

RAS 13857

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: Susquehanna Steam Electric Station
Pre-hearing Conference

Docket Number: 50-387-OLA and 50-388-OLA
ASLBP Number: 07-854-01-OLA-BD01

Location: (telephone conference)

DOCKETED
USNRC

July 16, 2007 (8:45am)

Date: Tuesday, July 10, 2007

OFFICE OF SECRETARY
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 2 NUCLEAR REGULATORY COMMISSION

3 + + + + +

4 ATOMIC SAFETY AND LICENSING BOARD PANEL

5 + + + + +

6 PRE-HEARING TELECONFERENCE

7 _____

8 In the Matter of:		Docket Nos.
9		50-387-OLA and
10 PPL SUSQUEHANNA LLC		50-388-OLA
11 (Susquehanna Steam Electric		ASLBP No. 07-854-
12 Station, Units 1 and 2)		01-OLA-BD01

13 _____

14 Tuesday,

15 July 10, 2007

16
 17
 18 The above-entitled matter came on for
 19 pre-hearing conference at 9:30 a.m.

20
 21 BEFORE:

22 G. PAUL BOLLWERK, III, Administrative Judge

23 RICHARD F. COLE, Administrative Judge

24 LESTER RUBENSTEIN, Administrative Judge

25
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APPEARANCES:

On Behalf of the Petitioner:

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On Behalf of PPL Susquehanna LLC:

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On Behalf of the Nuclear Regulatory Commission:

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ALSO PRESENT:

DEBORAH WOLF, Licensing Board Panel Law Clerk

ZACHARY KAHN, Licensing Board Panel Law Clerk

RICHARD GUZMAN, NRC Staff

DREW STUYVENBERG, NRC Staff

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

(9:35 a.m.)

JUDGE BOLLWERK: Good morning. Today we're here to conduct an initial pre-hearing conference and an extended power uprate, or EPU proceeding, under Part 50 of Title 10 of the Code of Federal Regulations, also referred to as the CFR.

This pre-hearing conference has been convened as a result of the response of Eric Joseph Epstein to a Notice of Consideration a facility operating license amendment posed no significant hazard consideration determination and hearing opportunity published in the Federal Register on March 13, 2007.

In its petition dated May 11, 2007, Mr. Epstein requested an adjudicatory hearing regarding the October 11, 2006, application of PPL Susquehanna LLC for an EPU for the two units of its Susquehanna steam electric station located near Berwick, Pennsylvania.

In a May 25, 2007, memorandum, the Secretary of the Nuclear Regulatory Commission, acting on behalf of the five-member Commission, referred Petitioner Epstein's hearing request to the Atomic Safety and Licensing Board Panel for the appointment

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1 of the Licensing Board.

2 On May 31, 2007, the Licensing Board
3 Panel's Chief Administrative Judge issued a notice
4 designating this three-member Licensing Board to
5 conduct a proceeding.

6 In convening this pre-hearing conference
7 today, we're here to afford Mr. Epstein, as well as
8 applicant PPL Susquehanna, and the NRC staff, the two
9 other participants to this proceeding, an opportunity
10 to make oral presentation on the questions of whether
11 Mr. Epstein has established that he is entitled to
12 party status in this proceeding by showing he has the
13 requisite standing and has proffered one or more issue
14 statements or contentions contesting the adequacy of
15 certain aspects of the PPL Susquehanna application
16 that are legally sufficient to be admitted as
17 litigable issues in this proceeding.

18 Before we begin hearing the participants'
19 presentations on these matters, I'd like to introduce
20 the Board members. With me here in Rockville,
21 Maryland, is Dr. Richard Cole. Judge Cole is an
22 environmental engineer and full-time member of the
23 Atomic Safety and Licensing Board Panel. Joining us
24 from the west coast is Judge Lester Rubenstein. Judge
25 Rubenstein is a nuclear engineer and a part-time

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1 member of the Panel.

2 My name is Paul Bollwerk. I'm an attorney
3 and the Chairman of this Licensing Board.

4 Also here with Judge Cole and me in
5 Rockville are Licensing Board Panel Judicial Law
6 Clerks Deborah Wolf and Zachary Kahn.

7 At this point, I'd like to have the
8 counsel for the various participants or the
9 participants identify themselves for the record. Why
10 don't we start with Mr. Epstein and anyone who might
11 be with him this morning, then move to counsel for the
12 applicant, and finally to NRC staff counsel.

13 MR. EPSTEIN: This is Eric Joseph Epstein.
14 I'm in Harrisburg, Pennsylvania, today. And the only
15 one with me is my dog, Rosita.

16 JUDGE BOLLWERK: All right. Thank you.

17 MR. LEWIS: Yes. This is David Lewis,
18 with the law firm of Pillsbury Winthrop Shaw Pittman,
19 representing PPL Susquehanna. On another line is Mr.
20 Bryan Snapp, who is with PPL's counsel's office.

21 MR. SUBIN: Lloyd Subin, OGC, NRC.

22 MS. UTTAL: Susan Uttal, NRC, OGC. And
23 with us is --

24 MR. GUZMAN: Rich, Rich Guzman.

25 MS. UTTAL: -- Richard Guzman and Drew

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1 Stuyvenberg from the staff.

2 JUDGE BOLLWERK: All right. Does the
3 Court Reporter have those names?

4 MS. UTTAL: No.

5 JUDGE BOLLWERK: Can you go ahead and
6 spell them for her?

7 MS. UTTAL: Richard Guzman, G-U-Z-M-A-N.

8 MR. SUBIN: And Stuyvenberg is S-T-U-Y, V
9 as in Victor, E-N, B as in boy, E-R-G.

10 JUDGE BOLLWERK: All right. Mr. Subin,
11 are you on a different phone than Ms. Uttal?

12 MS. UTTAL: No. We're both on the same --

13 JUDGE BOLLWERK: On the same line. You're
14 coming in a little bit -- less clear than she is,
15 so --

16 MR. SUBIN: Okay. How is this? Is that
17 better?

18 JUDGE BOLLWERK: A little bit better, yes.

19 All right. Thank you, everyone.

20 As to the order of presentation by the
21 participants in this pre-hearing conference, in our
22 June 13th order we outlined a schedule that affords an
23 opportunity for the participants to address the
24 various contested matters now before the Board.

25 We would intend to follow that schedule as

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1 closely as possible in terms of the issues and
2 allocated times for argument. In that regard, we have
3 requested before starting on an issue for which Mr.
4 Epstein has been afforded an opportunity for argument
5 and rebuttal, he should indicate how much of his total
6 15-minute time allocation he wishes to reserve for
7 rebuttal. The Board will be providing counsel with
8 notice of the need to finish his or her presentation
9 toward the end of the allocated argument time.

10 Also, as we noted in our June 13th
11 issuance, in making their arguments the participants
12 should bear in mind that we read their pleadings, and,
13 as such, they should focus their presentations on the
14 critical points and controversy as those issues have
15 emerged as a result of the various participant filings
16 over the last 60 days.

17 Finally, after hearing from the
18 participants regarding the standing and contention
19 admissibility matters at issue, we would like to have
20 a brief discussion regarding some of the
21 administrative details involved in this proceeding.

22 And at this point, if none of the
23 participants has any kind of opening statement they
24 want to make, we'll go right into the question of
25 standing, or any other questions they want to raise

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1 with the Board, we'll go into the issue of standing.

2 (No response.)

3 All right. Hearing nothing, Mr. Epstein,
4 you would be up first. You have 15 minutes, and what
5 portion of that would you like to save for your
6 rebuttal after hearing from the staff and from PPL
7 Susquehanna?

8 MR. EPSTEIN: Well, whatever the residual
9 amount is. I'm going to use the 15 minutes to discuss
10 the Big Rock case -- Vermont Yankee -- standing, and
11 outlining my contention. So I'm at the mercy of
12 whatever time is left, sir.

13 JUDGE BOLLWERK: Okay. All right, then.
14 Then, you are -- you're up and whatever you --
15 whenever you'd like to start speaking, please feel
16 free.

17 MR. EPSTEIN: I'd like to address the Big
18 Rock Point case that was raised in your memorandum.
19 And, frankly, I believe the difference in potential
20 risk between an operating reactor and an independent
21 spent fuel storage installation justifies treating the
22 present case consistent with established NRC
23 precedent.

24 Big Rock Point was a 67-megawatt boiling
25 water reactor which began operation in '65, as we're

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1 all aware closed in '96 prematurely. That plant was
2 shut in '97. Much different than the current request
3 we're looking at. In addition, PPL offered as a
4 reference to defeat my standing the Georgia Tech
5 Research reactor case of '95.

6 I would just point out that the
7 Susquehanna plant is neither passive or retired. This
8 is an EPU request to increase thermal power. I think
9 it's a much more significant issue in terms of risk to
10 the local community.

11 When looking at the decision, one of the
12 things that the Judges noted was that this was a
13 passive structure that was clearly different than an
14 operating reactor, and I would just reiterate that
15 Susquehanna is the 19th and 20th largest reactors in
16 the country.

17 Also, on reconsideration, the Judges noted
18 that the particular petitioner -- I believe his name
19 was Mr. McManemy -- offered some fresh declarations
20 that he occasionally transverses the area in question.
21 Frankly, I think the Court got it right, basically,
22 based on the representation. Mr. McManemy's argument
23 was patently defective to confer standing.

24 However, in this case, on the face of it,
25 does not alter the standing requirement for a person

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1 like myself that live or work within 10 to 50 miles of
2 an operating reactor. If the necessary declarations
3 are made, and I believe I've made them, for standing,
4 by someone like myself living in close proximity to
5 the harm, which is the reactor, or regularly working
6 in that area.

7 I know PPL had stipulated in the response
8 to me, page 6, footnote 7, that I did just commute to
9 my work space. I'd like to clarify that I don't run
10 back and forth to my work space. I actually work
11 there for long durations of time. In addition, I
12 think I've clearly established that I have business
13 and familial interest at the cusp as well as well
14 within the 50-mile zone.

15 In addition, on that case I noticed the
16 Court, you know, addressed Mr. McManemy's sporadic
17 visits. I'd just reiterate the fact that I'm born and
18 raised in this area. I lived within 50 miles of the
19 plant from '83 to '88 when I was a resident of Perry
20 County. I still work and parent in the area. I'll
21 likely die in the area. And I spelled out my work
22 schedule on my petition on page 6.

23 And not to overdo standing, I would just
24 defer to the previous decision made by the prior panel
25 on relicensing in which they said, I quote, "We do,

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1 however, find that the Petitioner Epstein has made
2 sufficient showing to establish standing for himself
3 under the proximity presumption."

4 I can assure everyone that there has been
5 no material change in my status since the decision.
6 I have gained some weight, but I'm the same person.
7 Based on case law precedent, and the fact that neither
8 the staff or PPL challenge that standing decision, I'd
9 ask that you admit me and determine that I have
10 established standing for the present case.

11 I would also point out a number of issues
12 related to my personal interest, just for
13 clarification. Obviously, this case has use
14 implications on the middle and lower Susquehanna.
15 Obviously, it has implications on water quality. I
16 also believe that the 2001 recapture uprate is not
17 resolved. I think PPL is moving forward, and that
18 particular case has not been resolved, frankly.

19 In my research, I have never found a PPL
20 application that had been filed for surface water
21 withdrawal or mitigation requirements. There is no
22 evidence that an application was filed, reviewed, or
23 approved, by the Susquehanna River Basin Commission on
24 their 2001 uprate. So, frankly, I think that case is
25 still in abeyance, and there is a real potential that

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1 they're out of compliance as they're filing for this
2 additional uprate.

3 In addition, I think this is potentially
4 a bad precedent that would allow other utilities like
5 AmerGen and TMI to circumvent state and federal
6 regulations. And, finally, the Susquehanna, as most
7 of you know, was a designated endangered river as of
8 2005 and is frequently challenged by flooding,
9 draught, and acid mine drainage.

