

1 MR. WELLINGTON: Has no position on this
2 point at the time.

3 JUDGE BOLLWERK: All right. Then let me
4 turn to Pacific Gas and Electric.

5 MR. REPKA: Judge Bollwerk, at the outset
6 may I ask if it's possible for me to reserve one
7 minute of my time for surrebuttal?

8 JUDGE BOLLWERK: The answer to that is
9 yes, but they always get the last chance to say
10 something. So if they want to come back and say
11 something and you want to say something, I give them
12 the last chance. Whoever starts gets the last chance.
13 But with that understanding, if you want to --

14 MR. REPKA: We can extend the logic a long
15 way, I suppose. But we'll take one minute for
16 surrebuttal.

17 JUDGE BOLLWERK: All right.

18 MR. REPKA: First I'd like to start with
19 the procedural issue as to what the standard for the
20 admissibility of the County's and the Harbor
21 District's issues is.

22 And the answer to that is that the
23 standards are the 2.714 standards, that's been
24 specifically addressed in the -- at least one
25 Licensing Board decision that we've cited in our

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1 filings. That's the Yankee Atomic case, LBP 99-14.

2 In addition, there is absolutely no
3 precedent in NRC caselaw for the idea that there is a
4 lesser standard for interested-governmental entities
5 with respect to the admissibility of a contention.
6 Likewise, there's no -- nothing in the regulations
7 that would support that reading.

8 2.715(c) allows an interested agency to
9 participate on contentions that validly admit it, or
10 not participate, take a position, or not take a
11 position as it sees fit. But it does not create a
12 different admissibility standard. And to read
13 otherwise would completely subvert the reforms in the
14 Commission's hearing regulations of 1989 that
15 established new standards in 2.714 with respect to
16 admissibility of contentions.

17 If the standard were a lesser standard, as
18 I think the Board recognized, then an interested-state
19 or government entity, like the County or like Utah in
20 the *PFS* case, could essentially raise all manner of
21 issues without regard to the 2.714 criteria. And that
22 would completely change the NRC's hearing process.

23 An analog for this, a direct analog for
24 this was provided by the Commission in the License
25 Transfer case, PG&E's Part 50 License Transfer case.

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1 The Commission issued an order on June
2 25th finding that the County and the CPUC had failed
3 to raise any admissible issue under the subpart (m)
4 admissibility criteria. .

5 Lacking an admissible issue, it directed
6 the staff to treat those -- those issues as comments
7 to be dealt with in the safety evaluation. And that
8 is the appropriate treatment for issues that don't
9 raise the 2.714 threshold.

10 It's not that those issues are being
11 ignored, it's that those issues are being dealt with
12 in an appropriate forum.

13 Now let me turn to the substance of the
14 proposed contention. Essentially this proposed
15 contention, I'm going to put emergency preparedness to
16 the side for a minute, but it's essentially a security
17 contention under NEPA.

18 The question before the Board is one of
19 whether security and, particularly, security issues
20 related to terrorist attacks must be addressed in an
21 alternatives analysis, either alternative sites or
22 alternative-measures analysis portion of the ER. It
23 therefore raises directly the same issue as Mothers
24 for Peace contention, EC1 that we already talked about
25 today and, for the some reasons, raises an issue

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1 that's beyond the scope of a legally-required NEPA
2 analysis.

3 The County's concern is that -- is that
4 security issues post-9/11 be addressed. In fact, as
5 we stated this morning, those concerns substantively
6 are being addressed by the Commission. I mentioned
7 Chairman Meserde's letter to Tom Ridge in the Office
8 of Homeland Security.

9 Highlighted in that letter are the
10 security enhancements that have already been required
11 by the Commission with respect to operating nuclear
12 power plants and others, other nuclear facilities.

13 Mr. Lewis mentioned this morning the fact
14 that interim -- an order with respect to interim
15 compensatory measures related to ISFSIs is something
16 that's still on the Commission's plate and will be
17 forthcoming shortly. PG&E will respond to all of
18 those things. That is, the security issues are being
19 addressed. They're being addressed in the appropriate
20 fashion, in the appropriate forums.

21 And, quite frankly, taking those threat
22 assessment and threat-vulnerability issues and trying
23 to bootstrap them into an environmental report is
24 beyond the scope of NEPA and unnecessary as an
25 allocation of public resources.

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1 With respect to alternate sites, and the
2 County really raises two aspects to its security
3 issues. First is the alternative-sites analysis. The
4 County has not identified any of the alternative sites
5 that are addressed in the Environmental Report as
6 superior from a security perspective with respect to
7 the others.

8 Even if you assumed that an alternative-
9 sites analysis was -- was required under NEPA with
10 respect to security issues, the fact of the matter is
11 the County in its contention has not identified any
12 superior site.

13 And the Commission's standard with respect
14 to alternative-sites evaluations is one of obviously
15 superior. And this County, this County contention
16 alleges no obviously superior site.

17 The fact is that whatever of the sites was
18 selected for the ISFSI, it will have to meet the
19 Commission's requirements with respect to physical
20 security, and that ultimately is the standard.

21 And it will also have to meet whatever
22 interim compensatory measures are required and
23 whatever further measures might be required by the NRC
24 in the future when it completes its top-to-bottom
25 security assessment.

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1 The County also raises in its contention
2 but didn't address here this morning the -- the issue
3 of 10 CFR 72.94, which is the analysis of man-induced
4 hazards of the facility.'

5 Quite simply, as we said in writing, that
6 requirement relates to normal human activity. There's
7 nothing in the regulation or the NRC's guidance
8 documents that would suggest that that regulation
9 extends to deliberate acts of terrorism or other
10 security issues.

11 And under 10 CFR 72.40(c) it's one that
12 under the law is not reopened in a licensing
13 proceeding for a co-located ISFSI such as this one.

14 With respect to the County's second
15 security aspect of this contention, its alternative-
16 security plans, counsel this morning mentions
17 protecting against offshore attacks, and issues of
18 that nature.

19 Again, those are precisely the type of
20 alternative enhancements that are being addressed in
21 the NRC security-and-safety context. They don't need
22 to be addressed in the NEPA environmental context, nor
23 is there any precedent that they should be addressed
24 in that context.

25 I would also add that with respect to that

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1 there really is no basis or specificity in the
2 proposed contention with respect to any particular
3 alternative security measures that the County might
4 like to see.

5 Now the third aspect of the County's
6 proposed contention is emergency preparedness. This
7 argument is largely bounded by the same arguments we
8 have made in our filings with respect to the Harbor
9 District's contentions. But the fact of the matter is
10 the County claims that it does not understand its
11 increased responsibilities. That position is,
12 frankly, puzzling to PG&E.

13 The County recognizes that it has the lead
14 responsibility with respect to emergency response at
15 Diablo Canyon. It has every reason and basis to know
16 what's in the emergency response plan and is acting as
17 if it is completely dumbfounded by the changes.

18 We really don't understand that position.
19 And if the County has concerns with respect to the
20 emergency response at the ISFSI, it's in the best
21 position possible to try to raise those issues and
22 deal with it.

23 Now with respect to emergency
24 preparedness, I also address the Harbor District's
25 contention. I think the Harbor itself recognizes that

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1 its contention is barred by NRC regulations, that 10
2 CFR 72.32. This is a co-located ISFSI at the Power
3 Plant. The risks and the emergency response
4 associated with the ISFSI are not materially different
5 than they are for the Power Plant.

6 The changes to the emergency response plan
7 associated with the ISFSI are not significant or
8 substantial or material to this proceeding. They are
9 -- they are changes such as an additional emergency
10 action levels to address ISFSI accidents, to -- so
11 that the shift managers can make a determination with
12 respect to emergency response.

13 There are changes to the site description
14 to include the ISFSI and changes to training to deal
15 with the ISFSI and to deal with the new emergency
16 action levels. Those are not changes that in any way
17 change the offsite emergency response
18 responsibilities.

19 They don't significantly or substantially
20 change the duties of the offsite responders. And the
21 County has not identified any issue that it thinks
22 should be addressed that hasn't been addressed.

23 And the -- with respect to the Harbor
24 District, their issues on emergency preparedness are
25 ones that clearly go to the Power Plant emergency

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1 response plan, clearly within the scope of the
2 prohibition of 10 CFR 72.32.

3 The Harbor District's issues relate to the
4 emergency alert system. I'll go down these one by one
5 just to point out some, some basic points.

6 The emergency alert system is a county and
7 state function, not a PG&E function. It's not the
8 responsibility of PG&E. It relates to the Power
9 Plant, not the ISFSI.

10 With respect to the evacuation time
11 estimates, those are prepared by PG&E. They are
12 updated periodically. They're in the process of being
13 updated or have just been updated based upon the new
14 census data. That's a normal update to the Power
15 Plant emergency response.

16 Those evacuation time estimates are
17 updated to include new accident risk assumptions.
18 They include the most recent vehicle escape routes and
19 road conditions and demographics.

20 Periodically the Power Plant emergency
21 response plan is exercised. It was exercised with the
22 participation of local governments in May of 2000 and
23 will be exercised again in October of 2002.

24 Those are the normal processes for
25 updating and addressing emergency response related to

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1 the Power Plant and the co-located ISFSI. All of
2 these issues are beyond the scope of this proceeding.
3 Again that's not to say that PG&E ignores those
4 issues. Those issues are being addressed, but through
5 the appropriate processes.

6 And the County and the Harbor District, as
7 governmental entities, are in a position to provide
8 input, to participate, and certainly we welcome that
9 involvement.

10 JUDGE BOLLWERK: I think it is clear you
11 don't accept the argument that the amendment to the
12 plan has essentially opened this, the plan, up to
13 litigation in this proceeding?

14 MR. REPKA: The amendment to the plan
15 would open up the amendment to the plan. It does not
16 open up the entire plan. It does not open up the --
17 all of the issues raised by the Harbor District are
18 not areas that are amended in the context of the
19 ISFSI.

20 So to the extent there was an issue
21 related to the emergency plan as it relates to the
22 ISFSI, such as the emergency action levels proposed
23 for ISFSI, that might be an issue. That hasn't been
24 raised by either the County or the Harbor District.

25 All of these issues really go to the Power

1 Plant. And, as the Commission has recognized, in
2 promulgating its rule, the offsite response for the
3 ISFSI is bounded -- and to say "bounded," I mean it's
4 extremely well bounded by the Power Plant emergency
5 response. So all of that is not opened up in this
6 proceeding.

7 JUDGE BOLLWERK: All right. Any other
8 Board questions?

9 JUDGE LAM: No.

10 JUDGE KLINE: No.

11 JUDGE BOLLWERK: No.

12 All right. Thank you, sir.

13 Does the staff have anything?

14 MR. LEWIS: Yes. Your Honors, if I could
15 have an advance indulgence on your part, Ms. Coggins
16 may also assist me with regard to this segment of the
17 --

18 JUDGE BOLLWERK: All right.

19 MR. LEWIS: -- of the issues.

20 Our -- once again, as I have always
21 proceeded on the basis that our pleadings have
22 basically set forth our positions, let me put to one
23 side for the moment the question of 2.714 standards
24 applying to 2.715(c), and then come back to that at
25 the end.

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1 We had what appears to me to be almost
2 exactly the same reaction to the alternatives
3 suggestion of the County that PG&E did.

4 The one specific thing I found in there,
5 other than general assertions about having to do an
6 analysis of alternative sites, was the increased
7 threat of an offshore attack.

8 And I believe that that is precisely the
9 type of issue that is going to be considered among the
10 things that the Commission has before it in the
11 combined cases.

12 Additionally, I would point out that the
13 -- there doesn't -- there is not in the County's
14 pleading a confrontation of exactly, other than
15 mentioning this offshore attack, precisely what
16 deficiencies, what was wrong with the analysis of
17 particular sites that was done and discussed in the
18 ER.

19 I would make the point that the
20 obviously-superior standard, which Mr. Repka
21 mentioned, is the objective of an alternatives
22 analysis.

23 The NRC or any other government agency is
24 not in the business of telling an applicant that it
25 may not do what it wishes to do because there is a

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1 roughly-equivalent site where it could be done or a
2 roughly-equivalent way that it could be done.

3 The standard for telling an applicant that
4 is that there has been identified an obviously-
5 superior alternative.

6 It's not -- it's not at all clear to the
7 NRC staff that one of the things that would be
8 considered in a NEPA-alternatives analysis is site
9 security. I say that for a number of reasons.

10 First, because site security is
11 essentially a safety issue.

12 And secondly because under the NRC's
13 consistent practice with respect to alternative-site
14 analysis, the analysis of alternative sites is done
15 essentially at the recognizance level.

16 The NRC has never imposed upon itself the
17 obligation, does not believe it has the obligation, to
18 scrutinize alternative sites or other alternatives
19 with the same degree of rigor or depth -- "rigor" is
20 not a good word, but "depth" would be word -- as is
21 developed for the proposed site. That would be
22 essentially replicating the Environmental Report that
23 was done for the proposal.

24 If you will give me one moment. (Pause.)

25 Okay. It is because I believe from the

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1 analysis that we have done that the sole specific
2 assertion with regard to deficiencies in the
3 alternatives analysis is related to the security
4 issues that -- for that reason I believe I've made the
5 points I want to on that point.

6 With regard to offsite emergency planning,
7 we saw this issue, I think, slightly differently than
8 PG&E.

9 Our perception was that the plan about
10 which the Harbor District was complaining was the
11 County's plan. Everything we saw in there pointed to
12 a conclusion that they were complaining about the
13 County's plan, that the County didn't know that a
14 certain road had eroded away and no longer existed.

15 They referred to it right upfront as the
16 "San Luis Obispo County Emergency Response Plan."

17 That, as we understand it, is an ancillary
18 document to the PG&E offsite plan. And it's so
19 referenced in the emergency plan submittal of PG&E.

20 My understanding is that what PG&E does
21 essentially is at a minimum it makes itself aware of
22 what the current County or other governmental-entity
23 plans are. But in addition to that I think that it is
24 not at all uncommon for NRC licensees to, in fact,
25 have substantial input into the development of some of

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1 those plans.

