUDGE YOUNG: -- of the other two
16 parties.

17 MR. LODGE: I did want to bring the panel's --

18 ADMIN. LAW JUDGE YOUNG: Did you have something
19 else you wanted to say first?

20 ADMIN. LAW JUDGE BARATTA: I never quite got the
21 answer to my question about the uncertainty. That's what I
22 was trying to get out originally.

23 ADMIN. LAW JUDGE YOUNG: Do you want to?

24 ADMIN. LAW JUDGE BARATTA: I, I just, it, it,
25 you made that, that statement several times but from what

1 we've heard I, I gathered that, you know, again that these
2 regulations were prescriptive as to what you have to do if
3 you don't have this or you have that.

4 So how, how does the, how you, what's the basis
5 for your statement that the uncertainties are unknown if
6 the regulations tell you you've got to do something?

7 And specifically the regulations tell you you
8 have to do something with respect to the makeup of the weld
9 material if you don't have the weld material.

10 MR. LODGE: One moment please. I wonder if we
11 might have a five minute break in order to formulate it.

12 ADMIN. LAW JUDGE YOUNG: Okay.

13 (Off the record.)

14 MR. LODGE: Sorry, not trying, not trying to be
15 cute or misleading with the response.

16 But it's very difficult to answer your question
17 Dr. Baratta, without understanding whether or not it's
18 backed up by data from original actual irradiated material
19 as opposed to accelerated aging samples of as, as opposed
20 to computer projections.

21 The representations that Mr. Lewis made about
22 the capsules were that, did, did not indicate they were
23 actual bits of metal of the same material that the RPV at
24 Palisades was actually constructed from.

25 A 1992 NRC interim safety evaluation that we

1 don't have extra copies of that I will certainly provide
2 the, the panel as well as a 1991 letter from Consumers
3 Power to the NRC indicate that Consumers Power, and I'm
4 reading from the 1991 letter, Consumers Power Company does
5 not have chemistry measurements for the Palisades vessel
6 specific belt line welds nor does it have a surveillance
7 specimen made with the same material and heat of wire.

8 Consumers Power Company does have copper and
9 nickel measurements for the actual vessel belt line
10 material.

11 In the staff, the, the interim safety
12 evaluation dated 1992 the staff concludes the surveillance
13 plate material was removed from plates that are in the
14 Palisades belt line, however, the surveillance weld
15 material is not from a Palisades belt line weld hence it
16 has no value in determining the effect of neutron
17 irradiation on the Palisades belt line welds.

18 We believe that there are significant
19 uncertainties that, that pose the issue, that pose the
20 issue of fact that we believe should be heard by the panel.

21 Issues of, of public confidence in the margin
22 of safety are not obviated simply because regulations are
23 being followed in some fashion.

24 We differ of course with whether or not the
25 regulations are, are truly being followed that 50.61

1 according to the executive director for operations it
2 appears to me that the details of the approach selected are
3 what, are the subject of that three year notice.

4 But that the, the, the plan and the
5 implementation of the plan begins at an earlier point
6 outside of that three year time period. And we believe
7 that the only meaningful way that that regulation can be
8 interpreted is that in, because, because the utility does
9 not provide confidence that it can implement a flux
10 reduction program out to 2031 but only to 2014 and that if
11 they don't make it they will shut down is not a plan. It
12 is, it is a failure. And the Petitioners believe that that
13 has to be, the subject has to become then the subject of
14 hearing.

15 ADMIN. LAW JUDGE YOUNG: Before you go on and
16 this may give you something to focus on in your remaining
17 argument. But I want to make sure I ask you this before,
18 before you go on from contention one.

19 First a simple question, maybe not a simple
20 answer. But you've provided a lot more with your reply
21 than you did in your original contention. And we've
22 discussed what we'll consider and what we won't consider.

23 But why did you not provide that at the outset?
24 Can you, I mean just explain that. What, what the
25 situation was. What your reasons were.

1 And then if you could also in your remaining
2 time expand a little bit on if there were a hearing what
3 you would anticipate litigating.

4 And also if you could address that in the
5 context of there being the right to a hearing at a later
6 point if anything proposed would involve the types of
7 issues that were discussed before that would require an
8 amendment to the license.

9 And we heard discussed the things that would
10 and the things that might not or would not.

11 I just want to make sure that, that you address
12 those sort of basics --

13 MR. LODGE: All right.

14 ADMIN. LAW JUDGE YOUNG: -- in addition to
15 anything else.

16 MR. LODGE: Well, the, I guess the --

17 ADMIN. LAW JUDGE YOUNG: And I should say, I'm
18 sorry, I did interrupt you again.

19 But for you and all, and the other parties as
20 well, I don't think anything that any of us say should be
21 taken to indicate that, you know, we have made a decision
22 one way or the other, that we see things one way or the
23 other.

24 But obviously we do see the issues being
25 significant enough to, to warrant full discussion and it's

1 in that context that, that I ask these questions and the
2 others that we've asked as well.

3 MR. LODGE: As a grassroots intervention
4 comprised of volunteers it is a logistical difficulty to
5 come up with the type of response that we ultimately
6 replied with at the beginning of the process.

7 We took our interpretations at the face value
8 of, of the NRC regulations to mean that a short, a, a brief
9 concise statement would probably be a preferable item for
10 the Board to consider.

11 And also we were mindful of the Turkey point
12 observation that to trigger full adjudicatory hearing
13 Petitioners must be able to "proffer at least some minimal
14 factual and legal argument in support of their
15 contentions". That cites to a Duke Energy Corporation
16 case.

17 We believed that part, the law of parsimony was
18 perhaps preferable in terms of setting up the outlines of
19 what the intervention would be.

20 I confess to some misunderstanding of exactly
21 what the expectations were and we, as I say, put our
22 contentions together as a committee involving many many
23 dozens of volunteer hours in assessing a great deal of
24 public domain material.

25 I don't know how responsive that is to your

1 first question. As to --

2 ADMIN. LAW JUDGE YOUNG: Did you, did you have,
3 I presume that you did have access to the expert you've
4 cited?

5 MR. LODGE: Yes. oh, yes.

6 ADMIN. LAW JUDGE YOUNG: Okay.

7 MR. LODGE: And we consulted with him
8 actively --

9 ADMIN. LAW JUDGE YOUNG: Okay.

10 MR. LODGE: -- in the weeks before, correct.

11 Your second question was essentially what would
12 we anticipate educating or, or contending evidentiarily at a
13 hearing on this issue.

14 Well, obviously we would attempt to through the
15 discovery process as well as the adjudication try to
16 establish, pin down exactly what efforts to the extent that
17 there are, have been deliberations that are a matter of
18 public record, to get to the bottom of the embrittlement
19 computations.

20 We would also expect to establish the
21 uncertainties that we've talked about today by way of
22 proving them as indisputable or maybe disputed but, but
23 fact.

24 And furthermore presumably if the Board were to
25 admit this contention then the Board is considering whether

1 or not 2014 projection of exceeding the criterion is
2 acceptable from a regulatory standpoint.

3 So we would certainly be attempting to make the
4 argument that it is not and that a plan in, announced,
5 enumerated in 2011 is not an adequate regulatory, doesn't
6 address the regulation.