10 On the Vermont Yankee ruling, the 316
11 ruling, my challenge really is not focused on 316(a)
12 or (b), but I'll address the three elements briefly.
13 They -- quote -- said, "We do not share the majority's
14 concern that the Commission cannot legitimately rely
15 on a state permit which expires only five years into
16 the 20-year renewal period."

17 I think that supports my argument that PPL
18 cannot subvert existing state statutes or assume
19 compliance based on grandfathered SRBC regs. The
20 second element of that decision was, "We conclude the
21 Vermont Environmental Court stay is irrelevant to the
22 issue now before us." I think this supports my logic
23 that resubmission by PPL would not be untimely, and
24 further suggest that this issue may need to be
25 revisited after it is resolved by the EPA or judicial

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1 resolution.

2 In fact, staff, in their reply to my
3 petition, argued -- quote -- "As a result of the
4 Second Circuit's opinion, the EPA has advised that the
5 rule should be considered suspended. Thus, inherent
6 in this context within the scope of this proceeding,
7 the licensee is not required to comply with the
8 suspended rule. As such, the contention is
9 inadmissible as it has no basis in fact."

10 I would argue that the ruling doesn't mean
11 316 has disappeared, or PPL will not have to be
12 compliant with federal mandates. Only the timing for
13 compliance has changed. And, frankly, the impact of
14 the delay for PPL is negligible, since the anticipated
15 project completion date, as of the NRC's website this
16 morning, was January 2008. And there is really no
17 hurry, since the licenses don't expire until 2023 and
18 2025.

19 You know, at the end of the day, absent
20 artificial corporate deadlines, there is no rush to
21 get the uprate completed prior to EPA's resolution of
22 the rule. And finally, in this case, the Commission
23 ruled.

24 And, finally, under Commission precedent,
25 the pendency of the appeal of the Vermont

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1 Environmental Court and any resulting uncertainty as
2 to the permit status are not relevant here. I am not
3 challenging the permit. I'm seeking to include an
4 evaluation of the update on Act 220 and the
5 Susquehanna River Basin Commission's 803.42 and
6 803.44.

7 Moving quickly to the contentions, I
8 would --

9 JUDGE BOLLWERK: Whoa, whoa, whoa, whoa.
10 Let's deal with -- we're supposed to deal with
11 standing first.

12 MR. EPSTEIN: Okay.

13 JUDGE BOLLWERK: You kind of --

14 MR. EPSTEIN: Oh, I'm sorry.

15 JUDGE BOLLWERK: -- moseyed over into the
16 merits as it were, so --

17 MR. EPSTEIN: No, I didn't know if you
18 wanted me to do everything at once.

19 JUDGE BOLLWERK: No, no, no, no. Well,
20 let's take the standing first, and then we'll take
21 each one of the contentions individually.

22 MR. EPSTEIN: Okay.

23 JUDGE BOLLWERK: So don't -- to keep
24 everything sort of clear here in terms of what we're
25 talking about. You've taken about a little over five

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1 minutes, so let's assume it's about five minutes on
2 standing. Let me -- do you have anything else you
3 want to say on the issue of standing, your standing?

4 MR. EPSTEIN: No.

5 JUDGE BOLLWERK: Okay. Let me, then, turn
6 to PPL first and see what Mr. Lewis has to say.

7 MR. LEWIS: Thank you, Judge Bollwerk.
8 This is Mr. Lewis.

9 Mr. Epstein noted that we have not
10 challenged the prior standing determination. We did
11 -- PPL did oppose Mr. Epstein's standing in that
12 proceeding. We did not appeal the Licensing Board's
13 decision, because we could not. It was a favorable
14 decision, dismissing his hearing request. So there
15 was no opportunity for PPL to appeal the standing
16 determination in that proceeding. One does not appeal
17 a favorable decision because one is not aggrieved.

18 We do believe that -- and maintain that
19 Mr. Epstein does not have standing. All reliance is
20 placed principally on the Commission's guidance in the
21 PFS case, CLI98-1348, NRC 26. And in there the
22 Commission held that standing does not depend on the
23 precise number of visits. This is a case that relates
24 not to a petitioner that resides within 50 miles but
25 one who is claiming standing based on visits to the

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1 area.

2 Rather, the Commission indicated that it's
3 the visits' length and nature. Do they establish a
4 bond between the Petitioner, an ongoing connection,
5 and sufficient presence with the area? That is the
6 test.

7 And so simply the fact that Mr. Epstein
8 has indicated a number of days he may be in Allentown,
9 which is approximately 50 miles away, or in some other
10 towns, because he's a member of a board of directors,
11 is not a sufficient allegation. It does not establish
12 the requisite bond, the requisite sufficient presence
13 and connection with the area.

14 In the PFS case, the Commission gave as an
15 example a woman who lived at the reservation
16 periodically. She had relatives there that she came
17 and cared for, and she was also there for child care.
18 And the Commission indicated that was a real bond with
19 the area.

20 Mr. Epstein had also cited a Georgia Power
21 case where an intervenor had a home that he didn't
22 reside at all the time within 50 miles of the plant,
23 but he lived there about one week a month. So about
24 25 percent he was actually living at a home that he
25 owned in the vicinity.

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1 Those are cases where there's a real bond,
2 a real connection, a real ongoing presence, not
3 occasional visits. And I submit to you that if
4 standing can be created simply by occasional visits,
5 then, in essence, anybody has standing simply by
6 traveling to the vicinity of a plant occasionally.

7 I would submit to you that anybody who
8 travels north/south on any of the Pennsylvania
9 highways could claim standing. And what this really
10 means is that Mr. Epstein, by occasionally traveling
11 to other towns, can act much as a private attorney
12 general in any proceeding by simply claiming, "I
13 travel to other towns, and, therefore, I have standing
14 to intervene in any proceeding relating to a reactor
15 in those areas, even though I don't live within 50
16 miles of them."

17 JUDGE BOLLWERK: So -- this is Judge
18 Bollwerk -- if I understand your argument, then,
19 you're saying that the 50-mile presumption, assuming
20 it applies, only applies to those who reside within an
21 area? It does not apply to those who, for instance,
22 travel into the area, who work in the area, who
23 recreate in the area? I mean, where -- what -- I just
24 want to understand the scope of your argument, I
25 guess.

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1 MR. LEWIS: The 50-mile presumption does
2 apply to people who live within the area.

3 JUDGE BOLLWERK: Right.

4 MR. LEWIS: A 50-mile presumption may
5 apply to individuals who frequent the area but don't
6 reside there, if, under this PFS decision, they can
7 establish, by demonstrating their visits' length and
8 nature, that those visits establish a real bond, an
9 ongoing connection, and a sufficient presence in the
10 area.

11 So it is a matter of discretion, it is a
12 matter for the Board to rule, you know, where to draw
13 the line. But I think that the Commission guidance is
14 occasionally visits are not enough. It has to be the
15 sort of frequent, ongoing, more than one day visits
16 that establish a real presence, bonding, connection
17 with the 50-mile area.

18 JUDGE BOLLWERK: All right.

19 MR. LEWIS: And I'll stop there.

20 JUDGE BOLLWERK: All right. Let's see
21 what, then, the NRC staff has to say on this issue.

22 MR. SUBIN: Yes. Lloyd Subin from OGC.
23 I'd like to go a step further and argue that he
24 doesn't have standing. And I'm going to use the Big
25 Rock case where we're getting guidance I think also

1 from the Commission, which says NRC Licensing Board
2 and the Commission itself have recognized proximity
3 standing at such distances where a petitioner
4 frequently engages in substantial business and related
5 activities in the vicinity of the facility, engages in
6 normal, everyday activities in the vicinity, has
7 regular and frequent contacts in the area near a
8 licensed facility or otherwise has visits of length
9 and nature showing an ongoing connection and presence.
10 And then, it goes on to talk about mere occasional
11 trips to areas located close to reactors they're not
12 looking for.

13 I don't believe Mr. Epstein has told us
14 that he has frequent -- I think everything he cited is
15 more of a sporadic type of visiting. He is there on
16 a business nature maybe a couple of days a month at
17 best. A number of the sites that he cited to us, the
18 areas are actually more than 50 miles, as best we can
19 tell, from the site. And, therefore, we believe that
20 these are just sporadic visits. It doesn't meet the
21 frequency and the regular contacts that the Board --
22 the Commission is looking for.

23 JUDGE BOLLWERK: Which ones do you believe
24 are more than 50 miles? This is Judge Bollwerk.

25 MR. SUBIN: I don't remember offhand. We

1 looked -- if I'm not -- I'm not sure if Allentown was
2 even within the 50 miles, unless it was a place that
3 was at the end of Allentown. And I didn't -- I didn't
4 do exact dates. I don't know his -- I didn't use,
5 let's say, his address and use an address in
6 Allentown. But a number of these things we Googled,
7 and they appeared to be over 50 miles from -- in one
8 case, it was about 76 miles.

9 JUDGE BOLLWERK: All right. Well,
10 anything -- Mr. Epstein, you get your chance in a
11 second. Is there anything else from the staff?

12 MR. SUBIN: No, that's it.

13 JUDGE BOLLWERK: All right. Now, sir.

14 MR. EPSTEIN: Yes. Well, first, let me
15 respond to PPL. Basically, they said they were not
16 aggrieved. So if they're not aggrieved, then they
17 weren't aggrieved by the fact that I was conferred
18 standing in the last issue.

19 And, again, they're relying on the PFS
20 case, which I believe is spent fuel storage in the
21 Georgia Power case, which is, you know, again, smaller
22 reactors. But let me get to the heart of this issue,
23 which is the length, nature, and duration of my
24 visits. I live here. I'm 56 miles from the plant.
25 That's where I live.

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1 I penetrate the veil every day just by
2 going to Grantville or Halifax or, you know, taking my
3 daughter up to the Appalachians to walk the trail.
4 This is a daily routine. I'm 47. I've been born and
5 raised here.

6 The Board may speak about I've been on for
7 eight years and will continue to serve on. The length
8 and nature of my visits the PUC mandates, and whenever
9 we convene a meeting I have to be there at least three
10 hours. That's a mandate. I don't have a choice. And
11 that's in addition to driving.

12 By the way, if anybody was paying
13 attention this winter, I-78 was actually shut down for
14 a day and a half. So I guess that could be considered
15 also piercing the veil. At any rate, my problem with
16 the argument from both the PPL and NRC is that these
17 are arguments coming from people that aren't here.

18 I'm here every day. I pierce the veil
19 every day. I work here every day. You know, I was
20 just recently up in Scranton. I'm going to Hazleton
21 next week. I mean, these are well within 25 miles of
22 the plant.

23 So I'm not really sure that we need to get
24 bogged down in what "occasional" and "regular" are.
25 After 47 years of living here, I think I've pretty

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1 much established that I not only lived a little
2 outside the zone, I've actually lived inside the zone.
3 But I'll be here forever. I have a mortgage, I parent
4 here. I don't think there's any question that I have
5 a vested interest. You know, I don't know what else
6 to say when it comes to occasional and regular visits.
7 But just about every day, just to go and shop, I
8 pierce the veil.

9 In terms of the areas not being inside the
10 50 miles, that's nonsense. I don't know what Google
11 says or how reliable Google is, but I believe I
12 referred to Hazleton, Scranton, very, very close. My
13 office is on the northwest side of Allentown --
14 actually, not Allentown itself. It's in the 50-mile
15 zone, as is Fogelsburg.

16 So, you know, frankly, as someone who was
17 born and lived here, I'm kind of taken aback by
18 someone who is not from here telling me I don't live
19 within the zone of interest. However, that's a
20 subjective emotion, and I'll just leave it at that.