2 So I just -- I just failed to see exactly
3 what deficiency on the part of PG&E is being -- is
4 being pointed to here.

5 Now we are talking here about the ISFSI.
6 If the County doesn't understand the plan, then
7 apparently they didn't understand the plan before,
8 because the ISFSI just added some rather specific and
9 narrow things to the plan.

10 And I'm not sure whether the County is
11 saying that, well, they understood the plan before,
12 but now they're totally perplexed with -- about it
13 because of what was added regarding the ISFSI. I'm
14 just not -- I'm not sure what the argument is there.

15 The -- as we pointed out in our pleading,
16 because this is a co-located site, PG&E could have
17 simply said that their 50.47 offsite plan is all they
18 had to do.

19 In fact, the regulation says that's fine,
20 on a view by the NRC that the requirements for offsite
21 emergency planning for a nuclear power plant would
22 almost certainly encompass what is needed with respect
23 to a co-located ISFSI.

24 Now, in fact, what the emergency plan does
25 contain is amendments to -- and supplementation to

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1 specifically address issues regarding the ISFSI.

2 And the requirements with respect to an
3 ISFSI are in -- do not implicate offsite emergency
4 planning. I think the licensee's application shows
5 that. Our regulations are based upon that.

6 All right. Let me move on to this
7 question that -- oh, I will just say one other thing
8 in that regard.

9 I see absolutely no significance in this
10 proceeding to the fact that PG&E chose to present its
11 ISFSI emergency-planning provisions as an update and
12 a supplementation of its existing Power Plant
13 emergency plan.

14 In fact, it seems to me like a totally
15 logical thing to do and makes it much easier for the
16 NRC to review it and, I would think, everyone else.

17 In any event, it was very discretely
18 identified in the plan, exactly what was being added.
19 So I think it would be totally illogical for that to
20 open up emergency planning. That is in no way related
21 to issues regarding an ISFSI.

22 On the -- on the question of what type of
23 specificity of issue a 2.715(c) participant needs to
24 bring forward in a proceeding, we put into our
25 pleading cases that we believe point in the direction

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1 that if a 2.715(c) participant chooses to raise an
2 issue, that it should, number one, be very specific.
3 The specificity itself is set forth in the regulation,
4 in 2.715(c).

5 And in addition to that, the cases that we
6 have identified to date point in the direction that
7 because in the proceeding the implication of
8 responding to an issue, a subject matter, or a
9 contention, give it whatever name you want to, is
10 going to be the same, that the standards should be the
11 same -- I think that this is maybe even more so in a
12 proceeding that might be -- might very well become a
13 subpart (k) proceeding.

14 If this becomes a subpart (k) proceeding,
15 it would seem to me that not only 2.714 parties but
16 also 2.715(c) parties would have an obligation to show
17 that there is a genuine and material issue -- a
18 genuine issue of material law or fact.

19 The contrary, contrary theory is
20 essentially the theory that Mr. Temple put forward,
21 which is that the governmental entities wish to bring
22 their concerns to the Board. I believe it was Dr.
23 Kline who asked him for some elaboration on what that
24 meant.

25 I will say that from the NRC staff's point

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1 of view we would mount a case in response to a concern
2 and issue a contention. The name wouldn't really
3 matter. We would be obliged to come forward with the
4 same degree of evidence.

5 And I've wrestled with this particular
6 question some myself and -- and if at some point the
7 Board wants us to look into it further, I will make
8 the offer to do so.

9 I know that governmental entities do in
10 many ways enjoy a special relationship under the NRC's
11 regulations, and that is completely appropriate, and
12 I don't in any way dispute that.

13 I do, however, believe that what we have
14 already pointed to and further investigation, which I
15 believe will also corroborate that once that party
16 crosses into raising a subject matter or an issue, it
17 should define it with the same degree of specificity,
18 with the same degree of indication of what it is
19 intending to prove, whom it is going to offer. The
20 various the hearings that are, in fact, under 2.714.

21 That's -- that completes what I have to
22 say.

23 JUDGE BOLLWERK: All right. Any Board
24 questions for the staff?

25 JUDGE KLINE: No.

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1 JUDGE LAM: Mr. Lewis, in the staff's
2 oversight and review responsibility, have the staff
3 identified any new and additional burden to the
4 emergency planning and security plans caused by the
5 proposed co-locator facility?

6 MR. LEWIS: Let me consult for a moment.

7 We -- we have gone out with requests for
8 additional information which includes some requests
9 that do cover that area. We don't have a final
10 position. Our position will be taken in our safety
11 evaluation. So I think that we don't have a final
12 view on that which I would want to offer.

13 JUDGE BOLLWERK: Let me ask a procedural
14 or a status question, then a substantive question.
15 You mentioned -- is there -- is there a schedule for
16 the staff's SAR at this point?

17 MR. LEWIS: Yes. February 22 -- (Mr.
18 Lewis consults with his colleagues off record) -- I
19 believe it's February 22, although I'm -- that -- I
20 was looking at my calendar. That may be a Saturday.

21 But there was a letter earlier that set
22 out the date by which the staff intended to have its
23 SER and its EA completed, a letter of May 9th, 2002.
24 And the target date there for the issuance of both the
25 SER, the environmental review, and the license, was

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1 February 22nd, 2003.

2 JUDGE BOLLWERK: Fine. I take it that
3 hasn't changed then? That's --

4 MR. LEWIS: That has not changed. We have
5 -- we sent out a Request for Additional Information,
6 according to our normal process, on August 29th. And
7 the -- under the schedule that is in this letter, the
8 response is due on October 15th. And if PG&E cannot
9 meet that, they're supposed to tell us two weeks in
10 advance of that. So we think things are on target as
11 far as we know.

12 JUDGE BOLLWERK: My substantive question
13 then. Now you'll have a chance to comment on this.
14 If anyone else wants to offer thoughts.

15 The cases, as I looked at them, that deal
16 with interested-governmental entities and their
17 ability to raise issues seem to be prior to the
18 Commission's rulemaking changes back in the '80s,
19 which raised significantly the threshold for
20 introducing issues, contentions.

21 At one point basically getting an issue
22 in, whether you were an intervenor or an interested-
23 governmental entity, was a fairly low threshold. That
24 clearly was raised for one who wants to be an
25 intervenor, a 2.714 participant.

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1 What does that say for the interested-
2 governmental entities in terms of any -- their status?
3 And I'll throw that out and what -- anything you'd
4 like to say about it?

5 MR. LEWIS: That's -- that's precisely the
6 issue that I have not nailed down for myself. I've
7 noted the same thing.

8 I know that the -- that the 2.714
9 provisions have become very explicit and very -- have
10 become more demanding than they were previously. And
11 the only thing that the regulation in 2.715(c) says is
12 that the presiding officer may require specificity.

13 I really have nothing further to add on
14 that.

15 JUDGE BOLLWERK: All right. I'll go this
16 way.

17 Anything he wants to say --

18 MR. REPKA: Judge Bollwerk, I'll -- I'll
19 respond to that gladly. I think what you raise is the
20 point I made earlier, that the 1989 revisions to 2.714
21 must apply to a 2.714 petitioner as well as a 2.715(c)
22 petitioner, or else the very purpose behind that would
23 be completely frustrated.

24 I think the point of 2.714 is to set
25 standards for admissibility of contentions regardless

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1 of who or what raises those contentions.

2 What 2.715(c) says is a state agency can
3 participate and its participation on admitted
4 contentions may be less than a party promoting that
5 contention. But it says nothing about allowing the
6 interested-state agency to propose some lesser level
7 of contentions.

8 If it could, obviously we would have
9 proceedings like PFS or some of the proceedings of the
10 1980s where there were -- where there were interested-
11 stated agencies participating that would have been
12 completely unaffected with respect to the new
13 contention standard. And that, I think, was not the
14 Commission's intent.

15 The Commission's intent was to -- to
16 increase those standards in order to get the hearing
17 process better defined. And that applied regardless
18 of who the petitioner was.

19 JUDGE BOLLWERK: Do you want to say
20 anything about that, Ms. Curran? I'll offer you an
21 opportunity, based on your general knowledge of the
22 agency's rules, if there's anything you want to say.

23 MS. CURRAN: Well, I must say that I've
24 always been afraid of this because it seems so
25 ambiguous. And I think Mr. Lewis said that it remains

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1 unclear.

2 And it seems to me that where it's clear,
3 the benefit of the doubt needs to go to the County,
4 because there is -- there's obviously an intention
5 here to make it easier for state and local governments
6 to participate. That is a desirable thing.

7 So where the regulation is unclear, that's
8 the way I think it should in go, in favor of the full
9 participation of the County.

10 JUDGE BOLLWERK: All right.

11 JUDGE KLINE: But doesn't it raise
12 practical problems? I mean I think Mr. Lewis said it
13 correctly: Once the issue is raised, both the
14 applicant and the staff have virtually no choice but
15 to mount a case on it? That is to say, to respond to
16 it as if it were a 2.714 contention.

17 That being the case, shouldn't we demand
18 the same standards for the initial contention?
19 Because it isn't clear to me just procedurally how we
20 can permit a standard pleaded to lesser standards on
21 the one hand, and then when the burden shifts to the
22 other side of the room demand the high standard of
23 burden of proof from them. And it just isn't clear
24 how we can make that workable.

25 So if you'd comment on that it would be

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1 helpful.

2 MS. CURRAN: Well, the regulation does
3 require some degree of notice from --

4 JUDGE KLINE: Well, yeah, the --

5 MS. CURRAN: -- from the state or local
6 government, so that you -- one couldn't say that there
7 is no notice. It's like a complaint. And certainly
8 in court complaints are litigated.

9 JUDGE KLINE: But if we permit an initial
10 contention to come in on some lesser standard of
11 pleading, then when it's responded to can we permit
12 and accept a lesser standard of proof or a lesser
13 standard of response?

14 MS. CURRAN: I -- I guess I don't see a
15 link between those two things.

16 JUDGE KLINE: Well, I mean if everything
17 is -- if the standards that are normally required to
18 get a contention in are waived or somehow reduced,
19 then what is the burden of proof that the -- that the
20 responding party must carry?

21 Is it the same as if it were a fully-
22 pleaded contention? And, if so, why wouldn't we just
23 ask for the contention in the first place?

24 MS. CURRAN: Because the purpose of the
25 contention-pleading standard, as it was amended, was

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1 to significantly raise the threshold for --

2 JUDGE KLINE: Yeah.

3 MS. CURRAN: -- participation in an NRC
4 proceeding.

5 JUDGE KLINE: Right.

6 MS. CURRAN: And it's not clear that the
7 Commissioners intended to treat state and local
8 governments the same way as citizen groups, as
9 individuals. That's the big question here.

10 And I think the NRC has a process for
11 elucidating what the basis for the parties' positions
12 are. You have a discovery process where the applicant
13 can find out what is the -- what is the state or local
14 government's case here and then mount a case to meet
15 that evidence.

16 JUDGE KLINE: Is it your view then that a
17 mere statement of concern on the part of the County
18 would then trigger a full procedural response on that
19 basis from the applicant and the staff --

20 MS. CURRAN: Well, --

21 JUDGE KLINE: -- in terms of discovery,
22 presentation of expert witnesses, the whole -- the
23 whole response that they normally do provide when we
24 have a 2.714 contention?

25 MS. CURRAN: Well, the standard is that

1 the presiding officer may require such representative
2 to indicate with reasonable specificity in advance of
3 the hearing the subject matter on which he desires to
4 participate.

5 So it's not just a matter of raising a
6 concern, it's describing it with reasonable
7 specificity, which is higher than listing concerns, I
8 would say, but not necessarily the very high standard
9 for other parties to get a hearing.

10 JUDGE KLINE: All right.

11 JUDGE BOLLWERK: All right. Let me move
12 to the next. Does the Independent Safety Committee
13 want to say anything about this? I don't know that
14 they have a dog directly in this fight, but they could
15 at some point if they want to put an issue in, so --

16 MR. WELLINGTON: (Shakes head negatively.)

17 JUDGE BOLLWERK: No.

18 All right. The Energy Commission.

19 MS. HOUCK: We would just ask that if
20 there's any discrepancy that it be found in favor of
21 the County.

22 JUDGE BOLLWERK: All right. The Port --
23 the Harbor District. Excuse me.

24 MR. WAYLETT: Again, I'd like to reiterate
25 that our view of 2.715(c) is that the purpose is for

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1 us to provide you information and concerns because of
2 our -- our unique location, directly adjacent to the
3 plant and at the beginning point of the evacuation
4 plan, that the Board should take up. We were not
5 attempting to raise a formal contention to argue and
6 marshalling our own evidence.

7 JUDGE BOLLWERK: Let me -- why don't you
8 go ahead and address this point, --

9 MR. WAYLETT: Sure.

10 JUDGE BOLLWERK: -- and then if you all
11 have any rebuttal on anything else that you want to
12 put in, that would be -- we'll start your clock then.
13 How's that? Since there's a Board question.

14 MR. TEMPLE: Well, I particularly
15 appreciate Mr. Lewis' perspective because I think the
16 staff has been put in a difficult position. The
17 Commission was silent on this. The Commission didn't
18 create a paradigm for the staff to use, so the staff
19 used what they had. They have got a well-defined
20 path. There's a lovely four-step analysis that goes
21 through 2.714. That's not available here.

22 You recognize the role that we have with
23 respect to our citizens. And we're not asking to be
24 able to haul in a trailer full of irrelevant,
25 inapplicable issues that should not be treated.

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1 We're also asking not to create some
2 impossible burden for the licensee. What we're asking
3 is that, if we have legitimate concerns that are
4 relevant to the proceeding, that the licensee
5 demonstrate conformance with the applicable laws and
6 factual production that they must come to to
7 demonstrate that they qualify for the license.

8 We're not holding them or asking that they
9 be held to a higher standard either. But we ask that
10 you do what the Commission intended and allow us to
11 participate and allow us to raise these issues before
12 you.