7 ADMIN. LAW JUDGE YOUNG: And which regulation
8 are you referring to?

9 MR. LODGE: 50.61. Essentially along the lines
10 of, of the Exhibit 2 discussion.

11 ADMIN. LAW JUDGE YOUNG: The Exhibit 2
12 discussion being that 50.61 is a, is a, is a way to resolve
13 the 54.29 --

14 MR. LODGE: In, in 21 C iii, C-13 --

15 ADMIN. LAW JUDGE YOUNG: -- and 51 and 21 --

16 MR. LODGE: Yes, your Honor.

17 ADMIN. LAW JUDGE YOUNG: -- issues?

18 MR. LODGE: Yes. Finally you asked and I don't
19 want to, pardon me if I'm not couching this.

20 You essentially asked if, if, what's, what's
21 the problem in just waiting until a plan is promulgated and
22 objecting to it then, i.e. 2011.

23 Number one there might be a change in the
24 regulation, might by that time. Number two that's a
25 independent decision that we believe is, it's an ongoing

1 licensing type of determination.

2 I believe that the scope of an objection which
3 could be raised at that time as I hinted this morning, may
4 not allow a litigation of the adequacy of the, of the
5 decision, the underlying basis for the ultimate decision
6 that's made may not, we may not be able to reach through
7 that proceeding to get to the, the underlying computations
8 of, calculations, margins of error discussions, that sort
9 of thing.

10 ADMIN. LAW JUDGE YOUNG: I'm sorry, I didn't
11 follow you.

12 MR. LODGE: Well --

13 ADMIN. LAW JUDGE YOUNG: You made references to
14 the decision and, and --

15 MR. LODGE: When, all right --

16 ADMIN. LAW JUDGE YOUNG: -- when you were
17 talking about the decision --

18 MR. LODGE: In 2000, let's say --

19 ADMIN. LAW JUDGE YOUNG: -- decision --

20 MR. LODGE: -- the decision we would anticipate
21 presently to be made in 2011 by the utility. The election
22 of, of options.

23 We, I'm, I'm not, I don't believe having
24 litigated before the NRC before in ongoing licensing
25 proceedings we do not believe that from a legal standpoint

1 it would be possible to get to this issue of --

2 ADMIN. LAW JUDGE YOUNG: Which issue?

3 MR. LODGE: The issue of, of adequacy of the
4 solution, the resolution proposed by the, by the company
5 in, in that type of proceeding.

6 The, the basis, as I understand the NRC regs
7 for that type of proceeding and I'm by no means expert and
8 I didn't review them today or yesterday, it would appear to
9 me that all that need be proven by the NRC and/or utility
10 is that we've considered various technical criteria and
11 here's our resolution, our proposed resolution.

12 It, it is difficult to get behind or into the
13 basis of the computations at that point because it's a,
14 it's a narrow selection of alternatives as opposed to
15 laying out a long term plan to manage embrittlement which
16 is the scope of the 20 year proceeding.

17 ADMIN. LAW JUDGE YOUNG: Well, let me, let say
18 something and then anybody can correct me to the extent
19 that they think I'm wrong.

20 If there were a, a situation where the plant or
21 the company is, were to proposed to amend its license then
22 the standard that comes in at that point is essentially the
23 same standard as for the initial grant of initial license
24 of showing that whatever you propose to do is, is in
25 keeping with the safety and security and I can't remember

1 the exact language. But it's actually a broader standard
2 than the license renewal standard as I understand it.

3 Now anyone can speak to that.

4 Mr. Lewis, do you want to speak to that?

5 MR. LEWIS: I really don't understand the, the
6 assertion that, you know, subsequent proceeding challenging
7 for example the efficacy of annealing that, the efficacy of
8 annealing would not be able to be looked at.

9 I mean I just don't understand the legal
10 argument, I'm sorry, your Honor.

11 ADMIN. LAW JUDGE YOUNG: There would be a, there
12 would be an application to amend the license and in that
13 application the applicant, and again feel free to add,
14 correct, whatever, the application, the applicant would
15 have to demonstrate that what they were proposing to do
16 was, met the, the general standard for safety and the
17 protection of the public.

18 And they would have to back that up and, and
19 there would be notification to the public and the public
20 would have the right to petition for a hearing to challenge
21 anything that was said in the application.

22 Now that's sort of a summary but.

23 MR. LODGE: Well, I think that, what would
24 actually be afoot here is the NRC would render a proposed,
25 or a decision or a proposed decision which then could be

1 challenged by someone petitioning for a hearing.

2 ADMIN. LAW JUDGE YOUNG: Actually that's not
3 generally the way it occurs in my understanding and again
4 subject to correction.

5 But generally what happens with a license
6 amendment is that there's an application to amend the
7 license and before the staff may or may not make a decision
8 before any ultimate decision is made and any adjudication
9 that may be granted based on an inadmissible contention.

10 If a, if a contention is admitted then the
11 applicant would have the burden of showing with respect to
12 the issue in the admitted contention that their application
13 of, meets the standard, the same standard for issuance of
14 an initial license mainly, mainly safety and the protection
15 of the public. And I'm not using the precise language.

16 But I'd ask counsel for the other parties have
17 I misstated anything or left anything out in your view?

18 MS. UTTAL: You're correct that when a license
19 amendment comes in it's noticed with an opportunity for a
20 hearing. But if there's no significant hazards then the
21 amendment may be granted prior to the hearing or prior to
22 the, to the finishing of the hearing.

23 But if not then you'll wait until, until
24 everything --

25 ADMIN. LAW JUDGE YOUNG: Right.

1 MS. UTTAL: -- is resolved. Once the federal
2 registry notice is published then they would have 60 days
3 to get their application, their intervention, petition and
4 contentions in.

5 ADMIN. LAW JUDGE YOUNG: You would not be
6 challenging any action that the NRC took. The NRC, what
7 the staff does on a separate track whether they made a no
8 significant hazards determination or, or had not made a
9 determination by the time this, the, the adjudication
10 proceeding were underway.

11 The issue is not whether what the NRC has done
12 is correct. The issue is whether the license amendment
13 sought by the applicant should be granted.

14 MR. LODGE: Well, your Honor, we're not clear
15 sitting here in 2005 what the license amendment
16 implications of selection of an alternative would be.
17 Because obviously among other things the alternative has
18 not been chosen.

19 And what I was hearing by way of discussions
20 before the lunch break was, well, there might be
21 implications for changing the operating, the previncable
22 operating temperature or some other feature.

23 That is a very indirect way to get at the heart
24 of the issue which is the adequacy of the, the computations
25 underlying the selection of that alternative.

1 If, if it would help the panel I wonder if we
2 might request to maybe respond briefly on this tomorrow if
3 we're, if we meet tomorrow.

4 ADMIN. LAW JUDGE YOUNG: I think we probably
5 will meet tomorrow. Yeah, I don't see any problem with
6 that, do you? Okay.

7 Okay. Well, why don't you finish up whatever
8 argument you want to make today and then we can move on
9 and, and do as much of the other contentions.

10 MR. LODGE: I have one last observation --

11 ADMIN. LAW JUDGE BARATTA: We're, we're going to
12 let him respond tomorrow then, right?

13 ADMIN. LAW JUDGE YOUNG: Yes, if he, and then if
14 you --

15 MR. LODGE: I just have --

16 ADMIN. LAW JUDGE YOUNG: -- want to add
17 anything tomorrow --

18 ADMIN. LAW JUDGE BARATTA: Oh, all right, all
19 right.

20 ADMIN. LAW JUDGE YOUNG: -- I can, as well.
21 But I mean, I didn't mean to imply that you couldn't
22 also --

23 MR. LODGE: There's one additional response I'd
24 like to make today. I, as I understand it, please correct
25 me if I'm wrong.