21 JUDGE BOLLWERK: When you say "your
22 office," you're talking about the organization that
23 you work for, I take it?

24 MR. EPSTEIN: Yes, 986 Postal Road in
25 Allentown.

1 JUDGE BOLLWERK: Okay. And if you could
2 tell us, what does that organization do?

3 MR. EPSTEIN: The Sustainable Energy Fund
4 is a quasi-public/private entity. It's an
5 environmental finance entity that essentially loans
6 money for alternative energy projects. It was created
7 out of a settlement with PPL in 1998 in which the
8 company that Mr. Lewis represents was a party to.

9 So we have assets right now of about
10 \$25 million. We vet loans, and, in fact, we basically
11 only loan -- our mandate is to loan and interact with
12 people within the 29-county PPL rate base. So much of
13 the business activity we do, not all of it, but most
14 of it has to be within 50 miles of the plant.

15 JUDGE BOLLWERK: In terms of the meetings
16 that you spoke of, you've indicated in your pleading,
17 I guess there is about approximately a half dozen a
18 month?

19 MR. EPSTEIN: It depends on the frequency.

20 JUDGE BOLLWERK: Right.

21 MR. EPSTEIN: And it depends on the
22 timing. There is more meetings when we have a PRI,
23 which is a request for program investment. And when
24 that occurs, there is normally an overnight stay
25 required, because we're lending money and we take that

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1 obligation seriously.

2 But, yes, that's the average. It can be
3 more and it can be less, and that's just for the Board
4 meetings.

5 I was recently in Scranton to speak on
6 behalf -- not on behalf, but with Conoco, and I've
7 been in Hazleton to deal with some other personal
8 issues. So those are -- what I did is I just went to
9 my date book and got you the dates that I knew I would
10 be --

11 JUDGE BOLLWERK: Yes.

12 MR. EPSTEIN: -- 50 miles within the area.
13 I didn't give you the time when I hiked the
14 Appalachian Trails or when I go grocery shopping,
15 because I thought that was unnecessary.

16 JUDGE BOLLWERK: So the meetings are
17 associated with that organization, then.

18 MR. EPSTEIN: Yes.

19 JUDGE BOLLWERK: Okay. I'm sorry.

20 Go ahead. Judge Cole.

21 JUDGE COLE: Yes, Judge Cole here. Mr.
22 Epstein, you listed five cities --

23 MR. EPSTEIN: Yes.

24 JUDGE COLE: -- visited -- Allentown,
25 Conyngham, Fogelsville --

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1 MR. EPSTEIN: Right.

2 JUDGE COLE: -- Hazleton, and Scranton.

3 MR. EPSTEIN: Right.

4 JUDGE COLE: And my perusal of the map
5 indicates that three of those are 47, 45, and almost
6 50 miles from the plant.

7 MR. EPSTEIN: That's correct.

8 JUDGE COLE: And when you talked about
9 Hazleton, you said you handled a personal matter in
10 Hazleton.

11 MR. EPSTEIN: Well, Hazleton, I have -- I
12 have a close friend in Hazleton.

13 JUDGE COLE: Okay. But are most of your
14 business trips associated with the three larger cities
15 there -- Allentown, Scranton, and Fogelsville -- that
16 you mentioned?

17 MR. EPSTEIN: Yes, depending on who the
18 Chairman of the Board is. Right now, that would be
19 the cycle. Frankly, a lot is at the discretion of the
20 Chairman of the Board.

21 JUDGE COLE: Yes. Now, the two closest
22 cities that you mentioned, the closest to the plant --
23 Hazleton, about 15 miles --

24 MR. EPSTEIN: Yes.

25 JUDGE COLE: -- and Conyngham -- how often

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1 do you get there on business trips?

2 MR. EPSTEIN: It kind of depends. Right
3 now, I get there more frequently than I would like,
4 because the Chairman of the Board resides in that
5 area. So --

6 JUDGE COLE: Hazleton or Conyngham?

7 MR. EPSTEIN: Both. He is from Conyngham,
8 and Hazleton is we convene meetings at the Penn State
9 campus in Hazleton normally for finance, but sometimes
10 for PRI.

11 JUDGE COLE: So a consideration, at least
12 as I see it -- and you can debate it -- is the quality
13 time you spend close to the plant. But most of your
14 time is spent at the 50-mile perimeter or just inside
15 the perimeter. Do you think that that qualifies as
16 the proximity qualification?

17 MR. EPSTEIN: Yes, I think it's consistent
18 with the letter of the law and NRC precedent. I don't
19 quibble with 10 or 50 miles. I think it -- the law is
20 pretty black letter when it comes to that.

21 JUDGE COLE: All right, sir. Thank you.

22 JUDGE BOLLWERK: Let me just check. Judge
23 Rubenstein, do you have anything you wanted to talk --
24 ask him?

25 JUDGE RUBENSTEIN: I'm interested in why

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1 he thinks those peripheral areas create a bond to the
2 plant.

3 MR. EPSTEIN: Those peripheral areas?

4 JUDGE RUBENSTEIN: Yes.

5 MR. EPSTEIN: Well, the whole 29-county
6 rate base is a bond. Those are just the places that
7 I have to attend, and I do attend for business.

8 I'm from the area. I'm from South Central
9 Pennsylvania. I mean, I've had a bond here all my
10 life. That is the bond that I'm dealing with for the
11 -- just I guess to establish standing, but it doesn't
12 mean I don't have any other established bonds, or I
13 don't make any other visits. I'm unable to tell you
14 with any degree of preciseness when exactly I'm going
15 to be in Shamokin or Pottsville or any other areas
16 close.

17 So, I mean, I'm from here. You know, if
18 you're going to argue that you have to be, you know,
19 within 10 or 25 miles, you know, perhaps that is a
20 valid argument. But, you know, on a regular daily, if
21 not weekly, basis, I just pierce the veil. I don't
22 know what else to tell you, because when we have these
23 meetings they are usually no less than three hours,
24 and I have to spend anywhere from an hour to an hour
25 and a half to get there.

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1 However, when I'm looking at a project,
2 the projects are well within the 50-mile area. So I
3 think I have a bond not only to the plant, but to the
4 electric the plant generates and the customers and the
5 citizens in the area.

6 JUDGE BOLLWERK: All right. Anything
7 other Board members have, then, at this point?

8 JUDGE RUBENSTEIN: Not in this area.

9 JUDGE BOLLWERK: Okay. All right. Let's,
10 then, move on to Technical Contention 1, which is, if
11 I could summarize, basically an assertion that PPL
12 failed to consider the impact of its proposed uprate
13 on water usage.

14 And I recognize, Mr. Epstein, you sort of
15 talked about this a little bit before, but if you'd
16 like to give, again, another summary of your basic
17 argument in this area --

18 MR. EPSTEIN: Sure.

19 JUDGE BOLLWERK: -- it would be useful to
20 the Board. Thank you.

21 MR. EPSTEIN: Okay. And I'm just going to
22 take from the NRC playbook where that -- you asked for
23 a brief explanation of the basis of the contention.
24 And the crux of what I'm arguing is that state and
25 federal regulations which may impact, constrict, or

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1 restrict waterflow, water use, and cooling systems at
2 the plant can possibly lead to health and safety
3 challenges for local communities, have not been
4 properly vetted or integrated in the uprate
5 evaluation.

6 And I notice Mr. Lewis stated in his reply
7 in Section 3.121 of PPL's environmental report,
8 "Reflects the fact that with updated conditions we
9 will have to change the approval that we need with
10 respect to the maximum amount of water we will be
11 consuming."

12 However, acknowledging the need for a
13 change does not guarantee -- and PPL has not
14 established that it will receive such approval. And
15 the issue raised in the contention in my mind within
16 the scope of the proceedings are safety-related
17 omissions and a failure to coordinate with Act 220 and
18 SRBC 803.42 and 803.44.

19 In terms of a direct relationship with the
20 river, because I think that was the crux of PPL's
21 argument, PPL has stated that the pond requires
22 replenishment from the Susquehanna River. And if you
23 just look at the tech specs, assuming the makeup pond
24 requires .36 million gallons per day and evaporates
25 .065 gallons a day, there is a nexus -- a direct nexus

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1 daily of about 300,000 gallons. So it's difficult for
2 PPL to argue its consumption has no relationship to
3 plant cooling, the state of the river, groundwater
4 supplies, or aquatic life.

5 I believe this issue is material to the
6 proceeding, inasmuch as water use and consumption,
7 water supply and water chemistry, have a direct and
8 indirect relationship with safety-related components,
9 plant cooling, and are intimately connected to the
10 health and safety of the river and the local
11 community.

12 Now, PPL, you know, points out that the
13 spray pond is a safety component. The NRC and PPL, as
14 do I, are concerned with cooling towers in the makeup
15 systems. However, the NRC's reactor oversight process
16 uses performance indicators to track scrams and power
17 changes of 20 percent or more. Each scram or power
18 change creates a safety challenge.

19 So a station has to make generation
20 reductions based on compliance with water use
21 restrictions, SRBC 803.42 and 803.44, or water budget
22 restrictions consistent with Act 220, and those water
23 conditions cause scrams or power reductions, and I
24 don't believe it's accurate or factually correct to
25 segregate generation from safety.

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1 If PPL has to shut the plant to reduce
2 power, then alternative systems and backups are also
3 shutter challenge. PPL would then be testing the
4 safety and emergency core cooling system.
5 Essentially, there is no separate imaginary fence
6 between generation and safety.

7 And I guess the crux of that argument is
8 seasonal flow, Act 220, SRBC regs, may make the amount
9 of power for generation unreliable. So frequent power
10 decreases in scram show up as safety indicators in the
11 ROP and put stress on the system. The NRC doesn't
12 compile generation indicators. It analyzes safety
13 indicators like scrams and power reductions. The
14 uprate clearly has the potential to create safety
15 challenges.

16 I just think we need to tear down this
17 fictional fence that PPL and the NRC have created
18 between power generation and safety. I believe I have
19 established a nexus between safety and generation and
20 defeated PPL's argument, "Mr. Epstein provides no
21 basis to assume the plant surface water withdrawals
22 will be restricted or the possibility is material to
23 the licensing."

24 However, PPL cannot produce any evidence
25 that water use or consumption will be -- will not be

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1 restricted, no evidence whatsoever, and PPL
2 acknowledges an increase in consumptive use will be
3 required.

4 In addition, as I pointed out, the
5 Susquehanna steam electric station may already be out
6 of compliance with their initial uprate of 1.4 percent
7 in 2001. So, basically, the facts we're looking at
8 are Act 220 of 2002, which mandates the DER to update
9 the state water plan by 2008, "The Environmental
10 Quality Board will adopt regulations addressing water
11 use registration, period reporting, and
12 recordkeeping." And the DEP is authorized "to enforce
13 the Act." It also establishes the duty of any person
14 to proceed diligently in complying with orders of DEP.

15 And then, as you're probably aware,
16 Sections 803.42 and 803.44 of the basic commission
17 regard -- relate to approval and reporting
18 requirements for surface water withdrawal. The
19 existing permits that Susquehanna has predate the
20 surface water withdrawal requirement the basic
21 commission now resides over.

22 The concise statement of facts are similar
23 to the argument I just made before, and I would just
24 add that, you know, PPL does acknowledge the need for
25 increased and consumptive water use, and you can't

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1 guarantee it will be available for generation or pond
2 purposes based on grandfathered regs.

3 Again, to go over the issue of support or
4 sufficient information, you know, my argument is that
5 PPL had acts of omission, and the NRC's continual
6 insistence on mischaracterizing state water use
7 regulation as "anticipated events" do not cure the
8 safety problems that I raise.

