

Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

Title: Entergy Nuclear Indian Point
Units 2 & 3

Docket Number: 50-247-LR & 50-286-LR
ASLBP No.: 07-858-03-LR-BD01

Location: White Plains, New York

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UNITED STATES OF AMERICA

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NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

In the Matter of:		
ENTERGY NUCLEAR OPERATIONS,		Docket No. 50-247-LR
INC. (Indian Point Nuclear		and 50-286-LR
Generating Units 2 & 3)		ASLBP No.
		07-858-03-LR-BD01

Richard A. Daronco Courthouse
 Courtroom 200
 111 Dr. Martin Luther King Boulevard
 White Plains, New York
 Monday, March 10, 2008

The above-entitled conference was
 convened, pursuant to notice, at 10:00 a.m.

BEFORE:

LAWRENCE G. McDADE, Administrative Law Judge, Chair
 KAYE D. LATHROP, Ph.D., Administrative Judge
 RICHARD E. WARDWELL, Ph.D., Administrative Judge

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I-N-D-E-X

1		
2	ITEM	PAGE
3	Westchester County:	
4	Opening statement by Westchester County	13
5	Response by the applicant	16
6	State of New York:	
7	Opening statement by State of New York	32
8	Response by the NRC staff	41
9	Response by the applicant	45
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

2 (10:03 a.m.)

3 CHAIRMAN McDADE: We are here in the
4 matter of Entergy Nuclear Operations, Inc., Indian
5 Point nuclear generating units 2 and 3, docket numbers
6 50-247-LR and 50-286-LR.

7 My name is Lawrence McDade. I am the
8 Chairman of this Atomic Safety Licensing Board panel.
9 With me on the panel are Judge Lathrop and Judge
10 Wardwell.

11 We are going to be having oral argument
12 today on the admissibility of contentions,
13 specifically this morning, with regard to Westchester
14 County and then the State of New York.

15 Let me explain very briefly the procedure
16 that we are going to use. As indicated in previous
17 orders, the intervenor will have an opportunity to
18 make an opening statement to speak generally with
19 regard to the contentions that they have submitted,
20 that the NRC staff and the applicant, Entergy, will
21 have an opportunity to briefly respond. We are then
22 going to be asking questions.

23 The procedure, we are going to be going
24 not to any particular party at this point, but we will
25 be asking some questions of the intervenor, following

1 those questions up with the staff, following them up
2 with the applicant.

3 So it isn't going to be a situation where
4 we are going to address all of the questions to the
5 intervenor, then all of our questions to the staff and
6 then to the applicant. We will be going back and
7 forth from one to the other.

8 Each of you is represented by a number of
9 people. What we are trying to do here today is to get
10 answers to our questions and to get the best answers
11 possible so that we better understand the positions of
12 each of the parties.

13 Therefore, when we pose a question to any
14 particular party here, we will allow you to choose who
15 is going to answer that question for you. And it may
16 be appropriate in certain instances where more than
17 one of the attorneys is going to respond for a
18 particular party in response to a particular question.

19 We would urge you to just simply sit at
20 the table and answer the questions. Many of these
21 questions may require you to refer to your notes. And
22 it will be easier if you are just sitting at the table
23 and have access to the notes.

24 We don't have a podium set up. It's not
25 necessary for you to come up to a podium. It's not

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1 going to be necessary for you to stand when answering
2 a question.

3 What we would ask you to do, at least
4 initially, in answering a question is to state your
5 name so that the Court Reporter has an opportunity to
6 attribute to the right person the statement that is
7 being made.

8 Before we begin with asking questions,
9 we're going to have you go through and identify
10 yourself for the record. I think at this point we
11 might as well go ahead and do that.

12 First of all, we have Westchester County.
13 Who is going to be representing Westchester County
14 here?

15 MR. PRUYNE: Good morning, Board members.
16 Justin Pruyne, Assistant County Attorney on behalf of
17 the Westchester County Attorney's Office for County
18 Executive Andrew J. Spano and the Westchester County
19 Board of Legislators.

20 CHAIRMAN McDADE: Are you going to be
21 answering all of the questions for Westchester, Mr.
22 Pruyne?

23 MR. PRUYNE: Yes, Your Honor.

24 CHAIRMAN McDADE: Okay. For the NRC
25 staff?

1 MR. TURK: Good morning, Your Honor. My
2 name is Sherwin Turk. I am an attorney with the
3 Office of the General Counsel. I would like to
4 introduce several people, maybe more than a few, who
5 are with me today. To my right is co-counsel Kimberly
6 Sexton. To her right is co-counsel David Roth. At
7 the table behind us is Christopher Chandler,
8 co-counsel; and Beth Mizuno, co-counsel.

9 We also have a paralegal with us: Brian
10 Newell. And I would also like to introduce some of
11 the technical staff who are here with us today and
12 perhaps ask them to stand just as I call their names.

13 First, Mr. Bo Pham is the project manager
14 for the license renewal application of Entergy for
15 Indian Points 2 and 3. Mr. John Boska is sitting
16 behind him. Mr. Boska is the project manager for
17 current operations of Indian Point units 2 and 3.

18 To the side of Mr. Boska is Mr. Glenn
19 Meyer, who is here on behalf of Region I, NRC located
20 in Pennsylvania. Next to him is Ms. Kimberly Green,
21 who heads up the safety review for the license renewal
22 application review for the NRC staff. And also Andrew
23 Stuyvenberg is with the NRC staff in Washington. He
24 heads up the environmental reviewing for us.

25 And, with that, I thank you very much for

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1 your listening to these lengthy introductions.

2 CHAIRMAN McDADE: Okay. Thank you, Mr.
3 Turk. The one thing I would ask, when we do get to
4 the next break, would you please just give a list of
5 those names to the Court Reporter so that he will have
6 the spelling of all the names of the people that you
7 just introduced?

8 MR. TURK: I've done that already.

9 CHAIRMAN McDADE: Okay. Thank you.

10 For Entergy?

11 MS. SUTTON: Yes. I am Kathy Sutton for
12 Morgan, Lewis and Bockius on behalf of the applicant.
13 I will ask my colleagues to introduce themselves.

14 MR. O'NEILL: I am Martin O'Neill, also
15 with Morgan-Lewis, representing Entergy.

16 MR. BESSETTE: Paul Bessette from
17 Morgan-Lewis, also representing Entergy.

18 MR. ZOLI: Elise Zoli from Goodwin
19 Procter, also representing Entergy on the aquatic
20 contentions.

21 MR. FITZGERALD: Robert Fitzgerald from
22 Goodwin Procter, also representing Entergy.

23 CHAIRMAN McDADE: Okay. Good morning.
24 Thank you.

25 Okay. We are at a point of starting with

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1 Westchester County. Before we get into questions,
2 does Westchester have any opening statement?

3 MR. PRUYNE: Yes, Your Honor. Members of
4 the Board, on behalf of County Executive Spano and the
5 Westchester County Board of Legislators and the
6 residents of Westchester County, I would like to
7 welcome you all here today.

8 AUDIENCE MEMBER: We can't hear him.

9 CHAIRMAN McDADE: Okay. One of the things
10 that I think is going to be necessary, we have
11 individuals up here who are making presentations.
12 Those are the individuals who are going to be
13 speaking.

14 We are hopefully going to speak in a way
15 that can be heard by everybody. The acoustics here
16 are what the acoustics here are. The individuals who
17 are spectators are not participants and are not going
18 to be speaking during the course of the proceeding.

19 If you do speak during the course of the
20 proceeding, it will be necessary to ask you to leave
21 the proceeding. As I said, the acoustics here are
22 what the acoustics here are. It is important that we
23 hear what everybody says.

24 And to the degree that we can, if the
25 speaking is low, we will ask people to speak up. But

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1 we cannot have individuals who are spectators to this
2 proceeding talking during the course of the
3 proceeding.

4 Okay, sir. Please proceed.

5 MR. PRUYNE: Thank you, Your Honor.

6 Members of the Board, as you know,
7 Westchester County has approximately one million
8 residents. And it's one of the most populous counties
9 in the State of New York.

10 The county is and has been opposed to the
11 relicensing of the Indian Point nuclear generating
12 facility for several years based upon our position
13 that it's poorly sited, that there are age management
14 issues, and that it is unsafe given today's realities.

15 As I said, the county is densely
16 populated. And this dense population, the topography
17 of the area, and the roadway system make a thorough
18 and timely evacuation difficult, if not impossible.

19 The county agrees with the State of New
20 York that this Board and the Commission --

21 AUDIENCE MEMBER: Your Honor, I'm not a
22 guest here. I'm representing me. And I can't hear a
23 word he said. Can't we get a microphone? The public,
24 without information, we are being denied. I am being
25 denied to be properly representing.

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1 Frankly, the public is being denied the
2 right to hear what is being said. The least we can do
3 is bring a microphone in so this gentleman can be
4 heard by all of us.

5 The press is here. Obviously they have a
6 right to be here. They have a job to do as well.
7 That's the least you can do. If they have a
8 microphone, that would help quite a bit.

9 CHAIRMAN McDADE: Let me make one thing
10 very clear, that the next time somebody from the
11 audience speaks out, we will ask the security people
12 to escort them from the facility, period. The next
13 time somebody in the audience speaks out, we will ask
14 them to be removed from the facility.

15 Two things. One, there is a transcript of
16 this proceeding being made. The transcript will be
17 available on the NRC Web site. I am sorry if you are
18 not able to hear. We have a facility here. We are
19 using the facility to the best that we can.

20 We can hear the individuals. I am sorry
21 if you are not able to. Again, we will reiterate to
22 all of the people to speak up to the degree that they
23 can to be heard. But that is the best that we can do
24 at this point in time.

25 Please continue, sir.

1 MR. PRUYNE: Thank you, Your Honor.

2 Just my last sentence, the county does
3 agree with the State of New York that this Board and
4 the Commission should consider and examine the many
5 safety, environmental, and procedural issues
6 identified in the petition submitted by the State of
7 New York and adopted and cosponsored by Westchester
8 County.

9 CHAIRMAN McDADE: Okay. Thank you.

10 MR. PRUYNE: Thank you.

11 CHAIRMAN McDADE: Again, just dealing with
12 Westchester County in response to Westchester's
13 opening, does the NRC staff wish to make an opening,
14 Mr. Turk?

15 MR. TURK: No, Your Honor. I think what
16 we would like to do at some point is make a general
17 opening statement in response to all petitioners if
18 that is permissible.

19 CHAIRMAN McDADE: Well, I think that the
20 issues with regard to Westchester County are going to
21 be very limited in scope. The issues with regard to
22 the State of New York are going to be much broader in
23 scope. It might be appropriate for you to make an
24 opening prior to the time after New York makes its
25 opening.

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1 And I think basically the issues raised by
2 New York are issues that are common to all of the
3 petitioners in this particular case. Theirs I think
4 is one of the broadest in scope. So why don't we do
5 that.

6 Just based on what Westchester had to say,
7 Ms. Sutton, does the applicant wish to respond?

8 MR. BESSETTE: Yes, Your Honor. My name
9 is Paul Bessette. And I am responding on behalf of
10 the applicant.

11 Entergy has not and does not object to
12 Westchester County participating in this proceeding as
13 an interested governmental county. However, we do
14 object to Westchester County or any other party being
15 admitted as a full party without providing an
16 admissible contention of its own and would be willing
17 to address any questions the Board has.

18 CHAIRMAN McDADE: Okay. Thank you.

19 Okay. Directing to Westchester County,
20 the first issue that we had posed to you in the
21 scheduling order had to do with whether or not it was
22 permissible for us to allow an individual organization
23 to become a party by adopting the contentions of
24 another without having at least one admissible
25 contention of their own.

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1 We specifically cited you to two
2 particular cases that seem to go in opposite
3 direction. One was the Commission decision in an
4 earlier Indian Point proceeding. And then there was
5 a Board decision in the Vermont Yankee case.

6 Do you have anything that you wish to say
7 on that issue?

8 MR. PRUYNE: Well, yes, Your Honor. I do
9 believe that the --

10 CHAIRMAN McDADE: And, again, to the
11 degree you can, please try to speak up. I do want
12 people to hear if it's at all possible.

13 MR. PRUYNE: Thank you.

14 I do believe that the current status of
15 the federal regulations, specifically 2.309, does
16 indicate that we can proceed as a party, rather than
17 as an interested governmental body. And I do believe
18 that the Vermont Yankee case that you cited to us
19 reaffirms that.

20 CHAIRMAN McDADE: Okay. The next question
21 is, why would you want to? What is your role in this
22 proceeding if you are admitted as a party under 2.309,
23 as opposed to participating as an interested
24 government entity under 2.315?

25 MR. PRUYNE: We believe that the county's

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1 participation in this is an integral part of this
2 process. And we do have a unity of interest with the
3 State of New York. And we have come to an agreement.
4 We do believe that they would be adequately
5 representing the county's positions with regard to all
6 32 of these contentions.

7 CHAIRMAN McDADE: Is it your position that
8 it's an either/or situation? Either you're in here as
9 a party under 2.309 or you're in here as an interested
10 government entity under 2.315?

11 MR. PRUYNE: Not necessarily, but I do
12 believe that at this stage, it is anticipated that we
13 would like to come in under 2.309 and that if that had
14 to be revisited at a later stage with regard to 2.315,
15 that that could be done so at that stage. But I
16 believe it will be premature at this time for us to
17 come in under 315.

18 CHAIRMAN McDADE: Okay. You understand
19 that if you were admitted under 2.315, you would have
20 the opportunity as a matter of right to introduce
21 evidence, to cross-examine witnesses, to offer
22 proposed findings of fact; whereas, if you came in
23 under 2.309, unless New York specifically authorized
24 you to do so, you would have to follow their lead.
25 You understand that?

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1 MR. PRUYNE: Absolutely, Your Honor. And
2 we do have our faith and confidence. And the State of
3 New York would adequately represent the interests of
4 the county in this matter.

5 CHAIRMAN McDADE: In the event that you
6 were admitted under 2.309 and New York decided to
7 abandon one or more of its contentions, would you have
8 the ability to continue with that contention?

9 MR. PRUYNE: Yes, we would.

10 CHAIRMAN McDADE: Is that part of your
11 motivation for wishing to proceed under 2.309?

12 MR. PRUYNE: Yes, it is.

13 CHAIRMAN McDADE: Okay. Anything further
14 on this?

15 MR. PRUYNE: No, Your Honor.

16 CHAIRMAN McDADE: Okay. Mr. Turk?

17 JUDGE WARDWELL: Help me understand a
18 little bit more, if you would. If you were admitted
19 as an interested governmental body, would you not have
20 the abilities, then, to cross-examine other witnesses
21 from other parties that might be admitted to this
22 proceeding and not just relate to New York State's?

23 MR. PRUYNE: I don't think that we would
24 not have the ability to do so, but at this stage, we
25 are prepared to have a unified voice with the State of

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1 New York. And they would be doing that for us.

2 If at some point in the unlikely situation
3 that New York were to drop out with respect to certain
4 contentions, we would reexamine our position.

5 But as it stands now, New York will be
6 speaking for the County of Westchester.

7 JUDGE WARDWELL: And you're fully
8 confident that New York will be able to represent all
9 the questions and inquiries that you might have for
10 the other participants to their participation and not
11 directly your own to the degree that they allow or
12 disallow your participation?

13 MR. PRUYNE: Absolutely because we have
14 been working closely with the State of New York with
15 regard to this proceeding and other proceedings
16 involving this specific facility.

17 So we do have a good working relationship
18 with both offices and with the State of New York in
19 general. So we have full confidence that our
20 interests would be adequately represented.

21 JUDGE WARDWELL: As you read the
22 regulations, do you believe that it is inadmissible
23 for you to come in as an interested governmental body
24 and also adopt New York's contentions at the same
25 time?

1 MR. PRUYNE: I don't understand what you
2 mean by the term "inadmissible."

3 JUDGE WARDWELL: Well, is it or is it not
4 allowed by the regulations for you to come in as an
5 interested governmental body and at the same time
6 adopt a contention as an interested governmental body
7 such that it preserves your rights in the future
8 should New York State drop any one of their
9 contentions for you to pick it up at that point and
10 become a full-fledged party member, as opposed to an
11 interested governmental body? Can you do it both
12 ways? Is there anything in the regulations that
13 prohibits you from doing it both ways that you are
14 aware of?

15 MR. PRUYNE: Not that I am aware of.

16 JUDGE WARDWELL: Thank you.

17 CHAIRMAN McDADE: Well, specifically in
18 addressing the language of 2.315, it talks about
19 interested government agencies who have not been
20 admitted as a party under 2.309. That is a quote from
21 the regulation.

22 If we admit you as a party under 2.309,
23 are we not precluded from having you participate as an
24 interested government entity under 2.315?

25 MR. PRUYNE: I don't believe so. I

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1 believe that you could make an order subsequent to
2 that initial order, let's say, if there was a
3 contention that was to be dropped or there was a
4 difference with regard to whether, let's say, New York
5 State was no longer going to represent us with regard
6 to a contention. I believe you could revisit that
7 issue with regard to 315.

8 CHAIRMAN McDADE: Okay. Mr. Turk, with
9 regard to the NRC staff, how do you read 2.315? If we
10 admit them under 2.309, are they precluded from
11 participating under 2.315?

12 MR. TURK: Yes, they are, Your Honor. I
13 think you hit the nail on the head. 2.315 is entitled
14 "Participation by a Person Not a Party." The entire
15 regulation addresses what do you do with someone who
16 is not admitted as a party, either an individual or
17 other entity or an interested state or municipal or
18 county government.

19 So you essentially have a choice. Should
20 Westchester be admitted as a party? Have they made
21 out the case that they need to make to be admitted as
22 a party or not? If they have not, then the regulation
23 in 2.315 states that you have the option, the
24 discretion to admit them under 2.315(c) as an
25 interested governmental entity. It's one way or the

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1 other.

2 CHAIRMAN McDADE: But if we admit them
3 under 2.309, we could not also accept them under 2.315
4 and allow them the right to present evidence to
5 cross-examine, present proposed findings of fact as to
6 all contentions, whether New York or other parties?

7 MR. TURK: That's how we read the
8 regulation because, in effect, they would then be a
9 super party. They would have more rights than any
10 other party in the proceeding.

11 CHAIRMAN McDADE: Now, with regard to the
12 first issue, whether or not not having submitted an
13 admissible contention of their own, whether or not
14 they can adopt the contentions of the State of New
15 York, why should we not follow the ruling of the Board
16 in Vermont Yankee and allow them to do so?

17 MR. TURK: The two cases that you cited,
18 the Vermont Yankee case and the other decision, both
19 involved a different fact situation. There the
20 different petitioners had submitted admissible
21 contentions.

22 So the Board's and the Commission's ruling
23 there found they already had petitioners who met the
24 standards for intervention. They were admitted as a
25 party. And then you get to the second question, which

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1 is adoption.

2 Here Westchester has filed no contentions.
3 And while we certainly recognize that Indian Point is
4 located in Westchester County, Westchester County has
5 an obvious interest in assuring the safety of its
6 citizens, they still have not met the standards for
7 intervention. One, they have standing, but, two, they
8 have not filed any contentions of their own.

9 CHAIRMAN McDADE: Is there anything that
10 you can point us to in the regulations or in
11 Commission case law that says specifically if you have
12 an entity that has demonstrated standing, that they
13 cannot become a party by adopting contentions without
14 submitting their own? And, again, putting aside the
15 Indian Point, the old Indian Point decision, which was
16 under the earlier regulations, is there anything other
17 than that case that you can point to that leads one to
18 that conclusion?

19 MR. TURK: I can't think of one, Your
20 Honor, but I would point to the whole rationale of the
21 Commission's regulations on intervention. If it was
22 enough for a petitioner simply to demonstrate standing
23 and then come in and say, "I would like to adopt other
24 people's contentions," they wouldn't have the two-part
25 test that the Commission has sought for intervention.

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1 One, they must show standing. Two, they must have an
2 admissible contention of their own. To admit --

3 CHAIRMAN McDADE: Well, is the second part
4 of that really so we have appropriate issues, the
5 contention requirements that somebody has identified
6 issues that are worthy of a hearing?

7 So here in the situation if the State of
8 New York, for example, indicates those issues that are
9 worthy of a hearing that there is a genuine dispute
10 with regard to, why would it be against the Commission
11 policy to have Westchester adopt those same
12 contentions, instead of just simply writing them out,
13 basically duplicating what the State of New York has
14 written, signing it themselves? Why isn't it
15 sufficient for them just to say, "We're satisfied. We
16 have read what New York has submitted. We agree with
17 that"? Why should they have to submit basically a
18 duplicate petition?

19 MR. TURK: I would address that by telling
20 you how I perceive what would happen if a Board were
21 to rule that way. If it were permissible for
22 petitioners simply to demonstrate standing, then you
23 could have a million people come in and say, "We have
24 standing. And we would like to adopt New York State's
25 contentions and be a party. And if New York State

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1 withdraws, well, we will take over the contentions."

2 That is not the intent of the Commission
3 in establishing the intervention requirements. Anyone
4 who seeks to intervene as a party must meet the
5 twofold test of standing and having an admissible
6 contention.