1 Tomorrow my intention would be to, to elucidate
2 a little bit more our objection if you will to the
3 possible, having to wait and see in 2011, okay.

4 My one final observation today is that it's
5 unfortunate that the NRC staff doesn't recognize Mr.
6 Bezdekas' qualifications. He was the, one of the in-house
7 engineering experts who identified Palisades as being one
8 of the embrittled plants as early as 1981 according to a
9 not man apart for instance the earth article we've read
10 that is based on upon a number of hard news sources in the
11 American Physical Society.

12 Mr. Bezdekas identified, was one who identified
13 in the first ten years of operation the Palisades plant as
14 having early earmarks or hallmarks of an embrittlement,
15 serious embrittlement problem among 14 other, 13 other
16 reactors.

17 And I think that his qualifications would be
18 readily discernable possibly in information that's not a
19 matter of public domain information but available to the
20 NRC staff as it was evaluating how to respond to the
21 contention.

22 Thank you.

23 ADMIN. LAW JUDGE YOUNG: Okay. All right.

24 Let's move on to , it's ten to two. If anyone
25 wants to take a minute to reorganize their papers to the

1 appropriate point, actually, it might be good to hear from
2 the, hear from all of you as to whether proceeding in the
3 order, the numbered order as they were submitted is the
4 best way to do it, or whether another order might be
5 appropriate, doing some of them together.

6 For example, it's been suggested maybe there's
7 a relation between 2 and 7. Anything, anybody have any --

8 MR. LEWIS: I would suggest we just go in
9 numbered order, your Honor.

10 ADMIN. LAW JUDGE YOUNG: Okay. Go ahead, then,
11 on Number 2. And I guess, I guess with regard to all these
12 remaining contentions, I think it would be helpful if you
13 focused a good, at least a good part of your argument on
14 the, particularly the next three; 2, 3 and 7, on the scope
15 issues in light of the Commission's Turkey Point decision
16 and subsequent case law on scope, because I think you have
17 a harder row to hoe with these on the scope issue.

18 MR. LODGE: Well, with respect to Contention
19 Number 2, we believe that the, our assertion, of course, is
20 that the natural process, if you will, of aging of the
21 reactor systems, including pipes, the plumbing,
22 essentially, and the inner and outer loops, is going to
23 increase routine licensed releases of radiation, and
24 possibly other toxic material.

25 ADMIN. LAW JUDGE YOUNG: But, the thing is,

1 you, to be within scope you need to allege that there's
2 something related to managing the actual effects of aging
3 or the time limited aging analyses, if you're talking about
4 the two being, it would have to address that directly. And
5 I think the arguments to be made are that these issues are,
6 if they haven't been pretty specifically identified as not
7 within the scope, I think it's pretty clear that you need
8 to have something that's directly related to aging in order
9 to be within the scope.

10 MR. LODGE: As we understand it, the drinking
11 water supply intake for the City of South Haven is not
12 currently operating as that; but within approximately a
13 decade, it will be turned on and will be integrated into
14 the local portable water supply system. And our contention
15 is that there is no management plan that takes into account
16 the potential for incremental radiation and toxic chemical
17 leakage from the plant, given that we believe that National
18 Oceanographic and Atmospheric Administration models confirm
19 the water flow in Lake Michigan toward that intake pipe.

20 ADMIN. LAW JUDGE YOUNG: Hasn't, didn't the
21 Commission in Turkey Point, though --

22 ADMIN. LAW JUDGE BARATTA: Yeah, that's what
23 I'm looking for, I thought, the problem I, excuse me for
24 interrupting, but the problem that I had with this one is
25 that it was so close to what the Commission ruled on in

1 Turkey Point, that it has to be already outside the scope.
2 That's --

3 ADMIN. LAW JUDGE YOUNG: There was a contention
4 in Turkey Point that alleged that aquatic resources at
5 Biscayne National Park will become contaminated with
6 radioactive material, chemical waste and herbicides during
7 the license renewal term, and consequently will endanger
8 those who consumer aquatic food from the area.

9 And, the second one had to do with allegations
10 that severe and unusual challenges to the safe storage of
11 high level radioactive spent fuel, whether in spent fuel
12 pools or at dry cask storage, presented a problem. And the
13 Commission found that both were outside the scope of a
14 license renewal proceeding.

15 And again, you know, our job is to be
16 independent adjudicators and base our decision on the law,
17 on the alleged facts; and doing that, make sure that we are
18 fair to all parties. In other words, we don't sway in
19 favor of any party, we base our decision on the law and the
20 regulations. And in these instances, the Commission has
21 been pretty clear in what it said, in case law precedent
22 that's based on the license renewal regulations.

23 ADMIN. LAW JUDGE BARATTA: Why doesn't -- I
24 guess in Turkey Point, the Commission said that the issues
25 raised in Contention 1, which is the one dealing with a

1 similar topic, raises only topics that are -- Part 51 is
2 generic Category 1 issues, and the contention therefore
3 grants as no dispute material to the NRC's license renewal
4 decision on Turkey Point, and therefore it's not liticable.
5 And if I could understand what, how yours differs from
6 that --

7 MR. LODGE: Differs factually in that we're
8 talking about a water line intake that would be a component
9 of a portable public water supply versus more indirect
10 seepage pollution into bodies of water.

11 ADMIN. LAW JUDGE YOUNG: Is there a Category 2
12 issue that identifies that as, basically for environmental
13 issues, if they're Category 1, they're generic; if they're
14 Category 2 then you, that would, might warrant a hearing if
15 there's a contention this otherwise meets the admissibility
16 standards.

17 MR. LODGE: Well, we believe it's a plan-
18 specific, I mean, it's a very fact-specific circumstance,
19 specific to the Palisades Plant in that, as I say, it's,
20 yes, we understand that, the Category 1 and Category 2
21 differentiation. Yes, it's very site-specific in that the
22 water intake is less than a mile from the shore, and it is
23 oriented in the explicit direction of the Palisades Plant.

24 ADMIN. LAW JUDGE YOUNG: I'm sorry, repeat that
25 again.

1 MR. LODGE: The pipe is less than a mile
2 offshore and aimed, if you will, oriented in the direction
3 of the Palisades Nuclear Plant; and as well, the, what we
4 understand to be the currents of Lake Michigan have a
5 tendency to flow in the direction of the intake pipe.

6 ADMIN. LAW JUDGE YOUNG: Issues involving
7 impacts -- impacts --

8 MR. LEWIS: Category 2 issues are at
9 51.53.(c)4, I believe; 51.53(c), and they're all listed
10 in --

11 ADMIN. LAW JUDGE YOUNG: Appendix B, aren't
12 they?

13 MR. LEWIS: Appendix B, I think Table B-1.
14 51.53(c) --

15 ADMIN. LAW JUDGE YOUNG: The beginning of
16 Appendix B talks about impacts of -- Table B-1, summary of
17 findings on -- issues for license renewal Nuclear Power
18 Plants. Impacts of refurbishment on surface water quality,
19 Category 1; impacts of refurbishment on surface water use,
20 water use conflicts, ground use, impacts of refurbishment
21 on ground water use and quality, generic issue, and their
22 various types of ground water quality degradation.