9 And that's a brief synopsis of
10 Contention 1, or T1.

11 JUDGE BOLLWERK: All right. Anything else
12 you want to say about T1 at this point?

13 MR. EPSTEIN: No.

14 JUDGE BOLLWERK: All right. Then, let's
15 turn to PPL.

16 MR. LEWIS: Thank you, Judge Bollwerk.
17 This is David Lewis. It's hard responding to Mr.
18 Epstein's assertions, because they are really all over
19 the place. But I think the gist of what I heard was
20 that PPL will need an approval to increase its
21 consumptive use and approval by the Savannah -- sorry,
22 the Susquehanna River Basin Commission.

23 And I would submit to you that that is
24 true, but it's irrelevant. On page 18 of our answer,
25 we cited the Commission's case law that indicated that

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1 nuclear plant operations may depend on other state
2 permits that are required for water discharges, and I
3 submit a water consumption is no different.

4 But it's not the job of the NRC to
5 litigate whether another agency is going to grant
6 permits that are solely within the agency's
7 jurisdiction. If we don't have a permit to withdraw
8 water, then we need -- then, we would not be able to
9 operate, and there would be no safety issue.

10 If we do get the permit that we need, we
11 will have the water, and there will be no safety
12 issue. In any event, you know, whether we get that
13 permit or not is a matter that is -- will be resolved
14 by the SRBC, and the Commission has indicated the
15 Board should construe the scope of their authority to
16 avoid, wherever possible, litigating the issues within
17 the primary responsibility of another agency.

18 And that while water permits may be
19 necessary for a nuclear plant to operate, NRC
20 licensing is not dependent on those permits. You
21 know, whether those permits are obtained will be
22 determined by the agencies that grant those permits.

23 So that really is the main response to
24 this contention.

25 Mr. Epstein is also arguing that there may

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1 be increased scrams and safety challenges. His whole
2 argument simply ignores the design of the plant and
3 the presence of an ultimate heat sink, which in
4 essence provides a source of water that is sufficient
5 to provide cooling for both units over a 30-day
6 period, and not only provides cooling over the 30-day
7 period but accommodate a design basis/loss of coolant
8 accident at one unit, bring both units to a cold
9 shutdown, and maintain that over a 30-day period.

10 The NRC licensed the plant based on the
11 sufficiency of that ultimate heat sink. And as a
12 result, the river intake and the Susquehanna River is
13 simply not relied on as a safety-related system. It
14 does provide long-term makeup, and it does provide
15 long-term water for the cooling towers for generation.

16 But it is not a source that is needed
17 every moment for safety. And as a result, Mr. Epstein
18 is simply not raising a contention that relates to the
19 design and licensing basis of the Susquehanna plant.

20 JUDGE RUBENSTEIN: This is Judge
21 Rubenstein. Are there technical specification
22 constraints on the water supply to the UHS?

23 MR. LEWIS: Yes, Judge.

24 JUDGE RUBENSTEIN: Could you expand on
25 that?

1 MR. LEWIS: There is a requirement that
2 the spray pond -- the ultimate heat sink is an eight-
3 acre spray pond that contains 25 million gallons of
4 water, at least 25 million gallons. In fact, it
5 normally contains more.

6 The technical specifications establish a
7 minimum water level measured a height above mean sea
8 level, and that level has to be checked twice a day.
9 If the level drops below the required elevation, then
10 there are action statements. Let me see if I have
11 those.

12 The water level has to be maintained at
13 678.1 feet MSL, and has to be checked once every 12
14 hours. That's tech spec 4.7.1.3. If the spray pond
15 is not operable, the plant is required to go to cold
16 shutdown within 24 hours, and that's tech spec
17 3.7.1.3.

18 JUDGE RUBENSTEIN: Are these independent
19 of any subsequent water availability decisions that
20 may be made?

21 MR. LEWIS: I'm not sure I understand your
22 question, Judge Rubenstein. Could you --

23 JUDGE RUBENSTEIN: Are the tech specs and
24 the minimum water supply and the ultimate heat sink
25 independent of what water may be available from the

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1 Susquehanna? In other words, if you don't meet your
2 tech spec requirements --

3 MR. LEWIS: The tech specs do not depend
4 on the river intake being operable. They don't depend
5 on having a source of makeup for the ultimate heat
6 sink. They only depend on, do you have the requisite
7 volume of water, as determined by the height of the
8 water in that reservoir, to meet the 30-day cooling
9 requirement, the ability to bring both plants to cold
10 shutdown and maintain that for a 30-day period and
11 handle a LOCA.

12 And by the way, that amount of volume in
13 the UHS is also sufficient to maintain spent fuel
14 cooling over that 30-day period, too.

15 This approach that the NRC takes of
16 requiring a 30-day supply of water in an ultimate heat
17 sink has always been the NRC's approach in the
18 standard review plan and in their regulatory guide.
19 So this is the NRC's safety standard. It's reflected
20 in Reg. Guide 1.127, and in NRC's standard review plan
21 in SRP Section 9.2.5.

22 Those sections indicate that what is
23 required for the plant is a 30-day supply of water.
24 I think there has always been a recognition that in
25 the longer run you may need additional water for

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1 residual heat removal. But if you can handle a
2 disruption for 30 days, and bring the plants to a cold
3 shutdown, the volume of water that you need for
4 residual heat removal in the long run is much, much
5 smaller, and is not a safety issue. It's not hard to
6 find a source at that point to supply RHR.

7 JUDGE RUBENSTEIN: Thank you.

8 JUDGE BOLLWERK: All right. Judge Cole,
9 do you have anything?

10 JUDGE COLE: I have no questions.

11 JUDGE BOLLWERK: Anything else on this
12 one, Mr. Lewis?

13 MR. LEWIS: No, Judge Bollwerk.

14 JUDGE BOLLWERK: All right. Let me turn,
15 then, to the NRC staff.

16 MR. SUBIN: Yes. To be brief, the only
17 thing that we would have to add is that, again, we
18 don't believe that the contention is related to the
19 uprate. I don't think he raises anything that is
20 something that we would be responsible for.

21 And I turn again -- I would turn to the
22 Commission, the Commission's memorandum and order on
23 the Vermont Yankee, where they have said that we
24 shouldn't be second-guessing -- we should not be
25 second-guessing and looking at whether EPA or the

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1 state regulatory agencies do. They do their job, and
2 we do ours.

3 JUDGE BOLLWERK: All right. Anything from
4 either of the Board members for the staff?

5 JUDGE RUBENSTEIN: No.

6 JUDGE COLE: No.

7 JUDGE BOLLWERK: All right. Then, let's
8 go back to Mr. Epstein. Given what you've heard, sir,
9 what additional information do you want to provide us?

10 MR. EPSTEIN: Well, I would just point out
11 a couple of things. First of all, the Susquehanna
12 River Basin Commission is not state. It's a unique
13 federal basin commission, and I think we all need to
14 recognize we're living in a different regulatory
15 world. Pennsylvania is now deregulated, so there was
16 no PUC hearing. And a lot of these events are not
17 occurring in isolation.

18 You still need a permit to increase
19 surface water withdrawal. You still need to address
20 what happens when the spray pond dips below certain
21 levels. You still need to assure the spray pond and
22 the heat sink don't suffer from aging problems, and
23 that there aren't any problems with leakage from the
24 pond.

25 So there's a number of issues that are out

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1 there, and, you know, I would just say that I'm still
2 disturbed that nobody has really addressed from PPL
3 the fact that they didn't even go through this process
4 for their uprate in 2001. So we still may have an
5 issue before us that hasn't been addressed.

6 So what I'm saying is I don't think taking
7 additional time to examine coordinating with DEP or
8 the Susquehanna River Basin Commission is really going
9 to be an undue hardship on the NRC or PPL.

10 JUDGE BOLLWERK: All right. Anything
11 either of the Board members have? Go ahead, Judge
12 Rubenstein.

13 JUDGE RUBENSTEIN: I don't know if this is
14 a good time, Judge Bollwerk. Both PPL and the staff
15 in their briefs -- and in some of the discussion this
16 morning -- have addressed the lack of citations in
17 specific sections of the SAR, the Safety Analysis
18 Report, or the license application, and the
19 environmental report, and deficiencies in those
20 sections, and the basis for challenging their content.

21 And I'd like to focus on it just a little
22 bit with Mr. Epstein.

23 MR. EPSTEIN: Sure.

24 JUDGE RUBENSTEIN: Okay. Okay. Let's
25 discuss for -- of course, we're -- much of what I --

1 underlying the discussion so far on Contention 1 is:
2 a) it's not in the scope of the NRC, and it's not in
3 the scope, in particular, of this hearing, which is in
4 particular focused on the extended power uprate.

5 . Okay. Let's -- in particular, let's
6 discuss the Commission's review criteria for the EPU
7 license amendments. Mr. Epstein, are you acquainted
8 with the NRC standard review plan NUREG-0800?

9 MR. EPSTEIN: Yes.

10 JUDGE RUBENSTEIN: Are you acquainted with
11 review standard 001?

12 MR. EPSTEIN: Yes, but I haven't -- that's
13 not committed to memory.

14 JUDGE RUBENSTEIN: Well, let me help you.
15 You're aware of the document, and you know that NRC
16 issued a review standard for extended power uprates,
17 RS-001, in December 2003. Are you acquainted with the
18 document, or would you like me to do a little
19 refreshing, so -- to help you?

20 MR. EPSTEIN: Refresh away.

21 JUDGE RUBENSTEIN: Well, the standard is
22 the first-of-a-kind document and provides a
23 comprehensive process and technical guidance for
24 reviews by the NRC staff. And it provides useful
25 information to the licensees on what to consider in

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1 applying for an extended uprate.

2 MR. EPSTEIN: Right.

3 JUDGE RUBENSTEIN: And this is something
4 that the NRC Advisory Committee on Reactor Safeguards
5 endorsed as an excellent review standard for extended
6 power uprates. And what they did was they compared --
7 they created the review standard by including an
8 evaluation of the basic standard review plan, NUREG-
9 0800, and the -- basically, to determine the
10 applicability and the adequacy of the various standard
11 review plan sections that the review of an EPU
12 application and a developed and revised guidance as
13 necessary.

14 So, in effect, this says this is the scope
15 of the staff's review, in particular for an extended
16 power uprate. And the purpose of this, which you may
17 or may not recall, but let me help you a little bit --
18 and this is from like page 5 of the review standard --
19 the purpose is to provide guidance to the Nuclear
20 Regulatory Commission staff's review of extended power
21 applications to enhance consistency, quality, and --
22 I'm going back -- and completeness of reviews.

23 This in a way defies the scope of the
24 review of a safety analysis or a license application
25 for an EPU. The review standard also, in the same

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1 way, provides the boundaries for the licensees to
2 guidance documents the staff uses for -- for them in
3 saying, "This is how we review an EPU application."
4 And, in particular, they also provide acceptance
5 criteria for the areas of review.

6 So, in essence, it tells the license
7 applicant, for this amendment in particular, how to
8 prepare their safety analysis report, and it
9 establishes the areas within the staff's scope of
10 review, and to some degree within the Licensing
11 Board's scope.

12 And we discussed a little bit about the
13 review standard requires the licensee to identify
14 differences between the design basis and the
15 information and review standard. So what we have is
16 a number of contentions which are being challenged on
17 these kinds of things.

18 Now, let me get fairly specific, and I'm
19 going to move on to some of your other areas. Let me
20 check in here.

21 MR. EPSTEIN: Do you want me to deal with
22 what you've said now or later?

23 JUDGE RUBENSTEIN: Well, I haven't gotten
24 specific yet.

25 MR. EPSTEIN: Yes, but I -- before we get

1 specific, I'd like to address some of the generic
2 issues you raised, if that's okay.