13 I don't have a test, and the Commission
14 has not authorized me to treat this three-part
15 analysis or something before you, a paradigm that, you
16 know, should be used as a legal standard. I don't
17 think it's out there because the caselaw certainly
18 doesn't show it. I think we've just defaulted to
19 using the same old thing. And it's about time
20 somebody raised this.

21 JUDGE KLINE: But this is an adversary
22 proceeding. Once an issue is raised, the applicant
23 either wins or loses point by point. So what, what
24 happens when you raise a more or less informal issue?
25 How is it to be tried?

1 MR. TEMPLE: The Board should satisfy
2 itself that the applicant has met the applicable
3 requirement. That's how it should be tried.

4 And if they need to take additional
5 evidence, if the evidence that's before it is
6 sufficient to satisfy the Board and tell the
7 interested-governmental entity that they have
8 sufficient evidence and the applicable requirements of
9 law have been met, then sobeit.

10 But if it needs additional information
11 from the licensed applicant, if it needs expert
12 testimony in order to understand the issue and assure
13 that the applicant has satisfied the regulation, then
14 it should obtain that.

15 JUDGE LAM: So you are saying the Board
16 should have significant discretion in trying the
17 issues raised by a government entity?

18 MR. TEMPLE: Absolutely, because of the
19 mutual role that we play in protecting public health
20 and safety.

21 JUDGE BOLLWERK: All right. Anything else
22 you want to say with respect to what you've heard from
23 either the staff or the applicant in terms of all the
24 other matters that were raised, other than this
25 threshold procedural issue?

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1 MR. TEMPLE: Certainly the other issues I
2 have rebuttal on, but not on the 2.714, 2.715 issue.

3 JUDGE BOLLWERK: All right. Why don't you
4 go ahead then with that?

5 MR. TEMPLE: My view is that the licensed
6 applicant here has missed a lot of what we're saying
7 with respect to alternative sites, first of all.

8 I understand the ER need not treat the
9 alternative sites with the same degree of detail. And
10 they -- if they've come to a reasonable conclusion and
11 we don't have an obviously-superior alternative,
12 sobeit.

13 Our concern is that our view of the ER and
14 the analysis, the alternatives was -- it was very
15 conclusory. It lacked the necessary detail and
16 information for someone to independently come to the
17 same result except to say they have a list of other
18 places they supposedly looked at it. They have a
19 seismic report that's current on the place they chose,
20 so they chose that site.

21 We don't understand that to be the level
22 of analysis that's needed to get to the conclusion
23 they got. And we don't understand that the Commission
24 could independently review the information they
25 provided in the ER and come up with that same result.

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1 That's our point in conformance with 51.45(c).

2 With respect to the alternative security
3 plans, that went on -- that is not opaque. That went
4 on so far behind the scenes that there's not enough
5 detail for us to tell what was there other than a
6 conclusion that what they have is the right course of
7 action.

8 Again it's a matter of the amount of
9 detail and analysis that's available to us to
10 determine that they've conformed with the requirements
11 of law. And that's not apparent in what they've
12 submitted to you.

13 With respect to the emergency plan, the
14 County has concerns just particularly with the ISFSI.
15 It does not currently -- it has not had any
16 communication from PG&E with respect to the proposed
17 change other than to receive the ER, and the license
18 application, and the portions of the emergency
19 response plan that were appended to it.

20 But our emergency responders don't
21 understand how the ISFSI will impact them, what an
22 ISFSI accident -- what the associated accident
23 consequences are and could be and how that could
24 impact their response. That's the County's concern
25 with the emergency response plan and what they

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1 understand.

2 So, therefore, I do think that the ISFSI
3 change aspects of the emergency response plan are
4 appropriate to the degree that they're -- whether they
5 are adequate or not to satisfy the Commission's
6 regulations are an appropriate subject for this body
7 to deal with.

8 JUDGE BOLLWERK: All right.

9 JUDGE LAM: Do you consider the new
10 facility posing a new and additional threat, or
11 because you don't know what the impacts were? I mean
12 what is the County's position in terms of emergency
13 preparedness?

14 MR. TEMPLE: In terms of emergency
15 preparedness, they don't understand our -- our
16 emergency responders don't understand the accident
17 consequences that can arise from a sudden catastrophic
18 problem with the cask and the cask contents and how
19 that can impact the offsite responders or the need to
20 take responses to protect the public health and safety
21 in response to that kind of event.

22 JUDGE LAM: So right now it's a lack of
23 understanding instead of you have discovered new
24 threats?

25 MR. TEMPLE: That's correct.

1 JUDGE BOLLWERK: Is there -- I mean I
2 don't want to get in the middle necessarily at this
3 point, but is there -- you all could have this meeting
4 and discuss this? I don't know if that's -- I mean if
5 there's a lack of information that's passing back and
6 forth, that's a little bit different than the Board
7 getting involved with an issue or contention, but I --

8 MR. REPKA: I think I have said before in
9 the filings and elsewhere that PG&E is always willing
10 to talk to the County about emergency preparedness
11 matters, does in fact as a routine matter have those
12 discussions, and invites that kind of conversation.

13 But with respect to knowledge of the plan,
14 I simply don't understand Mr. Temple's point
15 whatsoever. Since the changes are included in the
16 application, they're all there as Attachment B.
17 There's one page that identifies precisely what the
18 changes are

19 And in our view -- and I think it's clear
20 on the face of it that none of those increase the
21 responsibilities in any way. So I find the whole
22 argument to be fuzzy at best but, yes, we are always
23 willing to have those discussions.

24 JUDGE BOLLWERK: All right. Anything
25 further you want to say on this subject?

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1 MR. TEMPLE: No. Thank you.

2 JUDGE BOLLWERK: All right. The only
3 thing I'll leave with you, a visit would help for you
4 all to get together and have a meeting and talk about
5 this, feel free. Don't let us keep you from doing
6 that, so.

7 The Port, the Harbor District.

8 MR. WAYLETT: We'd just like to clarify
9 that the specific things we pointed to in our pleading
10 that triggered concern was not intended as an
11 exhaustive list.

12 Our feeling is that in addition to those,
13 the possibility of a malicious action do increase, do
14 increase and change what could be happening in an
15 emergency response situation.

16 I'd also like to note that 2.715(c) says
17 "may require," and because we would concur that the
18 Board has a lot of discretion here in the absence of
19 direct caselaw.

20 JUDGE BOLLWERK: All right. Mr. Repka,
21 you had mentioned something about another minute. I
22 don't know if you still want that, or...

23 MR. REPKA: Sure. If I have a minute,
24 I'll take it.

25 JUDGE BOLLWERK: All right.

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1 (Laughter.)

2 JUDGE BOLLWERK: Again with the
3 understanding that they get the last word, that's
4 fine.

5 MR. REPKA: 2.715 goes only to getting in
6 the door. It doesn't go to the standard of admissible
7 contention. And I don't think there's any precedent
8 for Mr. Temple's position.

9 With respect to the issue of alternatives,
10 I just want to point out that Mr. Temple's
11 characterization of the alternatives, both the
12 alternative sites and the alternative projects
13 discussed in the Environmental Report, is what I would
14 consider a gross oversimplification at best. And,
15 again, it lacks a specific argument which would make
16 an admissibility standard.

17 With respect to those issues, as well as
18 the emergency-preparedness issue, I would just say as
19 a general matter I think the Harbor District and, to
20 some degree, the County have conceded that their
21 issues are not intended as a formal contention.

22 And with -- in response to that, I would
23 just say that they're in the wrong forum in that case,
24 that their issues can be dealt with as the Commission
25 did in the license-transfer case through other

1 vehicles, through routine discussions, through
2 whatever it might be. But in this forum it's an
3 inadmissible contention.

4 JUDGE BOLLWERK: All right.

5 Anything further, Mr. Temple?

6 MR. TEMPLE: Very briefly. The absence of
7 an alternatives analysis is both within the purview of
8 this Board to deal with and within 51.45(c). And we'd
9 ask you to consider that as you review their license
10 application.

11 You know, the concern with -- we are
12 absolutely welcome and interested in speaking with
13 PG&E. Our emergency-response people are interested in
14 speaking with PG&E to understand what their
15 responsibilities are with respect to the ISFSI.

16 We -- I want the Board, though, to please
17 take a hard look at their application to ensure that
18 it has the necessary details that are required under
19 these circumstances.

20 JUDGE BOLLWERK: All right. And the
21 Harbor District, anything you want to say?

22 MR. WAYLETT: No additional comments.

23 JUDGE BOLLWERK: All right. The only
24 comment I would make, that I recognize that once
25 participants get into litigations, sometimes they tend

1 to not want to -- I want to say "meet" or get together
2 on certain things.

3 I would hope that if that's the -- the
4 fact that this is pending with us and we'll deal with
5 it is not something that's going to keep you all from
6 talking, if you need to do that. And that's the only
7 thought I would leave you with.

8 All right. Anything other from the other
9 two Board Members?

10 JUDGE LAM: May I? I have a question to
11 follow up with Judge Kline's inquiry. This is a
12 question directed to staff.

13 Assuming the Board permit a lower standard
14 for pleading requirement for a government entity and
15 then assuming the Board exercises discretion to permit
16 a lower trier standard in terms of burden of proof,
17 I'd like to hear from the staff: Do you have an
18 opinion about that type of approach?

19 MR. LEWIS: I have an opinion. My opinion
20 is that that is not what is currently intended by the
21 Commission. However, I, in all candor, I did advise
22 the Board that this is a difficult issue that I had
23 not heard -- you know, in OGC, in the Office of
24 General Counsel, looking at this issue, we have not
25 identified a body of caselaw that gives us, you know,

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1 an ironclad feeling that this is the standard that was
2 intended for 2.715(c) participants.

3 We -- and that's the reason I said that I
4 would be more than willing to look into that further,
5 which is an offer which I will reiterate, because I
6 think -- I think it is an important question and I
7 think it deserves a more definitive answer, frankly,
8 than I'm able to give you today.

9 I don't think it would be a desirable
10 route to put the whole thing down at a lesser level.
11 I think the answer -- however, I think that the Board
12 has the right to demand from the staff a more specific
13 and detailed analysis as to whether or not there's
14 additional indication that the 2.714 standards were,
15 as they -- as we think they are, intended to apply
16 equally as much to a 2.715(c) participant when it
17 decides to raise a subject matter or issue.

18 JUDGE LAM: Thank you.

19 JUDGE BOLLWERK: All right. This isn't
20 going to be a project for your co-counsel, is it?

21 All right. Yes.

22 MR. LEWIS: Certainly not.

23 MR. TEMPLE: I was just wondering if it
24 would help the Board if the parties present here today
25 were able to brief this subject?

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1 JUDGE BOLLWERK: That's something I
2 actually want to discuss with the Board at the break.
3 You were reading my mind. I need to talk with them
4 about that. That may well be something we need to do.

5 All right. Anything further from either
6 of the Board Members at this point on this issue?

7 All right. It's about quarter to 3:00.
8 Why don't we go ahead and take an afternoon break.
9 We'll come back at three o'clock and reconvene and
10 deal with segment four which deals with a couple of
11 San Luis Obispo Mothers for Peace issues: The failure
12 to describe purposes or evaluate all of the impacts or
13 alternatives as an environmental issue, as well as
14 transportation impacts and other environmental issues.

15 And we'll reconvene at three o'clock.

16 (Recess taken from 2:43 p.m. to 3:02 p.m.)

17 JUDGE BOLLWERK: Let's start the second
18 session this afternoon. I'll go back briefly and
19 revisit the subject we were just talking about.

20 How long do you think it would take the
21 staff to provide the Board with a brief on this
22 subject? Let me ask, can you do it in 10 days, after
23 -- after the hearing is over?

24 MR. LEWIS: After the Prehearing?

25 JUDGE BOLLWERK: After the Prehearing is

1 over, yes.

2 MR. LEWIS: So something like Monday, the
3 20- -- let's see --

4 JUDGE BOLLWERK: Basically you're on the
5 21st or the 22nd. I don't know what the -- I was
6 looking for a calendar, and I don't have one,
7 unfortunately.

8 MR. LEWIS: Give me one moment, and I'll
9 give you --

10 JUDGE BOLLWERK: Sure.

11 (NRC counsel confer off record.)

12 MR. LEWIS: Just looking at calendars
13 between Ms. Coggins and myself, because of some plans
14 that we already have, Wednesday, the 25th of
15 September.

16 JUDGE BOLLWERK: All right. That's 14
17 days then, right? Two weeks.

18 MR. LEWIS: Yes. It's -- yes, 14 days.
19 Yes.

20 JUDGE BOLLWERK: All right. Let's --
21 let's go ahead and do this then. Why don't you
22 provide us whatever your thoughts are, additional
23 thoughts on this subject of the standard for
24 admissibility of issue by Section 2.715(c)
25 participants by the 25th.

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1 And then we'll give any of the other
2 parties an opportunity that wish to respond to that
3 pleading two weeks after that. And I'll put out a
4 brief order that gives these dates out, but --

5 MR. LEWIS: Thank you for allowing us that
6 time.

7 JUDGE BOLLWERK: Right. I think this is
8 an important question, that we want to have the
9 benefit of whatever additional --

10 (Water spilled at staff table.)

11 MR. LEWIS: I was so happy about the extra
12 time, that I --

13 (Laughter.)

14 MR. LEWIS: -- that I think --

15 JUDGE BOLLWERK: You just tried to drown
16 yourself.

17 MR. LEWIS: I just went crazy here.

18 MR. WAYLETT: Judge Bollwerk?

19 JUDGE BOLLWERK: Yes.

20 MR. WAYLETT: The Port would like to make
21 a short statement for clarification purposes.

22 JUDGE BOLLWERK: Okay.

23 MR. WAYLETT: Regarding whether we were
24 challenging the County or the -- or PG&E's plan, we'd
25 just like to clarify that again the list of concerns

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1 that we noted were nonexhaustive. And for the
2 purposes of this proceeding, we were challenging
3 PG&E's plan.