23 The ones that are, that are not generic are
24 listed as ground water use conflicts, portable and surface
25 water and D watering plants that use greater than 100

1 gallons per minute, ground water use conflicts plants using
2 cooling towers withdrawing makeup water from a small river,
3 ground water use conflicts -- wells, ground water quality
4 degradation cooling ponds at inland sights, those are the
5 ground use water and quality ones that would be site-
6 specific.

7 And as I understand the reasoning, the ones
8 that are identified as generic that they would be generic
9 to all plants, and so they are dealt with on that generic
10 basis. So, I guess my question would be, what authority
11 would you have that, you're saying that they're unique
12 aspects, but what legal authority would you have that this
13 could be argued to be within the scope, because of any
14 unique aspects, if not found in Appendix B or 51, any part
15 of 51, I guess, 51.53 was the one that Mr. Lewis mentioned.

16 MR. LODGE: I would need a few minutes to
17 review the regs to possibly be able to respond to that.

18 ADMIN. LAW JUDGE YOUNG: Well, the question
19 relates to 2, 3 and 7, and then on 8 the environmental
20 justice, there may be some other questions. Have you read
21 the case law about environmental justice and the policy
22 statement on environmental justice?

23 MR. LODGE: Yes.

24 ADMIN. LAW JUDGE YOUNG: Okay. You want to
25 take a break and then we'll come back and start going

1 through these after you've had a chance to look at it?

2 MR. LODGE: All right.

3 ADMIN. LAW JUDGE YOUNG: Okay, let's come back
4 at 4:00, we'll go for another hour or so, and then 5:30 we
5 start the Limited Appearance Statements.

6 (Off the record.)

7 ADMIN. LAW JUDGE YOUNG: Mr. Lodge, go ahead.

8 MR. LODGE: What was the pending point in our
9 discussion?

10 ADMIN. LAW JUDGE YOUNG: Well, the scope. The
11 scope issue is a significant one --

12 MR. LODGE: The scope on the water intake
13 issue.

14 ADMIN. LAW JUDGE YOUNG: Right.

15 MR. LODGE: We believe that the, that this is a
16 Category 2 issue in two possible respects, and in looking
17 at the Appendix B of Part 51, one of them, one reason is
18 that we believe that the lake is comprised in part of
19 ground water, but there is a ground water use conflict
20 involving a portable water supply, which is, shows as a
21 Category 2 matter of concern.

22 Further, I would point out that one of the
23 other facts specific to this controversy is that when the
24 water intake was planned and approved and constructed by
25 South Haven, it was presumably based upon the belief that

1 the plant, that Palisades, would not be operating in the,
2 at the end of the period of ten years from now. And --

3 ADMIN. LAW JUDGE YOUNG: Could I just ask you,
4 do you know whether the plant uses more than 100 --

5 ADMIN. LAW JUDGE BARATTA: Gallons per minute.

6 ADMIN. LAW JUDGE YOUNG: -- gallons per minute?

7 MR. LODGE: No, I do not.

8 ADMIN. LAW JUDGE BARATTA: Because that
9 determines whether it's one or two.

10 MR. LODGE: Right.

11 ADMIN. LAW JUDGE BARATTA: What, it's my
12 reading of, and please, somebody, if this is an incorrect
13 reading, when we talk about a conflict, what we talk about
14 is, the plant and some other entity are using a water
15 source for the same purposes, and as a result causing the
16 other entity to be denied use of that water.

17 In other words, if we're both, the example
18 that's given in Turkey Point is the plant's using it for
19 whatever reason, for irrigation, okay?

20 MR. LODGE: Right.

21 ADMIN. LAW JUDGE BARATTA: And somebody else is
22 using it for irrigation, and then there's a drain on the
23 source so that there's a competition going on there, as
24 opposed to what you were alleging in the contention which
25 is, it's not a competition, it's a contamination issue.

1 MR. LODGE: Right.

2 ADMIN. LAW JUDGE BARATTA: The conflict here is
3 two entities trying to use the same water for the same
4 purpose and because of, there's not enough, you can't get
5 there from here. And that's why there's distinction
6 between less than 100 and greater than 100. So, it's not
7 clear to me how that would move your contention stated into
8 a Category 2, versus a Category 1, in other words, become a
9 plant-specific issue, a generic issue.

10 MR. LODGE: Right.

11 ADMIN. LAW JUDGE BARATTA: And my, if anybody,
12 the staff of the applicant, if I'm misquoting what it, the
13 regulations are saying --

14 MS. UTTAL: That's correct, you're, you are
15 correct.

16 MR. LODGE: May I articular what we believe the
17 second part of Appendix B? That might apply here.

18 ADMIN. LAW JUDGE BARATTA: Sure, yeah, please.

19 MR. LODGE: It is under the socioeconomic's
20 section of the appendix, and is entitled, "Public Services
21 and Public Utilities", describes as a Category 2, an
22 increased problem with water shortages at some sites may
23 lead to impacts of moderate significance on public water
24 supply availability. As I was indicating, at the time that
25 the water intake was conceived and constructed, it was

1 anticipated, the public record indicated that the plant was
2 going to be operating, I guess, through 2011.

3 And we believe that this is actually a late, a
4 later developing controversy as a result, because of the
5 fact that the plant may now be operating through 2031. In
6 other words, it was conjectured that the plant would not be
7 operating and would not be posing a risk of contamination
8 at the time that the water intake would go into service as
9 a portable water supply source.

10 ADMIN. LAW JUDGE BARATTA: What was the
11 socioeconomic, what section of the regulations is that, I
12 missed it.

13 MR. LODGE: It's in Appendix --

14 ADMIN. LAW JUDGE YOUNG: It's in this next one.

15 MR. LODGE: Yeah, it's in Appendix B, right,
16 the following page.

17 ADMIN. LAW JUDGE YOUNG: It was that page.
18 This one, I think.

19 MR. LODGE: It says, Public Utilities.

20 ADMIN. LAW JUDGE YOUNG: No, no, I'm sorry,
21 it's this one here I think you're talking about, the third
22 one down?

23 MR. LODGE: Yes.

24 ADMIN. LAW JUDGE BARATTA: Okay, but --

25 MR. LODGE: We anticipate that there might be a

1 different view on the community's part as to the safety and
2 security of their water supply as a result of an extended
3 operation.

4 ADMIN. LAW JUDGE BARATTA: So what you're
5 interpreting as the reference to water shortages as, are
6 you implying that that, water, a shortage of clean water or
7 something, is that what you're implying that that means?

8 MR. LODGE: That the South Haven community may
9 view it as an undesirable and unanticipated contamination
10 source.

11 MS. UTTAL: Judge; I believe that that section,
12 the staff tells me, relates to the use of water by the
13 staff of the plant, by the addition of however many more
14 people are working there, not use of other entities.

15 ADMIN. LAW JUDGE YOUNG: Well, why don't you go
16 ahead and make your argument, and then we'll just move on
17 and hear the arguments of the, of the NMC and the staff.

18 MR. LODGE: The argument on this point?

19 ADMIN. LAW JUDGE YOUNG: Yes, Number 2.

20 MR. LODGE: I believe we've essentially made
21 it, that the, it falls within the scope because it is a
22 site-specific type of problem and matter of public,
23 portable water supply concern.