3 JUDGE RUBENSTEIN: Okay. By all means.

4 MR. EPSTEIN: Yes, because I think what
5 you're talking about -- and I understand and respect
6 the fact -- is there is a standard review process and
7 generic scoping that create boundaries. I would also
8 point out that, you know, that process cannot
9 anticipate all issues and challenges or concerns that
10 may arise at the site-specific facility.

11 And, you know, to the credit of the NRC
12 staff, they plainly said in their reply to me, "It's
13 impermissible for Petitioner to rely on generalized
14 suspicions and vague references to alleged events at
15 the facility, and equally unparticularized portions of
16 general studies providing no factual basis."

17 I think the difference here is that I'm
18 addressing, in seeking to clarify and define what I
19 believe to be the company's broad statements, factual
20 omissions, not commissions, but factual omissions, and
21 unique legal compliance events.

22 And I'm not here to oppose the uprate.
23 I'm not here to oppose the relationship. I'm here to
24 add value and bring awareness to issues that have
25 fallen through the cracks.

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1 So I'm not here to challenge the process
2 or even call into question large portions of the
3 scoping and generic review that PPL and NRC has
4 undertaken. And this may be a unique perspective for
5 the NRC. I'm here to add value to the proposition,
6 point out some of the weaknesses and missing
7 components, Judge.

8 So, you know, I understand what you're
9 saying. I'm clearly aware of that. And, you know, my
10 argument is that I think I can add value to the uprate
11 by looking at some of these issues that seem to have
12 fallen through the unanticipated cracks.

13 JUDGE RUBENSTEIN: Well, you've clearly
14 added value to the Board discussion by intervening in
15 both the previous hearings on the license extension.

16 However, the limitations are fairly clear
17 in terms of scope. For example, Section 3.2 of the
18 review standard sets out the templates for the safety
19 review for BWRs. And, for example, in that area,
20 insert 9, they deal with the source term and
21 radiological consequence analysis. And your
22 Contention 3 alludes to that.

23 Now, one of the problems and the reason I
24 brought up the standard review plan and the SRP and
25 the issue of scope is one of the ways -- one of the

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1 requirements for contention admission is that one goes
2 to the environmental report or the licensing
3 application and gets fairly specific on something that
4 they want to controvert. And then, they provide a
5 basis for this.

6 So in each of the contentions I find a
7 little difficulty in trying to understand what you're
8 saying in terms of what is the specific staff
9 requirement, was it satisfied, how is it controverted.
10 So, you know, if we were -- if this was a lecture in
11 a class, I would say, for each contention, can you
12 demonstrate they are within the scope of the staff's
13 review by identifying which part of the Code of
14 Federal Regulations, or at least the review standard,
15 they do not satisfy.

16 So, you know, please reference the
17 applicable section of the SAR or ER that you take with
18 -- issue with and why. So in the context of not
19 talking generally about value of your concern of
20 Susquehanna River and its basin, how would you answer
21 that kind of a question?

22 MR. EPSTEIN: I would answer it, and this
23 is -- hopefully, we have time here, because I'm a
24 former history professor with another question. And
25 that question is: because something doesn't exist in

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1 the premeditated scoping process, does that mean it
2 can't be raised?

3 JUDGE RUBENSTEIN: Oh, of course it can be
4 raised. The NRC makes available under the 2.206
5 section of the regulations the ability to say, "This
6 is inadequate."

7 MR. EPSTEIN: Yes, I've gone through the
8 2. -- it's like a cat chasing its tail, though. I
9 mean, there's a timeliness to the relicensing and the
10 uprate, and I'm raising issues that may not fit neatly
11 into the SER or provide exact cites for a basis for
12 contravention that may need a specific request.

13 I recognize and acknowledge that. What
14 I'm saying is that there's omissions, and I'm raising
15 those issues, and I'm not sure where they fit in into
16 the process that you talked about. But because they
17 don't -- because it's a square peg perhaps in a
18 circular hole doesn't mean that they don't fit
19 somewhere.

20 And, you know, I don't have the mastery of
21 the document you do, sir. Frankly, I just thought the
22 issues, especially in T1 and T2, were acts of omission
23 rather than commission. And rather than assigning
24 blame, I'd just ask PPL, and also the NRC, to review
25 the issues I raised.

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1 Look, I'm more than happy to do that. In
2 fact, let's be frank, I offered to settle this before
3 we even started, so we could avoid the litigation.
4 But I'm simply looking for a way to redress some of
5 these issues, and they don't neatly fall into
6 anybody's regulatory protocol.

7 There is no PUC hearing. The SRBC is
8 after the fact. DEP can't enforce their regs until
9 2008, but everybody knows they're out there. So, you
10 know, I'm suspended in a regulatory freefall raising
11 these issues in this current proceeding.

12 If you guys decide this is not where they
13 go, then, you know, I'll continue to pursue them. But
14 I think the point you raise is a valid point, you
15 know, and I don't know that you can anticipate every
16 safety challenge event or incident in a generic
17 scoping tool.

18 So, you know, my response may not satisfy
19 your curiosity. It may raise more questions. But I
20 think it's possible, and I've raised two technical
21 contentions that I feel need to be addressed and
22 perhaps there was little guidance or information for
23 either PPL or NRC to follow.

24 JUDGE RUBENSTEIN: Okay. I appreciate
25 your views on it.

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1 MR. EPSTEIN: Yes.

2 JUDGE RUBENSTEIN: Thank you.

3 MR. EPSTEIN: Sure.

4 JUDGE BOLLWERK: All right. I don't think
5 there's anything else, then, on TC1. Do either of the
6 Board members have -- Judge Cole?

7 JUDGE COLE: Yes, this is Judge Cole. Mr.
8 Epstein?

9 MR. EPSTEIN: Yes.

10 JUDGE COLE: There has been some serious
11 question raised about whether the issue you raise here
12 -- the water use issues -- are inside the scope of an
13 NRC review, and whether it's one of the things that we
14 have to consider --

15 MR. EPSTEIN: Right.

16 JUDGE COLE: -- whether to issue this
17 license. And it deals with the SRBC and the
18 Department of Environmental Resources and whatever
19 their activities have to be with respect to providing
20 water for the plant.

21 But isn't that speculative? We don't know
22 -- they're going to have to get those permits in order
23 to get the water. If they don't get the permits,
24 they're not going to be able to do what they want to
25 do.

1 MR. EPSTEIN: No, that's the point I'm
2 raising, Your Honor.

3 JUDGE COLE: Is that a problem that we
4 have to address?

5 MR. EPSTEIN: Well, I think --

6 JUDGE COLE: Or is that a problem for the
7 plant?

8 MR. EPSTEIN: Well, no, but I think -- I
9 think that we have an uprate from 2001 that hasn't
10 gone through the vetting process, so we have a
11 precedent that that's not going to happen and that the
12 company could move forward. So you can't presume
13 they're going to get those compliance permits, or
14 they're going to work with the new regulatory
15 protocols.

16 These are not unanticipated. These are
17 things that have occurred -- first of all, the SRBC
18 protocols occurred after the initial license was
19 issued. The Act 220 came out in 2002, so some of
20 these things are nuanced and, you know, this is the
21 first pathway that either the company or regulatory
22 entities are walking with these issues.

23 So I don't think it's clear-cut, and I
24 think you can assume that they're going to be granted
25 or not granted. And what I'm saying is, look, let's

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1 have a dialogue with DEP. Let's have a dialogue with
2 the Susquehanna River Basin Commission. Let's work
3 through this together. Let's not deal with it in
4 isolation so that we create a tragic event where one,
5 you know, denial of a permit, you know, holds up the
6 whole works.

7 JUDGE COLE: Who should have the dialogue?

8 MR. EPSTEIN: I think the NRC and the
9 Susquehanna River Basin Commission, which have begun
10 the dialogue, as PPL has begun the dialogue with the
11 Susquehanna River Basin Commission also. I think we
12 need to get together in a room to clarify this issue.

13 I mean, and there's a number of issues out
14 there, and the Susquehanna River Basin Commission is
15 struggling with it also. I mean, they have just
16 recently hired a nuclear engineer, because they have
17 three plants on the river. So these are emerging
18 issues that don't fit neatly into anybody's protocol.

19 And what has always been of concern to me
20 is that, you know, we're not separate regulatory
21 moats. You know, these issues can cross-cut. I don't
22 think that's a bad thing.

23 JUDGE COLE: All right, sir. I understand
24 your position.

25 MR. EPSTEIN: Okay.

1 JUDGE RUBENSTEIN: I would only add, in
2 addition -- this is Judge Rubenstein -- in addition to
3 the 2.206, you can establish and request a rulemaking
4 on what the NRC's role in water supply ought to be.

5 MR. EPSTEIN: Can I be frank with you?

6 JUDGE RUBENSTEIN: Sure.

7 MR. EPSTEIN: I've done the 2.206 on
8 daycare, and it was a complete waste of time.

9 JUDGE RUBENSTEIN: No, no, I didn't say
10 2.206.

11 MR. EPSTEIN: Yes. And by that, you're
12 talking about the rulemaking, which I did on
13 decommissioning. And, look, and this is not a slam on
14 anybody. There's a degree of frustration on this,
15 because I live here and have been here all my life and
16 lived through Three Mile Island. So we -- again, I'm
17 trying to work within the system and the avenues
18 afforded me.

19 You know, as a parent and a guy who works,
20 there is only so much time. If at the end of the day
21 there is not satisfaction or resolution from this
22 proceeding, sir, I may do that. But I haven't been
23 real optimistic about the outcomes, and I just need to
24 share that with you.

25 JUDGE RUBENSTEIN: I just want you to

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1 establish for the record --

2 MR. EPSTEIN: Sure.

3 JUDGE RUBENSTEIN: -- that there are
4 avenues you can pursue, albeit you view them as
5 frustrating, but there are avenues available to pursue
6 your interest.

7 MR. EPSTEIN: Yes. But there's a
8 timeliness issue also, and TMI is coming up next, and
9 there is precedent. So I appreciate your guidance,
10 and if things don't work out here, then that may be an
11 avenue I have to go through.

12 JUDGE BOLLWERK: This is Judge Bollwerk.
13 Just one question for the staff. Does the staff
14 contemplate or through the process having interactions
15 with the SRBC as this goes forward?

16 MS. UTTAL: Not that I'm aware of, Judge.

17 JUDGE BOLLWERK: All right. Anything from
18 either of the other Board members, then, on the first
19 contention?

20 JUDGE RUBENSTEIN: No.

21 JUDGE COLE: No.

22 JUDGE BOLLWERK: All right. Let's move to
23 the second contention, then, and I think we may have
24 sort of covered parts of it, but let's go ahead and
25 treat it as a separate entity.

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1 This one -- basically, that PPL failed to
2 disclose damaging information regarding faulty and
3 corroded intake piping. Sort of a summary, but,
4 again, Mr. Epstein, what would you like to tell us
5 about this one?

6 MR. EPSTEIN: Well, I don't know that
7 there's much to add to -- you know, you just provided
8 my specific statement and brief explanation. Thank
9 you.

10 But I guess it's important to get to the
11 -- demonstrate the issue raised in the contention is
12 within the scope of the proceeding. And I would just
13 simply say that PPL never directly addresses or rebuts
14 T2, but describes why their inability to monitor the
15 withdrawal of river water in their response -- I think
16 it's page 22 to 27 -- is irrelevant. "The Susquehanna
17 is not relied upon as a safety-related source of water
18 for reactor cooling, and the river intake is not a
19 safety-related system."

20 The company never addressed or explained
21 the failure to submit this information during their
22 filings. And the NRC staff dealt with it briefly by
23 referring to an oblique reference in Section 3121.

24 In terms of why this is material, I'll cut
25 right to the chase. Again, compliance with Act 220,

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1 SRBC 803.42, SRBC 803.44, and the Susquehanna steam
2 electric station will require accurate metering to
3 within five percent on the water diverted to the
4 plant, which cannot be achieved if the intake pipes
5 are partially impaired by residual deposits or
6 bioaccumulation.