7 CHAIRMAN McDADE: So it's the position of
8 the staff that the 309 sets out the requirements, and
9 they have to meet them, period?

10 MR. TURK: Yes.

11 CHAIRMAN McDADE: And unless they're
12 admitted under 309 as a party by meeting both the
13 standing and the submission of contention
14 requirements, then they don't have the opportunity to
15 adopt the contentions of others?

16 MR. TURK: That's correct.

17 CHAIRMAN McDADE: Okay.

18 JUDGE WARDWELL: Can you surmise why the
19 words "requester" and "petitioner" are used, then, in
20 309, as opposed to "party"?

21 MR. TURK: Until a petitioner is admitted
22 as an intervention, they are not a party. So until a
23 board has determined that they have standing and have
24 filed an admissible contention, they are a petitioner
25 or someone who requests a hearing only, not a party.

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1 JUDGE WARDWELL: But you are saying that
2 only parties can adopt contentions?

3 MR. TURK: Yes.

4 JUDGE WARDWELL: And 309(3), (f)(3), deals
5 with that adoption process and uses the terms
6 "requester," "petitioner," not "parties." Why
7 wouldn't it use the term "parties," then?

8 MR. TURK: It is possible that if a
9 petitioner files an admissible contention and seeks to
10 adopt the contentions of others -- and I believe that
11 happened in one of the cases that the Licensing Board
12 cited to us.

13 So at the same time that the Board rules
14 on the petitioner's standing to intervene, they also
15 could rule on the adoption request before there has
16 been a prior ruling on party status. So it could be
17 a simultaneous ruling, rather than in sequence. But
18 still that petitioner would have to have filed an
19 admissible contention.

20 JUDGE WARDWELL: One other, I am
21 interested in what happens to a party who is admitted
22 as an interested governmental body, a local
23 governmental body, whether or not there is anything in
24 the regulations that prohibits them from adopting a
25 contention and losing their status as an interested

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1 governmental body by that action.

2 Do you know of any regulation that
3 prevents that from happening?

4 MR. TURK: I don't know if a regulation
5 addresses that, but they would not be a party. Again,
6 2.315(c) addresses persons who are not parties. And
7 it affords Westchester County substantial rights to
8 come in, introduce evidence.

9 I don't know that we will have
10 cross-examination here. It is more likely we will
11 have Board questioning, although I don't think the
12 Board has ruled on that issue yet.

13 But they would be able to introduce
14 evidence and submit pleadings to the Licensing Board
15 and take up appeals. They would have the rights of a
16 litigant other than sponsorship of a contention and
17 management of the direction of that contention.

18 JUDGE WARDWELL: But could they not at the
19 same time -- do the regulations prohibit them at the
20 same time from adopting a contention just in case one
21 of the other parties dropped a contention and then
22 they would sacrifice their status as a local
23 governmental body and become a regular party if they
24 wanted to pick it up at that time? Just in regards to
25 preserving their rights to do that, is there anything

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1 in the regulations that prohibits that from taking
2 place?

3 MR. TURK: If they sought to adopt a
4 contention after it was admitted, they would be
5 obliged to file a request for admission of that
6 contention as their own.

7 Essentially it would become their
8 late-filed contention. And they would then have to
9 meet the late filing standards as I understand the
10 regulations.

11 JUDGE WARDWELL: Where does the term
12 "late" come in? Do you mean a new contention at that
13 time? I mean, there is no lateness with it, is there?

14 MR. TURK: It would be lateness in their
15 seeking to introduce that contention.

16 JUDGE WARDWELL: Lateness from what?

17 MR. TURK: Lateness of filing a
18 contention.

19 JUDGE WARDWELL: Do you mean in regards to
20 regulation of filing a contention, an untimely
21 contention, if you will, or --

22 MR. TURK: Yes.

23 CHAIRMAN McDADE: Does Entergy have
24 anything to add on this issue?

25 MS. SUTTON: Your Honor, we do. We just

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1 want to reiterate that we believe that you will be
2 reading the meaning out of 2.309(a) if you allow
3 Westchester party status without having proffered an
4 admissible contention.

5 CHAIRMAN McDADE: Okay. Do you think that
6 the Indian Point Board's decision was ill-advised? If
7 so, why?

8 MS. SUTTON: I believe that the facts were
9 different in that case, that they had proffered
10 admissible contentions.

11 CHAIRMAN McDADE: So it's not that they
12 were wrong. It's just that the facts are
13 distinguishable from the facts here?

14 MS. SUTTON: Absolutely.

15 CHAIRMAN McDADE: Okay. We have no other
16 questions with regard to Westchester at this time.
17 Before you withdraw and we start on the State of New
18 York, do you have anything further --

19 MR. PRUYNE: No, Your Honor.

20 CHAIRMAN McDADE: -- that you would like
21 to add?

22 MR. PRUYNE: No.

23 CHAIRMAN McDADE: Okay. Thank you very
24 much.

25 MR. PRUYNE: Thank you.

1 CHAIRMAN McDADE: If we could have the
2 representatives of the State of New York come forward?

3 MS. DENERSTEIN: We're here, Your Honor.

4 CHAIRMAN McDADE: Okay. Are you all of
5 them?

6 MS. DENERSTEIN: Actually, if it would be
7 helpful to Your Honors, we would like to introduce
8 ourselves.

9 CHAIRMAN McDADE: Okay. Please do so.

10 MS. DENERSTEIN: I am Mylan Lee
11 Denerstein. I am an Executive Deputy Attorney General
12 for Social Justice for Attorney General Andrew Cuomo.

13 MR. SIPOS: Good morning, Your Honors.
14 John Sipos, S-i-p-o-s, Assistant Attorney General for
15 the New York State Department of Law.

16 MR. ROYCEMAN: Your Honor, my name is
17 Anthony Royceman. I have not entered an appearance.
18 And I am appearing here only as a consultant to the
19 State of New York. I will not be speaking.

20 CHAIRMAN McDADE: Okay. Thank you.

21 MR. ROYCEMAN: Thank you.

22 MS. MATTHEWS: Your Honors, my name is
23 Joan Leary Matthews. And I am senior counsel for the
24 New York State Department of Environmental
25 Conservation, also for the State of New York.

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1 MR. PARKER: Your Honors, my name is John
2 Parker. I am regional attorney for the Department of
3 Environmental Conservation.

4 CHAIRMAN McDADE: And if you have not done
5 so before, when we get to a break, if you could give
6 the names to the Court Reporter to make sure he has
7 got the spellings correct on all the names?

8 MS. DENERSTEIN: And, Your Honors, I would
9 just also like to briefly introduce Jody Feld, who is
10 a scientist from the Attorney General's office; and
11 Janice Dean, who is an Assistant Attorney General in
12 Cape Kennedy, who is in charge of the environmental
13 protections there.

14 CHAIRMAN McDADE: Thank you.

15 At this point, before we begin your
16 questioning, does New York wish to make an opening
17 statement generally with regards to the admissibility
18 of their contentions?

19 MS. DENERSTEIN: Yes, it does, Your Honor.

20 Good morning. You just heard my name. I
21 am Mylan Denerstein. I work for Attorney General
22 Andrew Cuomo and serve as Executive Deputy Attorney
23 General for Social Justice. On behalf of the Attorney
24 General and the State of New York, welcome. Thank you
25 for holding an oral argument on this important matter.

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1 At the outset, I want to note that the
2 state strongly agrees with Westchester that the county
3 and the state should be permitted to speak with one
4 voice.

5 Westchester County should be allowed to
6 cosponsor the state's contentions as a full party. As
7 Your Honors noted, it makes a judicial economy. There
8 are scales of economy that are to be gained from doing
9 so.

10 As the NRC's Director of the Office of
11 State Programs, Robert Ryan, said in 1979, it is
12 insane to have a nuclear reactor on the Hudson River
13 in Westchester County, 40 miles from Times Square.
14 Indian Point is one of the most inappropriate sites in
15 existence.

16 It is an argument that has only gotten
17 stronger with time in light of new realities. It is
18 now 2008. And the unique safety, public health, and
19 environmental risks posed by Indian Point have only
20 increased. That is why the State of New York
21 unequivocally opposes the relicensing of the Indian
22 Point nuclear power plant.

23 Let me elaborate. Indian Point is not
24 secure from the threat of terrorism or the threat of
25 accidental radioactive releases. Sadly, New Yorkers

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1 know all too well that the threat of terrorism is
2 real. September 11th left absolutely no doubt about
3 that.

4 I was going to list for Your Honors
5 several examples of why it is clear that Indian Point
6 would be a likely target for a terrorist attack, but
7 I think it is obvious given what Westchester has
8 discussed about the population and the siting of the
9 plant.

10 We believe the Board must and can address
11 this critical issue in the context of the license
12 renewal proceeding. Moreover, the threat of
13 accidental releases of radioactivity is also real.

14 These 40-year-old power plants are showing
15 the strains and stress of aging. We see this in the
16 plant's aging spent fuel storage pools, which have
17 developed leaks and are sending radioactive fluids
18 into underground pools and ultimately into the state's
19 precious Hudson River.

20 New York State has grave concerns about
21 the future safety of Indian Point. We see this in a
22 whole state of recent system and structure failures,
23 including steam tube ruptures and a transformer
24 explosion and fire. New York State has grave concerns
25 about the future safety of Indian Point given the past

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1 history of serious safety problems.

2 Finally, the threat of an intentional or
3 accidental release is made uniquely unacceptable
4 because of the number of people put at risk. The
5 Indian Point nuclear power plants are located within
6 a 50-mile radius of 20 million people. These reactors
7 have the highest surrounding population density of any
8 of the 104 nuclear power plants in this country.

9 The NRC simply would not permit Indian
10 Point to be built today in Westchester County under
11 its current siting regulations. And it should not be
12 re-permitted.

13 And let's be clear, there can be no timely
14 evacuation of this area. Thus, this Board should not
15 allow Indian Point to increase this enormous risk by
16 extending its license for another 20 years.

17 The continued operation of Indian Point is
18 untenable. The risks are simply too great. Because
19 of these unique risks, New York State has mounted what
20 is probably the most massive and well-supported
21 opposition to a relicensing application in the history
22 of the United States.

23 With a team of legal and technical
24 experts, we have pored through Entergy's application
25 and identified in detail 32 contentions for Your

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1 Honors' considerations. The contentions explain
2 critical deficiencies in Entergy's license renewal
3 application.

4 Each of our contentions is supported by
5 factual evidence, voluminous studies, and sound legal
6 analysis. Many of our contentions are further
7 supported by expert declarations in the courts. New
8 York State has assembled some of the nation's foremost
9 experts.

10 The state has followed the rules and the
11 procedures of the NRC. Entergy has not. Entergy's
12 license renewal application is ripe with errors and
13 surprisingly out of date.

14 Entergy's application and environmental
15 report impermissibly rely on incomplete plans, vague
16 promises to do something in the future, and obsolete,
17 stale, or incorrect data. For example, Entergy
18 references seismic data that is approximately 27 years
19 old, despite the availability of more recent data that
20 shows the risk of earthquakes is stronger than Indian
21 Point was designed to withstand.

22 That simply should not be permissible.
23 This Board must hold Entergy accountable. There is
24 simply too much at stake to do otherwise.

25 As the Board has noted, the NRC's

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1 regulations on relicensing are strict by design.
2 Entergy must be held to the same strict standards as
3 are applied to petitioner/intervenors. If the same
4 standard applies, the state will prevail.

5 In conclusion, Indian Point's license
6 renewal application must be denied. There is simply
7 no safe alternative. Thank you.

8 At this time, Ms. Matthews will give the
9 remainder of the state's opening statement.

10 MS. MATTHEWS: Good morning, Chairman
11 McDade, Judge Lathrop, and Judge Wardwell. As you
12 heard before, my name is Joan Leary Matthews, counsel
13 for the New York State Department of Environmental
14 Conservation. And I am here on behalf of the State of
15 New York to also answer your questions about why New
16 York's detailed contentions should be granted a
17 hearing.

18 At stake in this proceeding are the
19 health, environment, and safety of more than 20
20 million people who live within 50 miles of Indian
21 Point.

22 This plant is different than other nuclear
23 power plants. This courtroom is a few miles from
24 Indian Point, which is located in the middle of this
25 nation's most heavily populated metropolitan area.

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1 And it is a short drive from New York City, the
2 world's greatest financial center.

3 Whatever the chances of a failure at
4 Indian Point, the consequences would be catastrophic
5 in ways that are almost too horrific to contemplate.
6 Yet, thinking about those consequences is exactly what
7 everyone in this room needs to do today.

8 This plant also sits on the shores of the
9 Hudson River. This mighty and proud river has always
10 been one that runs two ways. Yet, the Board must not
11 let this proceeding run two ways by having a process
12 that allows petitions like ours to be presented but
13 then only to be denied, and wrongly so, for narrow,
14 technical, and legalistic reasons, as Entergy is
15 asking this Board to do. The law demands otherwise,
16 as do the millions of people, the families, the
17 children, and the businesses that call this area home.

18 This is a day when we need to acknowledge
19 some self-evident truths. One of those truths is that
20 this area cannot be safely evacuated. Local residents
21 know that a fender-bender can tie up traffic for
22 hours. What would happen in the event of serious and
23 fast-moving nuclear accident?

24 Another self-evident truth is that Indian
25 Point is a tired, aging plant, not up to the rigors of

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1 operating for an additional 20 years. Let's face
2 reality. This company could not figure out how to get
3 the sirens to work.

4 And at a time when the government is
5 asking citizens to be vigilant because of terrorist
6 threats and when security measures are heightened
7 everywhere, the NRC is considering relicensing a
8 nuclear power plant where a security guard was
9 recently found sleeping on the job.

10 It is also self-evident that Indian Point
11 has very significant environmental impacts. Yet, the
12 NRC staff thinks that environmental impacts such as
13 radioactive leaks into the Hudson River shouldn't be
14 considered. As we begin celebrating the 400th
15 anniversary of the discovery of the Hudson River, can
16 the federal government seriously be considering
17 relicensing Indian Point for two more decades without
18 a serious review of its environmental impacts?

19 We understand, of course, that stating the
20 obvious is not enough to get a full hearing. To the
21 contrary, this proceeding is highly technical and,
22 without question, significantly advantages the
23 applicant.

24 Entergy is allowed to play a waiting game.
25 It has submitted a bare bones, insufficient

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1 application, waited for us to find faults, and then
2 claims that it will fix them.

3 The contention presented by the State of
4 New York, however, expose Entergy's strategy and
5 provide a clear record for this Board to direct a full
6 hearing.

7 Entergy undoubtedly finds comfort in the
8 perfect industry record of NRC license renewals. It
9 sounds incredible, but in 42 proceedings, 42 licenses
10 have been renewed. This should and, based on the
11 evidence, will be the case where that perfect industry
12 record falls.

13 Here is one final self-evident truth.
14 Given the age and history of these two reactors; given
15 the significant environmental impacts that happen
16 every day this plant operates; given the continuing
17 radioactive leaks; given the failure to properly
18 address critical issues in the application, such as
19 metal fatigue; and, most important, given the very
20 real risks posed to tens of millions of New Yorkers,
21 it is self-evident that this license cannot be renewed
22 without a full hearing just because Entergy says that
23 Indian Point will be operated safely for two more
24 decades. That is our concern. That is why we are in
25 this proceeding.

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1 We have presented a case that more than
2 justifies the need for a full hearing. We have
3 presented compelling and detailed contentions raising
4 significant and important issues well within the
5 narrow scope of review.

6 A hard look is what is needed with respect
7 to every issue raised in this proceeding. There may
8 never again be a nuclear license renewal case where
9 the facts and circumstances so clearly warrant such a
10 public hearing process or where the stakes are so
11 high.

12 We are prepared to answer the Board's
13 questions. And we ultimately ask that a determination
14 be made directing a full hearing on the state's
15 contentions.

16 Thank you very much.

17 CHAIRMAN McDADE: Thank you.

18 Mr. Turk?

19 MR. TURK: Thank you, Your Honor.

20 The NRC staff, as the Licensing Board I'm
21 sure is aware, is tasked with reviewing the license
22 renewal application that is submitted by Entergy and
23 determining whether or not that application meets the
24 requirements of the Commission for license renewal.

25 The Commission in the past, commencing, I

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1 believe, in the 1980s, began to look at the issue of
2 what issues need to be considered for license renewal.

3 Do we go back and look at all of the
4 issues that pertain to the safety or environmental
5 impacts of a nuclear power plant or is the renew at
6 license renewals stage more limited?

7 And the answer, stated by the Commission
8 in both 1991 in its statement of consideration
9 accompanying its initial rulemaking on license renewal
10 as well as in the 1995 statement of consideration on
11 license renewal, is that only certain issues need to
12 be examined for a license renewal.

13 CHAIRMAN McDADE: Mr. Turk, if you could,
14 could you try to just speak up a little bit because I
15 would like everyone to be able to hear you as well as
16 possible?

17 MR. TURK: Thank you, Your Honor. I will
18 try.

19 In 1991, when the Commission adopted the
20 license renewal regulations, they issued a statement
21 of consideration, in which they looked at what issues
22 need to be examined for a license renewal.

23 And at that time they indicated -- and
24 this is published in the Federal Register at, I
25 believe it is, 56 Federal Register --

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1 CHAIRMAN McDADE: We have the cite, Mr.
2 Turk.

3 MR. TURK: Okay. At page 56, line 46 of
4 the Federal Register, the Commission stated that since
5 initial licensing, each operating plant has
6 continually been inspected and reviewed as a result of
7 new information gained from operating experience.

8 Ongoing regulatory processes provide
9 reasonable assurance that as new issues and concerns
10 arise, measures needed to ensure that operation is not
11 inimical to the public health and safety and common
12 defense and security are backfitted onto the plants.

13 The Commission decided that there is no
14 need to reexamine at license renewal stage all of the
15 various issues that would be examined for initial
16 licensing and that are examined during the course of
17 ongoing operations at a nuclear power plant.

18 The Commission concluded that there is
19 considerable logic to the proposition that issues that
20 are material as to whether a nuclear power plant
21 operating license may be renewed should be confined to
22 those issues that are uniquely relevant to protecting
23 the public health and safety and common defense and
24 security during the renewal period. Other issues
25 would by definition have a relevance to the safety and

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1 security of current plant operation.

2 The Commission continued, "Given the
3 Commission's ongoing obligation to oversee the safety
4 and security of operating reactors, issues that are
5 relevant to both current plant operation and operation
6 during the extended period must be addressed now
7 within the present license term, rather than at the
8 time of renewal."

9 In a nutshell, that is the definition of
10 the scope of issues that may be considered in this
11 license renewal proceeding. The issues must be either
12 those which are laid out in the regulations in 10 CFR
13 part 54 or those environmental impacts that are
14 permitted to be considered under 10 CFR part 51.

15 The staff's position with respect to
16 contentions that you will be hearing from us today
17 focuses on two essential considerations. Number one
18 is the issue raised within the proper scope of this
19 proceeding. Number two, has the petitioner met the
20 pleading requirements set out for contentions in 10
21 CFR 2.309?

22 And those are the issues which the Board
23 must address in its decision on the admissibility of
24 contentions.

25 CHAIRMAN McDADE: Okay. Thank you, sir.

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1 For Entergy?

2 MR. BESSETTE: Yes, Your Honor. Paul
3 Bessette.

4 We disagree, obviously, with New York's
5 characterization and the substance of their arguments
6 in our license renewal application. Entergy believes
7 it prepared a robust and legally sufficient
8 application for the Indian Point licensing, Indian
9 Point Entergy center.

10 As Mr. Turk said, many of the issues
11 raised by New York today are simply outside the scope
12 of this proceeding. And, finally, we are not here
13 today to determine the suitability of the siting of
14 the facility for Commission policy.

15 We would be glad to answer any further
16 questions you may have.

17 CHAIRMAN McDADE: Okay. Thank you.

18 What we want to do is ask some preliminary
19 questions and then get into individual contentions.
20 One of the preliminary questions that I have, first of
21 all, of New York State, in your petition, you
22 indicated that at a later point in time, you
23 anticipated making the request that this proceeding be
24 taken under subpart G, which is the formal hearing
25 proceedings, as opposed to subpart L.

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1 Is it the position of New York State that
2 that request would be made after the contention
3 admissibility decisions are made?

4 MR. SIPOS: Good morning, Your Honor.
5 John Sipos, Assistant Attorney General.

6 The short answer to your question is yes.
7 We wanted to place the parties, the applicant and the
8 staff, on notice about New York's position. We wanted
9 to raise it for the Board's awareness. But we would
10 be filing a formal motion subsequent to whatever
11 ruling Your Honors make on the contentions
12 admissibility.

13 CHAIRMAN McDADE: Okay. And, Mr. Turk,
14 the NRC staff agrees that that would be timely, that
15 once we know what contentions, if any, are admitted,
16 that that would be the time to make a determination as
17 to whether a subpart G proceeding would be
18 appropriate?

19 MR. TURK: Your Honor, I would have to
20 wait to see the motion and reach that determination.
21 I don't know the answer as I sit here.