24 ADMIN. LAW JUDGE YOUNG: Do you want to address
25 the other --

1 MR. LODGE: May we address them separately?
2 You're -- with the other contentions?

3 ADMIN. LAW JUDGE YOUNG: I wasn't going to say
4 the other two contentions --

5 MR. LODGE: Oh, sorry.

6 ADMIN. LAW JUDGE YOUNG: I was going to say the
7 other arguments about the vagueness and lack of
8 specificity.

9 MR. LODGE: The BEIRS VII report, we believe,
10 changes the parameters. The BEIRS VII report was co-
11 sponsored among other entities by the Nuclear Regulatory
12 Commission, and it's conclusion suggests very strongly that
13 there is not a safe level of radiation when you're talking
14 about human exposure.

15 We believe that that figures into the
16 assessment of this particular threat to the public water
17 supply. We believe that --

18 ADMIN. LAW JUDGE YOUNG: But does -- how does
19 that bring, how would, are you saying that would somehow
20 bring it within the scope, or --

21 MR. LODGE: We think that in a practical sense
22 that the municipality of South Haven, the citizens of South
23 Haven and any other users of the municipal water supply,
24 are, once they're better educated about the, about the
25 findings of the BEIRS VII study, may well reject the use of

1 that particular part of the system to draw water from Lake
2 Michigan.

3 ADMIN. LAW JUDGE YOUNG: The question I had
4 asked, and I don't want to, you can make that argument,
5 but, was, my question related to the specificity and the
6 arguments that your contention and basis were vague, and I
7 don't, I know you didn't mention the BEIRS VII report in
8 the original contention.

9 You, basically the allegation you make,
10 assuming scope, is that due to the direction of the flow
11 and the close proximity to the drinking water intake, that
12 there would be contamination. And then you say you hope to
13 produce public records of toxics and radiation testing.

14 MR. LODGE: Which we, some of which we provided
15 in the reply to the contentions.

16 ADMIN. LAW JUDGE YOUNG: And again, you know,
17 your other, a strict requirement that's been made stricter
18 --

19 MR. LODGE: Correct.

20 ADMIN. LAW JUDGE YOUNG: But those are the
21 requirements that govern, so I don't want you to rely on
22 what you provided in your reply and assume that we're going
23 to consider that --

24 MR. LODGE: Correct, I understand.

25 ADMIN. LAW JUDGE YOUNG: Because -- say what

1 we're going to do on those types of issues.

2 MR. LODGE: Getting current data on the
3 radioactive content of the water in and around the intake,
4 it's not possible at the present time because of it's
5 current use. It is owned by Pacific Gas and Electric and
6 is a natural gas facility, and we don't have permission,
7 nor is there public domain data available, but we don't
8 have permission to obtain any kind of raw data, any kinds
9 of samples that we could provide data to the panel with,
10 and the parties.

11 We have no further argument on this contention.

12 ADMIN. LAW JUDGE YOUNG: Okay. Mr. Lewis?

13 MR. LEWIS: Thank you. Petitioner has offered
14 this contention as a safety issue. They divided their
15 contention from the safety issues and environmental issues
16 and this is one they listed as a safety issue, which I
17 assume means that they're challenging the required showing
18 in Part 54 as opposed to the Environmental Review. Clearly
19 this is not a contention that has anything to do with the
20 management of aging.

21 Petitioner's saying, well, contamination can
22 result from leaky systems, but they do absolutely nothing
23 to identify any error in our integrated plan assessment,
24 they don't identify any component within the scope of the
25 rule that may leak, or any inadequacy in any of the aging

1 management programs. So, they clearly do not raise an
2 issue within the scope of Consumer Part 54.

3 With respect to the environmental issues that
4 are within the scope of this proceeding, it clearly falls
5 within none of those. The better place to look for, one of
6 the issues that can be raised is 50.51.(c)3, those define
7 specifically the issues that have to be addressed by an
8 applicant --

9 ADMIN. LAW JUDGE YOUNG: 50.51 or 51 --

10 MR. LEWIS: Sorry, 51.53.(c)3, excuse me --
11 10C4-51.53.(c)3 raises the environmental issues that have
12 to be examined in the license renewal procedure. And, the
13 contention that the Petitioners are raising does not fall
14 within the scope of any of those issues.

15 Petitioner's have referred to two issues now
16 for the first time. They've referred to the, an issue
17 concerning ground water use conflict, which is addressed in
18 51.53.(c)3C, that issue has to do with whether a plant is
19 withdrawing groundwater, and groundwater does not mean
20 surface water, groundwater means water in the aquifers,
21 whether they are pumping so much water that they are
22 depressing the aquifers, and they're creating a zone of
23 influence that then prevents other people from withdrawing
24 water from wells. That's clearly nothing to do with the
25 assertion of how the contamination of intake for a water

1 supply system.

2 The second reference they made is to
3 socioeconomic impacts on public utilities with water
4 shortages. That issue is defined more specifically in
5 51.53(c)3I, the issue has to do is whether license renewal
6 is going to cause such a population increase because of a
7 large refurbishment task force that has to come on to
8 refurbish the plant. They can get a great influx of
9 workers and the local water supply can't serve those
10 increased number of workers and their families and whatever
11 secondary increases in population might result from a large
12 increase in the workforce.

13 51.53(c)3I specifically refers to the impacts
14 from the population increase. This has nothing to do with
15 a contamination of the water supply system, so neither of
16 those Category 2 issues encompass this contention.
17 Petitioner has suggested that, this site-specific aspect so
18 they can raise it, but a Petitioner cannot raise a Category
19 1 issue as the issues that the NRC has resolved generically
20 just by saying, there's some site-specific aspect.

21 The Category 1 issues are resolved by rule, and
22 therefore they can only be reopened by a petition for a
23 waiver of those rules, and certainly the Petitioners have
24 made, filed no such petition in this proceeding. The
25 Petitioner has also referred to the BEIRS VII report, I'm

1 not sure what their assertion of the significance of that
2 report is.

3 The releases from the plant are governed by
4 Part 20, there's been no showing, this really goes to
5 basis, this is outside the scope, but there's been no
6 showing that there's any releases in excess of the Part 20
7 limits, and that alone is a basis for denying this
8 contention.

9 The only assertion that I've heard recently
10 about the BEIRS VII report from the public interest groups
11 is that it's reaffirmed the appropriateness of the linear
12 no threshold hypotheses for establishing radiation
13 protection standards. The Part 20 limits are, in fact,
14 based on the linear no threshold hypothesis, so there's no
15 inconsistency between the BEIRS VII report that I'm aware
16 of and the NRC's current regulations. If there were, that
17 would require away from the ruling, the Part 20 regulations
18 are certainly not subject to attack in this proceeding,
19 absent permission from the Commission.

20 Finally, I do want to clear up about the intake
21 that the Petitioners seem to be referring to. I think
22 there may be some confusion from what it's, what's been
23 referenced. The current intake for the South Haven water
24 supply system is, operational I think it's about four miles
25 north of the plant and about a mile out to the lake.