4 JUDGE BOLLWERK: All right. Anything
5 further anybody wants to say on that subject then?
6 Are we -- all right.

7 Let's then move on to the last segment
8 that we have scheduled for today. This is argument on
9 several -- two issues: Emergency -- rather -- I'm
10 sorry. Environmental issues. One dealing with
11 failure to describe purposes and evaluate all the
12 impacts and alternatives in the Environmental Report.
13 And also an issue about transportation impacts.

14 Ms. Curran, how long do you wish to retain
15 for response and/or rebuttal?

16 MS. CURRAN: Well, the first thing I
17 wanted to ask you was whether it might be possible to
18 separate those two contentions, because frankly I'm
19 afraid that I'll either forget or not do a thorough
20 enough job because I'm tacking number 3 on to number
21 2. So I was wondering if I could do 10 minutes for
22 the first one and five minutes for the second one,
23 something like that.

24 JUDGE BOLLWERK: All right. Sure. That's
25 15, and then save the other 15 for rebuttal? Am I --

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1 MS. CURRAN: Oh, wait here. What I have
2 done.

3 JUDGE BOLLWERK: I don't know.

4 MS. CURRAN: What are the timeframes?

5 JUDGE BOLLWERK: The time was 30 minutes
6 total.

7 MS. CURRAN: The time is 30 minutes. So
8 20 minutes for the first contention, for EC2.

9 JUDGE BOLLWERK: All right.

10 MS. CURRAN: Ten minutes for EC3.

11 JUDGE BOLLWERK: All right.

12 MS. CURRAN: And for EC2 I'd like to save
13 eight minutes for rebuttal.

14 JUDGE BOLLWERK: All right.

15 MS. CURRAN: And for EC3 I'd like to save
16 four minutes for rebuttal.

17 JUDGE BOLLWERK: All right. So that would
18 mean 12 minutes and six. And then I take it once
19 again the interested-governmental entities are going
20 to proceed as individuals on this one, --

21 MR. TEMPLE: (Nods head.)

22 MR. WAYLETT: (Nods head.)

23 JUDGE BOLLWERK: -- or is there any
24 attempt to combine times at all?

25 MR. WAYLETT: (Shakes head.)

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1 MR. TEMPLE: (Shakes head.)

2 JUDGE BOLLWERK: No? All right.

3 All right. Then EC2 I guess is the first
4 one.

5 MS. CURRAN: Okay. Contention EC2
6 challenge -- challenges PG&E's failure to adequately
7 describe the purposes of the proposed action at issue
8 here or evaluate reasonably-associated impacts and
9 alternatives.

10 And, as we discuss in the contention, an
11 accurate description of what is the purpose of a
12 proposal is very important because it defines what are
13 the range of alternatives that will be looked at.

14 I thought it might be helpful to the Board
15 and the parties to point out the inconsistencies in
16 the Environmental Report and the license application
17 that led us to submit this contention.

18 My first reading of this Environmental
19 Report and the license application was that PG&E
20 needed additional space in which to store fuel that it
21 apparently had not planned for when it got an
22 extension of its license back in the early 1990s.

23 They, PG&E, recaptured the construction
24 permit period and at that time, I suppose, didn't
25 think about how PG&E would need more space of some

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1 kind to storage additional spent fuel. So my
2 understanding was that was the purpose of this
3 application.

4 And if you look at page 12-1 of the
5 Environmental Report, it says under the section
6 entitled, "Need for the Facility," "The additional
7 capacity to accommodate discharged spent fuel as
8 proposed herein will allow DCPD to continue to
9 generate electricity," which sounds to me like: We
10 couldn't produce electricity if we didn't have the
11 space to put this additional spent fuel.

12 There's also a letter dated December 21st,
13 2001 from PG&E to the NRC enclosing the license
14 application, which describes its application as, "A
15 plan to provide storage capacity for spent fuel
16 generated by DCPD through the remainder of the license
17 term." And I would underscore "remainder."

18 Then when we looked a little closer at the
19 Environmental Report, we saw that the actual capacity
20 of the new ISFSI would be two or three times larger
21 than what was needed to store the additional fuel that
22 would be generated for the remainder of the license
23 term.

24 So then we looked -- started to look
25 closer at what was the language of the Environmental

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1 Report. If you look at page 1.2-2 of the
2 Environmental Report and go down to about the middle
3 of the third full paragraph, PG&E says, "In addition
4 to accommodate spent fuel generated during the license
5 period as well as any damaged fuel assemblies, debris,
6 and nonfuel hardware, PG&E may use three other MPC
7 designs from the High Storm 100 System." So suddenly
8 we have this concept of storing fuel from the licensed
9 period.

10 And if you look at PG&E's response to our
11 contention, at page 52, there is a sentence there in
12 the bottom of this paragraph on page 52 where PG&E
13 says, "To provide storage for used fuel generated over
14 the term of the current operating licenses, PG&E is
15 proposing the subject ISFSI."

16 Well, "fuel generated over the term of the
17 current operating licenses" is all the fuel generated
18 at Diablo Canyon since the Plant became operational
19 back in the mid-1980s.

20 So what -- there's -- either, I don't know
21 if it's just sloppy writing or some intent to mislead,
22 but what PG&E -- PG&E is proposing here is an ISFSI
23 that is large enough to store all of the fuel that is
24 generated from the beginning of the operation of
25 Diablo Canyon through the end of the operation of the

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1 facility.

2 In other words, the purpose of this
3 project is not to store additional spent fuel, it is
4 store all the spent fuel.

5 Now, as we state in our contention, PG&E
6 has indicated in a public statement to a public
7 meeting, not a statement to its employees as PG&E
8 states in its response to our contention, that PG&E
9 intends to pursue license renewal for this facility.

10 So certainly one of the purposes of this
11 greatly-expanded spent fuel storage capacity would be
12 to provide additional storage capacity for the license
13 renewal term.

14 Another might be to empty the pools at the
15 end of the life of the facility. But none of this is
16 stated in the application. And, as a matter of fact,
17 the application misleadingly infers that the only
18 purpose is to allow storage of this incremental amount
19 of fuel.

20 Now if, in fact, the need and purpose for
21 this facility is to store the entire lifetime
22 inventory of spent fuel at Diablo Canyon Nuclear Power
23 Plant during the entire license term, then the range
24 of alternatives would be different.

25 The Environmental Report would look at an

1 array of alternatives for storing all that fuel. And
2 it would also look at the timing of when should the
3 fuel be taken out of the pools and put on the cask on
4 the pads.

5 Another significant part of this
6 contention is our assertion that pool storage, as it
7 is currently carried out at Diablo Canyon, is not safe
8 to protect the pools against a severe accident because
9 of the likelihood that if -- actually the certainty,
10 as the NRC now finds it, that if water is drained from
11 the pools to the tops of the fuel assemblies, the fuel
12 will burn. That was the concession that the NRC made,
13 the change of position that the NRC took in NUREG
14 1738, the report that was issued by the staff in -- I
15 think it came out -- in January of 2001.

16 So this becomes a very important issue,
17 that the actual purpose of this license amendment is
18 far broader than what is represented in this
19 environmental report and has great implications for
20 the array of alternatives that should be examined in
21 the environmental report.

22 The alternative that petitioners would
23 insist must be evaluated in this Environmental Report
24 is that the ISFSI is constructed in such a way that
25 the -- the spent fuel pools are empty to the point

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1 where they can be used for low -- low-density storage
2 and that more fuel is put in the ISFSI in order to
3 prevent the likelihood of a pool fire.

4 And what we seem to be getting here is the
5 worst of both worlds, which is that if the -- if the
6 project is defined as PG&E would have it defined, then
7 we are going to have fuel pools that are full through
8 2021 and 2025 and perhaps beyond. And PG&E gets a
9 permit to store what may be another 25 years of fuel
10 into half of a license renewal term.

11 There's one more point I'd like to make in
12 my initial presentation, and that is both PG&E and the
13 NRC staff argue that pool storage has no relationship
14 to the proposed ISFSI.

15 And I would -- we have received a letter
16 from the staff that is dated August 29, 2002. It's a
17 request for additional information to PG&E from the
18 staff. And it raises a number of issues relating to
19 the relationship between the spent fuel pools and the
20 proposed ISFSI having to do with cask candling.

21 And then there's also another general
22 question, and I'll ask Dr. Thompson to pass this out.

23 (Copies of said letter distributed to
24 participants.)

25 MS. CURRAN: The questions that I would refer

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1 your attention to are Questions 2-9 and 2-10 which
2 refer to the questions about the general relationship
3 between the ISFSI and the existing operation, and
4 asking PG&E to address that relationship, which it has
5 not apparently done to the staff's satisfaction.

6 More to the point, Question 4- -- 4-2 asks
7 PG&E to provide structural design criteria and bases
8 for exclusion of cask-drop events during handling and
9 transport.

10 And then, finally, in Section 15 I believe
11 Question 15- -- 15-4 relates to a request for an
12 assessment of storage and transfer cask drops.

13 We would submit that this correspondence
14 demonstrates that, from the perspective of the NRC
15 staff, there is a direct relationship between the
16 operation of the ISFSI and the pools and that there
17 are concerns about that relationship that have not
18 been addressed or resolved yet.

19 That concludes --

20 JUDGE BOLLWERK: Anything else?

21 MS. CURRAN: -- my initial presentation.

22 JUDGE BOLLWERK: Right on the button.
23 Twelve minutes exactly.

24 All right. Let's see. Do you want -- do
25 you want to go to the second contention now, or do you

1 want us to go around and come back to you?

2 MS. CURRAN: I'd rather stick with this
3 one and then move to the next one.

4 JUDGE BOLLWERK: All right. Are you done
5 with number 2 now, or are you still --

6 MS. CURRAN: Oh, I'm finished with number
7 2.

8 JUDGE BOLLWERK: Right. You're going to
9 do number 3 now, or are you --

10 MS. CURRAN: No. I wanted to --

11 JUDGE BOLLWERK: -- you want to go around?

12 MS. CURRAN: -- hear from the other side
13 about 2.

14 JUDGE BOLLWERK: You want me to go around.
15 All right.

16 Are you all able to kind of divide your
17 time up somewhat generally, or is that going to be a
18 problem?

19 MR. REPKA: I think we have 20 minutes.
20 What I'd like to do is just take 10 minutes on each
21 and --

22 JUDGE BOLLWERK: All right.

23 MR. REPKA: -- save a minute of that for
24 surrebuttal each time.

25 JUDGE BOLLWERK: Let's try, let me see

1 what the interested-governmental entities -- anyone
2 want to say anything specific about Contention Number
3 3, EC3?

4 MR. TEMPLE: The County has remarks with
5 respect to both EC2 and EC3 together. So whenever the
6 Board would like to take those comments.

7 JUDGE BOLLWERK: All right. Why don't you
8 do EC3 then, if you wouldn't mind. Can you -- you can
9 divide them up obviously, or is that --

10 MR. TEMPLE: We've -- we've got them
11 developed together in our response.

12 JUDGE BOLLWERK: Okay. Let me think.
13 What's the Board Authority -- or Port -- what does the
14 Harbor District want to do? Excuse me.

15 MR. WAYLETT: Either would be fine. No
16 position.

17 JUDGE BOLLWERK: All right. The Energy
18 Commission, do you have --

19 MS. HOUCK: We have no specific comments
20 and don't object to either.

21 JUDGE BOLLWERK: All right. And the
22 Independent Safety Committee?

23 MR. WELLINGTON: We have no comments on
24 this issue.

25 JUDGE BOLLWERK: All right. Let's --

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1 let's do this. Why don't you go ahead and give us
2 your comments since they don't seem to be divisible on
3 number 3.

4 MR. WAYLETT: Certainly.

5 JUDGE BOLLWERK: And we'll kind of bear
6 those in mind, and we'll hopefully take that into
7 account when we get around to talking about it.

8 And then we'll move to the Harbor
9 District, and you can give us what you have on number
10 2; how's that? All right.

11 MR. WAYLETT: Okay.

12 MR. TEMPLE: It's the County's position
13 that the -- an issue has been raised regarding the
14 purpose of the proposed ISFSI. And the concern that
15 has been raised is that the Environmental Report is
16 insufficient because it does not include an analysis
17 of the environmental impacts from the construction of
18 an ISFSI that's several times larger than that
19 required for a 20-year license. And this is a factual
20 issue that's suitable for hearing, in the County's
21 view.

22 The County recommends that the NRC review
23 the Environmental Report and the license application
24 in light of the contentions being raised in segment 4
25 to ensure that PG&E has met all applicable

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1 requirements.

2 JUDGE BOLLWERK: All right. What about
3 the Harbor District then?

4 MR. WAYLETT: We would support admission
5 of the contention.

6 JUDGE BOLLWERK: All right. Then let me
7 turn to PG&E.

8 MR. REPKA: It appears that this
9 contention has morphed this afternoon. As originally
10 constructed, the contention was an argument that the
11 purpose was insufficiently described because the real
12 purpose, according to the Mothers for Peace, was
13 license renewal. That no longer appears to be the
14 argument. But that was a blatant attempt to bootstrap
15 into this proceeding issues related to license renewal
16 which clearly are not within the scope of what's being
17 proposed right now. And that's addressed in our
18 papers.

19 The issue today is -- still relates to the
20 purpose. The Mothers for Peace claim some deception
21 or confusion, but I'm afraid that's entirely of their
22 own making.

23 The purpose of this ISFSI license
24 application is storage of spent fuel. The purpose is
25 to comply with our Nuclear Waste Policy Act obligation

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1 to provide for onsite storage of spent fuel until the
2 federal government completes a high-level waste
3 repository currently proposed -- as currently proposed
4 for Yucca Mountain.

5 The description of the size of the spent
6 fuel storage installation is very plainly stated on
7 1.2-2 of the Environmental Report. It states that
8 it's a capacity of, and I'm quoting now, "140 casks to
9 be capable of storing the spent fuel generated by DCP
10 Units 1 and 2 over the terms of the current operating
11 licenses (20- and 20- -- 2021 and 2025 respectively."