7 And the concise statement to support that
8 is similar to what I just uttered, frankly. I don't
9 want to keep reinventing a wheel.

10 I don't know that there's really much to
11 add. I just feel that, you know, this information was
12 not disclosed to the NRC. It was disclosed to the
13 Susquehanna River Basin Commission. I stick to my
14 original claim that it was a hastily filed document.
15 That is essentially borne out by the fact that PPL is
16 still at the Susquehanna River Basin Commission, and
17 they haven't acted on the permit, which is unusual
18 since Peach Bottom, which filed a similar application,
19 received approval within two months.

20 So I think there is an issue here, and it
21 -- and, you know, again, this is something that I
22 think we can work on together. You know, I have
23 offered to bring in other entities, and, frankly, you
24 know, I think when a party has relevant evidence
25 within its control it should produce it. And I'm sure

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1 the company would like to respond to that.

2 But as far as T2, really, there's not much
3 more to add that hasn't already been said, other than
4 requiring the accurate metering -- I'm not sure I
5 included that before -- within five percent of the
6 water diverted, which is an SRBC criteria.

7 JUDGE BOLLWERK: All right. Any questions
8 from either of the Board members at this point?

9 JUDGE RUBENSTEIN: Not from me, sir.

10 JUDGE COLE: Yes. Mr. Epstein?

11 MR. EPSTEIN: Yes.

12 JUDGE COLE: In one of the responses -- I
13 don't know whether it was the staff or the applicant
14 -- they indicated that because of the constriction,
15 whatever it is, in the intake pipe, the flow meters
16 overestimate the intake amount. Is that a concern?

17 MR. EPSTEIN: Well, it -- look, the
18 concern is that there's not accurate metering.
19 Obviously, that would be a beneficial outcome.

20 JUDGE COLE: That's what I thought.

21 MR. EPSTEIN: Right.

22 JUDGE COLE: Yes.

23 MR. EPSTEIN: But you can't guarantee a
24 beneficial out -- you should be -- my opinion, sir,
25 you shouldn't be dependent or contingent on a

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1 beneficial outcome based on faulty equipment. I'd
2 prefer to have a beneficial outcome based on precise
3 equipment and eradicating the deposits or the
4 bioaccumulation.

5 JUDGE COLE: Okay. So I assume that they
6 -- they're in conversations with the SRBC concerning
7 this intake?

8 MR. EPSTEIN: Well --

9 JUDGE COLE: And the accuracy of
10 measurement?

11 MR. EPSTEIN: You'd have to talk to them,
12 because that's where this case goes from here. And,
13 you know, I've been in conversations with the SRBC,
14 and I don't want to -- I can't characterize what PPL's
15 meetings are. I can characterize what mine have been.

16 JUDGE COLE: Yes. All right, sir. Thank
17 you.

18 JUDGE BOLLWERK: Anything from Judge
19 Rubenstein?

20 JUDGE RUBENSTEIN: No. I'm satisfied with
21 this.

22 JUDGE BOLLWERK: All right. Let's turn to
23 PPL, then.

24 MR. LEWIS: Thank you, Judge Bollwerk.
25 This is David Lewis. Mr. Epstein said that we have

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1 not rebutted his contention and explained the
2 omission. I would have said that in the first
3 instance it's Mr. Epstein's obligation as the
4 proponent of the contention to explain why his
5 contention was in scope and why it's material, and
6 that obligation is his, not ours.

7 But the reason why it's -- the intake flow
8 meters aren't addressed in the application is
9 obviously. They are totally irrelevant. And unless
10 Mr. Epstein explains the relevance, there is no basis
11 for his assertion that we are hiding or failing to
12 disclose an important piece of information.

13 The intake flow meters are not safety-
14 related components. The intake -- river intake
15 structure is not a safety-related system. These flow
16 meters are not relied on for any NRC purpose. They
17 are not used in any NRC-related application. They are
18 not used in any NRC safety analysis, and they are not
19 used or relied on at all in the uprate application.

20 Again, it's Mr. Epstein's obligation to
21 explain why they are germane, why they raise a safety
22 issue, and he never does so.

23 In fact, what's extremely telling in this
24 argument, Mr. Epstein just explained that the reason
25 these are material is because they relate to

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1 compliance with SRBC regulations, the Susquehanna
2 River Basin Commission regulations. He doesn't say
3 they are material, because they relate to any NRC
4 regulations.

5 And so, once again, what is absolutely
6 clear is that what Mr. Epstein really wants to
7 litigate is matters solely within the purview of the
8 SRBC, whether we're meeting SRBC requirements. and as
9 I previously discussed, and as are cited in our
10 answer, that's just beyond the scope of this
11 proceeding.

12 I do want to point out, just while I'm on
13 the topic of the SRBC regulations, that on page 6 of
14 Mr. Epstein's reply he cited to 18 CFR 430.13. I just
15 did want the Board to realize that those are the
16 Delaware River Basin Commission regulations, not the
17 SRBC regulations.

18 With respect to the issue of metering,
19 this issue is, in fact, addressed in the application
20 to the SRBC, which is attached as I think Exhibit 1 to
21 Mr. Epstein's petition. So it's clearly before the
22 SRBC.

23 In that application, the application
24 indicates that we're not relying on these meters,
25 because they're probably overstating the flow, simply

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1 because there is buildup inside these intake pipes,
2 which is not surprising for a pipe that has been in
3 the water for 20-some years now.

4 Instead, we are calculating the withdrawal
5 and consumptive use by the performance of the cooling
6 towers, by measuring the spray pond makeup, and by
7 measuring the flowdown. And so we do have an accurate
8 method of determining what our withdrawals are, and
9 that is certainly never challenged.

10 If, in fact, you go to the SRBC
11 regulations that Mr. Epstein cites -- I looked at them
12 carefully -- what you realize is that those
13 regulations, in fact, don't require a metering. They
14 require an applicant to describe the metering or other
15 methods that are being used. And so what we have in
16 our application is currently another method not
17 relying on metering, but instead relying on the
18 performance curves of the cooling towers and
19 measurements of the makeup to the spray ponds and the
20 blowdown from the cooling towers.

21 But as I said, again, that is entirely a
22 matter that is within the purview of the SRBC. It
23 does not relate to any safety determination that the
24 NRC has to make with respect to the uprate, and,
25 therefore, it is simply not material and not within

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1 the scope of this proceeding.

2 JUDGE BOLLWERK: All right. Judge Cole
3 has a question.

4 JUDGE COLE: Yes. Mr. Lewis, with respect
5 to the intake pipe and whatever happens to be clogging
6 the pipe, is the applicant addressing that at all?
7 Surely you don't want a part of the system to just
8 become clogged. Are they doing anything to minimize
9 or eliminate the problem they had with the clogging of
10 the intake pipe?

11 MR. LEWIS: The intake pike is not
12 clogged. It is simply a buildup around the -- inside
13 the pipe that makes its diameter somewhat smaller, and
14 it's -- you know, the exact diameter isn't determined.
15 There is still plenty of flow through those pipes.

16 But the way that the withdrawal works is
17 those flow meters measure the velocity of the water
18 through those pipes, and you then multiply that by the
19 cross-sectional area of the pipe to figure out, you
20 know, what is the volume of water flowing through.
21 And if there is, you know, some buildup and,
22 therefore, that diameter is not known precisely, then
23 those meters aren't as accurate as you'd like them to
24 be. But there is no problem getting water to the
25 cooling towers.

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1 But, yes, in fact, for the SRBC purposes,
2 the application, which again I think is attached to
3 Exhibit 1 to Mr. Epstein's petition, PPL's application
4 to the SRBC indicates that PPL is looking at replacing
5 these pipes to reestablish -- to put in new pipes and,
6 therefore, be able to reestablish the accuracy of the
7 flow meters.

8 JUDGE COLE: So as far as you know -- this
9 is Judge Cole again -- as far as you know, the problem
10 with the decrease in the effective diameter of the
11 intake pipe is not a problem like three-quarters
12 clogged with zebra mussels or something like that.

13 MR. LEWIS: Absolutely not.

14 JUDGE COLE: Okay. Thank you.

15 MR. LEWIS: Either there's no leakage,
16 those pipes maintain their integrity, they move the
17 volume of water that's necessary for the cooling
18 towers and for, you know, other makeup. There isn't
19 any problem in delivering water. It's simply, are
20 these meters which are there only -- you know, not for
21 any NRC purpose, only for SRB purposes -- SRBC
22 purposes, are those accurate.

23 JUDGE COLE: Thank you.

24 JUDGE BOLLWERK: All right. Judge
25 Rubenstein, anything?

1 JUDGE RUBENSTEIN: No, I'm satisfied with
2 that.

3 JUDGE BOLLWERK: All right. Let's hear
4 from the staff, then, if Mr. -- are you finished, Mr.
5 Lewis?

6 MR. LEWIS: Yes, sir.

7 JUDGE BOLLWERK: Okay. The staff, then,
8 please?

9 MR. SUBIN: Briefly, the staff has not
10 much to add other than the fact that we agree that
11 this is just safety-related functions that these --
12 that this has, and that it's not part of an NRC
13 requirement that these are available.

14 JUDGE BOLLWERK: Not safety, you mean.

15 MR. SUBIN: Correct. I said it wrong.
16 They're not safety. You're right. That's what I
17 meant to say. Thank you.

18 JUDGE BOLLWERK: All right. Anything from
19 either of the Board members? No?

20 (No response.)

21 All right. Then, let's turn to Mr.
22 Epstein for whatever rebuttal you'd like to provide.

23 MR. EPSTEIN: Just a couple of points. I
24 mean, the company has flat out said that they're not
25 undertaking any aggressive action to eradicate the

1 material. And see, to me that undermines the
2 reliability of postulated reporting. You know, from
3 where I'm coming from, they're theorizing that other
4 modes or methods or theorems may work. I believe
5 there should be real-time monitoring with physical
6 inspection.

7 Now, that's my belief. It's the only
8 thing I can enforce, and I'd feel a lot better if the
9 company, rather than say to look at other measures,
10 would actually take a proactive approach to this,
11 which they're not.

12 In addition to the cite from the Delaware
13 River Basin Commission, I appreciate the correction
14 from Mr. Lewis and would just point out that this is
15 the Susquehanna River Basin Commission -- sometimes
16 refers to it as Savannah -- so I think we're both at
17 fault for misspeaking at times, and hopefully that's
18 not a fatal error.

19 I'd also point out that these are aging
20 pipes. The pipes are getting old, and so it's not
21 just a bioaccumulation or the materials inside them,
22 it is also the integrity of the pipes. I don't know
23 what their tensile strength is. Neither does the
24 company, if they don't test them.

25 So, again, this is something that disturbs

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1 me. And why wait for a problem, rather than go right
2 at it.

3 Yes, the SRB describes other methods other
4 than metering. But, again, I think it's better if you
5 actually have the metering, so you know what's coming
6 in and out. And we need to get an approved method,
7 which we don't have.

8 The piping itself -- these are issues that
9 are going to be there as the plant gets older, as the
10 accumulation accrues and as the integrity becomes
11 challenged. And my position is that we should be
12 proactive rather than reactive. Again, I would point
13 to the 2001 license uprate, which is yet to be vetted
14 before the Susquehanna River Basin Commission.

15 And this is just part of what I feel is a
16 systematic pattern of omission rather than commission.
17 But, you know, Your Honors, it's up to you to decide
18 if this falls squarely within the realm of this
19 proceeding. I'm just here to raise the issues, and
20 hope we can move it forward.