1 That intake is subject to sampling of the
2 Palisades REMP program, the Radiological Environmental
3 Monitoring Program. The Petitioners say, well, that's like
4 the fox guarding the henhouse, but this is an NRC mandated,
5 NRC inspected program, and there's no basis for suggesting
6 that the ongoing laundering of that current intake is in
7 any way inadequate.

8 There is a new plant that was built adjacent to
9 Palisades, it's the Covert Generating Plant, I think is the
10 name of it. It's a, I believe it's a combined cycle plant,
11 and it built a new intake for that plant. My understanding
12 is the city of South Haven asked the Covert Generating
13 Company, which is an LLC, to design the intake so that it
14 could be used in the future to supply old water to a new
15 public water supply system if one is built.

16 But that is not currently the case, so it has
17 the capacity, I think the pumps have the capability to
18 provide intake, provide a water supply, new water treatment
19 facility in the future. But currently it's not serving in
20 that capacity, it's only providing water to the Covert
21 Generating Plant.

22 ADMIN. LAW JUDGE YOUNG: Is the plant use, does
23 the plant use more than 100 gallons per minute or less? Do
24 you know?

25 MR. LEWIS: Does Palisades withdraw ground

1 water at more than 100 gallons per minute?

2 ADMIN. LAW JUDGE YOUNG: Mm-hmm.

3 MR. LEWIS: I'm told no; I'm sorry, I wasn't
4 ready for that question.

5 ADMIN. LAW JUDGE YOUNG: Okay. Well, that
6 distinguishes under the ground water use and quality which
7 are generic and which, you say no they, it does not --

8 MR. LEWIS: That issue will be addressed in our
9 environmental report. It is a Category 2 issue, we will
10 explain --

11 ADMIN. LAW JUDGE YOUNG: Category 2?

12 MR. LEWIS: Yes, that ground water conflict
13 issue is a Category 2 issue, and therefore our
14 environmental report has to explain why it's applicable or
15 not.

16 ADMIN. LAW JUDGE YOUNG: Why it's what?

17 MR. LEWIS: Applicable or not to our plant. A
18 number of the Category 2 issues are not necessarily
19 applicable to each plant.

20 ADMIN. LAW JUDGE YOUNG: Well actually, if it's
21 less than 100 gallons per minute, it's a Category 1 issue.

22 MR. LEWIS: It's really a Category 2 issue, but
23 what the generic environmental impact statement determined
24 is if plants are drawing less than 100 gallons per minute,
25 there should be no significant environmental impact. We

1 don't know what old plants are, therefore we require each
2 applicant, in their environmental report, to explain if
3 they are above this limit. If there is, there's a further
4 assessment, if they're not, then everything is within the
5 scope of the GEIS.

6 ADMIN. LAW JUDGE YOUNG: And, just one other,
7 you referred to 51.53(c)3 --

8 MR. LEWIS: I, capital I.

9 ADMIN. LAW JUDGE YOUNG: Right, and then, but
10 what I was looking at, under C3, small Roman Numeral 2.

11 MR. LEWIS: Have I missed a Roman 2, yes, I'm
12 sorry, it's 51.53(c)3, small double i, I missed the small
13 double i.

14 ADMIN. LAW JUDGE YOUNG: And then --

15 MR. LEWIS: Big capital I.

16 ADMIN. LAW JUDGE YOUNG: And then B or I, you
17 said I?

18 MR. LEWIS: I.

19 ADMIN. LAW JUDGE YOUNG: Big, large I?

20 MR. LEWIS: Large I. Too many sub-sections in
21 that regulation.

22 ADMIN. LAW JUDGE YOUNG: So you don't fall
23 under any of the --

24 MR. LEWIS: The specific provision I was
25 referring to in 51.53(c)3ii, big capital I is the

1 statement, "Additionally, applicant should provide an
2 assessment of the impact of population increases
3 attributable to the proposed action on public water
4 supply". That is the issue that is a Category 2 issue, and
5 again, it has nothing to do with a contamination scenario,
6 it has to do is, is there going to be a large population
7 increase from a great increase in the workforce at the
8 plant, that then taxes the local public services.

9 ADMIN. LAW JUDGE YOUNG: Okay. Anything
10 further?

11 MR. LEWIS: No.

12 ADMIN. LAW JUDGE YOUNG: Ms. Uttal?

13 MS. UTTAL: Staff has nothing to add.

14 ADMIN. LAW JUDGE YOUNG: Okay. Anything
15 further from you on this one?

16 MR. LODGE: No, your Honor.

17 ADMIN. LAW JUDGE YOUNG: Okay. Then let's go
18 onto Number 3, which is the fuel storage, storage pads --

19 MR. LODGE: Yes.

20 ADMIN. LAW JUDGE YOUNG: -- issue. Which is, I
21 believe, also comparable to the second contention and
22 Turkey Point, that we wanted to hear from you on.

23 MR. LODGE: Very good. I believe that from a
24 drafting standpoint, based on it's face, this particular
25 contention has fewer problems than we have discussed,

1 expecting other contentions. Our contention is that, I
2 believe I understand that the objection is going to be that
3 this is a separately regulated type of facility.

4 We believe that this is a structure on-site,
5 under the exclusive control of the utility company, and I'm
6 talking about the concrete pads, on which dry casks are
7 located, that is certainly something that poses a potential
8 problem because of the passage of time. And with the
9 passage of time comes the increasing possibility of an
10 earthquake.

11 What you have, of course, is a second floor NRC
12 technical person --

13 ADMIN. LAW JUDGE YOUNG: Back up for a second.

14 MR. LODGE: Yes.

15 ADMIN. LAW JUDGE YOUNG: Let me hear that, you
16 just made a statement that, that I thought was going to end
17 one way, and it ended with increasing possibility of -- I
18 thought you were going to end it by referring to increasing
19 aging somehow, but you ended it by saying, increasing
20 possibility of earthquakes. Is that what you said?

21 MR. LODGE: Yes, it is.

22 ADMIN. LAW JUDGE YOUNG: Okay, so I guess --

23 MR. LODGE: The gist of Dr. Landsman's
24 objection as articulated while he was an official at the
25 NRC, was that there is not an adequate safety margin in the

1 design and construction of the second concrete pad, in
2 particular.

3 ADMIN. LAW JUDGE YOUNG: Which, and again, I
4 don't want to cut you off --

5 MR. LODGE: Right.

6 ADMIN. LAW JUDGE YOUNG: -- but I am for a
7 moment, and then you can start up again, but if it's an
8 aging issue, then it may be relevant in a license renewal
9 context.

10 MR. LODGE: Correct.

11 ADMIN. LAW JUDGE YOUNG: If there's another
12 issue, it may be a serious issue for which there may be
13 other avenues of challenge, but they wouldn't fall within a
14 license renewal proceeding if they didn't relate to aging
15 or it didn't, weren't a site-specific environmental issue.

16 MR. LODGE: Sure.

17 ADMIN. LAW JUDGE YOUNG: So, that's why I
18 interrupted in the first place, because I wasn't sure how
19 the increased possibility of an earthquake by virtue of
20 passage of time would fall within either of those.

21 MR. LODGE: I understand that. Let me finish
22 the thought here.

23 ADMIN. LAW JUDGE YOUNG: Okay.

24 MR. LODGE: Perhaps it will help.

25 ADMIN. LAW JUDGE YOUNG: If you want to start

1 over again, I apologize.