12 In other words, it would be capable, if
13 completed to its maximum size, to store all the fuel
14 generated over the anticipated operating lifetime of
15 the two units. In that way, the ISFSI would be able
16 to accommodate storage of spent fuel both during the
17 licensed term and during any post-license
18 decommissioning period if offsite storage is not
19 available at that time at Yucca Mountain or elsewhere.

20 So the purpose of the spent fuel storage
21 installation is clearly spent fuel storage. The size
22 of it is clearly stated. The rationale for the size
23 is what it is. There is no obvious intent to deceive
24 there. And it has really no relationship to license
25 renewal or other matters.

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1 The alternatives to the project are
2 discussed in the Environmental Report. The purpose is
3 storage. The alternatives discussed in the
4 Environmental Report are those that are logically
5 related to spent fuel storage, for whatever term,
6 whatever capacity. That includes wet storage. That
7 includes shipment to an interim -- an alternative
8 interim facility such as the proposed PFS facility.

9 And it also addresses the no-action
10 alternative as well, which we conclude would be
11 inconsistent with our Nuclear Waste Policy Act
12 obligation.

13 So this contention really, in essence,
14 fails to raise, A, any issue of disputed fact, because
15 the size of the ISFSI is what it is; and B, because
16 the purpose of it is what it is: Storage. And also
17 doesn't identify any relief that could be granted.

18 The discussion of alternatives is a
19 reasonable discussion of alternatives and there are no
20 -- no -- nothing in the contention which would suggest
21 otherwise.

22 In the proposed contention itself, the
23 intervenors submitted information related to perceived
24 problems with -- with high-density wet storage.

25 However, we're not applying in this

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1 application for high-density wet storage approval. So
2 the idea of discussing consequences and perceived
3 problems with wet storage in the context of this dry
4 cask operation is -- simply doesn't raise an issue
5 within the scope of the proceeding.

6 (Baby cries in the audience.)

7 JUDGE BOLLWERK: Why don't you hold up one
8 second.

9 Okay, --

10 MR. REPKA: My argument was clearly having
11 an effect.

12 JUDGE BOLLWERK: Someone leaving the room
13 here. Okay.

14 MR. REPKA: In essence, the Mothers for
15 Peace are arguing that there should be further
16 discussion of -- they were arguing further discussion
17 of license renewal. And clearly that's not
18 appropriate and applicable.

19 And in that regard I would additionally
20 cite you to the Commission's recent decision in the
21 *Duke Catawba-McGuire* license renewal case where they
22 found no correlation between license renewal and a
23 future amendment related to possible use of MOX fuel.
24 A similar, analogous rationale would apply here.

25 Second, there's no basis to address spent

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1 fuel fires and wet storage installations in this
2 Environmental Report. There's no basis to address
3 terrorism issues under NEPA in this Environmental
4 Report for the reasons that we discussed this morning.

5 And this is also not a forum in which to
6 address and for the Mothers for Peace to attack other
7 generic environmental impact statements that have been
8 prepared by the NRC on handling and storage of spent
9 fuel, including NUREG 0575 which is the generic
10 environmental impact statement on spent fuel storage
11 and NUREG 1347 which is the generic environmental
12 impact statement on license renewal.

13 In the end this is just a very odd
14 contention that fails to raise any dispute of fact or
15 law and does not raise an admissible issue.

16 JUDGE BOLLWERK: Do you want to say
17 anything about the document that Ms. Curran has passed
18 out here?

19 MR. REPKA: Oh, I'm glad you reminded me
20 of that because I do.

21 Ms. Curran is referring to a couple of
22 RAIs related to cask-drop accidents, and those RAIs
23 related to cask drops that are related to the ISFSI
24 and the cask-transfer facility. They're not RAIs as
25 I understand them or as we, PG&E, understand them

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1 within the scope of the other license amendment that
2 deals with storage of handling of spent fuel in the
3 area of the spent fuel pools and the fuel-handling
4 building.

5 This is -- I'm not sure where Ms. Curran
6 was going in trying to bootstrap these RAIs into a
7 particular contention. It didn't seem like a logical
8 fit to me. But, just as a factual matter, the RAIs
9 are not raising issues related to wet storage.

10 JUDGE BOLLWERK: I think Mr. Lewis made
11 reference to that license -- that was -- you said --
12 indicated that was noticed at one point, or did I
13 misunderstand?

14 MR. REPKA: It -- it is a license
15 amendment. I believe it was on or about the same --
16 filed on or about the same date as the ISFSI license.
17 It was noticed. There were no -- no request for
18 hearing, no intervention. And it's -- it is a
19 completely separate Part 50 license action.

20 JUDGE BOLLWERK: All right. Was it issued
21 under a no-significant-hazards consideration?

22 MR. LEWIS: Yes.

23 JUDGE BOLLWERK: Yes.

24 MR. REPKA: As a proposed no-significant
25 hazards.

1 JUDGE BOLLWERK: Right. Right. Right.

2 JUDGE LAM: Mr. Repka, you are saying that
3 the proposed license here for the ISFSI is only
4 sufficient to accommodate a single 40-year licensing
5 period for both units; that's what you're saying? It
6 does not include any capacity for license renewal
7 storage?

8 MR. REPKA: Well, the capacity is what the
9 capacity is, and -- but what it does is it
10 accommodates storage for an amount of fuel that's
11 calculated to be the fuel generated during the current
12 40-year license term for those two units.

13 And that would, if the plants terminate
14 their operating license at that point, would
15 accommodate then removal of all fuel from the spent
16 fuel pool to the dry-cask storage facility for
17 decommissioning of the Power -- Power Plant and
18 released from the Part 50 license.

19 JUDGE LAM: Did I understand, the question
20 is: If there were a license renewal for an additional
21 20 years or so for both units, if, then would this
22 current proposed size capacity accommodate that
23 license renewal storage?

24 MR. REPKA: Obviously if license renewal
25 were pursued by the company and granted, and of course

1 the company has not made a decision to do that and has
2 not applied for a license renewal application -- for
3 a license renewal at this time, if fuel was generated
4 during a renewal term, obviously it could be stored at
5 the ISFSI if it were within the 140-pad locations, the
6 138 casks.

7 However, then at that point it would
8 defeat the purpose of being able to accommodate a
9 decommission -- decommissioning of the Part 50
10 facility.

11 JUDGE LAM: I see. I see, sir.

12 MR. REPKA: And I think it's also
13 important to keep in mind, though, that this ISFSI
14 proposal is the maximum-to-be-completed size under
15 this license. That does not mean that it would all be
16 built at one time. It will be built in phases as
17 needed.

18 So if at some point it's determined that
19 -- for example, if PFS were to become an option or
20 some other option were to eliminate the need for the
21 full capacity, the full capacity would not be
22 developed.

23 JUDGE LAM: I see. Now I understand why
24 -- why you are saying decommissioning -- what you are
25 saying is if there were license renewal, some of the

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1 decommissioning capacity could be utilized for that
2 storage.

3 MR. REPKA: That's at least hypothetically
4 possible. True. But then something would have to be
5 done at the end of the renewed-license term to
6 accommodate decommissioning -- assuming Yucca Mountain
7 were not available.

8 JUDGE LAM: Thank you.

9 JUDGE BOLLWERK: All right. Anything else
10 at this point?

11 MR. LEWIS: Nothing at this point.

12 JUDGE BOLLWERK: Staff then on contention
13 EC3 -- EC2. Excuse me.

14 MR. LEWIS: EC2. We -- our response to
15 this was filed on August 19th and basically, I think,
16 set forth our fundamental position.

17 The staff failed to see any kind of
18 corroboration of the assertion by the Mothers for
19 Peace that -- that the pad was -- the pad and the
20 ISFSI were being designed for license renewal.

21 I think that we -- we've seen the specific
22 mathematical points made by PG&E, but we've also
23 spoken with our staff.

24 And the description of the numerical space
25 and its -- the intention for that amount of storage

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1 that was described by Mr. Repka, we would totally
2 agree with.

3 There -- it is not strange, in fact I
4 think -- I think it is generally the staff's position
5 that there should be a capability for a full-core
6 offload. So there may be that capacity capability
7 built into the size. That doesn't equate to the
8 capability with a 140 casks to accommodate a 20-year
9 renewal period.

10 I -- there's been no -- I've heard
11 absolutely nothing that asserts that the pad as
12 proposed and the ISFSI as proposed can accommodate the
13 renewed period of operation if there were a 20-year
14 renewal.

15 And there is an assertion that the ISFSI
16 is two to three times larger than it needs to be, and
17 that's all I heard about it. I heard that -- I heard
18 that assertion, and then I just -- it just didn't seem
19 to prove at all in anything I heard from either PG&E
20 or the staff.

21 So I think that -- I think that the --
22 just looking at the way the contention is styled right
23 at the beginning, a failure to fully describe the
24 purposes, I just don't think that any admissible,
25 litigable issue has been set forth by Mothers for

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1 Peace on this point.

2 JUDGE BOLLWERK: Do you have any comments
3 on the document that Ms. Curran has handed to us?

4 MR. LEWIS: Yes. Mr. Repka's
5 understanding and the understanding undoubtedly of
6 PG&E staff with whom he presumably discussed this is
7 correct. The questions are about protection of the
8 fuel inside the casks at the fuel-transfer station,
9 which is part of the ISFSI and located adjacent to the
10 ISFSI.

11 They are not questions about drops of
12 heavy loads into the spent fuel pool.

13 JUDGE BOLLWERK: Anything further?

14 MR. LEWIS: Not on EC2.

15 JUDGE BOLLWERK: All right. Are you
16 asking this to be made part of your basis now? Is
17 that what you --

18 MS. CURRAN: Yes.

19 JUDGE BOLLWERK: -- how you submitted
20 this?

21 All right. Does anyone want to say
22 anything about that? I think that was the
23 implication, but I don't know if that was ever
24 expressed that way.

25 Mr. Repka?

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1 MR. REPKA: I have no objection to adding
2 it to the basis, but I would say that in general an
3 RAI does not constitute a basis for a contention. And
4 there's substantial Commission caselaw on that point
5 in recent years.

6 JUDGE BOLLWERK: All right. Mr. Lewis.

7 MR. LEWIS: Took the words right out of my
8 mouth.

9 JUDGE BOLLWERK: All right. Any of the
10 interested-governmental entities want to say anything
11 about this document?

12 MR. WAYLETT: (Shakes head.)

13 MR. TEMPLE: (Shakes head.)

14 JUDGE BOLLWERK: No. All right. Then I
15 think we're on then to contention EC3 which deals with
16 transportation issues -- oh, I'm sorry. Rebuttal. My
17 goodness. My fault.

18 MS. CURRAN: That's okay.

19 JUDGE BOLLWERK: Good Lord, you looked
20 like --

21 MS. CURRAN: Alarm.

22 JUDGE BOLLWERK: You looked as scared as
23 I looked embarrassed. You've got eight minutes.

24 MS. CURRAN: Okay. Mr. Repka argues the
25 contention has morphed, and I think PG&E's position on

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1 what the purpose of this licensing request is has
2 morphed, because in the Environmental Report it says
3 in a statement of need that the purpose of this
4 license is to allow PG&E to continue to operate.

5 Now Mr. Repka says the purpose of the
6 license amendment is to allow PG&E to store spent
7 fuel. And he clarifies that the purpose is to allow
8 PG&E to store all the spent fuel on the site.

9 Now we have not at all abandoned our
10 concern that what this is is a backdoor way to get a
11 leg up on license renewal by getting a permit to store
12 a substantially-increased amount of spent fuel on the
13 site. But, more to the point, Mr. Repka has redefined
14 the purpose of this license amendment, which is to
15 store all the spent fuel that has been generated at
16 Diablo Canyon since the beginning of its license term.

17 Now this raises significant questions as
18 to how this ought to be done. What are the
19 alternative ways of storing all the fuel that has been
20 generated at the Diablo Canyon Nuclear Power Plant.
21 And in our view timing is everything.

22 Mr. Repka says that the ISFSI is going to
23 be built in stages and each increment is going to be
24 built as the need for additional capacity comes up as
25 the -- when the pools are full. But if that was the

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1 whole picture, then we wouldn't be seeing PG&E come in
2 for a permit to store two or three times as much fuel
3 on the site as PG&E needs in order to just accommodate
4 that additional increment of fuel.

5 Whether -- if -- it doesn't really matter
6 that PG&E wants to deny that the purpose of this is to
7 accommodate a license renewal term. PG&E sees this
8 overall as a strategy for storing fuel at the Diablo
9 Canyon Nuclear Power Plant.

10 And if that is the purpose, then the
11 method, the alternatives that would -- would mitigate
12 the impacts of spent fuel storage in general at the
13 Diablo Canyon Nuclear Power Plant have to be examined.
14 No matter how you approach it, that is what this
15 license application is about.

16 And I would also like, just in reference
17 to that letter, that request for additional
18 information, the questions do not -- do not exclude
19 the issue of the relationship between the ISFSI and
20 the spent fuel pools. The questions 2-9 and 2-10 are
21 very generally addressed to the relationship between
22 the two facilities overall.

23 Question 4-2 does not say this question is
24 not addressed to the pools. So I don't see the basis
25 for asserting that these questions have nothing to do

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1 with the relationship between the proposed ISFSI and
2 the spent fuel pools.

3 JUDGE KLINE: Assuming that your view of
4 the applicant's motives is correct, where is the harm
5 in it? Is there a violation of NRC regulations
6 somewhere buried in what might be called contingency
7 planning, if that -- if, in fact, there was such a
8 thing here?

9 I mean if -- suppose it was true that
10 somebody really -- and PG&E really was looking to a
11 license renewal at some future time, even if that were
12 true, is there a violation somewhere of that -- of NRC
13 regulations, or is there an environmental harm you can
14 point to that would flow from that set of facts?

15 MS. CURRAN: Yes.

16 JUDGE KLINE: All right.

17 MS. CURRAN: And we're not talking here
18 about violations of NRC safety regulations, because we
19 are in the NEPA realm.