22 CHAIRMAN McDADE: Well, I mean, at this
23 point in time, the question isn't whether or not the
24 motion would be granted. We haven't seen the motion.
25 It just has to do with when it should be filed. And

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1 the question is whether or not you agree that the time
2 to be filed is after the contentions, if any, are
3 admitted, at which point we know what the issues are
4 going to be.

5 And at that point, we would have a context
6 in which to make a determination as to whether or not
7 a formal or an informal proceeding would be more
8 appropriate.

9 MR. TURK: I think the Licensing Board
10 would be better informed once the contentions are
11 admitted. That is not to say that the motion would be
12 timely or that we would take a position on that now or
13 that the Board couldn't consider that suggestion
14 today.

15 We don't have a position on which is the
16 mandatory course to follow.

17 CHAIRMAN McDADE: Does the applicant have
18 a position on that?

19 MS. SUTTON: Yes. The customary format,
20 Your Honor, is subpart L, as you are aware. At this
21 point in time, we believe there is no basis for
22 subpart G. At some later point in time the state
23 files such a motion, we will respond to it in
24 accordance with the standards that are set forth in
25 Vermont Yankee, LBP 06-20.

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1 CHAIRMAN McDADE: But at this point just
2 to do with the timing of it, you would agree that at
3 this point, the motion would be premature?

4 MS. SUTTON: Yes, Your Honor.

5 CHAIRMAN McDADE: One of the issues that
6 is going to come up constantly through the course of
7 our discussion here today has to do with the current
8 licensing basis. And that is something that comes up
9 in a significant number of the contentions that were
10 filed by the State of New York.

11 And there is some dispute, I think,
12 between the parties as to what exactly the issue is.
13 And the issue, as I understand it, is not whether or
14 not the applicant was required to put together a
15 document containing a current licensing basis.

16 What the State of New York is contending
17 is that given the state of the record, it cannot
18 ascertain what the current licensing basis is. Given
19 the fact that it can't ascertain what the current
20 licensing basis is, you can't determine whether or not
21 the evaluation of those procedures, structures,
22 systems that need aging management are adequate or
23 not. You don't know where you are starting from. So
24 you don't know how to apply the aging management
25 systems.

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1 Is that tin the gist of New York's
2 position?

3 MR. SIPOS: That's exactly New York's
4 position, Your Honor. Our position has nothing to do
5 with assembling documents. It is, as your question
6 stated, that New York is unable to determine if there
7 is a current licensing basis and the consequences that
8 flow from that connected to the updated final safety
9 analysis report, the general design criteria in other
10 instances when we have identified issues regarding the
11 current licensing basis, that is exactly correct.

12 CHAIRMAN McDADE: Okay. Thank you.

13 Mr. Turk, starting with the definition of
14 the current licensing basis in 54.3, where do we go to
15 ascertain what the current licensing basis is? If we
16 sit down and we say, "Let's look it up," how does the
17 NRC staff do that?

18 The NRC staff is going out to conduct an
19 inspection of Indian Point or any other facility. How
20 does the inspector know what the current licensing
21 basis is so that they can make a determination as to
22 whether or not the applicant is in compliance with it?

23 MR. TURK: The current licensing basis
24 consists of a series of documents that arise during
25 the course of the operation of the facility. It

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1 includes the FSAR, the final safety analysis report,
2 as well as all of the various correspondence and
3 actions that have been taken with respect to the plant
4 since initial licensing.

5 When an inspector goes out to determine
6 whether the requirements of the license are being met,
7 the inspector would sit down and look at, what are the
8 requirements that pertain to this particular system or
9 component or structure and determine what is the
10 current licensing basis and then look to see, is it
11 being met? So it's somewhat on a case-specific or
12 incident-specific basis.

13 CHAIRMAN McDADE: In your papers, you
14 indicate that the current licensing basis is based on
15 those records that have been docketed with the NRC and
16 that those records would be accessible through ADAMS
17 or other records systems within the NRC.

18 Let me ask, what does the NRC do
19 specifically if they are looking at a particular
20 system to determine what the current licensing basis
21 is for that particular system? How would they go
22 about finding it?

23 Because, again, we start with a premise
24 that this is not pulled together in one place. It's
25 not like you can just simply go to a bookcase and the

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1 current licensing basis will be there in a number of
2 binders and you can just simply go to a particular
3 paragraph and determine, for example, how a particular
4 piece of equipment is required to operate.

5 So how does the NRC determine what the
6 current licensing basis is? Specifically the question
7 raised by New York, as I understand it, is how do we
8 as New York ascertain what that current licensing
9 basis is?

10 MR. TURK: May I have just a moment, Your
11 Honor?

12 CHAIRMAN McDADE: Please.

13 (Pause.)

14 MR. TURK: I thank you.

15 I am very fortunate to have knowledgeable
16 staff with me, Your Honor. I was just conferring with
17 Mr. Boska, who is the project manager for current
18 operations for Indian Point. And he confirmed that
19 the basis for determining the current licensing basis
20 or the first place you would go would be to look at
21 the license itself.

22 The license itself has different
23 requirements set out in license conditions. It has a
24 detailed set of technical specifications that govern
25 the mandatory requirements for plant operation.

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1 After looking at the license, the project
2 manager or the inspector would look at the updated
3 final safety analysis report because that should
4 document most of the requirements that apply to the
5 plant.

6 And, if necessary, the inspector or
7 project manager or member of the staff would look to
8 see, are there other submittals that pertain that need
9 to be addressed?

10 CHAIRMAN McDADE: And where would they
11 find those other submittals?

12 MR. TURK: The staff --

13 CHAIRMAN McDADE: We have basically got
14 almost 30 years of them with regard to Indian Point,
15 correct?

16 MR. TURK: Well, yes. And you have that
17 with respect to all nuclear power plants that come in
18 for a license renewal. And the same situation applies
19 probably throughout the industry that you don't have
20 an assemblage of documents where you could say, "For
21 this structure, here is every document that pertains.
22 Here is the current licensing basis laid out in nice,
23 easy to access format."

24 JUDGE WARDWELL: You say there isn't
25 access to it in easy format? Is that what you just

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1 said? I'm sorry. I missed that.

2 MR. TURK: There's no document assemblage
3 that says, "Here is everything that pertains to the
4 plant" in one place. So the staff would have to go
5 back. If it's not satisfied that enough information
6 is available to it in the FSAR and the license, it
7 might go back and say, "What are other commitments
8 that have been made that may not be apparent here?"

9 JUDGE WARDWELL: Without that --

10 MR. TURK: But they should be. Any
11 binding or any important commitment should be laid out
12 in the FSAR or in the license itself.

13 JUDGE WARDWELL: Is there an updated FSAR
14 currently for Indian Point available?

15 MR. TURK: Yes. Like any nuclear power
16 plant, it is required to update every two years.

17 JUDGE WARDWELL: And is that in one
18 location --

19 MR. TURK: Yes.

20 JUDGE WARDWELL: -- under a sanction
21 number, say in ADAMS or some format like that?

22 MR. TURK: Yes.

23 JUDGE WARDWELL: Without the assembly of
24 all of the information, how is a petitioner to
25 determine whether or not a particular component is in

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1 that current licensing basis such that it isn't
2 required to be addressed under a licensing renewal
3 aging management review?

4 MR. TURK: The petitioner would have to do
5 the same thing the staff does, perhaps with less
6 knowledge about where to look. But they would have to
7 look for relevant documents that pertain to that
8 structure, system, or component.

9 JUDGE WARDWELL: But it would be even a
10 harder challenge for them, wouldn't it, because they
11 are looking for a negative? They have to search
12 everywhere because they may not find it in one
13 location, but they can't necessarily, then, conclude
14 that it's not in some other location and exempt it
15 from this aging management review. Isn't that
16 correct?

17 Isn't it a monumental task to do that
18 without a compiled current licensing basis that
19 someone could go to and look in one location to see
20 the absence or presence of a given component?

21 MR. TURK: I am sure it is a difficult
22 task, Your Honor. And the Commission has addressed
23 that in its statements of consideration. The
24 Commission specifically ruled or stated in adopting
25 its rules that there is no requirement that the CLB,

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1 the current licensing basis, be assembled.

2 CHAIRMAN McDADE: It's not a requirement
3 that it be assembled, but the question that New York
4 has is, how is it ascertained? Now, they are not
5 saying necessarily and based on what the Commission
6 has said that it has to be located in one location,
7 but without having an index, a list, indicating, now,
8 specifically what changes have been made, what changes
9 the NRC has required, you know, where does a
10 petitioner go?

11 Again, they are required in their
12 pleadings to be very specific under 2.309. And their
13 basic thrust is it is very difficult for us to do that
14 when we have such an amorphous thing as the CLB to
15 work with.

16 So is there any specific guidance in NRC
17 documents that tell them how this can be ascertained?

18 MR. TURK: I don't know the answer to
19 whether there is guidance for that, Your Honor. The
20 licensees are not required to maintain an assemblage
21 in a neat, orderly, indexable fashion of all the
22 different matters that pertain to their licensing
23 basis.

24 CHAIRMAN McDADE: Put aside the applicant
25 right now. What about the NRC? Does it maintain the

1 current licensing basis in any specific manner?

2 MR. TURK: Not in the manner you are
3 suggesting.

4 CHAIRMAN McDADE: Okay. One of the things
5 you mentioned earlier was the FSAR. And you say that
6 has to be updated every two years.

7 MR. TURK: Yes.

8 CHAIRMAN McDADE: And I believe in the
9 documents, it is referred to by the staff as the
10 UFSAR, which is the updated final safety evaluation
11 report.

12 MR. TURK: Safety analysis report.

13 CHAIRMAN McDADE: Safety analysis report.
14 Okay. We are using an awful lot of acronyms. There
15 are people who are listening who don't necessarily
16 work in a nuclear plant and probably aren't going to
17 be familiar with them.

18 So what I am going to try to do, at least
19 the first time we use an acronym, is to try to say out
20 all the words. And then we can go back to the
21 initials later on.

22 MR. TURK: Okay.

23 CHAIRMAN McDADE: Okay. From the
24 standpoint of Entergy --

25 JUDGE WARDWELL: Before we get to it, can

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1 I just ask a clarifying question of petitioner? New
2 York State, could you elaborate a bit more on the
3 difference between ascertaining the CLB and not
4 compiling it? Couldn't someone take a position that,
5 really, you have a hidden agenda in regards to
6 requiring them to really compile it?

7 What would serve your needs in regards to
8 being able to locate and access the information you
9 needed in order to determine which components are
10 needed for an aging management plan?

11 MR. SIPOS: Your Honor, there is no hidden
12 agenda on New York's part. We have tried to follow
13 the NRC's regulations as they have been promulgated
14 and as they have been amended. We understand the
15 difference between the 1991 regulations and the 1995
16 regulations. We understand the questions about
17 assembling the CLB.

18 And I want to make it unambiguously clear
19 any argument that New York is trying to force Entergy
20 to assemble and serve up in a banker's box the CLB is
21 an argument that misses New York's point.

22 We submit it is a red herring. Our
23 argument is not that it should be assembled. Our
24 argument is that it is not ascertainable. And,
25 moreover, New York's argument is also that right now

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1 as we are here today in this courtroom, there is not
2 an updated, a meaningful updated, final safety
3 analysis report.

4 Chairman McDade I think is right to note
5 the issue of acronyms. And we throw them around.
6 UFSAR becomes almost second nature. But what does
7 that term stand for? The first word in that term is
8 "updated." And in this instance, the FSAR, whatever
9 it is, is not updated. It has old seismic
10 information.

11 JUDGE WARDWELL: Okay. Can I interrupt?

12 MR. SIPOS: Yes.

13 JUDGE WARDWELL: I didn't ask about the
14 UFSAR. I was going to get to that later. What I am
15 interested in now, what do you feel you need to make
16 the CLB ascertainable?

17 MR. SIPOS: We feel that the UFSAR, if I
18 could come back to that, is a building block. It is
19 a keystone in the CLB. And in bringing that right
20 back to 54.3, the definition of the CLB that we find
21 in the relicensing regulations, which informs New York
22 what the CLB is, there are parts, building blocks,
23 within that definition that just are not updated.
24 They are not current.

25 There are references to, for example, the

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1 general design criteria or suggest the general design
2 criteria that were proffered by the Atomic Industrial
3 Forum, a trade group, a lobby group.

4 The UFSAR says, "Well, that is what we
5 built the plant to." New York believes that is not an
6 appropriate standard for constructing two nuclear
7 power reactors. We have attempted to identify some of
8 the deficiencies in the UFSAR.

9 And if I could just pick up on a point
10 that Mr. Turk made, he discussed the statement of
11 considerations. We would call to the Board's
12 attention the 1995 statement of considerations for the
13 relicensing rule in which the NRC, the Commissioner
14 said, "The FSAR, the updated FSAR, is a very important
15 document. It assures consideration. It establishes
16 appropriate administrative and regulatory controls."

17 There is a plethora of documents, both by
18 industry and the NRC, that underscore the importance
19 of the UFSAR. Without an updated FSAR, we question
20 whether there is a current licensing basis for this
21 facility.

22 There are NEI documents. There is an NEI
23 document, NEI 98-03, revision 1. It reflects the
24 industry's quote, "Recognition of the importance of
25 the UFSAR." There is the NRC regulatory guide.

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1 These documents, for whatever reason,
2 these important documents, have not been maintained
3 and have not been updated. And we have submitted a
4 detailed declaration from David Lochbaum, who has
5 endeavored to review the documents in the public
6 document reading room in Rockville, that shows that
7 there are significant and substantive deficiencies in
8 these keystone documents that form the CLB.

9 JUDGE WARDWELL: Thank you.

10 CHAIRMAN McDADE: Ms. Sutton or Mr.
11 Bessette?

12 MS. SUTTON: Well, we obviously disagree.
13 There is a current licensing basis. One can ascertain
14 that by walking through the various elements specified
15 in 10 CFR section 54.3. That would include NRC
16 regulations, plant-specific design information,
17 docketed correspondence, responses to the NRC
18 bulletins and generic letters. That is all there, and
19 it is on the docket.

20 Furthermore, you are to look at the
21 license renewal application, which explains how that
22 information has been used, what is in scope, what
23 isn't in scope. And you can ascertain the current
24 licensing basis.

25 The applicant is in no way required to

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1 compile the current licensing basis. It can be
2 determined on an issue by issue basis.

3 CHAIRMAN McDADE: The position of the
4 State of New York, as I understand it, though, is
5 that, for example, Dr. Lochbaum of the Union of
6 Concerned Scientists at their behalf went through the
7 documents and have found gaps. It's not that it
8 hasn't been compiled but that there are certain gaps
9 of things that should be there that he couldn't find
10 in the records.

11 Now, doesn't that preclude us moving
12 forward with this?

13 MS. SUTTON: As specified in our answer,
14 Your Honor, we believe that the information that he
15 claims is missing is on the docket. And we specify
16 that in the answer as to where the information can be
17 found in docketed correspondence. So we disagree on
18 that point.

19 CHAIRMAN McDADE: Okay. Does that raise
20 a genuine issue, though? In other words --

21 MS. SUTTON: No, Your Honor. We believe
22 there is no basis for his statements. The information
23 is publicly available.

24 CHAIRMAN McDADE: Okay. So it's your
25 position that the papers that you submitted as an

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1 answer contradict unequivocally that Dr. Lochbaum has
2 said and that, therefore, a genuine issue does not
3 remain as to the completeness of the current licensing
4 basis?

5 MS. SUTTON: That is correct, Your Honor.

6 CHAIRMAN McDADE: Okay. From the
7 standpoint of New York, how do you respond to that?

8 MR. SIPOS: We believe that Dr. Lochbaum
9 set forth in great detail, not only in his declaration
10 but in the accompanying chart, the process by which he
11 followed, the documents he reviewed, the shortcomings
12 in the documents that he located. And we believe that
13 there is, at a minimum, a genuine issue of material
14 fact as to the current licensing basis, the UFSAR, and
15 also the commitments to the general design criteria.

16 There is data that is required to be in
17 the UFSAR. And there is a UFSAR that is part of this
18 license renewal application. And that document
19 tendered to the Commission last April, we believe and
20 we have set forth with particularity, the deficiencies
21 in it.

22 One deficiency is that it references
23 seismic information from the circa 1980. That's quite
24 a long time not to update it. I was trying to think,
25 what happened in 1980?

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1 How far back was that? I looked for the
2 New York Times summary. The NRC was still considering
3 disposal at Carlsbad, New Mexico. That's a long time
4 ago. And that's the time frame in which some of the
5 seismic data in the UFSAR, which is part of the LRA,
6 is cited to.

7 CHAIRMAN McDADE: Okay. I understand
8 that. But, as I understand, the position of Entergy
9 is that there is a discernible current licensing
10 basis. You are saying that some of the data that
11 makes up what they consider the current licensing
12 basis, what the NRC staff considers the current
13 licensing basis is out of date. And, therefore, it
14 needs to be updated.

15 But their position also is that that is
16 not part of aging management, that, if anything, that
17 should be part of the day-to-day oversight by the NRC
18 of the operations and is, therefore, outside the scope
19 of this proceeding.

20 MR. SIPOS: The current licensing basis;
21 the UFSAR; the GDC, whatever the operable GDC, general
22 design criteria, are, that helps inform, as New York
23 understands it, the aging management review that is
24 the jumping-off point for license renewal to ensure
25 that the systems, structures, and components, all of

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1 them, all of the ones that are presently existing in
2 the facility, are examined.

3 And if modifications to the systems,
4 structures, and components are not reflected in the
5 UFSAR that accompanied the license renewal
6 application, that raises a genuine issue in New York's
7 view.

8 CHAIRMAN McDADE: Okay. One of the
9 things, since this particular case has been docketed,
10 today is really the first day that we have really
11 moved forward where the umpire has said, "Play ball"
12 and we have really started here.

13 We have had more motions in this case
14 prior to this point than I have seen in any other
15 case. And I wish one motion that they would have is
16 to change the name of the updated final safety
17 evaluation report because I don't know about anybody
18 else, but I stumble over UFSAR every time I try to say
19 it. And I wish we could come up with different
20 initials for it that would flow off the tongue a
21 little bit better. So if anyone is thinking of filing
22 a motion, there would be a good one that would be
23 entertained by the Board.

24 We would be interested in what our
25 authority is for doing that, but the Board would be

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1 sure, a tendency to do it. A lot of the acronyms
2 simply do not flow off at least my tongue.

3 One of the issues that you raise and as
4 you get started with an application for an extension,
5 you have an integrated plant assessment under 54.21.
6 And the question is, without an ascertainable current
7 licensing basis, how does one determine whether or not
8 the integrated plant assessment is adequate?

9 Am I correct that it is the position of
10 New York that it is impossible to make that
11 determination given the state of the record with
12 regard to the CLB?

13 MR. SIPOS: Yes, Your Honor.

14 CHAIRMAN McDADE: How does the staff
15 respond to that, Mr. Turk?

16 MR. TURK: We disagree.

17 CHAIRMAN McDADE: Okay. I understand
18 that. But why?

19 MR. TURK: Well, as I stated before, the
20 CLB is ascertainable. It just may take some digging
21 by the state. But if they have a complaint that the
22 updated FSAR -- maybe that is an easier acronym to use
23 -- that the updated FSAR is not complete, that is
24 really something that would be addressed under current
25 operations. It is not an issue unique to license

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1 renewal.

2 So if they have a concern about that, that
3 is something that would be addressed or should be
4 addressed outside the scope of this proceeding. For
5 purposes of the license renewal, the applicant has the
6 burden when they submit their license renewal
7 application to lay out what are their aging management
8 plans submitted in accordance with regulations and how
9 they relate to the current licensing basis.

10 It's up to the state if they have a
11 concern that there is some part of the CLB, the
12 current licensing basis, that is not addressed to
13 identify what that is, rather than to say, "We can't
14 tell."

15 CHAIRMAN McDADE: But how do they do that
16 if they can't tell?

17 MR. TURK: By going back through the
18 records, the same as the staff would do and as the
19 applicant would have to do if they were pressed on a
20 specific issue. They would then have to say how one
21 issue or another was addressed,

22 MS. SUTTON: You go through it issue by
23 issue. And, again, you use 54.3 as you guide, and you
24 find the information. It is on the docket. And it
25 most certainly is ascertainable.

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1 JUDGE WARDWELL: Could you elaborate a
2 little bit on with regards to the example that New
3 York State has provided in relationship to the age of
4 the seismic data, for instance? As I understand what
5 they're saying, that makes it not updated. It's
6 incomplete. What is your response to that particular
7 example?

8 MS. SUTTON: We believe that they disagree
9 with the seismic design basis of the plant. That is
10 currently codified by part 50. It is outside the
11 scope of this proceeding. And it is evident in the
12 current licensing basis.

13 They have identified the pre-GDC that
14 applies to this plant. They disagree with them. But
15 they are in the current licensing basis. They are
16 simply outside of scope.

17 JUDGE WARDWELL: Well, wouldn't using that
18 old data say that it isn't a very updated final safety
19 analysis report if it's using data that is that old?