2 MR. LODGE: No, that's all right.

3 ADMIN. LAW JUDGE YOUNG: I'm interrupting your
4 train of thought.

5 MR. LODGE: The surge pads are part of a
6 continuum of waste, spent fuel management at the site. The
7 spent fuel pool at Palisades was full to capacity by 1993,
8 which necessitated the resort to the use of dry cask on-
9 site storage. That prospect appears inevitably that dry
10 casks will continue to be used in an on-site storage factor
11 into the renewal period, probably, possibly, let's just put
12 it at that, possibly for the entirety of the 20-year
13 period.

14 I think functionally there is very little
15 distinction that can be made between the spent fuel
16 facility and the dry cask storage facility in terms of the
17 fact that there's a musical chairs type of process that
18 occurs when there is a periodic refueling. There will be
19 periodic refuelings of the plant during the 20 year
20 extension period, of course; there will be additional
21 motion movement of, after the five year holding period in
22 the spent fuel pool, of spent fuel into dry casks that will
23 be erected on the second pad.

24 The second pad is not the only focus of our
25 concern, but for purposes of discussion it is particularly

1 important, because Dr. Landsman, while an NRC employee,
2 identified and, in a public record type of fashion,
3 registered objections to the conformants of that pad's
4 construction design with, and location, with earthquake
5 safety regulations.

6 We believe that since this is a structure, on-
7 site, and I understand, and the Petitioners understand
8 well, that there's a separate licenser, if you will, that
9 has allowed the use of the pads to hold dry storage casks.
10 But we're not talking about the casks, we're talking about
11 the structures, the dry, pardon me, the concrete pads
12 themselves.

13 We believe that it is within the scope, as
14 delineated in Turkey Point, spent fuel is within the scope,
15 arguably, subject matter jurisdiction, if you will, of, the
16 Commission mentioned that in the Turkey Point decision, we
17 believe that this is simply another stage of the spent fuel
18 storage process.

19 ADMIN. LAW JUDGE YOUNG: How would the spent
20 fuel come in? You're, I think you're saying this is an
21 environmental contention, how would that, if you were to
22 allege that, how would that come into, how would it be
23 within the scope?

24 MR. LODGE: Well, spent fuel, the spent fuel
25 pool is something that the panel can consider the

1 management capability of NMC in, for the license extension
2 period. We believe that part of that management entails
3 emptying the spent fuel and moving it elsewhere on-site.

4 ADMIN. LAW JUDGE YOUNG: Are you, when you're
5 talking about management, are you talking about management
6 effects of aging? And if not, are you talking about any
7 site-specific environmental issue?

8 MR. LODGE: It is a site-specific environmental
9 issue, we believe.

10 ADMIN. LAW JUDGE YOUNG: And, can you help me
11 by pointing me to --

12 MR. LODGE: Once again, 51.53.

13 ADMIN. LAW JUDGE YOUNG: -- resources --

14 ADMIN. LAW JUDGE BARATTA: I guess I'd like to
15 understand, when you do that, again, going to Turkey Point,
16 the, in that instance, the intervener maintained before the
17 License Board that the possibility of catastrophic
18 hurricanes justified this plant-specific contention on
19 spent fuel accidents. If I substituted catastrophic
20 hurricanes, if I substituted the word catastrophic
21 earthquakes, what would be the difference?

22 Because it just seems like the two are so
23 parallel and the Commission already rejected it, then, you
24 know, what is unique about your contention that
25 differentiates it from the one in Turkey Point, which was

1 rejected?

2 ADMIN. LAW JUDGE YOUNG: And I think what we're
3 looking at here is, you know, there may be serious issues
4 raised, but the question for us has to be, and is limited
5 to, whether it falls within the scope of this proceeding in
6 addition to meeting the other requirements, but if it's not
7 within the scope of this proceeding, then any remedy would
8 be through the main, the other two would be the 22.06 and
9 the rule making under 28.02, I think it is, I'm not sure.

10 ADMIN. LAW JUDGE BARATTA: 28.

11 ADMIN. LAW JUDGE YOUNG: 22.06 and then 22.80
12 or something, let's see. 22.06 or 28.02, either one. I
13 think the Commission discussed those recently in a decision
14 in the Millstone case that was issued just last week.

15 MR. LODGE: The characteristics of the sand at
16 the Palisades site, is such that it's been referred to by
17 geologists as singing sand. It, dunes can move very
18 quickly, erosion over the period of the license extension
19 is a very unpredictable phenomenon that has not been
20 quantified adequately in the application at all.

21 ADMIN. LAW JUDGE YOUNG: Well, again, I'm sorry
22 to keep interrupting you, but I really want to try to get
23 us focused on this, you may be raising a very serious
24 issue, I don't know. You may be raising a very serious
25 issue that needs to be addressed, and certainly everybody

1 knows that what happens with -- has a big effect on the
2 management of high level waste and spent fuel, but all we
3 have jurisdiction over here are things that would be,
4 relate to aging issues or site-specific environmental
5 issues that would not be generic issues under Appendix B of
6 51.53, Appendix B 51, Part 51.

7 So, we need to, I guess, go through the same
8 process that we did for the last one in terms of, just
9 saying that it's site-specific, or talking about the
10 dangers of the sand movement is a little general in terms
11 of giving us the assistance we need to see how this would
12 fall within or not, the scope of the license renewal
13 proceeding.

14 MR. LODGE: May I have a moment, please?

15 ADMIN. LAW JUDGE YOUNG: Particularly in light
16 of Turkey Point. And you might want to look under Uranium
17 Fuel Cycle and Waste Management Section of the Appendix B.
18 Part 51, sub-Part A, Appendix B, yeah.

19 MR. LODGE: The erosion potential is a function
20 of time. I would point out that one of the circumstances,
21 the circumstances enumerated in the Landsman declaration,
22 and I understand that that came in as part of the reply to
23 contentions, but the Landsman declaration points out that
24 the, a major problem with the second pad in particular,
25 neither was constructed in contact with bedrock, and in

1 fact, there's a, perhaps a 100 or even 150 feet of sand
2 that, in the case of the second pad, was mechanically
3 tamped down, pressure tamped, to make a foundation for the
4 construction of the pads.

5 Concrete ages over time, erosion can change the
6 distribution of stress from the great weight of the casks
7 themselves over time. Even in the absence of an
8 earthquake, there can be changes in short in the
9 structure's capability to adequately hold the great weight
10 of the dry casks.

11 We believe that it falls within the scope of
12 Turkey Point in this way that in the decision it says,
13 "Left unmitigated, the effects of aging can overstress
14 equipment, unacceptably reduce safety margins, and lead to
15 reduction of required plant functions, including the
16 capability to shut down the reactor", whatever, "and
17 otherwise prevent or mitigate the consequences", basically
18 to make it impossible to mitigate consequences of accidents
19 with a potential for off-site exposures. So, we believe
20 that it is within the scope.

21 And finally, we've not, admittedly have not
22 filed a motion for this, but certainly have been
23 considering the possibility of a 10-CFR-2.758 request for a
24 waiver based upon the exception, the exceptional
25 circumstance here, where you have what we believe to be,

1 and suggest prima facie, is an authoritative expert opinion
2 that was rendered while the employee was an employee of the
3 NRC, and which still is, the controversy exists as an
4 unresolved issue, that is to say that the potentially
5 defective designer construction of the pads persists as a
6 problem today.