20 JUDGE KLINE: Yeah.

21 MS. CURRAN: But the injury, the harm
22 here, and I believe that's described in the
23 contention, is the failure to consider reasonable
24 alternatives.

25 In our view the most important measure

1 that ought to be considered here, if PG&E is proposing
2 to build a very large ISFSI, PG&E should be
3 considering whether it should be putting the majority
4 of the fuel that is in the fuel pools right now in
5 high-density storage to dry storage, and returning
6 those pools to low-density storage, under which
7 condition the risk of a pool fire would be eliminated.

8 That alternative is not even being
9 discussed here, even though what PG&E has got here is
10 an overall strategy for -- for waste storage. This
11 isn't just an incremental strategy, this is an
12 overall, cradle-to-grave waste strategy for storage of
13 interim waste.

14 JUDGE KLINE: What I understood from your
15 pleading, that you preferred to see fuel removed from
16 the wet storage and put into dry storage. And that's
17 what I understand is to happen --

18 MS. CURRAN: Well, --

19 JUDGE KLINE: -- under this proposal.

20 MS. CURRAN: -- there -- it is our
21 understanding that PG&E intends to maintain those
22 pools, the two pools on the site full, full on spent
23 fuel for the indefinite future.

24 Now we have the speculation that in 2021
25 and 2025 PG&E may take the fuel out of those pools and

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1 put it in dry storage, but that's not in the
2 Environmental Report.

3 And we also have PG&E telling members of
4 the public that it has no intention of decommissioning
5 in 2021 and 2025; that it's looking forward to another
6 50 years of operation.

7 So what we have here is PG&E establishing
8 an overall interim waste strategy for all of the fuel
9 at Diablo Canyon without having to address the
10 significant environmental impacts of -- of the
11 arrangement that it has right now. And that is a
12 violation of NEPA, in our view.

13 JUDGE LAM: But doesn't the Environmental
14 Report, as it stands today, reflect the 140-cask size
15 of the proposed facility? Even though I understand
16 you are asserting that 140 casks, it's about two to
17 three times what PG&E needs, but if the current
18 Environmental Report reflects the 140 casks size, then
19 what is the additional harm?

20 MS. CURRAN: So you're saying it's not
21 inaccurate? That's what -- it accurately portrays
22 what PG&E wants to build --

23 JUDGE LAM: Oh, no, no. I'm not talking
24 about motive. I'm just talking about absent anybody
25 knowing what PG&E intends to do, if its Environmental

1 Report talked about 140 casks, which you are asserting
2 is two to three times more than what they need, --

3 MS. CURRAN: Right.

4 JUDGE LAM: -- without the motives behind
5 it, but let us just for a moment ignore what PG&E's
6 motives are. If the Environmental Report talks about
7 140 casks, that reflects -- whatever they want to do
8 -- that reflects the appropriate amount of spent fuel.
9 It doesn't matter what you label it, it'd be a
10 strategy for storage, or whatever. Then the
11 environmental impact has been appropriately addressed;
12 isn't that true?

13 MS. CURRAN: No. Okay. You -- you used
14 the phrase, "the appropriate amount of spent fuel."
15 It is the appropriate amount of spent fuel if PG&E's
16 purpose is to create a facility that is large enough
17 to -- to accommodate two or three times the amount of
18 fuel that it needs to operate until the end of the
19 license term.

20 If it's because it has such a great
21 additional capacity, then the question arises: What
22 is the purpose?

23 And it appears to me that there are two --
24 if they're going to build a facility that big then
25 there are two potential purposes that need to be

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1 discussed in an objective sense, regardless of what
2 PG&E's personal motivation may be. That the purpose
3 is to create something bigger than what's needed, and
4 what might be done with that?

5 Well, one thing is maybe it will be
6 decommissioned at the end of its -- of 2021 and 2025,
7 but maybe not. Because PG&E has stated its intention
8 to apply for license renewal.

9 So another purpose, a reasonably-
10 foreseeable purpose here is to provide additional
11 capacity for a license-renewal term. So there is an
12 overall strategy here for providing interim storage
13 for all of PG&E's spent fuel, not just a little
14 interim amount needed to finish this license term.

15 JUDGE LAM: So your focus is really on
16 inadequacy in talking about alternatives.

17 MS. CURRAN: Yes. And that stems of
18 course from the -- the range of alternatives is
19 generally determined from the purpose of the
20 environmental action. PG- -- or the purpose of the
21 project.

22 PG&E misleadingly says in one part of the
23 ER that the purpose is to allow it to continue to
24 operate through 2021 and 2025. Well, in fact, that is
25 not the purpose because, if that were the purpose,

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1 then PG&E would be seeking a license -- a license for
2 only storage of that much fuel, but that can't be the
3 purpose here. They've got two or three as much
4 storage capacity.

5 And we want a full accounting of that and
6 to -- a discussion of what are the environmental
7 impacts and what are the alternatives to PG&E's waste-
8 disposal strategy.

9 Why should PG&E transfer this fuel in
10 small increments over the years when it could, if it
11 speeded up the process, go to low-density storage in
12 those pools and eliminate a significant risk of a
13 severe accident to the surrounding community?

14 Why isn't that on the table? We want that
15 to be discussed.

16 JUDGE KLINE: So the relief you seek is a
17 clarification or a redrafting of the Environmental
18 Report then; is that right?

19 MS. CURRAN: Yes.

20 JUDGE KLINE: That would clarify those
21 purposes?

22 MS. CURRAN: Well, the ultimate relief we
23 seek is the preparation of an EIS.

24 JUDGE KLINE: No, I understand that. But
25 your -- your contention right now is directed at PG&E,

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1 who has submitted an environmental report. And I
2 suppose at some point somebody -- I mean the relief
3 you seek is something you would ask the Board to
4 order. I mean --

5 MS. CURRAN: Right. We would ask the
6 Board to order --

7 JUDGE KLINE: -- what is it you ask us to
8 order?

9 MS. CURRAN: We would ask you to order
10 PG&E to revise its Environmental Report to acknowledge
11 the -- clearly acknowledge the true purpose of this
12 licensing action and to evaluate an appropriate range
13 of alternatives that is related to that purpose.

14 JUDGE KLINE: Okay.

15 JUDGE BOLLWERK: Can I direct a question
16 to Mr. Repka and then maybe you could reply to this.

17 If and when PG&E were to come in and ask
18 for license renewal, what kind of -- and assuming
19 that, as you have stated, that your purpose at this
20 point is to -- simply to provide enough space so that
21 you can unload all the fuel plus take care of
22 decommissioning.

23 If when you file for a license application
24 for -- a license application for renewal, what would
25 you have to address at that point in terms of spent

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1 fuel storage, if anything?

2 MR. REPKA: Well, license -- in all
3 likelihood, nothing. Spent fuel storage and license
4 renewal are two different issues and two different NRC
5 licensing actions.

6 If we come in, and for a license renewal
7 we would address the issues related to license renewal
8 subject to the generic environmental impact statement
9 on license renewal, which includes consideration of
10 storage of spent fuel generated over the additional 20
11 years. And my recollection is, is that's an issue
12 that has been addressed generically in the env- -- in
13 the license renewal generic environmental impact
14 statement.

15 So it would not require any new
16 environmental assessment related to fuel storage
17 generated during that period.

18 If it turned out that the ISFSI needed to
19 be increased in its capacity, obviously a new
20 amendment to the Part 72 license would be required and
21 the environmental impacts and alternatives related to
22 that proposal would be addressed at that time.

23 But all of these things, today's
24 application, the hypothetical license renewal and the
25 hypothetical ISFSI amendment, are all completely

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1 separate licensing actions. They all have -- are
2 independent of each other. At least two of them are
3 speculative at this time. And they all have
4 independent utility. So from a NEPA perspective, they
5 clearly do not -- are not required to be addressed all
6 at one time.

7 JUDGE BOLLWERK: All right. I'm sorry.
8 I interrupted your argument. I'll let you respond to
9 that and go back to whatever else you wanted to say.

10 MS. CURRAN: Well, I think I just heard
11 Mr. Repka say that when license renewal comes along,
12 PG&E would not consider that it had to ask for
13 permission to use the ISFSI; that would have been
14 granted already.

15 And so the -- essentially the fuel
16 storage, which I don't think can be underestimated in
17 this day and age the importance to any nuclear utility
18 of having a way to store spent fuel, that is -- that
19 is one of the biggest problems that the nuclear
20 industry has today. One cannot underestimate the
21 importance of having that inhand when one goes in for
22 license renewal.

23 JUDGE BOLLWERK: And I take it one of your
24 points is this question of low density versus high
25 density needs to be addressed?

1 MS. CURRAN: Yes. And we are concerned
2 that throughout this period of the remaining license
3 term that, as I think I said before, the petitioners
4 are going to get the worst of both worlds. That PG&E
5 will have been able to get a permit for a strategy for
6 continuing to store waste on -- on the Diablo Canyon
7 site, which will, as a practical matter,
8 institutionalize the continued practice of storing
9 spent fuel in a very high density configuration in
10 those pools on the site -- without any examination.
11 Instead the agency will be licensing the creation of
12 more spent fuel storage on the site.

13 And what the petitioners want to see is
14 this waste strategy addressed in a way that has some
15 integrity. PG&E is proposing to add a huge amount of
16 spent fuel to this site without addressing the problem
17 that it has right now with existing spent fuel pools
18 that are using high-density storage and have a risk of
19 creating a catastrophic accident.

20 Now that's a beyond-design-basis accident,
21 but it's a credible accident. It is something that
22 the NRC has not previously considered, that the agency
23 is now aware of.

24 So in looking at PG&E's overall strategy
25 for dealing with the waste that has been created at

1 Diablo Canyon since the mid-'80s, when this Plant was
2 licensed through the first quarter of the twenty-first
3 century, that it needs to be considered: What about
4 the existing measures that are being used to store
5 this fuel.

6 Why PG&E is proposing to take fuel out of
7 the pools in small increments and maintain those pools
8 at high-density storage when, if it's going to have an
9 ISFSI of that size, it could be doing that right away
10 and substantially decreasing the risk to the public?

11 JUDGE BOLLWERK: And so this is an issue
12 that any -- any spent fuel pool, any situation where
13 you have a spent fuel pool with high-density storage,
14 it also talks about building an ISFSI, that they need
15 to discuss this in their environmental impact
16 statement?

17 MS. CURRAN: Well, I don't know what the
18 result would be if PG&E had come in and said, 'We want
19 an ISFSI only for that much fuel, that we are going to
20 generate between 2006 and 2021 and '25.' That might
21 be a different case. Because in that case PG&E would
22 be seeking some marginal storage capacity, but that
23 isn't what's happening here.

24 PG&E has a wa- -- an interim-waste-storage
25 strategy that it is asking NRC approval for that will

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1 provide long-term interim storage for all of the spent
2 fuel that is currently at the Diablo Canyon site or
3 that will be produced at the Diablo Canyon site
4 through this operating license and potentially beyond.
5 That's -- that's a horse of a different color.

6 JUDGE LAM: Now I seem to be hearing a
7 conflicting message from you, Ms. Curran. On the one
8 hand I am hearing that you're opposing this proposed
9 new dry-cask storage facility. On the other hand I am
10 just hearing from you that you are asserting PG&E is
11 not moving fast enough to move the fuel from the spent
12 fuel pool to the dry cask storage system.

13 Which position are you taking here?

14 MS. CURRAN: Neither. This --

15 JUDGE LAM: Explain, please.

16 MS. CURRAN: This case is not about knee-
17 jerk opposition to a proposal, to a licensing
18 proposal. This is about seeking -- seeking licensing
19 action that protects the public and that does not
20 foist more nuclear waste storage onto this community
21 without dealing with the problems that PG&E has
22 created to date. That's what this intervention is
23 about.

24 And we don't think that the petitioners
25 ought to be sitting back and accepting a raw deal

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1 because dry-cask storage is safer than spent fuel pool
2 storage. It certainly is. But the way this is being
3 carried out, PG&E isn't going to eliminate pool
4 storage. PG&E is going to have pool storage and more
5 dry storage, too. And that we think is wrong and it's
6 unfair.

7 JUDGE BOLLWERK: Which goes back to your
8 worst-of-both-worlds argument.

9 MS. CURRAN: Yeah.

10 JUDGE BOLLWERK: Right. Anything else on
11 this contention at this point?

12 MR. REPKA: May I take --

13 JUDGE BOLLWERK: Well, let's see.
14 She's...

15 MS. CURRAN: I don't think so.

16 JUDGE BOLLWERK: All right. Very briefly,
17 and then Ms. Curran will get an opportunity to respond
18 to anything you have to say.

19 MR. REPKA: There really is no confusion
20 about the purpose of this application. It's to meet
21 the responsibilities of the Nuclear Waste Policy Act,
22 to continue to provide storage for spent fuel so that
23 we can continue to operate. Operation and storage are
24 flip sides of the same coin and the purpose here is
25 storage.

1 Ms. Curran wants to explore and litigate
2 the overall strategy for spent fuel storage at Diablo
3 Canyon. That's not subject to NRC approval. That's
4 not what we're asking for. This is not an amendment
5 for a strategy. This is -- this is an application for
6 a permit for an ISFSI.

7 With respect to the wet storage, that's
8 already been approved by the NRC. High density has
9 been approved at numerous plants around the country.
10 The alternative of low-density versus high-density
11 storage is really not an issue raised by the dry-cask
12 facility.

13 If this were a high-density application,
14 low density might be an issue. But even there the
15 Nuclear Waste Policy Act specifically encourages and
16 talks about approvals of high-density spent fuel
17 storage.

18 So we're -- we're really confusing a lot
19 of things in this contention, things that aren't
20 subject to NRC approval, things that have already been
21 approved by the NRC, such as high-density storage.
22 And there's frankly no real issue here.

23 And the only -- the last thing I'll say is
24 I hear exactly the conflict, the same conflict that
25 Judge Lam is hearing, and I find it equally puzzling.