20 MS. SUTTON: No, Your Honor. There is an
21 updated final safety analysis report on the docket.
22 It is based on that design basis information that was
23 developed when the plant was licensed originally, but
24 it is not currently open to argument in the license
25 renewal proceeding per the Commission's part 54

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1 regulations that have excluded the current licensing
2 basis information from the pack essentially.

3 JUDGE WARDWELL: What is updated in an
4 updated final safety analysis report?

5 MS. SUTTON: The information in there is
6 updated per 50.71(e) on an annual basis. And it is
7 information pertaining to various technical
8 specifications associated with plant operations.

9 JUDGE WARDWELL: Thank you.

10 CHAIRMAN McDADE: Okay. Assume for the
11 sake of argument that the report is inadequate, that
12 the final safety analysis report is inadequate. What
13 you are saying is, even if it is, it is outside the
14 scope of this proceeding.

15 What would an applicant, an interested
16 party, do if they were of the view that it had not
17 been updated properly, that the data was irrelevant,
18 that the data was erroneous? What would they do since
19 you are saying that they cannot raise it in the course
20 of the licensing renewal proceeding?

21 MS. SUTTON: As it pertains to current
22 plant operations, they can under part 50 seek
23 enforcement action per 2.206, for example, Your Honor,
24 but it would be in current licensing space.

25 CHAIRMAN McDADE: Now, that has to do with

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1 the current operation of the plant. But what New York
2 I think is also saying is that without having that
3 updated current operating basis, we can't make a
4 determination, we can't assess the adequacy of the
5 aging management plans that Entergy has put forward.
6 How do you respond to that?

7 MS. SUTTON: The distinction here is that
8 the NRC believes that the seismic information, for
9 example, currently in the licensing basis is adequate
10 for purposes of plant operation, including license
11 renewal, per part 54, as the rules are written.

12 CHAIRMAN McDADE: Again, they think it's
13 adequate. The staff thinks it's adequate. You think
14 it is adequate. New York doesn't think it is
15 adequate.

16 MS. SUTTON: But it is beyond the scope of
17 this proceeding to change the underlying regulation.

18 CHAIRMAN McDADE: But doesn't that -- and
19 we're talking about seismic. And we will get into the
20 individual contentions later, and that is one of the
21 individual contentions. But assuming the seismic
22 data, as it currently exists, demonstrates that there
23 is a real possibility of a more significant termor
24 than was anticipated, doesn't that affect the aging
25 management plans as well as the current operating

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1 basis?

2 Wouldn't you have to modify your aging
3 management plans to adjust for the actual seismic
4 conditions as known? And if you didn't do that, isn't
5 the aging management plan inadequate? And doesn't
6 that bring what New York has said within the scope of
7 this proceeding?

8 MS. SUTTON: To the extent that a change
9 were necessary, it would begin in part 50 space,
10 current operating space. And if the current licensing
11 basis were modified in some way, then yes, we would
12 have to go in and modify the application later in
13 time.

14 But the application doesn't drive the
15 current licensing basis. The current licensing basis
16 drives the application. In this case, we have used
17 the current licensing basis. If the bases change,
18 then we examine the need for change under 54.37(b) and
19 make changes accordingly.

20 CHAIRMAN McDADE: Okay. And, again, by
21 way of a preliminary issue here before we actually get
22 into the contentions, there is an issue as to the GDC,
23 the general design criteria.

24 Let me, first of all, ask Entergy. And we
25 have had various discussions here as to what general

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1 design criteria the plant was constructed under.

2 There was a draft NRC in 1967. There was
3 a final NRC in 1971. There was an industry -- and at
4 that time, I believe it was the AIF in 1971, yes,
5 1971.

6 Which are we dealing with? What general
7 design criteria informs our discussion here? Is it
8 the NRC '67 draft? Is it the AIF from, I believe,
9 October of '71?

10 MS. SUTTON: Yes, Your Honor, it is the
11 pre. Our plants are not licensed to appendix A to
12 part 50, those GDC. It is the prior GDC, which were
13 the AEC published in July of 1967. And it was
14 determined in 1982 that Indian Point 2 is in
15 compliance, even with the current GDC.

16 JUDGE WARDWELL: Can you speak a little
17 louder? It is hard to hear you up here.

18 MS. SUTTON: Yes, Your Honor. It is the
19 1967 general design criteria. As the plants were
20 licensed, they were issued construction permits after
21 May 21st, 1971. So they are not subject to the GDC
22 that are in appendix A to part 50. They were designed
23 to the pre-GDC, which were published in July of 1967.

24 JUDGE WARDWELL: Who pushed those in '67?

25 MS. SUTTON: It was the Atomic Energy

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1 Commission.

2 CHAIRMAN McDADE: And that one, though, in
3 '67 was a draft, correct?

4 MS. SUTTON: Correct, Your Honor.

5 CHAIRMAN McDADE: Okay. Let me ask, does
6 it make any difference for our purposes here which
7 general design criteria we are under? Isn't that part
8 of the COL outside the scope of this proceeding?

9 MS. SUTTON: It is part of the CLB --

10 CHAIRMAN McDADE: I'm sorry.

11 MS. SUTTON: -- and outside the scope of
12 this proceeding, yes. So it does not matter.

13 JUDGE LATHROP: You just said that you
14 meet the criteria of the 1971 GDC.

15 MS. SUTTON: For Indian Point unit 2,
16 there was a determination made in 1982 that they meet
17 the current GDC as well.

18 JUDGE WARDWELL: Let me ask the NRC staff,
19 does the NRC keep the GDC for each reactor in a
20 readily accessible place?

21 MR. TURK: We know what the proposed GDCs
22 were in July '67. And we know what the Atomic
23 Industrial Forum proposed as modifications to those
24 draft GDC.

25 The UFSAR, as I understand it, actually

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1 references the Atomic Industrial Forum proposed
2 revisions to the draft GDC as the basis for the
3 plant's design. In fact, maybe the best way to look
4 at it logically is that the draft GDC published in
5 July 1967 formed the basis for what the AIF, the
6 Atomic Industrial Forum, then came in with as a
7 proposed modification to those draft GDC. And it's
8 that AIF, proposed modification to the draft GDC, that
9 is referenced in the updated FSAR for Indian Point.

10 I would like to address one other
11 question.

12 JUDGE WARDWELL: What year was that?
13 Sorry to interrupt.

14 MR. TURK: It was also 1967, I believe
15 October.

16 I would like to address one other point.
17 Ms. Sutton stated that if the current licensing basis
18 were to change, then the accident would come in under
19 54.37, I believe she referenced, and change the
20 application, if I am not mistaken.

21 MS. SUTTON: The updated.

22 MR. TURK: The updated. Actually, I
23 believe the correct reference would be 54.21(b), which
24 states that CLB changes, current licensing basis
25 changes, during NRC review of the application would

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1 then be examined by the applicant. And the applicant
2 would have to then update its license renewal
3 application to address any changes in the CLB.

4 So, coming back to your question about the
5 seismic information that the state has presented, if
6 that information were to change the current licensing
7 basis for the plant and a license renewal application
8 has not yet been granted, then the LRA, the license
9 renewal application, would have to be modified to
10 address the new change to the CLB.

11 JUDGE WARDWELL: And what is the mechanism
12 for a petitioner to request that a review be made of
13 the seismic information to see whether or not it is
14 warranted to update the current licensing basis?

15 MR. TURK: As the Commission stated,
16 matters that are pertinent to both current operations
17 and license renewal, extended period of operation,
18 would be addressed under current operations. So they
19 could come in with, as Ms. Sutton suggested, a request
20 for enforcement action under 10 CFR 2.206 or they
21 could submit the information to the staff and ask for
22 it to be considered in a more informal nature.

23 JUDGE WARDWELL: Can you elaborate a
24 little bit more on that latter process, this informal
25 nature? What happens with that? So they send a

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1 letter to you saying, "Hey, this is all seismic data.
2 It ought to be updated." Then what happens?

3 You say you ignore it or you say, "Yes, it
4 does" or "No, it doesn't"? What are the various
5 options that occur after that has been submitted?

6 MR. TURK: Well, I would have to wait to
7 see if there is such a submittal, but in general if a
8 matter is submitted to the staff for consideration, we
9 would give it a first glance to see, is this something
10 that affects current safety, whether we believe it
11 needs to be considered further. And we might then
12 enter into discussions with the state to talk about
13 the information they present.

14 JUDGE WARDWELL: How would this be
15 addressed under an enforcement action? I don't
16 understand how that would take place. If, in fact,
17 it's merely objecting to the basis of which seismic
18 analyses are being run, it seems to me it wouldn't fit
19 neatly into an enforcement action very well.

20 MR. TURK: They would come in with a
21 petition under 2.206. The NRC staff would then
22 establish a petition review board, where there would
23 be formal consideration of the petition itself.

24 JUDGE WARDWELL: Thank you.

25 JUDGE LATHROP: Back to the question I

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1 asked. You said that the general design criteria
2 could be found in the updated FSAR, the ones that
3 apply to Indian Point 2 and 3. Is that what you said?

4 MR. TURK: I believe the answer is yes.
5 I have not looked at the updated FSAR to tell you
6 specifically for each criterion, are they mentioned
7 there or not, but there is a general reference in the
8 updated FSAR to the AIF, Atomic Industrial Forum,
9 proposed modifications to the draft GDC.

10 And I would reiterate something that Ms.
11 Sutton stated. And that is that for nuclear power
12 plants whose construction permits were issued before
13 May of 1971 -- and there were 64 plants in that
14 situation. I believe the number is 64, if not 67.

15 All of those plants had construction
16 permits issued before 1971. And they are not obliged
17 to conform to the current final GDC that was set out
18 in 10 CFR part 50, appendix A.

19 So that is not just unique to Indian
20 Point. That is unique to half the nuclear power
21 plants operating in this country.

22 JUDGE LATHROP: May I ask Entergy, what
23 was the date of the most recent updated FSAR?

24 MS. SUTTON: One moment, Your Honor. I
25 will have to confer with an Entergy representative.

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1 (Pause.)

2 CHAIRMAN McDADE: Well, while Mr. Bessette
3 is checking that, can we move on? Do you have
4 anything else on that?

5 JUDGE LATHROP: No, sir.

6 MR. BESSETTE: Your Honor, subject to
7 confirmation, I believe it is October of 2006 for unit
8 2 and October of 2007 for unit 3. It is our
9 understanding it is done six months after each outage.

10 CHAIRMAN McDADE: Okay. Thank you.

11 One of the issues having to do with
12 contention 1 had to do with the completeness of the
13 license renewal application. And there was a notation
14 by the State of New York in that regard that the
15 appropriate step for us would be for us to suspend
16 these proceedings until a complete or a more complete
17 application was submitted.

18 I guess the first question would be, what
19 authority does the State of New York point to that
20 would give us the authority to suspend the proceeding?

21 MR. SIPOS: Your Honor, the State of New
22 York believes that as constituted this Atomic License
23 Safety Board has the inherent authority to issue such
24 an order. In our papers we cited, I believe, NRC case
25 law to that effect as well.

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1 Another option would be to deny the
2 application or we have also asked for a determination
3 as the completeness and New York would also suggest
4 that the provisions of the Administrative Procedure
5 Act which if certain prerequisites are satisfied could
6 extend a current permit that there be a finding that
7 that provision does not apply here, does not apply and
8 the unit it would affect first would be Unit 2 in that
9 they do not have the entitlement to that safe harbor.

10 CHAIRMAN McDADE: At this point, I believe
11 also you cited 2.319 for our authority to suspend
12 which is our general authority to conduct hearings in
13 an orderly way. But one of the questions I have, and
14 again denying the application obviously if we
15 suspended it that would be a different option to
16 denying it and if we suspended it, we wouldn't get
17 that far, is what would happen if we did suspend it
18 as currently situated right now that I believe under
19 2.101 the staff has docketed it. The staff has found
20 the application administratively to be complete.

21 And as I further understand it at this
22 point in time given the fact that the application was
23 submitted and docketed more than five years prior to
24 the time that the original license to expire that that
25 license would continue until this matter is resolved.

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1 So if we were to suspend this proceeding, wouldn't
2 that just simply effectively grant the license renewal
3 without a hearing?

4 MR. SIPOS: No, Your Honor, it would not
5 and I'd like to explain if I may. The determination
6 that was made at the end of last July, July 2007, was
7 a determination by staff and in reading the letter or
8 reading the determinations that issued at that time,
9 staff did not make a determination under the
10 Administrative Procedures Act. Moreover, even if they
11 had, that would only be the opinion of staff. It is,
12 we submit, not the final word on behalf of the
13 Commission.

14 The staff going back to their letters and
15 their communications at the end of July after we wrote
16 and said we think there are deficiencies in the
17 application, following up on a comment that Mr. Turk
18 might have made or did make, excuse me, the staff
19 found that there was sufficient -- the staff found
20 that it could proceed with its review. But it did not
21 make a determination that's binding on the Commission
22 and that is what we seek to litigate here.

23 We have identified deficiencies in our
24 first contention, Contention 1, and we suggest that
25 this Board has the authority to review that

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1 contention, that completeness, are the required
2 reports, analyses and studies presented, and under its
3 authority make a determination on that. In short,
4 staff's determination at the end of the July is in no
5 way binding on the Board, on the Commission, nor does
6 it grant Entergy the safe harbor under the
7 Administrative Procedures Act.

8 CHAIRMAN McDADE: Assume for the sake of
9 argument, and again I'm not -- we have no opinion on
10 this at this point in time, but assume for the sake of
11 argument that we felt that we did have authority under
12 2.319 to suspend the proceeding. We don't have the
13 authority to direct the Commission. Would New York
14 not necessarily be let in a situation where the
15 license would continue? Just based on the NRC
16 regulations it would continue until there was either
17 further action by the Commission or by this Board if
18 we were to suspend.

19 MR. SIPOS: I believe the answer is no
20 because there is no finding yet by any entity within
21 the NRC, be it staff, this Board or the Commission,
22 that the application is complete and accurate.

23 CHAIRMAN McDADE: Okay, but is that
24 required under the regulation? Isn't the situation
25 basically saying as I read the regulation, "We don't

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1 want to be making these decisions at the last minute."
2 Likewise, we don't want the Applicant to be in a
3 situation where a delay that has nothing to do with
4 what they do whether the delay is the result of
5 something that the staff does, that the Board does, of
6 being in a position where they have to seize
7 operations. So they have said, "Submit your
8 application at least five years prior to the time that
9 the license is up for renewal and if you do that
10 you're covered." Your license will stay until the
11 Commission, and again, all the aspects of Commission,
12 the staff, the Commission itself, the Licensing Board,
13 until they resolve this matter and either grant the
14 extension, deny the extension, or condition the
15 extension and haven't at this point in time they've
16 done enough to -- They have their application
17 docketed. Isn't that all they need under the
18 regulation?

19 MR. SIPOS: In short, the answer is no.
20 That is not enough and the scenario which you propose
21 assumes a timely, complete and sufficient application.
22 It's one thing if in the process an issue were to
23 present itself. Down the road, staff said, "Here's a
24 new issue that's coming up. Let's look at it."

25 It's another thing when the Applicant

1 knows going into the process that there is an issue,
2 that there's a deficiency or that with respect, for
3 example, with embrittlement and the cumulative usage
4 factor issue and going in with an application that it
5 should have reason to believe is not necessarily
6 sufficient or complete and New York submits that's one
7 example of what's happened here that the proposal for
8 CUF is inappropriate. It's not a proposal at all.

9 So for that safe harbor to exist under the
10 scenario that you propose, there must be a complete
11 and sufficient application and New York here is
12 saying, "There is not a complete and sufficient
13 application."

14 CHAIRMAN McDADE: There's not going to be
15 a determination as to whether the application was
16 complete and sufficient until after we have a hearing
17 and isn't the whole purpose of this regulation to
18 allow the Applicant not to be just out there hanging
19 in the breeze while we're going through the hearing
20 process? Hasn't the determination of the staff to
21 docket the application been a sufficient finding in
22 order to apply the Applicant to benefit of this safe
23 harbor?

24 I just want to make sure I understand if
25 we were to agree that a suspension would be

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1 appropriate what could necessarily flow from that?

2 MR. SIPOS: We believe that if a
3 suspension was a remedy that the Board or the
4 Commission elected that in this case it would not
5 provide the safe harbor and I would respectfully refer
6 the Board's attention to 10 CFR Section 2.109, I
7 believe, (b). If I could just read it.

8 CHAIRMAN McDADE: I'm sorry. 109?

9 MR. SIPOS: I'm sorry. I was looking
10 down. 2.109(b) and if I may read it, it says, "If the
11 licensee of a nuclear power plant licensed under 10
12 CFR 50.21(b) or 50.22 files a sufficient application
13 for renewal of an operating license at least five
14 years prior to the expiration of the existing license,
15 the existing license will not be deemed to have
16 expired until the application has been finally
17 determined." And New York is focusing on "sufficient
18 application."

19 JUDGE WARDWELL: And how is "sufficient"
20 defined and who determines that?

21 MR. SIPOS: I believe this in instance, in
22 the first instance, as New York has raised this
23 contention, the Board can make that determination and
24 New York has attempted to identify deficiencies, to
25 identify factors, that would support or could support

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1 the Board ruling that this application which came in
2 in April was woefully deficient.

3 JUDGE WARDWELL: Staff, what did you use
4 in evaluating and deciding that you could docket this
5 application?

6 MR. TURK: The staff's standard, the
7 standard that's set up under law for the staff to
8 consider, is whether the application is sufficiently
9 complete to be docketed and we cite to this at pages
10 26 and 27 of our response to the state's contention.
11 The staff considers the regulations and the
12 application and determines whether the Applicant has
13 submitted the information required by regulation
14 sufficiently for the staff's review to be conducted in
15 a meaningful manner.

16 We don't require that every bit of
17 information be final or that the application be
18 totally complete. As the Licensing Board is aware we
19 go through a process with all applications whereby we
20 submit requests for additional information and the
21 application may be supplemented as a result of the
22 responses that we get in response to our RAIs, an
23 acronym.

24 JUDGE WARDWELL: And yet what New York
25 just alleged that the word "sufficient" in 109(b) is

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1 really different than your "sufficiently complete"
2 that you use for docketing if I understand what their
3 position is. Could you say your position on that?

4 MR. TURK: It's a matter -- There is no
5 concise, crisp definition of sufficient. The test is
6 whether the staff determines in its discretion that
7 the application is sufficiently complete for its
8 review to commence and that is a matter that is left
9 from the Commission to the staff to determine and as
10 numerous cases have held it's beyond the authority of
11 the Licensing Board to question or determine
12 otherwise.

13 JUDGE WARDWELL: But we could judge on
14 whether or not it's a sufficient application in
15 accordance to 109(b) without violating your
16 determination that it was sufficiently complete when
17 you docketed it.

18 MR. TURK: Your determination in this case
19 will be whether the application is sufficient in a
20 legal sense, does it mean the requirements of the
21 regulations to be granted but not to be docketed and
22 for the review to commence.

23 JUDGE WARDWELL: So if I understand what
24 you just said, you would agree with New York State
25 that the word "sufficient" under 109(b) is up to us in

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1 regards to whether or not it meets the requirements
2 and at any point that we determine it's not sufficient
3 we can suspend the hearing. Is that your position
4 also?

5 MR. TURK: No. No, definitely not because
6 the sufficiency there has to do with sufficient for
7 review, not sufficient for granting.

8 JUDGE WARDWELL: And where do you see that
9 in the 109(b)?

10 MR. TURK: 109(b) does not address that.
11 That is how the regulation has been interpreted and
12 applied in Commission case law.

13 JUDGE WARDWELL: And what case law is
14 that?

15 MR. TURK: In our brief, we cite to --

16 JUDGE WARDWELL: I understand case law in
17 regards to you docketing it for completeness and now
18 focusing whether or not the sufficient application
19 under 109 has been evaluated under case law.

20 MR. TURK: The Commission addressed this
21 specifically in the 1991 Statement of Consideration by
22 which we cited page 27 of our brief. At 56 Fed. Reg.
23 page 64963, the Commission stated that "the Commission
24 discourages filing of pro forma renewal applications
25 that would be filed simply for the sake of muting the

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1 10 CFR 2.109(b) deadline. However, a determination
2 that an application is sufficient for purposes of
3 timely renewal would not be litigable. Sufficiency is
4 essentially a matter for the staff to determine based
5 upon the required contents of an application
6 established in Sections 54.19, etc."

7 JUDGE WARDWELL: How would you respond to
8 that, New York State?

9 MR. SIPOS: The Statement of
10 Considerations that Mr. Turk refers to does inform New
11 York's position here and indeed there should not be a
12 pro forma filing of applications just to meet the
13 deadline in 2.109. Moreover, the Statement of
14 Considerations refers to required reports and
15 analyses. New York here submits that the required
16 reports and analyses were not submitted.

17 Moreover, in the series of letters that
18 went out last July, July 25, 2007, to the New York
19 State Attorney General's Office and to Entergy, staff
20 said that it found that it would proceed with its
21 review but it didn't not cite 10 CFR 2.109(b) in those
22 letters either to our office or to Entergy. That is
23 an issue that this Board may take up.