21 JUDGE BOLLWERK: Judge Cole has a
22 question?

23 JUDGE COLE: Yes. Mr. Epstein?

24 MR. EPSTEIN: Yes.

25 JUDGE COLE: I read in one of the filings

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1 here that -- and it was just mentioned also -- that
2 the applicant has another method for measuring its
3 water use, and the -- both the intake and the
4 discharge and evaporation of water.

5 MR. EPSTEIN: Right.

6 JUDGE COLE: And what's the matter with
7 the system they're using?

8 MR. EPSTEIN: Well, I think it's not that
9 there's anything the matter, but, you know, I was
10 raised that nuclear power was built around, you know,
11 redundancy and depth. And I would have thought the
12 primary means would have been real-time monitoring and
13 physical inspection.

14 So I thought the method that they're using
15 now is perhaps a good backup. But, again, it's just
16 my, you know, belief that there should be regular,
17 constant vigilance in looking at equipment that's
18 aging rather than require -- you know, relying on
19 theorems.

20 And, you know, that may be a philosophical
21 chasm, sir, that we can't brace, but, you know, that's
22 just coming out of my experience of dealing with an
23 accident, that it's just good to have backup systems
24 and to have physical onsite inspection of aging
25 equipment.

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1 JUDGE COLE: So you're not criticizing the
2 accuracy of their reporting of withdrawals and
3 discharges and evaporated water and water use in
4 general?

5 MR. EPSTEIN: No. I'm criticizing that a
6 secondary and tertiary mechanism has become the
7 primary means of evaluation. I think we're dealing
8 with a plant that's getting old, with equipment that's
9 getting old, and I think it needs to be looked at.

10 JUDGE COLE: But you're not challenging
11 the accuracy of those reports.

12 MR. EPSTEIN: I haven't yet, because I
13 haven't had the ability to look at it. Neither has
14 the Susquehanna River Basin Commission. So at this
15 particular point, I have not, but I'm not willing to
16 blindly accept them either, to be frank with you. I
17 just think these methods should basically confirm what
18 physical primary real-time monitoring would say.
19 Hopefully, I'm clear.

20 JUDGE COLE: All right, sir.

21 MR. EPSTEIN: This should be a means to
22 confirm the results from real-time monitoring.

23 JUDGE COLE: All right, sir. Thank you.

24 MR. EPSTEIN: Yes.

25 JUDGE BOLLWERK: Judge Rubenstein, any

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1 questions?

2 JUDGE RUBENSTEIN: No. I think his
3 concern is very clear to me.

4 JUDGE BOLLWERK: All right. Let's, then,
5 move to the third technical contention, Number 3.
6 And, again, to summarize, PPL has failed to consider
7 the consequences of an accident caused by its proposed
8 uprate.

9 Mr. Epstein?

10 MR. EPSTEIN: I have nothing to add. And
11 I've got to be frank with you, I ran through my
12 presentation, and I ran out of time. So I -- you
13 know, I'm going to let Contention 3 stand. And as a
14 former schoolteacher, you know, when you run out of
15 time, you run out of time.

16 And I didn't want to breach the rules that
17 you provided. I couldn't get my presentation within
18 15 minutes, so that -- Tech 3 is going to have to ride
19 on its own merits.

20 JUDGE BOLLWERK: Yes. Judge Cole has a
21 question.

22 JUDGE COLE: No, not a question, Mr.
23 Epstein, but if you think you need a couple more
24 minutes, we're willing to give it to you.

25 JUDGE BOLLWERK: Absolutely. You have

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1 plenty of time. So if you have something you want to
2 say, you certainly can.

3 MR. EPSTEIN: Well, that particular
4 technical specification I think is just philosophic in
5 nature. And I don't know, frankly, if it's within the
6 scope of this. It's just I'm viewing things
7 differently than you are.

8 And when I say "you," I think that's the
9 industry and the NRC, so I'm raising an issue that is
10 perhaps more generic in scoping than particularized to
11 Susquehanna. And, you know, I'm satisfied from the
12 response I got back, which was predictable. I just
13 look at the world a little differently.

14 JUDGE BOLLWERK: All right. Judge
15 Rubenstein?

16 JUDGE RUBENSTEIN: Well, I have something
17 for PPL and NRC --

18 JUDGE BOLLWERK: All right.

19 JUDGE RUBENSTEIN: -- in this area.

20 JUDGE BOLLWERK: Okay.

21 JUDGE RUBENSTEIN: Should I wait, or
22 should I --

23 JUDGE BOLLWERK: Let's let them -- let's
24 go ahead and let PPL and then NRC speak, and you can
25 ask your question with either one of them or both of

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1 them.

2 JUDGE RUBENSTEIN: Okay.

3 JUDGE BOLLWERK: So --

4 MR. LEWIS: Yes, Judge Bollwerk. This is
5 David Lewis. Just a couple of points relating to Mr.
6 Epstein's reply. In the original contention, he
7 asserted that the uprate application hasn't looked at
8 the increased consequences from a higher core
9 inventory than our answer pointed out that, in fact,
10 the application did. And there was no demonstration
11 of any deficiency in the application.

12 In the reply, Mr. Epstein referred to some
13 new information relating to fuel failure and the
14 transnuclear, new homes cask density problems
15 associated with reracking of spent fuel. I just
16 wanted to respond to those points very quickly.

17 First of all, assertions like this in the
18 reply are not proper, and I would refer the Board to
19 the Commission's decision in CLI04-35, 60 NRC at 623,
20 where the Commission said, "What our rules do not
21 allow is using reply briefs to provide for the first
22 time the necessary threshold support for contentions."

23 Beyond that, however, I also just want to
24 point out a couple of things in the application. The
25 uprate has no effect on spent fuel racks, and I would

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1 refer the Board to the safety analysis report at
2 page 6-6, which states, "There is no effect on the
3 design of the SSES fuel racks, because the original
4 fuel pool design temperature is not exceeded."

5 There is no new fuel designs. I would
6 refer the Board to the application -- the main
7 enclosure at page 24.

8 In addition, the spent fuel cask design is
9 simply not an issue in this proceeding, even though
10 the fuel is not being changed, but the cask design is
11 approved by rule in 10 CFR 72.214. These are cask
12 designs that are, of course, approved by a certificate
13 of compliance, and they are generally licensed. And
14 so the design of the ISFSI is simply not an issue in
15 this proceeding.

16 That's all I have.

17 JUDGE BOLLWERK: All right. Judge
18 Rubenstein, do you want to ask your question now, or
19 do you want to wait and hear from the staff?

20 JUDGE RUBENSTEIN: I can ask it now.

21 JUDGE BOLLWERK: All right.

22 JUDGE RUBENSTEIN: In Contention 3 -- and
23 this is mainly to clarify it, and I sort of may drift
24 a little bit into merit, but it's mainly focused on
25 material -- materiality. It's for the PPL and the

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1 staff could add whatever they want.

2 The staff states in its contention that he
3 -- and I'm going to read the parts I want from the
4 second paragraph. "The amount of radioactivity in the
5 reactor core, and thus available for release in the
6 event of an accident, is significantly more at 120
7 percent power than at 100 percent power." I agree
8 with this.

9 Then, the previous sentence says, "PPL and
10 NRC are overly reliant on compliance with NRC
11 regulations, without examining the consequences of an
12 accident caused by the proposed uprate."

13 So just to clarify what the situation here
14 is based on an EPU, my question is -- well, at higher
15 power level, more radioactive fission products will
16 accumulate in the fuel. And the question 1 becomes,
17 during regular operation, how is the radiological
18 release rate controlled? In other words, you have rad
19 waste systems, and that type of thing.

20 So describe the effect of the increased
21 power on the rad waste system, as to capacity, and why
22 the radiological release rate is acceptable. And
23 we're sort of drifting a little into the merits, but
24 I want to clarify the part where we're overly reliant
25 on the regulations.

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1 So, PPL, go at it.

2 MR. LEWIS: Judge Rubenstein, I don't
3 think I can do it. The --

4 JUDGE RUBENSTEIN: Well --

5 MR. LEWIS: -- focused on accidents, and
6 I can explain how the applicant -- application
7 addressed accident consequences, but the contention
8 didn't address the impact on the rad waste system and
9 normal releases and control of those releases. I
10 believe that is addressed in the application. I
11 just --

12 JUDGE RUBENSTEIN: Aren't rad waste
13 systems administratively controlled?

14 MR. LEWIS: They definitely are. I mean,
15 the --

16 JUDGE RUBENSTEIN: Do they change with the
17 operating -- with the extended power operation?

18 MR. LEWIS: I don't know, Judge. The
19 control mechanism doesn't change, and the release
20 limits won't change. I don't know whether a slightly
21 greater amount of rad waste is generated, but as far
22 as controlling releases, for example, in liquid
23 releases, the control regime that applies at any
24 nuclear plant is that you have holdup tanks and you
25 have limits and you have to sample and measure those

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1 tanks and determine compliance with limits. And,
2 therefore, you always maintain compliance with those
3 limits.

4 Those limits are set on ALARA
5 considerations, which maintain doses on the order of
6 three millirem or something on that level.

7 What I'm saying, Judge Rubenstein, though,
8 is I just haven't looked at these portions of the
9 application to know what's in the application with
10 respect to --

11 JUDGE RUBENSTEIN: Well, okay.

12 MR. LEWIS: -- routine releases. But what
13 I can say is that with respect to accident
14 consequences --

15 JUDGE RUBENSTEIN: I was about to ask you
16 that.

17 MR. LEWIS: -- the --

18 JUDGE RUBENSTEIN: Let me ask the
19 question, and you can answer it.

20 MR. LEWIS: Okay.

21 JUDGE RUBENSTEIN: During a postulated
22 accident, an increase in the radioactive fission
23 products in the fuel could lead to an increase in
24 radiation released into the atmosphere?

25 MR. LEWIS: Yes.

1 JUDGE RUBENSTEIN: During a postulated
2 accident, that's true?

3 MR. LEWIS: Yes.

4 JUDGE RUBENSTEIN: What assurances do we
5 have that releases into the environment are bounded
6 within the limits set by federal regulations, in
7 particular for EPU operation?

8 MR. LEWIS: Well, because those analyses
9 have been done. PPL previously submitted an analysis
10 for alternative source terms, and the uprate
11 application indicates that that approval, the
12 alternative source term, is an amendment that is
13 required before the uprate application may be granted.

14 The application for alternative source
15 terms evaluated or reevaluated all of the design basis
16 accidents using the core isotopic levels associated
17 with the uprate, and demonstrated that those design
18 basis accident consequences would meet NRC limits.

19 The uprate application itself references
20 and cites back to the alternative source term
21 application and incorporates that information. And
22 that same information is provided in the environmental
23 report that's part of the uprate application.

24 So the analysis has been done, and our
25 main challenge to the admissibility of this contention

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1 was that Mr. Epstein simply didn't address the
2 application, didn't address the portion of the
3 applications that provided the very analyses that, you
4 know, he was questioning, and identified no error in
5 those analyses.

6 JUDGE RUBENSTEIN: Thank you.

7 JUDGE BOLLWERK: Judge Cole, anything?

8 JUDGE COLE: Mr. Lewis, one of the
9 consequences of uprating the power would be an
10 increase in the megawatt days burnup of the fuel,
11 right?

12 MR. LEWIS: Yes.

13 JUDGE COLE: And is that addressed in the
14 safety documents and its impact on the fuel storage?

15 MR. LEWIS: I was trying to -- I guess my
16 answer is yes. I believe that the increased power in
17 the reactor is caused by -- is not -- it isn't -- it
18 doesn't require a different fuel design. We're still
19 using the same fuel that we used prior to the uprate.
20 We also use the same fuel that we used prior to the
21 uprate. So it's primarily achieved by the core design
22 and, as I understand it, I believe more fuel bundles.

23 But the fuel that we remove after the
24 uprate will still be within the design basis of the
25 racks and will still be within the design basis of the

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1 casks. That is definitely addressed in the safety
2 analysis report.