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1 JUDGE BOLLWERK: All right. Ms. Curran.

2 MR. LEWIS: Judge Bollwerk, I was
3 wondering if the staff could have a few moments to add
4 a few things that we think have not been touched on
5 that we -- that are -- we think are relevant to
6 discussion --

7 JUDGE BOLLWERK: All right. I guess Ms.
8 Curran gets the last word. That's -- that's --

9 MR. LEWIS: I wouldn't think of depriving
10 her of the last word.

11 JUDGE BOLLWERK: All right.

12 MR. LEWIS: One way of looking at this,
13 which we think has not been specifically described, is
14 the following. That the application as we understand
15 it is for an ISFSI that would have the capacity for
16 140 -- or maybe it's 142 -- which one is it?

17 MR. REPKA: It's 138 casks, 140 stored
18 cask locations.

19 MR. LEWIS: Okay. A hundred and forty
20 storage locations. If -- that is what it is limited.

21 If PG&E, due to a business decision that
22 it makes, ends up needing more storage locations, it
23 will have to get an amendment to its specific Part 72
24 license. That's one point.

25 The other point is that despite the fact

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1 that the NRC has done significant re-evaluations in
2 the area of spent fuel pool fires, we have not been
3 led by those studies to withdraw existing
4 authorizations for high-density pools. We continue to
5 believe that high-density pools can operate safely.

6 Yes, there is a major technical report
7 that does talk about considerations under which you
8 could have spent fuel pool fires and has raised issues
9 that the staff, I believe, is still considering. I'm
10 checking with my staff. There's no change in the
11 regulations yet, but we're certainly considering what
12 the implications of that report are both in terms of
13 amount of time that one has available to take actions
14 and other types of things, which I can't think of at
15 the moment.

16 So it seems to me that what -- what the
17 contention is -- is seeking to litigate is, number
18 one, the continuation of an authorization that already
19 exists for high-density storage in the wet pool and an
20 assertion that there is -- that -- an assertion that
21 further options and strategies regarding staging of
22 spent fuel and how much spent fuel is kept in the wet
23 pool should be considered because of the size of the
24 ISFSI that is requested to be approved, the 140-casks
25 storage locations.

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1 Now as long as that ISFSI is accurately
2 and adequately described in the Environmental Report
3 and there is a logical reason under the existing
4 license for having that amount of space, I fail to see
5 what compels any further consideration of these other
6 alternatives.

7 The way that Mr. Repka described it was
8 that there is independent utility to doing, to having
9 the ISFSI licensed at the size requested, and to
10 continue with the high-density storage.

11 These other -- the other parts of this, to
12 my way -- to the staff's way of thinking, are based
13 upon a request that the Board probe whether or not
14 there are some alternative ways of using this -- this
15 facility, that PG&E has in mind. But the staff is
16 having a lot of trouble understanding why an
17 application that accurately describes what the size of
18 the facility is that is requested and states why that
19 size is being requested is deficient.

20 JUDGE BOLLWERK: All right. Ms. Curran,
21 let me just -- anyone over on this side of the room
22 want to say anything before Ms. Curran gets her chance
23 to finish up?

24 MR. TEMPLE: Yeah, just a quick question.
25 In light of PG&E's description that the construction

1 will be completed in a phased basis, where in the
2 license application or the Environmental Report is
3 this described?

4 MR. REPKA: We'll get back with the
5 citation on that.

6 MR. TEMPLE: Thanks.

7 MR. REPKA: I'm not sure that needs to be
8 on the record, but if the Board would like it on the
9 record we'll do that.

10 JUDGE BOLLWERK: It's really a question of
11 whether Mr. Temple thinks it needs to be on the record
12 or not. I don't know --

13 MR. TEMPLE: It's germane to a number of
14 proceedings the County's involved in with this. And
15 we're trying to understand whether, again, the
16 Environmental Report is complete in its description of
17 the project.

18 JUDGE BOLLWERK: Okay. Well, it maybe --
19 it sounds like maybe something you can be able to
20 exchange the information offline then, I think. But
21 if you want to put it on the record at some point, you
22 can certainly do so once you've -- I think you were
23 going to give him the citation, in any event?

24 MR. REPKA: Yeah, we'll look for that.
25 It's certainly in our filing as well.

1 JUDGE BOLLWERK: All right. Any -- any of
2 the other interested-governmental entities want to say
3 anything at this point?

4 MR. WAYLETT: (Shakes head.)

5 JUDGE BOLLWERK: We'll turn to Ms. Curran
6 and let her finish up on this contention.

7 And I heard the words "independent" -- I'm
8 sorry -- oh, I can't remember now.

9 MS. CURRAN: "Independent utility."

10 JUDGE BOLLWERK: "Independent utility,"
11 right. You're not making any kind of segmentation
12 argument here, I take it? This is really...

13 MS. CURRAN: Well, there is an element of
14 segmentation to the extent that if -- if the
15 Environmental Report doesn't discuss the purpose of
16 providing more capacity to store fuel during a license
17 renewal term, that is segmentation. Because there's
18 something that's going to be achieved here through
19 this permit that goes beyond the project as initially
20 described without addressing environmental impacts.
21 I think that's segmentation.

22 And I don't believe that this meets the
23 test for independent utility. This case involves a
24 situation where the scope of the project is much
25 larger than what is being described in the

1 application. And I -- and it extends into potentially
2 another -- would -- it would certainly facilitate
3 another licensing action, would even trigger it or
4 make it much more likely.

5 So I -- I guess I don't see how that fits
6 the model of independent utility. I don't believe it
7 is. I believe that this project is much bigger than
8 it's being described, and that is the problem here.
9 And if the alternatives are not discussed, then it
10 will be the kind of an action that NEPA tries to
11 prevent, where a government allows something to happen
12 without looking at all the impacts and all the
13 alternatives that could make that action safer for the
14 environment and safer for the public.

15 And I -- I just want to mention very
16 briefly that one of the issues that we are raising
17 here is the potential -- the vulnerability of these
18 pools to attacks of malice and insanity. That's --
19 you know, that's a very real concern, immediate
20 concern for the petitioners.

21 We're talking about another 20 years of
22 spent fuel storage without addressing these very, very
23 basic concerns about the overall program for spent
24 fuel storage at Diablo Canyon, even though the project
25 is intended to address those larger concerns.

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1 It seems to me that PG&E made a mistake in
2 the proceeding for the extension of the permit back in
3 the year 1992, because it didn't think about how it
4 might need more spent fuel storage space. And that's
5 a very costly mistake in this day and age with the
6 pools at these nuclear plants filling up and with
7 Yucca Mountain seemingly far away. And PG&E seems to
8 be trying to correct that by building in some
9 flexibility into the future.

10 Well, if PG&E wants to do that, then we
11 need to have a full disclosure statement and
12 environmental report that discusses that.

13 And, finally, I would just say that the
14 Nuclear Waste Policy Act does not dictate to the NRC
15 how it regulates the safety or the environmental
16 impacts of spent fuel storage. That remains the NRC's
17 responsibility, and there is nothing in the Nuclear
18 Waste Policy Act that directs the NRC to cut back or
19 eliminate or exempt itself in any way from complete
20 environmental analyses of its proposed licensing
21 actions.

22 And ultimately what is going to be
23 required here is an EIS by this agency.

24 That's all --

25 JUDGE BOLLWERK: All right. Anything

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1 further?

2 MS. CURRAN: -- I have.

3 JUDGE BOLLWERK: All right. Then I think
4 from any of the Board Members at this point?

5 All right. Then we're -- I guess for this
6 segment we're at the last part of it, contention EC3,
7 dealing with transportation impacts.

8 And I believe initially you said six
9 minutes, or thereabout, so.

10 MS. CURRAN: If you could just give me one
11 moment to get reorganized.

12 JUDGE BOLLWERK: Sure.

13 (Pause.)

14 JUDGE BOLLWERK: All right.

15 MS. CURRAN: This contention challenges
16 the Environmental Report's failure to discuss the
17 environmental impacts of transporting spent fuel away
18 from the Diablo Canyon Nuclear Power Plant at the
19 conclusion of the Plant's operating license, operating
20 life, when presumably it would be shipped away to a
21 permanent repository.

22 The reason for this contention, it has to
23 be borne in mind, is that the environmental report
24 does not discuss transportation impacts at all. It
25 says, "Transportation is governed by 10 CFR Part 71."

1 Now Part 71 is the NRC safety regulations
2 for transportation. So what PG&E is saying, in
3 effect, is: This is a nonissue from the point of view
4 of NEPA. Nobody has to evaluate these environmental
5 impacts. It's just a safety issue that we don't need
6 to address.

7 I don't think any party is denying here
8 that this fuel has to be shipped away from Diablo
9 Canyon at some point and that that would be a
10 foreseeable impact of this licensing action, unless
11 the NRC wants to say that the fuel is going to stay at
12 Diablo Canyon forever. That is a foreseeable impact
13 that has to be addressed.

14 In its response to our contention PG&E and
15 the -- and also the staff say that offsite
16 transportation is attributable to operation of the
17 facility and not the ISFSI. But, in fact, the reason
18 for this ISFSI application is that PG&E didn't have
19 permission to -- to accumulate this spent fuel. PG&E
20 would have had to stop operating in 2006 if it did not
21 get permission for this ISFSI unless it were able to
22 get some other permit, say for expanded pool storage.

23 So to say that this -- these
24 transportation impacts flow from the -- from the
25 operation of the Nuclear Plant is incorrect, because

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1 the operating license extension proceeding that was
2 done in the early '90s didn't address the fact that
3 PG&E would be generating additional spent fuel that
4 would need a storage place.

5 This -- this -- if this permit is not
6 issued, PG&E can't go on generating spent fuel. And
7 that, PG&E acknowledges in its own Environmental
8 Report. PG&E says that's the purpose of this
9 application.

10 PG&E says the transportation impacts are
11 appropriately -- appropriately considered by the
12 Department of Energy or by the NRC in the EIS for
13 either the Yucca Mountain facility or for private fuel
14 storage, the interim storage facility that's proposed
15 for central Utah. Well, that is not described in the
16 Environmental Report. There is nothing in the
17 Environmental Report that makes any attempt to -- to
18 assure the public that the environmental impacts of
19 spent fuel transportation away from the ISFSI have
20 been fully and adequately considered.

21 And we would argue that -- that the ER is
22 deficient as a matter of law for that reason.
23 Moreover, that neither the EIS for Yucca Mountain nor
24 the EIS for the private fuel storage facility consider
25 the environmental impacts of terrorist attacks or

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1 other acts of malice on spent fuel transportation
2 casks. And that this is a very obvious deficiency in
3 those generic environmental impact statements that
4 would need to be addressed in any EIS or environmental
5 report for this facility before a permit can be issued
6 to PG&E.

7 That's all I have on this one.

8 JUDGE BOLLWERK: All right. Then let me
9 turn to the governmental entities. Does anyone have
10 anything they want to say about this particular
11 contention?

12 I think San Luis Obispo County has already
13 spoken, I think, right?

14 The Harbor District.

15 MR. WAYLETT: We would support admission
16 of the contention.

17 JUDGE BOLLWERK: All right. The
18 California Energy Commission.

19 MS. HOUCK: The California Energy
20 Commission would support admission of the contention.

21 JUDGE BOLLWERK: All right. And the
22 Independent Safety Committee?

23 MR. WELLINGTON: No comments.

24 JUDGE BOLLWERK: All right. And then let
25 me turn to Pacific Gas and Electric.

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1 MR. REPKA: This contention is directed
2 entirely at transportation of spent fuel away from
3 Diablo Canyon at the conclusion of the operating
4 license term. That issue is beyond the scope of the
5 Part 72 license that we're currently applying for.

6 Contrary to what Ms. Curran keeps saying,
7 shipment away from Diablo Canyon is not a foreseeable
8 impact of the ISFSI licensing action. It's an impact
9 of Plant operation. The Plant was previously licensed
10 for a 40-year term. The assumption was that it would
11 generate fuel for 40 years and transportation is
12 addressed in that context as part of the prior
13 evaluation of the 40-year operating license term.

14 Ms. Curran keeps referring to CP recapture
15 as if that were some magical date, but in fact that
16 was not. Transportation is an impact of Plant
17 operation. The Plant was licensed to operate in the
18 original operating license. It was not licensed to
19 operate in the recapture. It was not -- it would not
20 be licensed to operate by this Part 72 license
21 application.

22 The Commission's regulations and
23 precedents, we believe, are very clear, that for a co-
24 located facility, that is the ISFSI would be located
25 at the Power Plant site, the transportation issues to

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1 be addressed in the Safety Analysis Report and in the
2 Environmental Report are those related to onsite
3 transportation. And those are, in fact, addressed in
4 PG&E's ER and SAR.

5 And we give in our filing a number of
6 citations to both the Environmental Report and the
7 Safety Analysis Report where that issue is addressed.

8 However, for a co-located facility there's
9 no requirement in the regulations to address
10 transportation offsite.

11 Now in addition to the consideration that
12 was previously given in the context of the Part 50
13 licensing of the Power Plant, offsite transportation
14 issues are not being ignored. They are being
15 addressed in connection with the appropriate licensing
16 actions, one of which would be the licensing of the
17 Yucca Mountain facility.

18 And we cite to the fact that
19 transportation of spent fuel from the individual
20 reactor sites to the proposed repository at Yucca
21 Mountain has been and is being addressed in the DoE
22 environmental impact statement for Yucca Mountain.
23 That's the appropriate forum for that issue.

24 In addition, this case is distinguishable
25 from a stand-alone Part 72 ISFSI such as the PFS

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1 facility at Skull Valley. In that case there is no
2 power plant. And, like Yucca Mountain, transportation
3 issues of the spent fuel to that facility must be
4 addressed and are being addressed in conjunction with
5 the licensing of that facility. And we cite, in
6 particular, the documents where that's being addressed
7 and discussed.