24 CHAIRMAN McDADE: Okay. But let's go back
25 a second. I mean, the first issue there and they were

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1 talking about sort of a pro forma application, when
2 the staff makes a determination to docket it under
3 2.101 they've made a determination that it's not
4 simply a pro forma application.

5 Now it may or may not be sufficient. Down
6 the road, we may or may not determine as a matter of
7 law that the application is sufficient and can be
8 granted. But isn't the whole purpose of 2.109(b)
9 allowing this safe harbor as it were to protect the
10 Applicant. If the Applicant puts forth a good faith
11 application, not a pro forma application, the staff
12 makes a determination that it meets the requirements
13 for docketing under 101, then the Agency goes through
14 the process of reviewing it, initially with the staff
15 review, ultimately having the review passed through
16 the Board, ultimately to the Commission, but that the
17 Applicant shouldn't be left in a position if that
18 takes a long time. If the staff is slow, if the Board
19 is slow, if the Commission is slow, they even though
20 they've submitted a sufficient application again they
21 just haven't had the imprimatur. We haven't gotten to
22 the point of ruling one way or the other. They get to
23 stay in operation until it's determined one way or the
24 other whether it's efficient.

25 And again, my question is if that's the

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1 case, if we were to suspend, doesn't that do just the
2 opposite of what New York is wanting which is it
3 prevents us ultimately from reaching the issue of
4 whether it is sufficient in a timely manner. It
5 continues the operation of the plant indefinitely and
6 at that point they have no incentive to submit another
7 application, a more complete application, because they
8 can keep going indefinitely.

9 MR. SIPOS: I believe the Board could
10 always order them to remedy the deficiencies and I
11 think Your Honor's question goes to a larger issue of
12 perhaps crosscutting many facilities across the
13 country. But New York's position is with respect to
14 the application here for Indian Point that Entergy's
15 application was not sufficient and at 2.109 which the
16 staff did not cite to in its docketing letter that
17 that allows this Board to make that determination and
18 there's been no finding by the staff in any way under
19 2.109(b).

20 Moreover, to address the concern about
21 that this could continue on indefinitely, if there was
22 a finding that it was not sufficient in this case, and
23 again not addressing sort of the larger policy issues
24 but in this case, if there was a finding that the safe
25 harbor did not apply, that would be direct incentive.

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1 Entergy would have a very pointed incentive to get its
2 application up to code, up to snuff, so to speak and
3 so that we would not be in a situation where it
4 dragged on indefinitely.

5 New York, to be sure, has a concern about
6 that, but we believe a finding that it is not
7 sufficient under 2.109 would send a very clear message
8 that more needed to be done here and would move this
9 process forward actually.

10 CHAIRMAN McDADE: Okay. Thank you. From
11 Entergy's standpoint, Ms. Sutton, Mr. Bessette, Mr.
12 O'Neill.

13 MS. SUTTON: We just believe there is a
14 very clear distinction between the staff's
15 docketing/sufficiency review in which they basically
16 determined that the application had the reasonable
17 amount of information sufficient to commence the
18 staff's review. They were not at that point saying
19 that the application was sufficient upon which to
20 issue a renewed license.

21 That's the purpose of this proceeding.
22 You can determine that for some reason the application
23 is not sufficient to support issuance of license, but
24 the initial sufficiency review is not subject to
25 challenge in this proceeding. We, too, have cited

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1 multiple cases in our answer, in particular, Baltimore
2 Gas and Electric, that that initial sufficiency review
3 is not open to challenge here.

4 And then, yes, Judge, if, in fact,
5 hypothetically there was a suspension and we believe
6 there is no basis for a suspension given that we have
7 docketed a sufficient application we would continue to
8 operate under the timely renew doctrine.

9 CHAIRMAN McDADE: What is your view? Do
10 we have the authority to order a suspension?

11 MS. SUTTON: In this case, the standard is
12 that it's a drastic action and it's not warranted in
13 the absence of immediate threats to public health and
14 safety and we believe those situations are -- that
15 standard is not met in this case and therefore there
16 is no basis upon which to suspend the proceeding and
17 in that case the standard is set forth in the Vermont
18 Yankee. It's Commission Case CLI-00-20.

19 CHAIRMAN McDADE: Mr. Turk, anything
20 further?

21 MR. TURK: Yes, sir. I would simply
22 respond to the State's claim that the staff did not
23 cite 2.109(b) in its correspondence as irrelevant.
24 There's no obligation that we cite regulations when we
25 write to a petitioner or to a state how is interested

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1 in intervening. We don't have to cite regulations.

2 In fact, the Federal Register notice
3 states the information that's necessary. On August 1,
4 2007 at 72 Fed. Reg. 42134 the staff published the
5 notice of acceptance of docketing of the Indian Point
6 license renewal application and in that notice the
7 following statement appears, "The Commission staff has
8 determined that Entergy Nuclear Operation, Inc. has
9 submitted sufficient information in accordance with 10
10 CFR Sections 54.19, etc., to enable the staff to
11 undertake a review of the application and the
12 application is therefore acceptable for docketing."
13 The notice went on to state that "The determination to
14 accept the license renewal application for docketing
15 does not constitute a determination that a renewed
16 license should be issued and does not preclude the NRC
17 staff from requesting additional information as the
18 review proceeds."

19 In essence, the staff exercised its
20 discretion to determine that the application was
21 sufficiently complete to be docketed under 10 CFR
22 2.109(b) regardless of whether the regulation was
23 specifically cited and the staff then proceeded to
24 docket the application. This if you suspend the
25 proceeding would has Judge McDade pointed out

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1 essentially just continue the term of the existing
2 license and I think that's something that state wants
3 to probably avoid. But that would be the effect of
4 the Board's suspension of a proceeding. But I would
5 add there would be no grounds for the suspension in
6 any event because the determination to docket is a
7 staff determination.

8 CHAIRMAN McDADE: Anything further from
9 New York on this issue, sir?

10 MR. SIPOS: Yes, just briefly, Your Honor.
11 New York submits that if the staff were going to make
12 a finding under 2.109(b) that it is incumbent upon
13 staff to cite that provision and to make that ruling
14 clearly and I don't believe the excerpt that Mr. Turk
15 just read to the Board contained that finding.

16 Moreover, one other aspect or one other
17 response to Your Honor's suggestion about the concern
18 about it continuing on, New York would be prepared to
19 bring on a motion for summary deposition. If this
20 contention is sustained at the contention
21 admissibility stage, New York would be prepared to
22 bring on a motion for summary deposition very promptly
23 and to put the issue in specifically on the issue of
24 2.109(b) so that that could be decided right up front
25 and if the determination was made that it was not

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1 sufficient, that would certainly ensure that this
2 matter did not drag on.

3 CHAIRMAN McDADE: Thank you. Anything
4 further on this?

5 JUDGE WARDWELL: It's already late to
6 general and I can do it quickly.

7 But earlier on, you mentioned in regards
8 to alternatives besides a suspension that the Board
9 could deny the license. That isn't your contention
10 though, is it here? Your contention specifically
11 relates to suspension and not any other action by this
12 Board. Correct?

13 MR. SIPOS: I believe that is correct. It
14 would be a remedy that the Board would have as part of
15 its authority.

16 JUDGE WARDWELL: But it's nothing to do
17 with this contention, that particular remedy.

18 MR. SIPOS: I believe that is correct.

19 JUDGE WARDWELL: We are talking about the
20 suspension.

21 MR. SIPOS: And its sufficiency.

22 CHAIRMAN McDADE: But you have 30 other
23 contentions that say we should deny it.

24 MR. SIPOS: That is correct, Your Honor.

25 CHAIRMAN McDADE: Okay.

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1 JUDGE WARDWELL: Thirty-one.

2 (Laughter.)

3 JUDGE WARDWELL: Let me just raise this
4 because it was something we were going to talk about
5 earlier in general. In this contention and in other
6 contentions, you have a contention and then you have
7 bases with this. What is your opinion of what this
8 Board is adopting? Are we adopting intention or the
9 bases? And if there's a dichotomy or a difference
10 between the two which do we place our emphasis on in
11 your opinion?

12 MR. SIPOS: New York respectfully submits
13 that if the Board were to adopt a contention that
14 contention is informed by the bases and the additional
15 -- that it is informed by the bases, but that it is
16 the contention or how the Board frames the contention.

17 JUDGE WARDWELL: If there are small
18 variations that differ between the bases and the
19 contention which rules? Which has the most weight?

20 MR. SIPOS: The bases are an elaboration
21 and do flesh out and inform the contention if there
22 was a -- I believe it's difficult to parse one out
23 without the other. I'm not sure if there's an exact,
24 if there's a specific, instance that --

25 JUDGE WARDWELL: Yes, I'll get to it when

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1 we get to those individual ones.

2 MR. SIPOS: -- you're referring to.

3 JUDGE WARDWELL: I just wanted to raise it
4 as a general issue and get some discussion on it now
5 and then we'll cover each one.

6 MR. SIPOS: The bases flesh out the scope
7 or the intent of the contention.

8 JUDGE WARDWELL: So, in essence, you'd say
9 -- It sounds like you're saying or as I hear you say
10 or I'm interpreting what you're saying is that you
11 would take the position that it would depend upon the
12 individual contention if there is a small variation
13 between the bases and the contention on how the Board
14 could and should rule on that.

15 MR. SIPOS: Yes, I think so, Your Honor.

16 JUDGE WARDWELL: Entergy, what's your
17 opinion of that?

18 MR. BESSETTE: Your Honor, if you could
19 clarify the question.

20 JUDGE WARDWELL: When the Board adopts a
21 contention, if we do adopt any here, but let's say if
22 there is one that is adopted, are we adopting the
23 contention or the bases and specifically in
24 relationship to if there is variations between what's
25 stated in the contention and that which is stated in

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1 the bases, which is the one that carries the most
2 weight?

3 MR. BESSETTE: Your Honor, we believe it's
4 the contention.

5 JUDGE WARDWELL: Thank you.

6 JUDGE WARDWELL: Staff, what is your
7 opinion?

8 MR. TURK: I would say if there was a
9 direct conflict the contention would be the one to
10 look at. But I would also note that the bases define
11 the scope. I think the State made a similar point.
12 Mr. Sipos' words were that the bases flesh out the
13 scope of the contention and, in fact, they define the
14 scope of the contention.

15 So when you rule upon contentions, you
16 would be considering those bases statements. If the
17 State later wanted to add different theories in
18 support of contention, you would look to see is that
19 within the scope of the bases as presented and
20 supported in the contention.

21 JUDGE WARDWELL: In this particular
22 example, when they raised the potential of us denying
23 the application, if in fact that was one of -- in
24 their bases or in their discussion of it as they were
25 fleshing it out which it wasn't in the writing, I

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1 didn't see anything in the writing, he just mentioned
2 it here today and he has clarified that he didn't mean
3 it to relate to this contention, so it's not an issue
4 here, but if, in fact, he had written it also or said,
5 "Yes, it is part of this contention" and wants it to
6 be considered part of it, it's not stated in the
7 contention. So there's a real dichotomy there that
8 the contention would hold. We're ruling only on the
9 suspension of the license and not any denial of the
10 license in this particular case.

11 MR. TURK: In fact, I think there is that
12 dichotomy. I recall seeing there was a request both
13 to suspend and grounds for denial. But I think the
14 thrust of the contention is suspension.

15 JUDGE WARDWELL: I'm sorry. That raises
16 that. Thank you.

17 CHAIRMAN McDADE: Before we proceed
18 further, one administrative matter just to make sure
19 you all know. We anticipate going until about 5:00
20 p.m. We're told that basically that's the point where
21 for security reasons and administrative reasons in
22 this building that we should wrap it up. We
23 anticipate taking a break for lunch of about one hour
24 sometime during the course of the day. It's now about
25 12:00 noon.

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1 Does anybody have any strong feeling? I
2 don't know. Some people may need to eat. I'm happy
3 to move on but at the same period of time, I don't
4 want somebody who has a need to go out and get
5 something to eat as opposed to passing out to feel
6 it's difficult to go on. Does anybody want to keep
7 going for at least another half an hour or do you want
8 to break now? New York?

9 MR. SIPOS: Your Honor, we suggest that we
10 push on.

11 CHAIRMAN McDADE: Okay. Mr. Turk?

12 MR. TURK: We have varied opinions.

13 (Laughter.)

14 JUDGE WARDWELL: I think this panel, this
15 Board, has various opinions also and why I don't
16 necessarily have to eat, there are other reasons to
17 break at this time.

18 (Laughter.)

19 MR. TURK: I can support that.

20 CHAIRMAN McDADE: That may well inform my
21 decision. Does anybody have any strenuous objection
22 then, it's now 12:00 noon, that we break until 1:00
23 p.m.? New York?

24 MR. SIPOS: Let's break.

25 CHAIRMAN McDADE: Mr. Turk?

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1 MR. TURK: That's fine with us.

2 MR. BESSETTE: That's fine.

3 CHAIRMAN McDADE: Okay. So we'll start
4 again promptly at 1:00 p.m. Thank you. Off the
5 record.

6 (Whereupon, at 12:01 p.m., the above-
7 entitled matter recessed to reconvene at 1:15 p.m. the
8 same day.)

9 CHAIRMAN McDADE: On the record. A couple
10 of issues were raised before lunch. One of the issues
11 had to do with the temperature of the room.
12 Hopefully, we have gotten steps taken to raise the
13 temperature at least by a few degrees during the
14 course of the afternoon.

15 The other had to do with the acoustics.
16 Although it was possible for us on the Board to hear
17 counsel and counsel to hear us, it was difficult for
18 individuals are spectators to hear what was going on.
19 During the course of the lunch hour, we were able to
20 secure microphones. I would ask counsel to try to
21 speak directly into the microphone so to the degree
22 practicable everybody who has taken the effort to come
23 here and observe the proceeding will be able to hear
24 everything that is going on and will be able to
25 understand the positions taken by New York and by the

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1 NRC staff and by the Applicant. Yes?

2 MS. MATTHEWS: I just have a question
3 about the microphones. Apparently, there's not one
4 here for us at this table. So how would Your Honor
5 like us to proceed on that?

6 CHAIRMAN McDADE: There are two things
7 and, first of all, I would note that at least from our
8 staff the individuals from New York were the people
9 who could be heard by everybody.

10 (Laughter.)

11 CHAIRMAN McDADE: And it was only the
12 people from out of town that were somewhat more meek
13 and mild. The acoustics are not terrible. They're
14 just bad. So what I would ask is if you don't have
15 ready access to a microphone every time, we're going
16 to be asking questions and going back and forth and it
17 really isn't practicable to be shifting all the time.
18 So I would ask that if an individual who doesn't have
19 ready access to a microphone is going to be responding
20 if you could just stand. Because generally speaking,
21 if you stand, I think that probably will (1) people
22 tend to speak a little bit louder when they stand and
23 (2) also it will make it a little bit easier for the
24 people in the back to be able to hear what you have to
25 say and hopefully that will allow us to proceed in an

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1 expeditious manner and at the same period of time make
2 sure that people who are present will be able to hear
3 what the proceeding are as they're going on and having
4 come here not just have to wait and read the
5 transcript at a later point in time.

6 Are there any other administrative
7 manners, Judge Wardwell, before we get started again?

8 JUDGE WARDWELL: No.

9 CHAIRMAN McDADE: Judge Lathrop?

10 JUDGE LATHROP: No.

11 MR. TURK: I have a preliminary matter.

12 CHAIRMAN McDADE: Mr. Turk.

13 MR. TURK: During the course of argument
14 on contentions, different staff counsel will be
15 presenting the staff's position depending on what
16 category of issue is raised. I don't know in your
17 question if you're going to be identifying which
18 contention you're addressing, but depending on which
19 contention is it we'll have a different person come to
20 the front table to speak and hopefully their voice
21 will be picked up by the microphone.

22 CHAIRMAN McDADE: Yes, hopefully it will
23 and we will be addressing the contentions and saying,
24 "We're going to start talking about contention X." At
25 the same period of time as you're well aware, many of

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1 the contentions, they merge and some contentions
2 basically address a similar issue, one from an
3 environment stage, one from a safety issue. So there
4 isn't going to be a clear delineation on all the
5 questions that it's clearly on Contention 4 as opposed
6 to another contention. But we will sort of announce
7 ahead of time.

8 Also what we will try to do is just give
9 a short-handed expression of what the contention is.
10 Again, you all have read all of the pleadings and are
11 totally familiar with it. But again, it might be
12 helpful to people reading the record and also to any
13 of the spectators who are here when we're asking
14 questions about a particular contention if they know
15 what it is.

16 And again for the purposes of any
17 spectators in the rules of practice a contention is
18 basically an allegation. It's raising it from the
19 standpoint of the State of New York here. They have
20 raised an issue and they say that this issue needs to
21 be resolved prior to the time that a license
22 application is either granted or denied. So when we
23 use the word "intention" consider it synonymous with
24 an allegation or raising an issue and part of our role
25 right here is to decide whether or not the issue has

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1 been sufficiently joined, whether there is a genuine
2 dispute as to that issue, whether that issue is within
3 the scope of these proceedings so that we can
4 determine whether or not it is necessary to proceed to
5 an evidentiary hearing on that particular issue.

6 Any other preliminaries? And again, I
7 would ask even with the microphone, not everybody is
8 directly up to the microphone. So if you can make an
9 effort to try to speak up so that your voice carries
10 to the microphone so it then can carry to the
11 individuals who are in the back of the room and over
12 here to the side.

13 MR. BESSETTE: Judge McDade, we have one
14 issue to clarify with regard to the updates. We have
15 the exact dates for you earlier. Unit 2 FSAR was last
16 updated November 15, 2006 and the Unit 3 FSAR was
17 updated September 26, 2007.

18 CHAIRMAN McDADE: Thank you, Mr. Bessette.

19 MR. BESSETTE: You're welcome.

20 CHAIRMAN McDADE: Anyone further?

21 (No verbal response.)

22 (Off the record discussion.)

23 CHAIRMAN McDADE: I think basically where
24 we stand right now is we're up to New York Contention
25 3. Let me also just mention one thing. We may not

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1 have questions with regard to all of the contentions.
2 That does not indicate that we have a view one way or
3 the other with regard to that contention whether it's
4 admissible or inadmissible.

5 All of you have written a great deal with
6 regard to the contentions. Your positions are very
7 clear. Certainly they have been extensively
8 articulated in the writing. Our purpose in having
9 this oral argument is just to where we have among the
10 members of the Board any confusion or a question that
11 we will then ask questions with regard to that
12 particular contention. So if there is a contention
13 that none of us have a question on it doesn't indicate
14 either that we've made a decision that that contention
15 is admissible or inadmissible. It just is a
16 determination that based on the pleadings that we have
17 in front of us that the record is clear, that we think
18 we understand fully the issue and what the parties'
19 positions are with regard to that particular
20 contention.

21 New York, Contention No. 3 that the
22 license application does not comply with the
23 requirements of Section 54.29 because it is not
24 possible to ascertain if all relevant equipment,
25 components and systems that are required to have aging

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1 management systems have been identified or to
2 determine whether the aging management requirements
3 for license renewal have been met with regard to those
4 components. That's a shorthanded version of New York
5 Contention No. 3.

6 To the NRC staff, it is a requirement that
7 prior to submitting the application that there be an
8 evaluation, that the Applicant has to make a
9 determination as to what systems' equipment is going
10 to be effected by aging and to develop aging
11 management plans to address them. Can you explain the
12 methodology that the Agency uses, that the NRC uses,
13 to determine whether or not it is complete in that
14 regard, specifically addressing, I believe, it's 54.21
15 and the integrated plant assessment required pursuant
16 54.21? How does the Agency go about reviewing that?

17 MR. ROTH: Your Honor, David Roth for the
18 staff. One of the Agency's main tools for reviewing
19 such determinations is described in its Standard
20 Review Plan for License Renewal which is also known as
21 NUREG 1800. Within that NUREG, it lists typical
22 structures and components that are subject to the
23 reviews and describes in great detail how the staff go
24 through their scoping process to decide what items
25 should be in scope and whether the Applicant has

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1 adequately listed these items in scope.

2 CHAIRMAN McDADE: Now from the standpoint
3 of the Agency, we had talked about the, going back in
4 earlier discussions, both the CLB and GOC, the Current
5 Licensing Basis, the General Design Criteria. How are
6 those factored into your determination as to what
7 elements need to be considered in the aging management
8 plan?

9 MR. ROTH: The GDC or the Plant Design
10 Criteria if it's a GDC plant and the FSAR, the final
11 safety analysis --

12 CHAIRMAN McDADE: I'm sorry. Can you
13 speak up a little bit?

14 MR. ROTH: Sorry. The GDC, the General
15 Design Criteria, or the PDC which is our shorthand for
16 the Plant Design Criteria for those that are before
17 the General Design Criteria existed are certainly
18 references for the staff to use. Within the SRP, it
19 describes to the staff that they should look at the
20 GDC. They should look at the FSAR. They should also
21 review through the various specific regulations that
22 are called separate in license renewal, for example,
23 Station Blackout, and again it's a voluminous
24 document, 346 pages, but it provides the reviewer with
25 a starting point and describes the process by which

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1 the staff then review these.