3 The extent to which there is higher burnup
4 along the fuel rods, and what the effect is, I'm not
5 sure. I'm sorry, Judge Cole.

6 JUDGE COLE: That's all right. Yes, I --
7 I was just wondering if it was addressed directly,
8 because obviously you're going to -- for any given
9 time period, at an increased power level, the megawatt
10 days burnup is going to increase for the fuel. And if
11 they address that with respect to when they take the
12 fuel out, when they put it in the fuel pool storage,
13 and any safety aspects of that have been considered.

14 MR. LEWIS: There is a section of the SAR
15 which specifically addresses the fuel design issues
16 and the fuel storage issues and the fuel racks. So I
17 know it is addressed in the application. I'm
18 certainly not able to answer your technical question
19 on how it was addressed.

20 JUDGE COLE: All right, sir. Thank you.
21 That's fine.

22 JUDGE RUBENSTEIN: Judge Cole, I'll answer
23 that later.

24 JUDGE COLE: Do you know what section of
25 the SAR it is? I don't want to push us any further

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1 than we need to with --

2 MR. LEWIS: No. My concern was I want to
3 make sure it was addressed. I'm virtually sure it
4 was, but I don't remember seeing it.

5 JUDGE COLE: Well, I know the fuel pool is
6 addressed in Section 6.3 of the SAR.

7 THE COURT REPORTER: This is the Court
8 Reporter.

9 JUDGE BOLLWERK: Yes.

10 THE COURT REPORTER: I have lost track of
11 who is speaking.

12 MR. LEWIS: Okay. This is David Lewis.
13 I apologize.

14 THE COURT REPORTER: Okay.

15 JUDGE COLE: This is Judge Cole speaking
16 before that, so --

17 THE COURT REPORTER: Okay. Thank you.
18 Just the interruption by --

19 JUDGE COLE: By Judge Rubenstein.

20 THE COURT REPORTER: Okay. Thank you.

21 JUDGE BOLLWERK: This is Judge Bollwerk.
22 6.3 of the SAR for the spent fuel, the racking --

23 MR. LEWIS: Yes, for the fuel pool.

24 JUDGE BOLLWERK: For the fuel pool? I'm
25 sorry. All right. Any other questions for Mr. Lewis

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1 from the Board?

2 (No response.)

3 Anything else you want to tell us, Mr.
4 Lewis?

5 MR. LEWIS: No, sir.

6 JUDGE BOLLWERK: All right. Let's turn to
7 the staff, then.

8 MR. SUBIN: The staff has nothing else to
9 add other than what they've already said in the brief.

10 JUDGE BOLLWERK: All right. And, Mr.
11 Epstein, anything you want to add at -- get the last
12 word?

13 MR. EPSTEIN: Yes. I just wanted to
14 clarify. The issue that I was raising in terms of
15 reracking was my concern was that they may need to
16 increase density or to increase the number of fuel
17 cells in order to maintain core offload integrity.
18 And I don't, frankly, know if that was anticipated,
19 that they would need more cells, more density, and
20 potentially increase the propensity for a K-effective
21 incident. So that's where I was going with that.

22 On the other issue of fuel design, I just
23 don't know what fuel the company will use moving into
24 the future. I can't anticipate that, and I was just
25 hoping to get some clarity on that. And I do

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1 appreciate the healthy dialogue surrounding T3.

2 JUDGE BOLLWERK: All right.

3 MR. LEWIS: This is David Lewis. I was
4 just looking at the citations, and just to give the
5 Board the other citation. Section 2.1 of the SAR is
6 the section on fuel design and operation. It
7 indicates that we are going to use the atrium-10 fuel
8 bundle, which is what we already use. And in there is
9 the discussion of the thermal limits and other limits
10 applicable to the fuel.

11 JUDGE RUBENSTEIN: This is Judge
12 Rubenstein. The design of the core constrains the
13 nature of the fuel bundle. I don't want to get into
14 jargon, but the can that contains the fuel bundle has
15 certain dimensional limits. And this goes into the
16 lower core support plate, and these are fixed.

17 The only changes to the fuel are within
18 the array of the fuel rods, whether they are an 8 by
19 8 array or a 10 by 10 array, with smaller diameter
20 fuel pins, or a 6 by 6. And that would change very
21 little. The bundle total inventory would probably be
22 relatively the same.

23 JUDGE BOLLWERK: All right. Anything
24 further from Mr. Lewis or the staff on this one?

25 (No response.)

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1 Hearing nothing, Mr. Epstein, anything
2 further you want to say on Contention TC3?

3 MR. EPSTEIN: No.

4 JUDGE BOLLWERK: All right. And the Board
5 members, I take it, have concluded their questions as
6 well.

7 JUDGE COLE: We have.

8 JUDGE BOLLWERK: All right.

9 JUDGE RUBENSTEIN: Yes, I have.

10 JUDGE BOLLWERK: Okay. That really takes
11 care of the presentations and the discussion on
12 standing and the three contentions. I mentioned at
13 the beginning there might be a -- we had a couple of
14 administrative questions, and those really go I think
15 mostly to the staff. They basically are questions of
16 timing.

17 The staff has issued a proposed no
18 significant hazards consideration determination. If
19 you can, I was wondering when -- when -- if the staff
20 has a schedule for making that determination as well
21 as the timing of any staff issuances relative to the
22 environmental side, either a DIS, FEIS, or a finding
23 of no significant impact. And also, in terms of the
24 safety side, a draft SER or a final SER on this
25 particular amendment.

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1 MR. GUZMAN: This is Rich Guzman from the
2 Division of Operator Reactor Licensing representing
3 the -- as the project manager for the Susquehanna EPU
4 review. As far as the schedule, Judge, we're looking
5 at -- if I can just try to list down the items that
6 you are requesting, the first one being the no
7 significant hazards consideration.

8 We published the no significant --
9 proposed no significant hazards consideration
10 determination for comment on the public -- the Federal
11 Register on March -- I believe it was March 13, 2007.
12 So there's a 30-day comment period and -- for a total
13 of 60 days' request for a hearing, and so that expired
14 May 13th.

15 Through contact with our state contact, we
16 understand that there is -- there has been no comments
17 from the public in response to the publishing of that
18 in the Federal Register notice. And so the final
19 determination for no significant hazards notification
20 will be noticed as an individual notice, as it
21 routinely does for all license amendments once the
22 license amendment -- in this case, the EPU -- is
23 approved, which is targeted for, as you mentioned
24 earlier, January of 2008.

25 In terms of the draft environmental

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1 assessment, we plan on -- that's actually in routing
2 for concurrence right now, and is planned to submit
3 that to the -- for the Federal Register notice
4 publication by the end of this month. And so that
5 will be out for -- it will be available for public
6 comment.

7 JUDGE BOLLWERK: So you're doing an
8 environmental -- I'm sorry, this is Judge Bollwerk.
9 You're doing an environmental assessment, then?

10 MR. GUZMAN: Yes. You do -- we -- part of
11 our safety evaluation will include -- will include, as
12 a more -- I'm sorry, let me rephrase that. The two
13 products that come out of the ultimate approval of the
14 EPU amendment will be a safety evaluation, and then
15 separate to that an environmental -- it's an
16 environmental assessment, but it's a determination
17 that there's an impact on environment.

18 JUDGE BOLLWERK: EIS?

19 MR. GUZMAN: It's -- right, it's an EIS,
20 environmental impact statement. And so that is what
21 I was referring to is -- is going to be submitted at
22 the end of this month for -- as a draft environmental
23 impact statement.

24 JUDGE BOLLWERK: All right. Now, on the
25 safety side, in terms of a draft SER or a final SER?

1 MR. GUZMAN: Right. We are looking at the
2 end of August to have a draft safety evaluation or
3 safety evaluation report and submit it to the ACRS.
4 Typically, two to four weeks prior to the -- prior to
5 the meeting, subcommittee meeting with the ACRS, we
6 will provide a draft safety evaluation for them to
7 review in support of that meeting.

8 That meeting is scheduled for -- I've got
9 that here -- September 18th for the subcommittee
10 meeting, with an October date -- I believe the first
11 week of October for the full committee.

12 So to answer your question, it's -- we
13 expect a draft safety evaluation could be done
14 certainly prior to that September date, but my target
15 date for getting that completed and submitted to the
16 ACRS is the end of August.

17 JUDGE BOLLWERK: All right. In terms of
18 the environmental document that you issue at the end
19 of this month, that would be subject to public
20 comment?

21 MR. GUZMAN: Yes, it is.

22 JUDGE BOLLWERK: It will go in -- notice
23 of it will go in the Federal Register, then.

24 MR. GUZMAN: Excuse me? I'm sorry.

25 JUDGE BOLLWERK: Notice of it will go in

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1 the Federal Register?

2 MR. GUZMAN: Yes, it is.

3 MR. LEWIS: Judge Bollwerk?

4 JUDGE BOLLWERK: Yes.

5 MR. LEWIS: This is David Lewis. I
6 actually don't know what the staff is preparing, but
7 I would just assume, based on other updates, that's a
8 draft environmental assessment as opposed to an EIS.

9 JUDGE BOLLWERK: That was the question I
10 was trying to get clarified.

11 MR. LEWIS: Right. I think -- I think he
12 misspoke. I believe it's an EA that we're preparing.

13 JUDGE BOLLWERK: All right.

14 MR. LEWIS: Yes.

15 JUDGE RUBENSTEIN: Depending upon the
16 outcome of the EA, that would state whether an EIS is
17 required or not.

18 MR. LEWIS: Correct.

19 All right. The only other administrative
20 thing I would mention, then, is we have a requirement
21 under the rules to issue a determination with regard
22 to the hearing petition by approximately the end of
23 July, and we are going to make every endeavor to do
24 that.

25 And if we don't make that date, we will --

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1 under the rules, we have to let the Commission know
2 what the problem is. So you will be hearing something
3 from the Board one way or the other by the end of July
4 in terms of a decision or a reason why we haven't
5 reached it and when we would contemplate doing that.
6 And so that's our timeframe in terms of the schedule
7 we have to meet.

8 On behalf of the Board, I want to thank
9 all of the participants today for taking the time to
10 speak with us and to provide us your insight into what
11 -- in terms of standing and the contentions that have
12 been proffered in this instance. I think we've gotten
13 a lot of useful information.

14 I would mention we have Court Reporter
15 here. This is being transcribed. Probably the
16 transcript will be available hopefully sometime next
17 week in terms of the agency's ADAMS system, if one
18 wanted to go back and review it for any reason. And
19 so it will be part of the public record.

20 Do any of the parties have anything else
21 they want to bring to the Board's attention?

22 (No response.)

23 All right. If not, then, I thank all of
24 you for, again, joining us this morning and providing
25 us with your views. And if I can ask Judge Rubenstein

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1 if we could -- we're going to call you back in a
2 couple minutes, if you could just stay at your phone.

3 JUDGE RUBENSTEIN: I certainly will.

4 JUDGE BOLLWERK: All right. And, again,
5 thank you all. If there is nothing else, then we
6 stand adjourned.

7 Thank you.

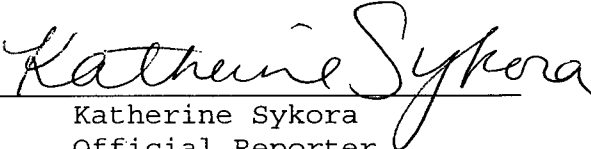
8 (Whereupon, at 11:15 a.m., the
9 proceedings in the foregoing matter were
10 adjourned.)
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CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: Susquehanna Steam Electric
Station Pre-Hearing
Conference
Docket Number: 50-387-OLA and 50-388OLA
Location: (Telephone conference)

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.


Katherine Sykora
Official Reporter
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