8 It's -- this is really a very simple
9 argument and it's a very easy contention to deal with.
10 This is one where the Mothers for Peace and others are
11 apparently trying to bootstrap other unrelated issues
12 into this Part 72 licensing proceeding. It's clearly
13 -- they're inadmissible here. They're not being
14 ignored. This just isn't the forum in which they're
15 to be addressed.

16 The contention again raises terrorism
17 issues. I don't think that we need to address that any
18 further.

19 We've already addressed the obligations
20 under NEPA, but the fact is regardless of the outcome
21 of that issue, terrorist attacks on transportation
22 routes and transportation activities are still beyond
23 the scope of this proceeding regardless of the outcome
24 of the Commission's decision on -- on NEPA and
25 terrorism.

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1 The contention also raises some issues
2 related to alternatives to transportation. Well, this
3 is a storage proposal. This is not a transportation
4 proposal. So alternatives to transportation are not
5 within the scope of what's required by NEPA.
6 Alternatives to storage are -- alternative forms of
7 storage are, and those are addressed in the
8 Environmental Report.

9 That's all I have to say on this issue.

10 JUDGE BOLLWERK: All right. We turn to
11 the staff then.

12 MR. LEWIS: Can I have one moment?

13 JUDGE BOLLWERK: Um-hum.

14 MR. LEWIS: I'm checking one thing, if I
15 could just have one moment.

16 JUDGE BOLLWERK: All right.

17 (Pause.)

18 MR. LEWIS: Okay. I'm ready to proceed.
19 Thank you.

20 JUDGE BOLLWERK: All right.

21 MR. LEWIS: The -- the environmental
22 impact statement, GEIS, which has been put out in
23 draft by Department of Energy, treats as one of its
24 major obligations an exhaustive analysis of
25 transportation on a nationwide basis, assuming

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1 something like -- I'm going by recollection -- 78 NRC
2 sites from which waste would be coming and smaller, a
3 considerably smaller number of DoE sites from which
4 waste would be coming.

5 My clear understanding of how the legal
6 regime works in this regard is that when the waste is
7 picked up from a particular licensee, the
8 responsibility for its shipment to the repository is
9 DoE's, both in terms of safety and in terms of the
10 environmental analysis.

11 In fact, I really question whether or not
12 any individual NRC licensee would be in a good
13 position to analyze the environmental impacts of
14 transportation of its waste from its facility at the
15 end of its operational life.

16 DoE clearly has been assigned the legal
17 responsibility and with it the attendant NEPA
18 responsibility with respect to this subject.

19 The license that was granted to -- for
20 operation of the Diablo Canyon units, as Mr. Repka
21 said, envision that there would be waste associated
22 with that period of operation that was, in addition,
23 I guess, several years of construction permit
24 recapture, to -- to allow for the, I believe,
25 basically the full 40 years or close to the full 40

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1 years of operation to be realized. But that's what
2 the licensing basis was.

3 Building a dry-cask storage facility, as
4 the licensee's preferred choice for storage of this
5 spent fuel, is the subject of this hearing and really
6 that is what was noticed for hearing here. The
7 transportation offsite at the end of operating life is
8 not part of that application.

9 And I don't see anything inappropriate,
10 sinister or deficient about PG&E not having addressed
11 transportation at the end of operating life from the
12 facility.

13 I -- the thing that we were checking and
14 -- and we just weren't certain of the exact dates
15 involved, is whether or not in addition to the points
16 we made in our -- in our discussion just now, this
17 facility is also covered by Table S-4, which is in
18 Section 50- -- 51.52. It's codified in Section 51.52
19 of the NRC's regulations.

20 And the point that I'm pursuing by raising
21 this is that -- give me one moment -- this is a
22 provision, "Environmental Effects of Transportation of
23 Fuel and Waste," Table S-4.

24 And if the timing of the -- the
25 environmental reports submitted by PG&E for

1 construction of Diablo Canyon were such that they were
2 submitted after February 4th, 1975 -- a fact which I
3 just don't know the answer to as I sit here, then this
4 would be an additional point, that this is a
5 regulation which is based upon a generic environmental
6 impact statement and makes a finding as to what each
7 licensee should include in its environmental analysis
8 of its Plant as assumptions for the environmental
9 effects of transportation of fuel and waste from the
10 facility.

11 So I -- I really can't go any further with
12 that point because I just don't know, as I sit here,
13 whether or not it is explicitly applicable to Diablo
14 Canyon, nor do I know whether or not it might have
15 been analyzed in some subsequent document, even if not
16 at the construction permit stage. And maybe -- maybe
17 by laying this on the record at some point we can get
18 a clarify of the acceptability of that.

19 That would be another point that I would
20 make, that the -- that the regulations have a generic
21 assumption that licensees are directed to use
22 regarding the impacts of transportation at the end of
23 life.

24 The other -- well, I think that concludes
25 my argument.

1 JUDGE KLINE: Does PG&E know the answer to
2 that question of whether Table S-4 was cited in the
3 licensing actions related to the Diablo Canyon Plant?

4 MR. REPKA: Our recollection of this, and
5 this is subject to confirmation, is that the
6 applications predated the time period in the rule for
7 Table S-4.

8 JUDGE KLINE: Okay.

9 MR. REPKA: But there was a discussion in
10 the licensing documents related to transportation.

11 JUDGE KLINE: All right.

12 JUDGE BOLLWERK: All right. If there's
13 nothing else from the staff, I guess, Ms. Curran, you
14 have your opportunity to reply.

15 MS. CURRAN: Okay. Mr. Repka argues that
16 transportation away from the facility is an impact of
17 Plant operation. In response to that I would just
18 like to read you a sentence from the Environmental
19 Report, and this is on page 1.2-1. The sentence is,
20 "The additional to capacity" -- "The additional
21 capacity to accommodate discharged spent fuel, as
22 proposed herein, will allow DCPD to continue to
23 generate electricity."

24 And I would argue to you that but for the
25 issuance of this permit PG&E would not be shipping the

1 incremental amount of spent fuel that it plans to
2 generate between 2006 and 2025 away from the Plant,
3 because PG&E would not be able to continue to generate
4 electricity. So in our view this is -- the
5 transportation impacts are impacts that flow directly
6 from the issuance of this permit.

7 Now I've heard argument here about Table
8 S-4 and other environmental impact statements, but it
9 really needs to be remembered that the Environmental
10 Report for this facility doesn't say anything about
11 environmental impact statements. It doesn't say we're
12 going to rely on environmental impacts. It doesn't
13 say we're going to rely on Table S-4. It doesn't say
14 we're going to rely on this generic impact statement
15 or that generic impact statement. It says nothing.

16 t just says this is a Part 71 issue. No
17 impacts, end of story. And that is not in compliance
18 with NEPA.

19 And I would also like to address the
20 relevance of I think it's 72.108, which relates to
21 impacts in the region. And PG&E makes an argument
22 that the region, as used in Part -- in that Part 72
23 regulation, is the area on the site.

24 Well, it may be that the NRC can through
25 a regulation affirmatively require the consideration

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1 of certain impacts and point an applicant in the
2 direction of considering impacts it considers are
3 important. But the NRC cannot, by regulation, exclude
4 consideration of reasonably-foreseeable impacts. That
5 is -- that is a standard that has to be applied in
6 each individual case.

7 I also heard an argument that
8 transportation is not part of this application and
9 therefore it need not be considered in the
10 Environmental Report. That is not the test under NEPA
11 for what kinds of impacts need to be considered.

12 NEPA requires consideration of all
13 reasonably-foreseeable impacts, whether or not those
14 impacts are the subject of the permit application at
15 hand. And, again, we would submit that the impacts of
16 transporting spent fuel away from this reactor, away
17 from this ISFSI are reasonably-foreseeable impacts of
18 the ISFSI licensing action.

19 And that concludes my presentation.

20 JUDGE BOLLWERK: All right.

21 JUDGE KLINE: Would you address the
22 question of redundancy in consideration? The argument
23 that's been made is, yes, it must be considered, but
24 it's going to be considered or has been in the Yucca
25 Mountain application.

1 So why -- why would you argue that there
2 has to be redundancy and that we consider it both here
3 and there?

4 MS. CURRAN: Well, I don't think that --
5 since PG&E did not believe that impacts had to be
6 considered, that these transportation impacts had to
7 be considered, I think it could be assumed that PG&E
8 did not take a hard look at whether that generic EIS
9 was sufficient to address the impacts of the
10 transportation along the routes, the specific routes
11 that have been identified, including barging the fuel
12 on the ocean to Santa Barbara.

13 Apparently it's difficult to get the fuel
14 out of the site on the road. And so one of the
15 alternatives that's being considered is barging it to
16 Santa Barbara. And I am not aware of whether the
17 Department of Energy's EIS, which is a massive,
18 massive document, and which I had got the final
19 version on a disk which I think would take me weeks to
20 print out, and I would have appreciated some hard look
21 by PG&E at that document to tell me that this generic
22 EIS was adequate to address the impacts of this kind
23 of unusual transportation route away from the Diablo
24 Canyon Nuclear Power Plant.

25 But since PG&E didn't consider it

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1 necessary, PG&E didn't address it. And I think that
2 at the very least it needs to be conceded in the
3 Environmental Report that this permit has impacts with
4 respect to transportation of fuel. And here is where
5 you can see them addressed. And we believe that this
6 is satisfactory. What we have now is PG&E denying
7 that they have to even evaluate them.

8 JUDGE BOLLWERK: All right. Anything
9 further from either of the Board Members?

10 MR. REPKA: May I have my surrebuttal?

11 JUDGE BOLLWERK: Well, if you want it.

12 MR. REPKA: I'll be brief.

13 JUDGE BOLLWERK: All right.

14 MR. REPKA: We're not here applying for a
15 transportation by barge to Santa Barbara or anywhere
16 else, number one.

17 Number two, Ms. Curran makes a lot of the
18 logic that but for this ISFSI permit operation
19 couldn't continue beyond 2006. Let's put aside the
20 factual basis for that because there perhaps might be
21 other options, who knows. But the fact of the matter
22 is her -- by that logic, she would attempt to
23 bootstrap into the Environmental Report all impacts
24 related to operation between 2006 and the current
25 licensed terms of 2021 and 2025, where that would be

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1 the logical extension of her argument, which is but
2 for the ISFSI, the Plant couldn't operate, therefore
3 it would generate more waste that has to be
4 transported. That's an operation impact.

5 There are other operation impacts in the
6 same period. And her logic would extend to
7 essentially redoing the operating license
8 Environmental Report for the periods 2006 to 2021 and
9 2025, and obviously that's not a tenable position or
10 conclusion.

11 And -- and, lastly, she would bootstrap
12 into this proceeding, all of the Yucca Mountain
13 licensing issues related to transportation, and that
14 clearly is not within the scope of what the Board has
15 before it.

16 JUDGE BOLLWERK: All right. Ms. Curran.

17 MS. CURRAN: I just have to think for a
18 minute.

19 JUDGE BOLLWERK: That's okay. Go ahead.

20 (Pause.)

21 MS. CURRAN: Well, it seems to me that our
22 argument is not as fanciful and ludicrous as Mr. Repka
23 suggests. I think if we had considered this idea that
24 the continued operation of the facility was a
25 foreseeable impact, we would have been faced

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1 immediately with the fact that PG&E could have pursued
2 some other strategy and we'd also been faced with the
3 idea of -- that the impacts of continued operation are
4 incremental.

5 But it seems to me that this is a --
6 regardless of that, and maybe I should have put in a
7 contention to that effect, but regardless of that,
8 there's a kind of a basic test under NEPA. If you
9 have a proposed action, what are the foreseeable
10 impacts that could follow -- you know that's the
11 purpose of this statute, to make sure that you don't
12 take an action where you haven't looked a little
13 farther into the future to see what you might be
14 bringing on yourself.

15 And we certainly have plenty of examples
16 of the government and private licensees creating all
17 kinds of nuclear waste that they were unable to
18 dispose of. That's a really graphic situation in
19 which the foreseeable environmental impacts of
20 creating a mess were not looked at and dealt with.

21 So it seems very reasonable to me to look
22 at what are the impacts of putting this additional
23 fuel on the site at Diablo Canyon and what's going to
24 happen when you try to get rid of it. That's been the
25 problem I think with government decisionmaking about

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1 nuclear waste for the last 25 years.

2 That's all.

3 JUDGE BOLLWERK: All right. Anything
4 further from the Board at this point with respect to
5 that contention?

6 All right. That basically concludes the
7 segments that we wanted to -- to address today and
8 receive argument on. At this point we will adjourn
9 the proceeding for the afternoon. We'll begin again
10 tomorrow morning at 9:30 right here back in this room.

11 We'll be dealing initially with some
12 contentions, dealing with financial qualifications.
13 San Luis Obispo and Mothers for Peace contentions 2,
14 3, 4, and 5, and two contentions from the San Luis
15 Obispo County also deal with financial qualification
16 issues.

17 And, again, we'll start at 9:30. Later in
18 the afternoon we'll be dealing with the seismic
19 contention starting around 2:30. That's the schedule
20 for tomorrow.

21 Any questions or comments from any of the
22 parties at this point?

23 MR. LEWIS: Yes. Judge Bollwerk, I was
24 just wondering if I could ask Ms. Curran: Are things
25 seeming to be on time for Dr. Legg to be here tomorrow

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1 at 2:30?

2 MS. CURRAN: I have no reason to think
3 otherwise.

4 MR. LEWIS: Fine. Thank you.

5 JUDGE BOLLWERK: All right. Well, if that
6 changes in some respect, obviously let us know sooner
7 rather than later.

8 All right. At this point then we'll stand
9 adjourned until 9:30 tomorrow morning. Thank you,
10 everyone. We'll see you in the morning.

11 (The Prehearing Conference was adjourned
12 for the day at 4:44 o'clock p.m.)

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CERTIFICATE

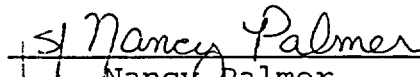
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in the matter of:

Name of Proceeding: Pacific Gas and Electric,
Diablo Canyon ISFSI

Docket Number: 72-26-ISFSI

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