2 If the question is how do they determine
3 which GDC apply to that particular plant, as we were
4 discussing earlier this morning, you can look back
5 through the current licensing basis which would
6 include the construction permit where the GDC would be
7 described, the final safety analysis report, the
8 original operating license, subsequent correspondence
9 that would say whether at some future time or whether
10 at some time from the initial construction permit the
11 Applicant has incorporated a later version of the GDC.

12 CHAIRMAN McDADE: And then using that,
13 taking NUREG 1800, one determines those systems that
14 need to be subject an aging management program.

15 MR. ROTH: Using that and then one could
16 review the licensee's application to determine if the
17 licensee has adequately and properly scoped in systems
18 at its plant. Yes.

19 CHAIRMAN McDADE: Okay. From the
20 standpoint of New York, why does that not give you
21 sufficient information to determine whether or not all
22 appropriate systems have been subject to an aging
23 management plan?

24 MR. SIPOS: Your Honor, in theory, it
25 might. But in this case it does not because the

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1 UFSAR, the updated final safety analysis report
2 submitted by Entergy, states that the reactors are
3 committed to the October 1967 suggested collection of
4 ideas put forth by the Atomic Industrial Forum.

5 This morning I believe we heard, I believe
6 the record will reflect, that Entergy also stated that
7 the July 1967 draft version published in the Federal
8 Register has applicability and also with respect to
9 Unit 2, I believe I heard that the 1971 GDC applies,
10 that statement connected to the 1982 letter from the
11 NRC.

12 But coming back to the documents that are
13 in this case, the documents that are attached to the
14 LRA, the UFSAR says time and time again that these two
15 reactors are committed to buy-buy for the general
16 design criteria is the suggestions put forth by a
17 trade association, by a lobbying group. There is --
18 And the consequences that cascade from that statement
19 are profound here. It affects the current licensing
20 basis and it would also affect the review, the plant
21 assessment that we're discussing now and any aging
22 management review.

23 Frankly, I think as this proceeding has
24 progressed even this morning, it's not clear what
25 these two reactors are to be benchmarked against with

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1 respect to the general design criteria and that's an
2 issue that's been put in issue here by the license
3 renewal application. Entergy has opened the door and
4 it's appropriate for the State to raise contentions on
5 that.

6 CHAIRMAN McDADE: As I understood what the
7 staff and the Applicant said this morning and also in
8 their application is basically that the general design
9 criteria, you look to what was available at the time
10 the plant was originally licensed and that was part of
11 the original licensing basis and at that point in
12 time, you start it off with a draft and then you start
13 it off with a supplement to that draft that was
14 prepared by the AIF. But that way back when the
15 original license application was approved, the
16 Commission said we find these general design criteria
17 to be adequate and that therefore since they were part
18 of the original license application that they are now
19 carried over and are part of this license renewal
20 application but that the adequacy of that is not to
21 be challenged in the license renewal proceeding, but
22 rather that there are other avenues that you could
23 approach if you felt those general design criteria
24 were inadequate. Because it would not only be
25 inadequate for the continued operation of the plant,

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1 it would be inadequate for the current operation of
2 the plant and that your options were either to
3 petition the Commission for an enforcement proceeding
4 or for the Commission to take action to change the
5 current licensing basis for this particular plant.

6 And, Mr. Turk, is that a correct statement
7 of the Commission's position, of the staff's position?

8 MR. TURK: It is, Your Honor. I would
9 simply make one slight modification. The Commission
10 didn't say that GDC for the plants were adequate. It
11 said that the plants are safe based on the criteria
12 that they use in their design. For instance, the CPU
13 was issued in 1966 for Unit 2 preceded even the 1967
14 draft GDC. So that was a plant specific determination
15 based on the criteria used by the plant for its
16 design.

17 JUDGE WARDWELL: Regardless of that, if
18 the UFSAR in fact says, the current one says, that
19 this is what's being used as the basis for this plant,
20 if these are the general design criteria that are
21 going to be used for this plant, regardless of what
22 the Commission said as would be adequate, is what's
23 said in the UFSAR, that UFSAR that is the appropriate
24 one for them to be looking at, isn't it, in regards to
25 judging what components aren't included that might

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1 require aging management review?

2 MR. TURK: Yes. The direct answer. And
3 I would note also that even though there were original
4 design criteria used for design of the plant, the
5 design criteria can change over time and that does
6 happen. I don't know specifically with respect to
7 Indian Point which criteria have changed.

8 JUDGE WARDWELL: That's what I was going
9 to ask you. What is now in the UFSAR?

10 MR. TURK: It should lay out what the
11 criteria are for the plant.

12 JUDGE WARDWELL: Which one of these is
13 that and what do they need to judge it by?

14 MR. TURK: It's the plant specific
15 criteria, originally the ones which the AIF proposed
16 as modifications to the 1967 rulemaking. At least,
17 that's my understanding. That's what the FSAR commits
18 to saying that this is what we mean.

19 But then for individual GDC they may have
20 been supplemented or modified over time because there
21 is no regulatory requirement that GDCB adhere to. It
22 would be a mistake to believe that just because the
23 final GDC, for instance, are in Appendix A to 10 CFR
24 Part 50 that those are binding. They are not. An
25 applicant may vary, make it an exception. A new

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1 applicant may get an exception to those final GDC as
2 long as they come up with something that's adequately
3 safe and which would be determined on a plant
4 specific/case specific basis.

5 CHAIRMAN McDADE: But they would either
6 have to comply with that or receive a specific
7 exemption from that from the Agency, would they not?

8 MR. TURK: Not an exemption. It would be
9 --

10 CHAIRMAN McDADE: Perhaps that's a
11 specific approval.

12 MR. TURK: Yes.

13 CHAIRMAN McDADE: To vary from the general
14 design criteria that had originally been used for that
15 plant.

16 MR. TURK: Let's not confuse the GDC as
17 published in the Code of Federal Regulations and the
18 initial GDC or design criteria that were used for the
19 plant. If they wanted to change their design
20 criteria, they would have to come to the Commission
21 and explain why they're varying and justify changing
22 the criteria.

23 CHAIRMAN McDADE: And then that would be
24 made part of the current licensing basis.

25 MR. TURK: Yes.

1 CHAIRMAN McDADE: If the Commission
2 granted that.

3 MR. TURK: Yes.

4 CHAIRMAN McDADE: Allowed them to change,
5 it would be part of the current licensing basis.

6 MR. TURK: That's correct.

7 CHAIRMAN McDADE: And if the intervenor or
8 any other interested party thought that what the
9 Commission did under those circumstances was ill-
10 advised, inconsistent with the regulations or unsafe
11 that their remedy would be to go to the Commission
12 with a petition and challenge that action directly.

13 MR. TURK: Yes.

14 CHAIRMAN McDADE: Not to challenge it in
15 the context of a renewal.

16 MR. TURK: Correct.

17 CHAIRMAN McDADE: Okay.

18 JUDGE WARDWELL: To follow up on that, New
19 York, would you comment in regards to do you agree
20 that what's in the UFSAR is what's critical for your
21 needs in regards to evaluating what components aren't
22 being addressed according to that and may need aging
23 management review?

24 MR. SIPOS: Absolutely, Your Honor. It is
25 a critical keystone document and contrary to its name

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1 and its title, it is not updated.

2 Also respectfully the State takes a
3 different view of the AIF submission in October 1967.
4 I'm not so sure that it can be characterized as a
5 supplement but as a suggestion. The Commission, the
6 Atomic Energy Commission, published the draft GDCs in
7 July and, in the Federal Register notice, the
8 Commission was very clear that it said that it
9 expected that it would apply the provisions as interim
10 guidance on a going-forward basis.

11 For the UFSAR here in 2007 when it was
12 submitted to say that the plant is committed to what
13 AIF suggested in October of 1967 raises grave
14 questions about what is going on at this plant, what
15 it has committed to. New York State has set forth in
16 its contention and in its accompanying declaration of
17 Paul Blanch the text of the GDCs and what the UFSAR
18 for Unit 2 and Unit 3 commits to and there frankly is
19 a disconnect, a substantive disconnect, there.

20 And in this proceeding just to further
21 address perhaps some concerns New York is not seeking
22 to raise a 2.206 enforcement proceeding or to file a
23 petition to respectfully change the regulations. We
24 believe that this UFSAR commitment to a lobbyist's
25 suggestion calls into the question the entire license

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1 renewal application right here as part of Rule 54 and
2 we think that is within the scope of this license
3 renewal proceeding.

4 CHAIRMAN McDADE: Okay. I followed you
5 right to the end there and I just want to make sure.
6 How do you draw that connection? Again, we're talking
7 about something that happened back in 1967. That's
8 when the AIF was issued, the general design criteria
9 from that organization. How does that now become part
10 of this license renewal application?

11 And I understand what you said that you
12 were not petitioning the Commission for change.
13 You're not asking for a rulemaking or for an
14 enforcement action. But what the Commission staff
15 seems to be saying and what Entergy seems to be saying
16 in their pleadings, we haven't had a chance to hear
17 from them orally here on this quite yet, is that those
18 are the remedies that you should seek, that the fact
19 that this was done by a trade organization back 40
20 years ago is not relevant now. There's a current
21 licensing basis now. You can attack the current
22 licensing basis. You only can attack those aspects
23 that are going to be affected during the continued
24 operation, the extended operation, the additional 20
25 years of the license that they're seeking.

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1 Why is that not a valid argument on the
2 part of the staff at Entergy?

3 MR. SIPOS: It is not a valid argument
4 because the State does not seek to challenge in this
5 proceeding the current licensing basis. Entergy has
6 submitted a UFSAR, an updated final safety analysis
7 report, which commits to a 40-year-old document.

8 And again, New York respectfully suggests
9 that it is not a supplement. It is not a version. It
10 is an expression of hope by a trade group as to what
11 the regulation could be or should be and simply put
12 the statement or suggestion of a lobbyist really has
13 no application in this proceeding. Moreover, it
14 affects --

15 Moreover, because it's in the license
16 renewal application and it's a commitment to what a
17 lobbyist suggested, that raises significant questions
18 as to what this plant, what is going on at this plant
19 and respectfully it appears that Entergy is all over
20 the road on this. Repeatedly through their license
21 renewal application, they say the AIF, the lobbyist's
22 suggestion is what applies. The lobbyist's suggestion
23 is what applies.

24 Today I believe we heard that for Unit 2
25 it is the 1971 regulation promulgated by the AEC and

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1 that it is also possible that the July 1967 AEC
2 general design criteria which was placed in the
3 Federal Register, that also applies. We have -- In
4 just the span of this morning, we've heard three
5 different versions, the lobbyist, the AEC `67 and the
6 AEC `71. That should be a red light as to what's
7 going on here.

8 And the GDC to come back perhaps again to
9 Your Honor's question the GDC informs the plant
10 assessment and the aging management review. But if
11 it's not clear what the GDC is, which of the three
12 options it is, then how can there be confidence in how
13 the aging management review and the plant assessment
14 was performed?

15 CHAIRMAN McDADE: Let me -- I want to
16 clarify something in my own mind. You've been talking
17 about this GDC published by the AIF, the trade group.
18 Does it make any difference whether or not that was
19 drafted entirely by the NRC or at that point, the
20 Atomic Energy Commission, by a trade group, by a
21 public interest group? Does it make any difference?
22 I mean, are we simply looking at was the general
23 design criteria at that point adequate?

24 And then the second question which is at
25 least as I understood the staff's position and the

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1 Applicant's position is, you know, for our purposes it
2 really doesn't matter because whatever it was it is
3 and this isn't the proceeding to challenge it.

4 MR. SIPOS: Yes, Your Honor. We do not
5 seek to challenge the GDC here in an enforcement
6 proceeding. However, in answer to your question, does
7 it matter, it most certainly does because what the
8 Atomic Industrial Forum said, whatever it said or
9 whoever said it, it could have been the Sierra Club in
10 a draft comment, that does not have any valid legal
11 basis.

12 It's an expression of hope but that's all
13 it is. It's an attempt to carry the day with the
14 regulator. But here in the Federal Register from July
15 1967 on page 10214, the Commission, this is the Atomic
16 Energy Commission speaking, saying "The Commission
17 expects that the provisions of the proposed amendment
18 relating to the general design criteria for nuclear
19 power plant construction permits will be used as
20 interim guidance until such time as the Commission
21 takes further action and it carries that on."

22 So for Entergy and the staff to say it
23 really doesn't matter, I don't see how that's tenable
24 and again today we heard, we now hear, that three
25 different versions may be applied depending on the

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1 unit and that should be -- Well, it should be
2 unacceptable.

3 But for the purpose of a license renewal
4 process, that's one of the critical elements that the
5 aging management review and the plant assessment is to
6 look at. What are -- If I could refer back to what is
7 the current licensing basis, part of it is our design
8 basis information. What was this plant built to? How
9 is it carried forward? And we believe there are
10 significant differences between the July 1967 version
11 put forth in the Federal Register by the Atomic Energy
12 Commission and the suggestions by the Atomic
13 Industrial Forum.

14 JUDGE WARDWELL: Because you're not
15 challenging the adequacy of the GDC, that's what I
16 heard you say, isn't your only mission to determine
17 what they actually are in the UFSAR and in your
18 pursuit of trying to determine what those are what did
19 you find out that exists in the UFSAR?

20 MR. SIPOS: We found --

21 JUDGE WARDWELL: That's a question.

22 (Laughter.)

23 MR. SIPOS: We found that in the UFSAR
24 that that document committed to a group of suggestions
25 by a lobbying group.

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1 JUDGE WARDWELL: So it committed.

2 MR. SIPOS: Repeatedly.

3 JUDGE WARDWELL: And that's been approved
4 the UFSAR as approved is committing to the '67 AIF
5 version of the GDC.

6 MR. SIPOS: May I have just one moment,
7 Your Honor?

8 (Off the record discussion.)

9 MR. SIPOS: I think we don't know the
10 answer. I think the statements in the LRA, in the
11 UFSAR and the LRA, and presented to this Board this
12 morning are inconsistent on several bases and we don't
13 know. We, the State of New York, don't know what GDC
14 this plant, these two reactors, are committed to. The
15 LRA says the lobbyist's version. This morning we
16 heard Unit 3 the 1971 version of the regulations put
17 forth in the Federal Register and then we also heard
18 the July 1967 version of the GDCs in the Federal
19 Register. There are substantive differences amongst
20 all three of those.

21 JUDGE WARDWELL: Thank you.

22 Staff, is it correct, are my impressions
23 correct, that in fact what's important is not
24 necessarily which of these are relevant? The only one
25 that's relevant is what is defined in the UFSAR. Is

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1 that a correct impression on my part or am I erroneous
2 and for what reasons?

3 MR. TURK: You're correct at this point in
4 time.

5 JUDGE WARDWELL: What are -- Let me
6 rephrase that. Do you know what are the GDCs that are
7 currently in the most recent UFSAR?

8 MR. TURK: The staff does and because the
9 UFSAR states what the criteria are.

10 JUDGE WARDWELL: And what are those? Can
11 you -- It would help if you announce for everyone?
12 Thank you.

13 MR. TURK: Thank you. And may I, since
14 we're talking about presentations, ask that we be
15 moved to the side of the room because I really feel
16 Entergy should be taking all the questions?

17 JUDGE WARDWELL: No.

18 (Simultaneous conversations.)

19 MR. TURK: -- closest in vision.

20 JUDGE WARDWELL: I purposely pick who I'm
21 interested in addressing. I'm not picking on you
22 because you're closest.

23 MR. TURK: All right.

24 JUDGE WARDWELL: I'm going to get over
25 there. Trust me. We will get over there.

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1 MR. TURK: When these units were proposed,
2 there were no final GDC in place and when the Unit 1
3 unit was proposed and a construction permit was
4 issued, there was not even the 1967 proposed GDC of
5 July '67 in place. Each plant proposed its own
6 principal design criteria and that's what Entergy's
7 predecessors did for these units.

8 When the Commission published its 1967
9 proposed GDC, they stated we're publishing these
10 proposed rules for comment. This is what is required
11 under the Administrative Procedure Act. Whenever an
12 agency takes regulatory action, rulemaking action,
13 they must publish their proposed rules, get comments
14 and then issue their final. The Atomic Industrial
15 Forum provided its comments in response to the
16 proposed rulemaking.

17 But I would like to read something that
18 appeared in the 1967 proposed GDC published by the
19 Commission in July and this is in the Federal Register
20 Volume XXXII at page 10214. "The purpose of the
21 proposed amendment would be to provide guidance to
22 applicants to develop the principal design criteria to
23 be included in applications for Commission
24 construction permits. These general design criteria
25 would not add any new requirements but are intended to

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1 describe more clearly present Commission requirements
2 to assist applicants in preparing their applications."
3 And it went on to say, "The Commission expects that
4 the provisions of the proposed amendments relating to
5 GDC for nuclear power plant construction permits will
6 be useful as interim guidance until such time as the
7 Commission takes further."

8 In sum, the proposed GDC of July '67 were
9 not binding at the time. They were not binding upon
10 Entergy's predecessor. As a nuclear power plant
11 applicant, Units 2 and 3 could propose their own
12 principal design criteria. Those criteria were
13 evaluated by the staff of the Commission and
14 determined to be adequate for protection of public
15 health and safety. The plants were licensed.

16 In time as new information became
17 available to the Commission, the GDC for the plant,
18 the principal design criteria for the plant, may well
19 have changed to address new safety requirements and
20 the updated UFSAR today should reflect what are the
21 current principal design criteria for these plants.

22 JUDGE WARDWELL: But does it?

23 MR. TURK: I believe that it does. Yes.

24 JUDGE WARDWELL: And you are charged to
25 reviewing that, aren't you, in regards to approving

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1 it?

2 MR. TURK: Fortunately, I personally am
3 not.

4 JUDGE WARDWELL: I understand that.

5 MR. TURK: The technical staff is and the
6 technical staff informs us, yes, the UFSAR does
7 reference the appropriate design criteria for the
8 plants.

9 JUDGE WARDWELL: It might be a little
10 scary if you were the one, don't you think?

11 (Laughter.)

12 CHAIRMAN McDADE: And to the degree that
13 each time if the applicant, in this case, I guess it's
14 not the applicant, but it's the licensee, at that
15 particular point in time, wished to change the
16 requirements they would advise the NRC and the NRC
17 would have to put its imprimatur on it before it could
18 change those design criteria.

19 MR. TURK: There are regulatory processes.
20 An amendment to the FSAR could be made without having
21 to get an amendment to the license and that process is
22 laid out under 10 CFR 50.59 which allows an applicant
23 to determine that it wishes to make changes to the
24 FSAR and then there's a process they have to follow to
25 make sure that those changes do not impair safety to

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1 the public.

2 Alternatively, if they find that there is
3 a significant safety issue as laid out in 50.59, they
4 would have to come in with an amendment to the
5 license. So there's a threshold determination. Is an
6 amendment to the license necessary or not? If not,
7 50.59 allows the applicant to make the changes subject
8 to subsequent staff review on an auditing basis.

9 CHAIRMAN McDADE: But they would still
10 need to give notice to the staff. The staff then
11 would make a determination based on an audit whether
12 or not it was appropriate or inappropriate, whether or
13 not it would require a license modification or not.

14 MR. TURK: Under 50.59, they can take the
15 action without prior notification to the Commission
16 and their updated FSAR would include their 50.59
17 analysis and that would be reviewed after the fact by
18 the staff.

19 CHAIRMAN McDADE: So the first the staff
20 would know about is in the biannual updates?

21 MR. TURK: If it was not something that
22 required a license amendment, yes.

23 CHAIRMAN McDADE: Or if it was not
24 something that the licensee initially thought would
25 not require an amendment. In the first instance, they

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1 make a determination. If they make that determination
2 that it would not require an amendment, they just
3 simply do it and then put it in the update which is
4 only required every other year. Once the NRC staff
5 had an opportunity to review that update, it would
6 then either acquiesce or challenge that determination.
7 Is that correct?

8 MR. TURK: That's essentially correct.
9 And I would point out also that the staff has resident
10 inspectors at the site who would become aware of the
11 processes that are being changed. So that's another
12 -- The staff would get a heads-up on the information,
13 but we're not waiting for the FSAR to come through
14 with the amendment.

15 CHAIRMAN McDADE: But in any event, it is
16 -- And again I'm not saying this is the case. I'm
17 saying that it's the staff's position that this is
18 part of the current licensing basis.

19 MR. TURK: Absolutely.

20 CHAIRMAN McDADE: And then therefore since
21 it is part of the current licensing basis, this isn't
22 the proceeding to challenge it.

23 MR. TURK: Correct.

24 CHAIRMAN McDADE: Okay. Now the
25 Intervenor, New York, as I understand it, says, "You

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1 know, we can't figure out what it is, that the updated
2 analysis is inadequate. So therefore since we can't
3 figure out what it is, we don't know whether or not
4 the determination as to aging management is adequate
5 or not." Is that correct?