7 We've learned from a federal register notice
8 that permission has been granted to the utility to load
9 seven additional dry storage casks on the second pad during
10 the month of October, I don't know if that's actually
11 happened, but the prospect is very distinct. And the
12 Commission, as a regulator, has appeared to have committed
13 itself in the face of an unresolved issue with effects for
14 a public health safety with index.

15 ADMIN. LAW JUDGE YOUNG: So, which rule is,
16 you're asking for an exemption from a particular rule?

17 MR. LODGE: From, if indeed the panel were to
18 find that this issue, on it's face falls outside the scope
19 of, I guess, Part 54, that we would, we would respectfully
20 request that a waiver be considered to allow the issue in.
21 I will, tonight, look at, follow the panel's suggestion and
22 I'll look up the Millstone discussion. I'm very curious to
23 see that.

24 ADMIN. LAW JUDGE YOUNG: Right. And actually,
25 what's, I'll just tell you briefly that, what appears to be

1 the bottom line on this, apart from pointing to the
2 alternate routes of 22.06 and 28.02, the Commission says
3 that you have to meet all four factors of, let's see -- if
4 someone could help me with the exemption, what's the
5 section, 2 --

6 ADMIN. LAW JUDGE TRIKOUROS: 758.

7 MR. LEWIS: Not any more.

8 ADMIN. LAW JUDGE YOUNG: 2.758 -- pardon?

9 MR. LEWIS: 2.390 now, I can't remember. It's
10 changed.

11 ADMIN. LAW JUDGE YOUNG: I know. Let's see,
12 3.09(c) I think maybe. 3.09(c), let's look at that.

13 MS. WOLF: That's non-timely filings.

14 ADMIN. LAW JUDGE YOUNG: No, that's non-timely
15 filings, I'm sorry, the exemption rule, the rule that
16 governs exemption of rules.

17 ADMIN. LAW JUDGE TRIKOUROS: It's 2.335.

18 ADMIN. LAW JUDGE YOUNG: 335, okay, okay, what
19 the Commission points out is that in order to grant an
20 exemption or waiver, you must meet four factors, all four.
21 The rule's strict application would not serve the purposes
22 for which it was adopted; the movement has alleged special
23 circumstances that were not considered either explicitly or
24 by necessary implication as a rule-making proceeding
25 leading to the rule sought to be waived, and we're talking

1 about the license renewal, scope rule.

2 Three, the circumstances are unique to the
3 facility rather than common to a large class of facilities,
4 and by waiver of the regulations necessary to reach a
5 significant safety problem. And then, the, I believe the
6 Commission ends up its discussion by referring to the 28.02
7 alternative brief that could be taken, and you probably do
8 need to read that if he's give it to you.

9 MR. LODGE: Absolutely will.

10 ADMIN. LAW JUDGE YOUNG: If you need a copy we
11 can --

12 MR. LODGE: That would be, that would be great,
13 thank you.

14 ADMIN. LAW JUDGE YOUNG: Because that, that
15 case involved a certified question to the Commission,
16 suggesting that the Commission might consider whether a
17 waiver was appropriate in that case.

18 MR. LODGE: Is, I mean, was the Commission --

19 ADMIN. LAW JUDGE YOUNG: They're responding to
20 the Board's certifications.

21 MR. LODGE: Okay, all right. Thank you.

22 ADMIN. LAW JUDGE YOUNG: So, if you want to
23 address that tomorrow --

24 MR. LODGE: Yes.

25 ADMIN. LAW JUDGE YOUNG: That's fine, but it

1 sounds as though what you're saying is that unless we
2 somehow found this to be a site-specific issue, that would
3 bring it under some Category 2 --

4 MR. LODGE: Right.

5 ADMIN. LAW JUDGE YOUNG: -- and exclude it from
6 all the Category 1 issues, that you would ask to have the,
7 an exemption from the rule.

8 MR. LODGE: That is correct.

9 ADMIN. LAW JUDGE YOUNG: Do you have anything
10 else to say on this point?

11 MR. LODGE: No, not at this point, thank you.

12 ADMIN. LAW JUDGE YOUNG: Okay. Mr. Lewis?

13 MR. LEWIS: Thank you, your Honor. The Turkey
14 Point decision is squarely on point. I agree with Judge
15 Baratta, it couldn't be closer unless it had referred to an
16 earthquake instead of hurricane. The storage of spent fuel
17 on-site is a Category 1 issue, and in fact the Category 1
18 determination was that spent fuel could be stored safely
19 and without environmental impact during the period of
20 extended operation. So it's absolutely clearly barred in
21 this proceeding absent a waiver, and there has been no
22 request for a waiver in this proceeding.

23 The Petitioners raised this as an environmental
24 issue, and that's why the Turkey Point decision applies,
25 but it's also clearly not a safety issue under Part 54, the

1 contingent has absolutely nothing to do with aging
2 management, and it does not relate to any component within
3 the scope of the rule. Those components are defined in
4 54.4, and it's just, it does not fall within any of those
5 provisions because it is a separately licensed facility.

6 Just one last point, I did hear Petitioners
7 refer to erosion being time-related. To the best of my
8 recollection erosion isn't mentioned anywhere in the
9 original petition, the reply, or Dr. Landsman's affidavit.
10 The issue had to do with liquefaction and amplification
11 from earthquakes, and so my belief, based on a quick check,
12 is that this is a brand new assertion that's just popping
13 up for the first time in the pre-hearing conference.

14 ADMIN. LAW JUDGE YOUNG: Anything further?

15 MR. LEWIS: That's --

16 ADMIN. LAW JUDGE YOUNG: Ms. Uttal?

17 MS. UTTAL: I have nothing to add, your Honor.

18 ADMIN. LAW JUDGE YOUNG: Okay, it is almost ten
19 to 5:00, do you think that that's enough time to get into 7
20 or do you want to save 7 and 8 for tomorrow and take a
21 little bit longer break before the Limited Appearance
22 Statements?

23 MR. LODGE: I would request that, your Honor.

24 ADMIN. LAW JUDGE YOUNG: Any objection?

25 MR. LEWIS: Not --

1 ADMIN. LAW JUDGE YOUNG: All right, then we'll
2 come back tomorrow and finish 7 and 8 along with your
3 additional comments on Contention 1 and Contention 3. And,
4 we will reconvene here at 5:30 to hear Limited Appearance
5 Statements, and all, counsel for all the parties are
6 welcome to stay up here, the only thing I would ask is, Mr.
7 Lewis, if you wouldn't mind moving one direction or another
8 since the, or at least we, somehow get the podium for the
9 Limited Appearance Speakers.

10 MR. LEWIS: I'll have to move into the --

11 ADMIN. LAW JUDGE YOUNG: Yes, so that we can
12 maybe pull that forward and be able to see and hear
13 everybody. Okay, thank you.

14 (Whereupon at 4:48 p.m., the meeting
15 was adjourned.)

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CERTIFICATE

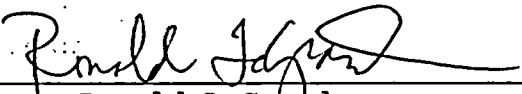
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in the matter of:

Name of Proceeding: Nuclear Management Company
Palisades Nuclear Generating
Station License Renewal

Docket Number: 50-255-LR;
ASLBP No: 05-842-03-LR

Location: South Haven, MI

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