6 MR. SIPOS: That is one of our concerns,
7 yes.

8 CHAIRMAN McDADE: That we need to have
9 effectively a clear baseline knowing what it's
10 supposed to be that we can then make a determination
11 as to the impact that aging would have on it and
12 whether the aging management plan is adequate under
13 those circumstances.

14 MR. SIPOS: Correct. How can New York be
15 confident in the aging management review if all that
16 the UFSAR commits to is some suggestion by a lobbyist?

17 CHAIRMAN McDADE: Okay. Going back again
18 -- Isn't it a red herring whether it was a suggestion
19 by a lobbyist or it was a suggestion by the State of
20 New York back in 1967? I mean, it was a draft
21 regulation. Comments were made on the draft
22 regulation. The Agency back almost 40 years ago
23 allowed the plant to be licensed with a particular
24 current licensing basis.

25 The Agency has subsequently said that for

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1 plants licensed before sometime in 1971 that we're not
2 going to apply the new criteria. Effectively, we're
3 going to allow the current licensing basis that
4 existed at that time to continue. Do I have a correct
5 statement of understanding of the staff's position?

6 MR. TURK: I believe you're correct, Your
7 Honor.

8 CHAIRMAN McDADE: Okay. Why does that not
9 satisfy your needs? I mean, it doesn't matter at this
10 point how it came about. If the general design
11 criteria has been accepted by the Commission, has been
12 accepted for decades by the Commission, and what
13 they're saying that if you had an objection to it this
14 isn't the fora, that there are administrative vehicles
15 available for you to challenge the adequacy of it.
16 It's just not here.

17 MR. SIPOS: Your Honor, New York does not
18 challenge the substance of the general design criteria
19 as it appears in, I believe, Appendix A to Part 50.
20 What we are challenging is Entergy's statement that
21 these plants are benchmarked to criteria that have no
22 legal significance and that infects and undermines the
23 aging management review. It is facially deficient for
24 Entergy to say these facilities built by Con Ed comply
25 with a lobbyist's suggestion.

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1 And moreover, given what we've heard
2 today, we've heard three different stories. We've
3 heard that the final GDC do apply for Unit 3. I
4 believe we heard that this morning. That's
5 fundamentally different from what's in the license
6 renewal application. And we also heard that the July
7 `67 GDCs which were proposed in the Federal Register
8 that they could also apply.

9 We're left thinking, "Which is it?" Which
10 of these options are they really committed to? Is it
11 Door No. 1, Door No. 2, Door No. 3? Tell us.

12 JUDGE WARDWELL: You're saying several
13 things here and to me, at least, I'm hearing several
14 things and I understand your statement in regards that
15 you feel you can't understand or know or comprehend
16 which it is you're actually trying to evaluate in
17 regards to looking at those components needing or not
18 needing aging management review. I understand that
19 part of it.

20 What I don't understand is if, in fact, it
21 was clear, let's go under the assumption it is clear
22 in the UFSAR, to me it makes no difference whether
23 Howdy Doody wrote them. If that's what's in there and
24 that's what's approved because you're not objecting,
25 that's why it doesn't matter who wrote them or why

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1 they're written, whether they're written by a lobbyist
2 group or whether they're written from the Truth of the
3 Universe that comes down and says, "This is the
4 appropriate ones."

5 If you're not challenging in this hearing,
6 then it's irrelevant. What is relevant is what is in
7 UFSAR, is it understandable, and if it is in the UFSAR
8 and it's understandable, then, in fact, you should be
9 able to address it in regards to aging management
10 review and if it isn't you can't.

11 How do you respond to that and then how do
12 you respond to their other statement of what's the
13 difference with your second statement saying about the
14 benchmarking to what you consider to be a very
15 nebulous or not credible standard that was developed
16 by the AIF is what I heard your second statement being
17 the one of another issue of yours. And I don't
18 understand why that isn't a challenge to the adequacy
19 of the GDC that's appropriate for this plant.

20 MR. SIPOS: May I have a moment, Your
21 Honor, to respond?

22 JUDGE WARDWELL: Sure.

23 (Off the record discussion.)

24 MR. SIPOS: Judge Wardwell, if I may, the
25 first part of your question is what motivates our

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1 concern primarily. We have concerns given the
2 inconsistency or incoherence of the commitment how the
3 aging management review could have been done in a
4 comprehensive, appropriate manner. I believe that
5 addresses -- I hope that addresses the first part of
6 your question.

7 JUDGE WARDWELL: Yes, it does.

8 MR. SIPOS: But secondly, just so this is
9 clear, we're not challenging the 1971 GDCs. Those are
10 on the books. We recognize that. But in this
11 proceeding, you've heard three different stories. We
12 don't know which criteria they're committed to.

13 CHAIRMAN McDADE: Let me just interject
14 here to make sure that I understand and I'm going to
15 ask this of Entergy and the staff as well and please
16 inform me here.

17 As I understand it, we started off with
18 Indian Point 1. At the time Indian Point 1 had its
19 license approve, that was before the draft guidance,
20 the 1967 guidance, that the NRC or the Atomic Energy
21 Commission at that point put out. So there were
22 general design criteria that were built into that
23 license application and they would then stay with that
24 license application unless it was changed.

25 At a later point in time, we had the draft

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1 that was issued in 1967 by the Commission. We then
2 had comments on that that were made by the AIF and
3 then at a later point in time we had a final order
4 regulation that was issued by Commission. So what you
5 look to is the Commission has made a determination
6 that for plants that were already licensed, that were
7 licensed before I think it was May of '71, that we're
8 not going to go back and change the general design
9 criteria for those, that the general design criteria
10 that was in existence at the time that they were
11 licensed would remain as part of the continuing
12 license basis for that plant as long as the plant
13 operated unless and until there was a change that was
14 either initiated by the applicant or was initiated by
15 the Commission, but on a plant specific basis. Am I
16 correctly understanding the position of the Applicant?

17 MS. SUTTON: Yes, Your Honor, and to back
18 up, the FSAR is part of the current licensing basis
19 per the definition in Section 54.3. That's clear.
20 Section 1.3 of the Indian Point 2 FSAR is clearly
21 titled "General Design Criteria" and I can read it in
22 its entirety, but I'll read it in portion.

23 It says clearly, "These general design
24 criteria tabulated explicitly in the pertinent systems
25 section of this report comprise the proposed AIF

1 versions of the criteria issued for comment by the AEC
2 on July 1967." So let me be clear that that's what I
3 was referring to earlier. That's the 1967. That is
4 in the FSAR. That is the current licensing basis.
5 That is what New York is attacking, the AIF version of
6 that. But that is the current licensing basis.

7 Now the staff said there are occasions
8 upon which the Agency may revisit the GDCs, may update
9 them. Again, in Section 1.3, I'm just quoting in
10 part, "Con Ed completed a study of compliance with 10
11 CFR Parts 20 and 50 in accordance with the
12 Commission's confirmatory order of February 11, 1980.
13 The detailed results of the evaluation of Indian Point
14 Unit 2 compliance with the then current GDC
15 established by the NRC in 10 CFR 50 Appendix A were
16 submitted to the NRC by Con Ed on August 11, 1980 and
17 the Commission concurrence was received on January 19,
18 1982."

19 So that's just an indication that later in
20 time they went back and said, "They're even in
21 compliance with Appendix A now." But this information
22 is all contained in the FSAR. It was available to the
23 State but they were not cognitive of it.

24 (Off the record discussion.)

25 JUDGE WARDWELL: How do you respond to

1 that? That seems pretty simple to me,
2 straightforward. It's not simple.

3 MR. SIPOS: As set forth in our contention
4 and in our supporting declaration from Paul Blanch,
5 when the UFSAR in this license renewal application
6 refers to general design criteria and is excerpting
7 them or applying them, it is using the AIF suggestion.
8 Yet staff in 1982 applied the `71 Atomic Energy
9 Commission promulgated regulations for the GDC for
10 Unit 3 and I believe we also heard that the July `67
11 AEC version somehow also applies.

12 MS. SUTTON: -- does not apply.

13 MR. SIPOS: It does not apply.

14 MS. SUTTON: -- just read from Section 1.3
15 of the FSAR.

16 MR. SIPOS: I'm not sure that's what was
17 said this morning. Nevertheless, the UFSAR submitted
18 to the Commission and to this Board, makes a
19 commitment that's just untenable and unenforceable and
20 we're not challenging `71 regulations. We're seeking
21 to have applied either the Atomic Energy Commission's
22 July 1967 draft regulations promulgated in the Federal
23 Register or what was promulgated in 1971. It cannot
24 be what AIF suggested and in the chart presented by
25 Mr. Blanch he determines that the text of what they're

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1 committed to is what the AIF suggested.

2 JUDGE WARDWELL: And that's what the
3 Blanch table is attempting to do is to merely
4 demonstrate that it's the AIF version that is being.
5 But is that not the one -- Entergy, could you again
6 repeat what is the current general design criteria in
7 the most recent updated FSAR?

8 MS. SUTTON: Yes, Your Honor. I'm quoting
9 from Section 1.3 of the UFSAR. "These general design
10 criteria tabulated explicitly in the pertinent systems
11 sections of this report comprise the proposed AIF
12 versions of the criteria issued for comment by the AEC
13 on July 11, 1967."

14 JUDGE WARDWELL: So it is the AIF version
15 of what you just heard.

16 MS. SUTTON: Correct, Your Honor. And
17 that is incorporated into the licensing basis of the
18 plant per the FSAR. And that is exactly what the
19 State is challenging.

20 CHAIRMAN McDADE: Okay. I think the
21 position of the parties on this is clear. Mr. Turk,
22 did you have something to add?

23 MR. TURK: I was just going to note, Your
24 Honor, I guess as a final statement from us that Ms.
25 Sutton was referring to the Unit 2 FSAR. The Unit 3

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1 FSAR has -- The Unit 3 FSAR as originally submitted to
2 the NRC back in 1970, I believe, contains the same
3 words. It may have been modified subsequently, but
4 the commitment was that they do comply with the AIF,
5 Atomic Industrial Forum, version of the proposed GDC.

6 CHAIRMAN McDADE: Okay. Thank you.

7 JUDGE WARDWELL: Have either of these
8 plants had their GDC modified? This is a question
9 towards Entergy.

10 MS. SUTTON: We'll have to take a moment
11 to confer.

12 (Off the record discussion.)

13 JUDGE WARDWELL: While you're doing that,
14 is there any other bases that you want to emphasize in
15 regards to this particular contention besides the GDC
16 issue?

17 Because as you read the contention, it's a bit more
18 general than that. But yet it seems like most of the
19 discussion here is with the GDC and I want to make
20 sure there isn't something else that you would like to
21 reiterate again or clarify.

22 MR. SIPOS: I think that's generally,
23 Judge Wardwell, that the third contention was seeking
24 to highlight the issue, the concern, New York had with
25 the GDC while the second contention was designed to

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1 highlight the concerns about the UFSAR and they both
2 together inform the concern about the current
3 licensing basis.

4 MS. SUTTON: Yes, Your Honor. There have
5 been instances in which the GDC have been modified per
6 50.59 license amendment as the staff earlier
7 explained. For example, there has been a change in
8 connection with the alternate source term. We don't
9 know the exact GDC number. There also has been a
10 change with respect to GDC 19 that deals with control
11 room doses. Those are two examples.

12 JUDGE WARDWELL: In the UFSAR, can a
13 person go to the section like you just quoted and find
14 either a table or a paragraph or a reference to an
15 appendix so that they can go to that and pull that out
16 and then compare it what actually has been done so
17 that they can use it to determine what components need
18 aging management review?

19 (Off the record comments.)

20 MS. SUTTON: Yes, Your Honor. There are
21 rev bars in the FSAR and there is also a section that
22 deals with compliance with GDC.

23 CHAIRMAN McDADE: Okay. I think the
24 positions of the parties with regards to Contention 3
25 are relatively clear and we can move on.

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1 Contention No. 4 is that the application
2 is deficient because the ER, the Environmental Report,
3 that there is not a separate environmental report for
4 each license. That's a separate environmental report
5 for Indian Point 2 and Indian Point 3. To New York,
6 can you explain succinctly why you believe they need
7 to have two environmental reports as opposed to a
8 single environmental report?

9 MR. SIPOS: We believe it's a requirement
10 by the plain text of the regulation. Moreover, we
11 believe it promotes and fosters NEPA's directive to
12 federal agencies to carefully examine the impacts of
13 their decision and that potentially one option here is
14 -- it's not an all or nothing proposition from a
15 logical perspective.

16 And by joining the two reactors together
17 in the Environmental Report, it is not -- it's not
18 illuminating all the options that are out there, one
19 of which is one unit might get relicensed and one
20 doesn't and how that plays out in terms of
21 alternatives in the no action alternative.

22 CHAIRMAN McDADE: Okay, there seems to be
23 two separate issues at least in my mind and let me see
24 if you agree or disagree. I mean, first of all, the
25 specific language of the regulation which is

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1 51.53(c)(1) talks about having a separate document
2 which is an Environmental Report. It doesn't say at
3 least in hoc verba that if there are multiple
4 applications that there have to be multiple
5 environmental reports.

6 But as far as the adequacy of the
7 Environmental Report, it seems that what Entergy has
8 done here by having a single Environmental Report,
9 given the fact that the cumulative impact of two
10 reactors may be greater than the sum of the parts,
11 makes sense and that really what you're saying is that
12 there is a deficiency in the Environmental Report in
13 that it doesn't adequately consider the possibilities,
14 for example, if Indian Point 3 license were renewed
15 and Indian Point 2 were not renewed. It doesn't take
16 that into consideration.

17 But it is not that they're need be two
18 Environmental Reports but rather than the one
19 Environmental Report that they published does not
20 adequately take into consideration all of the
21 possibilities presented by the facts of this case. Am
22 I correct?

23 MR. SIPOS: I think that's fair. I think
24 you -- that is the State's concern. The State's
25 concern is that this is not all or nothing. It's not

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1 roughly or approximately 2,000 megawatts or nothing.
2 There could be something in between and that that
3 legitimate inquiry into alternatives or no action
4 alternatives is not properly examined.

5 But coming back to the first part of your
6 question, there's another clause in the regulation
7 which I believe is -- I don't have it in front of me.
8 I think it's each nuclear facility and we believe that
9 that further supports New York's position.

10 JUDGE WARDWELL: While as you're looking
11 that up, is it fair to say that you would be satisfied
12 as long as the alternatives being addressed include
13 looking at only part of a total power components from
14 the combined plants such that only relicensing one of
15 the two would be considered as the environmental
16 impacts are being tabulated, compiled by the Applicant
17 and then assessed by the staff later on in the EIS?

18 MR. SIPOS: That is a concern that
19 motivates New York's contention.

20 JUDGE WARDWELL: If, in fact, they were
21 evaluated, if in fact, they did go in and look at only
22 replacing 1,000 megawatts in addition to the analysis
23 of looking at replacing 2,000 as an alternative, would
24 you really care whether or not there's one or two
25 Environmental Reports?

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1 MR. SIPOS: New York has a concern about
2 the proper evaluation of alternatives, to be sure,
3 Judge Wardwell, but also given that the Commission has
4 instructed us that the regulations are strict by
5 design, I would just note that the regulation says,
6 quote, "Each Applicant for renewal of a license to
7 operate A, nuclear power plant under Part 54 of this
8 chapter shall submit with its application a separate
9 document entitled `Applicant's Environmental Report
10 Operating License Renewal State'." Close quote.

11 CHAIRMAN McDADE: But here they have
12 submitted a separate document entitled "Environmental
13 Report". It's just that that Environmental Report
14 covers both nuclear power plants.

15 MR. SIPOS: That's correct, Judge McDade
16 and the regulation says to operate a nuclear power
17 plant.

18 JUDGE WARDWELL: How are you going to
19 respond when I ask Entergy about this and you're going
20 to say that this has been done time and time again at
21 other plants where more than -- when one owner, in
22 fact, has relicensed several plants that aren't even
23 on the same proximity of land use? How do you respond
24 to that?

25 MR. SIPOS: New York is aware of the cases

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1 cited by Entergy and that issue -- to our
2 understanding, that issue has not been raised.
3 Moreover, just because it's been done that way in the
4 past, does not necessarily mean given the clear text
5 of 10 CFR 51.53(c)(1) that it should be that way in
6 this case.

7 SR. SPEC. AGENT MULLEN: Okay, given the
8 plain language of 10 CFR 51.53(c)(1), Entergy, why
9 isn't it appropriate to have two Environmental
10 Reports, especially in regards to the relationship
11 that it impacts alternative analysis?

12 MS. SUTTON: Well, first the regulation is
13 clear that the separate Environmental Report must go
14 as a segregated document from the LRA. We have done
15 exactly that. Our LRA encompasses two units. It is
16 the Indian Point Energy Center that is the plant. At
17 the same time, we believe that it's not appropriate --
18 the major federal action here is to preserve the
19 option of renewing two units. And that's the action
20 that bounds the scope of the Environmental Analysis,
21 not only in terms of alternatives but also in terms of
22 cumulative environmental impacts from the renewal of
23 both units.

24 So, your Honor, we believe that in order
25 to be in compliance with NEPA, we must do this on a

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1 dual unit basis.

2 JUDGE WARDWELL: Well, no one is asking
3 you not to do the cumulative impact. That would still
4 take place if you had two Environmental Reports.
5 There's definitely a cumulative impacts, as you say
6 requirement to address. So -- and nor is New York
7 State contending that that cumulative impact shouldn't
8 be analyzed.

9 They're just saying in addition to that,
10 it makes sense at this site in regards to the
11 viability of some of the optional energy sources to
12 look at only replacing 1,000 of the 2,000 megawatts.

13 MS. SUTTON: Right, and they'd like to
14 redefine the major federal action. In this case, we
15 have filed an application for the renewal of two units
16 and that is the proposed action here. In that case,
17 we need to look at a reasonable range of alternatives,
18 vis-a-vis, that proposal and in this case, the
19 alternatives that they are looking to have examined
20 are not reasonable given that particular proposal in
21 terms of an alternatives analysis.

22 JUDGE WARDWELL: But is that the
23 appropriate definition of a power plant?

24 MS. SUTTON: We believe it is.

25 CHAIRMAN McDADE: Let me ask something, if

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1 I could going back to New York. And this goes back to
2 a question that Judge Wardwell asked before lunch;
3 whether we admit contentions or admit bases. Assume
4 for the sake of argument that we determine that in
5 fact, it was appropriate for Entergy to discuss in a
6 single Environmental Report the impact of both
7 licenses, of granting both licenses. If we had
8 questions then as to whether or not their analysis of
9 the alternatives specifically considering the
10 alternative of one plant as opposed to both plants
11 being relicensed, both reactors being relicensed, is
12 that outside the language of the contention as written
13 which talks about failure to provide two separate
14 Environmental Reports?

15 MR. SIPOS: No, I would submit it's not
16 outside the contention and that the Board also has
17 authority to recast contentions. I believe that has
18 taken place in other proceedings and given New York's
19 two concerns relative to this contention, I believe it
20 would not be inappropriate if following your
21 hypothetical, Judge, if you thought -- if the Board
22 thought it was appropriate that there be only one
23 Environmental Report but that the -- New York's second
24 objective was legitimate or found to be admissible to
25 issue a directive or to have that be a contention that

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1 would be litigated.

2 CHAIRMAN McDADE: What's the staff's view
3 on that, Mr. Turk?

4 MR. TURK: The thrust of this contention
5 is that the application is defective because two
6 reports were not submitted. That's the contention
7 you're asked to evaluate, not the adequacy of the
8 alternative discussions in the Environmental Report.

9 CHAIRMAN McDADE: So it would be the
10 staff's position that that would be too great a
11 modification and the contention for the Board to do.

12 MR. TURK: Yes, and also the state has
13 filed other contentions which address the adequacy of
14 the alternatives analysis. I think what New York is
15 trying to do is keep this contention alive even if
16 they get the other contention in. And I think they
17 really should be fair and recognize that this is a
18 little sufficiency contention, not a contention
19 dealing with the adequacy of the alternatives
20 analysis.

21 JUDGE WARDWELL: How do you address and
22 what's your definition of an individual power plant or
23 whatever the wording is in the appropriate regulation?

24 MR. TURK: To operate a nuclear power
25 plant.

1 JUDGE WARDWELL: To operate a nuclear
2 power plant.

3 MR. TURK: The regulation doesn't require
4 that an applicant that has more than one unit submit
5 more than one Environmental Report. An applicant who
6 wishes to submit a license renewal application must
7 have an Environmental Report segregated from it's
8 renewal application. Whether it's one unit or two
9 units or more, there's no requirement that separate
10 ER's be provided and in fact, if you did that, you
11 would probably ignore the cumulative impact of
12 operation of more than one facility so I think if an
13 Environmental Report addressed the combined impact of
14 operation of two facilities, you're going to get a
15 better informed and more appropriate discussion if you
16 segment and say, "Well, let's take a look at one plant
17 at a time", without regard to the total impact.

18 JUDGE WARDWELL: Well, if our goal is to
19 get as good an evaluation of the alternatives, than
20 shouldn't we also look at the partial power
21 application that would naturally be derived from a
22 separate ER and that being the motivated goal for why
23 it's worded in the regulation the way it is implying
24 that we're looking at a single individual plant?

25 And isn't it in fact, an individual plant

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1 that's importance here for units that have completely
2 different systems and different boundaries, separate
3 analyses run for it? I mean, we have two individual
4 -- these two plants at Indian Point are very different
5 in regard to their designs and the analysis that were
6 done to perform those designs. Aren't they?

7 MR. TURK: Well, you do have separate
8 safety analysis. I mean, each plant is a different --
9 slightly different design, at least.

10 JUDGE WARDWELL: I notice you use the
11 phrase "each plant".

12 MR. TURK: Yes.

13 JUDGE LATHROP: Yes, I would like to ask
14 that question. Do the regulations define what a plant
15 is? That is, is a plant all the reactors at one site
16 or is it each reactor at a site?

17 MR. TURK: If you'll give me one moment.

18 JUDGE LATHROP: We're using plant in two
19 different senses here in my mind.

20 MR. TURK: I'm thinking in a very loose
21 sense.

22 CHAIRMAN McDADE: While you're looking
23 that up, I did just want to reference, I think the
24 statement by the State of New York that clear language
25 of the regulation is the first time I ever heard a

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1 putative intervener refer to NRC regulations and
2 plain language in the same sentence.

3 MR. TURK: Your Honor, the clear language
4 of the regulations does not define nuclear power
5 plant. It does define nuclear reactor but not power
6 plant. When I use the term "plant", I'm referring to
7 the combined -- refer to the combined facility,
8 although I may slip up sometimes and refer to a single
9 reactor at a site at a plant.

10 MR. SIPOS: And your Honor, just for
11 further reference, 10 CFR Section 50.52 has a -- 50.2,
12 has a term, defining the term production facility.
13 Production facility means, "1, any nuclear reactor
14 designed or used primarily for the formation of
15 plutonium or uranium-233". That may be of some
16 assistance in forming the Board's decision.

17 MR. TURK: I am instructed, your Honor,
18 there is clear language of the regulations it states,
19 and this is in Section 54.3, "Nuclear power plant
20 means a nuclear power facility of a type described in
21 10 CFR 50.21(b) or 50.22", and I thank the State for
22 clarifying that the language of the regulation is
23 clear, but it doesn't have a unit by unit definition
24 that I'm aware of, your Honor.

25 JUDGE WARDWELL: How -- Entergy, how could

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1 one reconcile that each two individual units comprise
2 one plant when the individual units as alleged by New
3 York State in their reply have marked differences in
4 the number of systems, boundaries for similarly named
5 systems, and perform separate seismic analyses for
6 each of the units? Doesn't that naturally lead one to
7 believe they are separate plants?

8 MS. SUTTON: No, your Honor. We were able
9 to -- as explained in I believe, Chapter 2 and Chapter
10 3 of the license renewal application under the scoping
11 and screening methodological discussions, how one goes
12 about complying with 54.21 with plants that are
13 different as you've explained.

14 And we've indicated that even though they
15 are different, we comply with the expectations under
16 53.21 regarding the integrated plant assessment and
17 that methodology is fully described therein.

18 JUDGE WARDWELL: Well, there's no barring
19 you from submitting a license application for more
20 than one plant. It just seems like there difference,
21 isn't there, in what would be required for an ER.

22 MS. SUTTON: That's true. There are some
23 differences. There are also similarities in terms of
24 the type of aging management programs that are applied
25 across the units despite the differences in the

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1 equipment. So it is logical and consistent with the
2 regulations to do them on a combined basis.

3 In addition, we'd like to point out that
4 the standard review plan for the review of license
5 renewal applications also indicates that to be
6 docketed an application must identify quote "the
7 specific unit (units) applying for license renewal
8 which gives us the comfort that, in fact, you can have
9 multiple units in a single application. And that
10 citation is to NUREG 1800 Revision 1, Table 1.1-1 and
11 1.1-5.

12 JUDGE WARDWELL: And I don't think New
13 York State is contesting you in regards to submitting
14 a license application for more than one plant/unit,
15 however you want to define it. All they're saying is
16 that the ER has to have separate ones for the two
17 plants for the very obvious reason is because without
18 that, you're going to take the position, no, our
19 proposal is strictly the combined power outages of
20 these two plants.

21 MS. SUTTON: That's what it is, your
22 Honor. That's the proposal, and you can file one
23 application and the regs make clear under 51.53(c)(1)
24 that you have to have a segregated ER per application
25 and that's what you've done.

1 JUDGE WARDWELL: Per application or per
2 plant?

3 MS. SUTTON: Per application.

4 JUDGE WARDWELL: Thank you.

5 CHAIRMAN McDADE: Okay, I think we're
6 clear as to what the positions are of the parties on
7 Contention 4. Contention 5 says that the application
8 is inadequate because it does not provide adequate
9 inspection and monitoring for corrosion or leaks in
10 all buried system structures and components that
11 contain radioactively contaminant or may contain
12 radioactively contaminated fluids.

13 The initial response of the staff on that
14 as I understand it is this is part of the ongoing
15 operation, the monitoring for corrosion and therefore
16 is not part, not properly within the scope. A
17 question, isn't it valid what the State of New York is
18 saying that the nature of the monitoring that you
19 would do for a 50-year old pipe is different than that
20 monitoring you would necessarily do for a five-year
21 old pipe? So that even though you have ongoing
22 monitoring for the current facility which is part of
23 the current licensing basis, that that doesn't
24 necessarily mean that something more isn't going to be
25 necessary to insure that these, you know, buried

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1 systems that contain radioactive fluids or may contain
2 radioactive fluids, are going to maintain their
3 integrity during this additional 20 years.

4 So what's the staff's position on that?

5 MS. SEXTON: Your Honor, Kimberly Sexton
6 for the staff. Our position is that there is a
7 difference between monitoring for leakage and
8 monitoring for corrosion. Monitoring for leakage is
9 a current operating issue as monitoring for corrosion
10 can be an aging management issue. And I think that
11 what the state is trying to propose is that monitoring
12 for leakage is something that isn't adequately
13 addressed in the AMPs, and therefore, it needs to
14 become more robust by adding in monitoring for leakage
15 as opposed to monitoring for corrosion.

16 JUDGE WARDWELL: Aren't they addressing
17 both? Isn't New York State addressing both in this
18 contention?

19 MS. SEXTON: It seems that the thrust of
20 the contention is monitoring for leakage, when
21 discussing simply monitoring.

22 JUDGE WARDWELL: Well, the thrust of the
23 contention is, isn't it the first word they used was
24 "corrosion", that is orally, so it seems to me it's
25 pretty even. Now, in regards to the discussion, they

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1 may have emphasized more but --

2 MS. SEXTON: Well, in their Point 3, in
3 their bases, they say, "No adequate monitoring to
4 determine if and when leakage from the system
5 structures and opponents of curves.

6 JUDGE WARDWELL: How does one monitor for
7 corrosion of a buried pipe?

8 MS. SEXTON: Can I take a moment to
9 confer, please?

10 JUDGE WARDWELL: Sure. While you're doing
11 that, New York State, did you -- you used the phrase
12 "radioactively contaminated water or other fluids", in
13 your contention. Did you mean for the radioactively
14 contaminated to apply to both water and to the other
15 fluids or only to the water?

16 MR. SIPOS: I believe it's both, your
17 Honor.

18 JUDGE WARDWELL: It's both.

19 MR. SIPOS: Yes, there have been --
20 there have been incidents and indeed, there was an
21 incident last April, I believe, we have this in our
22 Contention, where steam vented up through a pipe
23 through the ground through the pavement, in a steam
24 pipe between Unit 2 and Unit 3, steam a form of water
25 but that's one example. It was aerosolized vaporized

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1 in that system, in that situation. But there are
2 other types of systems, there are other types of --
3 there are other systems which convey other types of
4 fluid which could pick up radionuclides, depending on
5 the failure mechanism of the initiating system
6 structure or component.

7 JUDGE WARDWELL: If, in fact, the fluid,
8 whether it's water or gas or some other liquid, to be
9 more precise, whether it's a liquid or a gas, must
10 have radioactivity in it for you to be concerned in
11 regards to your contention. If it doesn't have
12 radioactivity in it, it is not part of your
13 contention. Is that correct or not?

14 MR. SIPOS: If it doesn't have and
15 couldn't have radionuclides in it.

16 CHAIRMAN McDADE: The operative word there
17 being "may", not necessarily that it need have them
18 but that it has the potential.

19 MR. SIPOS: Yes, yes, your Honor.

20 CHAIRMAN McDADE: And you need to monitor
21 the conduit through which it goes and also monitor for
22 leakage.

23 MR. SIPOS: Yes, your Honor.

24 CHAIRMAN McDADE: Okay.

25 JUDGE WARDWELL: But before that takes

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1 place, there has to be some linkage to indicate why it
2 may in some potential future time have radioactivity
3 associated with that particular fluid.

4 MR. SIPOS: Yes.

5 CHAIRMAN McDADE: The sewer line from the
6 facility is not going to -- a pure sanitary sewer line
7 from the individual components that are there in the
8 various bathrooms.

9 MR. SIPOS: I actually think that begs the
10 question, I'm not trying to be difficult but what is
11 a pure line in that situation. It could have some
12 hydro-geological influence contamination and it could
13 cross the wall, the boundary and be picked up by -- I
14 mean --

15 JUDGE WARDWELL: But in order for someone
16 to make sure that this particular component, SSC, was
17 included in the aging management plan, or up for aging
18 management review or included in A of this effort on
19 regards to the inspections and monitoring associated
20 with it, there had to be some linkage or some
21 indication of why that might be rather than just say
22 it's a buried pipe in the ground that presently
23 doesn't carry -- doesn't have radioactive contaminated
24 fluid in it.

25 MR. SIPOS: You would have to show us that

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1 their AMR appropriately analyzed those systems,
2 structures and components for such a failure. I mean,
3 if it's their burden, we would raise the issue.

4 JUDGE WARDWELL: Thank you.

5 CHAIRMAN McDADE: Okay, getting back to
6 the staff.

7 MS. SEXTON: The way that monitoring is
8 taking place in Entergy's license renewal application
9 and Section B.16 are buried piping and tanks
10 inspection program. They discuss how they will go
11 about monitoring which is also consistent with the
12 goal of NUREG 1801, Section XI.M34, the buried piping
13 and tanks inspection.

14 JUDGE WARDWELL: And can you briefly
15 describe how is that done?

16 MS. SEXTON: Sorry, can you explain -- I
17 don't understand what you're asking.

18 JUDGE WARDWELL: Well, you were
19 emphasizing how it's the monitoring of corrosion and
20 not the monitoring of leaks and you were trying to
21 describe the difference between the two.

22 MS. SEXTON: Right.

23 JUDGE WARDWELL: And I as trying to probe
24 how one does monitoring for corrosion.

25 MS. SEXTON: Well, monitoring for leakage

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1 is generally you look at changes --

2 JUDGE WARDWELL: I know how monitoring for
3 leakage.

4 MS. SEXTON: Okay.

5 JUDGE WARDWELL: I'm not worried about
6 that. I'm concerned about how you monitor for
7 corrosion without monitoring for leaks.

8 MS. SEXTON: You can do thickness
9 measurements and you can do that ultrasonically. You
10 can visually inspect the inside if the pipe is large
11 enough for corrosion within the pipe. So it's very --
12 you're looking at the pipe itself as opposed to
13 changes of water level and things like that.

14 JUDGE WARDWELL: Would you see the
15 corrosion in the pipe from the inside though?

16 MS. SEXTON: Correct.

17 JUDGE WARDWELL: Would you?

18 MS. SEXTON: Oh, yes, you could.

19 JUDGE WARDWELL: And it never occurred
20 from the outside in?

21 MS. SEXTON: There is external corrosion
22 that could occur which is taken care of, I think, by
23 one of the A&Ps submitted by Entergy, correct.

24 JUDGE WARDWELL: Well, maybe I'll go to
25 them and see if they can help elaborate more on how

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1 one monitors for corrosion on these devices, these
2 SSEs.

3 MR. BESSETTE: More fundamentally, your
4 Honor, you know, we've committed to the program that
5 to the extent of the view plan as counsel for the
6 staff stated, B.1.1 buried piping of tanks and
7 inspection. We've committed to an entirety without
8 any exception. And simply New York is stating that's
9 not good enough because we're worried about corrosion.

10 Fundamentally, they keep talking --
11 we've been talking about leakage here today and
12 throughout their petition and their reply, it's not
13 leakage that's the focus of the program. As we
14 noticed in Pilgrim, the decision in Pilgrim stated
15 we're talking about loss of the function per 50.4 and
16 that's not what New York is talking about. They keep
17 talking about leakage.

18 And if you'll look on page 37 of their
19 reply, it says, "Need to prevent illegal release of
20 radioactive contamination into the environment".
21 That's to some, the gist of their contention. And
22 that's not the scope of license renewal. Per Pilgrim
23 it's loss of the function for 50.4 and we believe that
24 B.1.6 in the license renewal application which adopts
25 in its entirety the GALL program as stated, Roman

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1 Number XI.M.34 satisfies it and we believe it's New
2 York's burden to state why that program is not
3 satisfactory and they haven't provided any basis other
4 than .2, prevention of leaks which is an ongoing
5 monitoring program.

6 Now we can consult with our experts here
7 on particulars of how to detect corrosion, but the
8 program itself requires buried components are
9 inspected when excavated during maintenance. There
10 are standard industry practices for maintaining
11 external codings and wrappings. If trending within
12 the corrective action program identifies susceptible
13 locations, the areas with the history of corrosion
14 problems are evaluated for the need for additional
15 inspection, alternate coding or replacement.

16 And this is prior to the entry of the
17 extended operation period, plant operating experience
18 will be reviewed to verify that an inspection occurred
19 within the past 10 years. If an inspection did not
20 occur, a focused inspection will be performed prior to
21 the period of extended operation. That's the program
22 Entergy is committed to and it's completely consistent
23 with the GALL and we believe it's up to New York to
24 say why that's not sufficient.

25 We don't believe they've done so with any

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1 specificity beyond broad generalizations.

2 JUDGE WARDWELL: Could you -- I think you
3 have and correct me if I'm wrong, referenced that
4 challenges to GALL are a challenge to the regulation.
5 And what's your basis for saying that, if you, in
6 fact, did say that?

7 MR. BESSETTE: Could you rephrase the
8 question, your Honor, because I don't understand?

9 JUDGE WARDWELL: Did you not hear it or
10 did you not understand it?

11 MR. BESSETTE: I -- maybe I can clarify.
12 We have committed to implement the program of the
13 GALL. GALL is --

14 JUDGE WARDWELL: Is GALL legally binding?

15 MR. BESSETTE: The GALL is regulatory
16 guidance promulgated by the NRC and we --

17 JUDGE WARDWELL: Is it legally binding?

18 MR. O'NEILL: Your Honor, this is Martin
19 O'Neill, if I may interject. I don't think it was
20 ever intended to say that it's legally binding. It
21 clearly is guidance and there's case law to that
22 effect, but I think there's also case law to the
23 effect that the guidance is entitled to substantial
24 weight, special weight or deference from the staff.
25 It serves a very important function. It helps

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1 streamline the licensing process, taking advantage of
2 lessons learned in this case, aging lessons, and you
3 know, the staff and the industry expended considerable
4 resources in developing these guidance and I think
5 there's a reasonable expectation that if you adhere to
6 the guidance, you comply with the regulations.

7 JUDGE WARDWELL: And the appropriate
8 weight of that can be judged in regards to that but to
9 say it is a violation of the regulations is
10 inappropriate, is that what you're --

11 MR. O'NEILL: That's correct. I clearly
12 never intended to say that.

13 JUDGE WARDWELL: You referenced Pilgrim,
14 is that correct?

15 MR. BESSETTE: Yes, I did, your Honor.

16 JUDGE WARDWELL: And in what sense does
17 that influence this particular question?

18 MR. BESSETTE: We understand that the
19 Pilgrim decision addressed the GALL as regulatory
20 guidance but I think it completely addresses this
21 issue that New York is raising that ongoing monitoring
22 of leakage of radioactive contamination to the ground
23 not associated with loss of function for 50.4 is
24 outside the scope of license renewal.

25 JUDGE WARDWELL: And Pilgrim was what type

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1 of decision?

2 MR. BESSETTE: It's a license renewal
3 decision, your Honor.

4 JUDGE WARDWELL: By who?

5 MR. BESSETTE: A Board.

6 JUDGE WARDWELL: A Board.

7 MR. BESSETTE: Yes.

8 JUDGE WARDWELL: It wasn't a Commission
9 decision.

10 MR. BESSETTE: No, it was not a Commission
11 decision, your Honor.

12 JUDGE WARDWELL: And likewise the
13 appropriate weight for that was given in review of
14 this decision.

15 MR. BESSETTE: Absolutely, your Honor.

16 JUDGE WARDWELL: What is your reaction to
17 New York State's reply that they say it's not an issue
18 of trying to monitor the ongoing leaks. It's an issue
19 of trying to address future leakage and that's where
20 the aging management comes in? It's not an issue
21 dealing with ongoing leakage.

22 MR. BESSETTE: Well, your Honor, we
23 believe it's -- we have a program to address future
24 leakage per the aging management program we've defined
25 in B.1.6.

1 JUDGE WARDWELL: Isn't that an issue to be
2 addressed at hearing then, to debate whether or not
3 it's -- the details of it are sufficient given that
4 none of them are absolute and that there's a
5 discussion still available to look at the merits of
6 whether or not there's sufficient inspection for the
7 corrosion?

8 MR. BESSETTE: Only, your Honor, if New
9 York has proffered some adequate support and they
10 haven't. It's pure speculation and again, what their
11 issue is not focused on which is loss of safety
12 function, they haven't said the program is inadequate
13 for loss of safety function. Their focus is on
14 monitoring leakage. So we don't believe they've
15 adequately challenged to provide anything other than
16 generalizations to support their contention that this
17 program is not adequate.

18 JUDGE WARDWELL: Is the dose limits,
19 exposure limits to workers and public a safety issue?

20 MR. BESSETTE: Not for 50.4, your Honor.
21 That's an Appendix I issue. That's occupational
22 exposure. The dose limits we're talking about are
23 accident dose limits and so a general leakage to the
24 environment for public dose for Appendix I is not a
25 50.4 function.

1 JUDGE WARDWELL: How do you know that
2 isn't during an accident scenario? Why do you know
3 that might not necessarily be a pathway until that's
4 explored further in a merits issue, merits discussion
5 I should say?

6 MR. BESSETTE: Your Honor, it possibly
7 could, but in this case we don't know of any such
8 scenario. They haven't proposed such a scenario and
9 they haven't stated that. They just said they're
10 worried about just general leaks and the leaks they
11 cite throughout their petition are minor leaks of
12 utilities throughout the country. And they have not
13 been -- none of them resulted in any of the doses that
14 we're talking about here.

15 JUDGE WARDWELL: New York, how would you
16 respond to their comments in regards to your
17 contention?

18 MR. SIPOS: Our contention is supported by
19 a detailed declaration from Dr. Rudolph Hausler, who
20 discusses this issue in detail and highlights that one
21 of the failings here is that internal corrosion is not
22 the examined corrosion from the inside.

23 Moreover, if I heard staff correctly,
24 there also seems to be an agreement that monitoring is
25 appropriately within the scope and, indeed, there is

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1 a difference between a 50-year old buried pipe and a
2 five-year old buried pipe and New York State
3 respectfully submits that it has provided ample
4 specificity, more than that is required by the
5 regulations to support this contention.

6 The constant refrain about that the
7 Pilgrim proceedings somehow controls here misses the
8 mark of New York's contention. In Pilgrim the
9 intervener group sought the installation of monitoring
10 wells, I believe, to determine or to prove that there
11 was leakage going on. New York's contention is
12 different from that. It says there must be aging
13 management specific surveillance -- it's not
14 monitoring wells and I think some of the disconnect
15 between the parties here is a term has many meanings
16 or a term with different nouns after it has many
17 meanings.

18 New York is not asking in this contention
19 for monitoring wells. It is asking for increased and
20 appropriate inspection, surveillance or monitoring as
21 that term is used, and Dr. Hausler's declaration
22 supports it and we believe it is well within the scope
23 of this proceeding. It's clearly within the scope of
24 the proceeding.

25 JUDGE WARDWELL: Staff and then Entergy,

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1 are buried pipes containing radioactive -- radioactive
2 -- that contain fluids with radioactivity in them
3 considered part of the passive systems that require
4 aging management review?

5 MS. SEXTON: Not all buried pipes and
6 tanks containing radioactive fluid are considered
7 within the scope of license renewal. Only those that
8 meet the certain definition within 54 are. So it
9 would be incorrect for New York to state that all
10 buried piping and tank systems that may or may not
11 contain radioactive liquid or any liquid in general,
12 would be within the scope of license renewal.

13 JUDGE WARDWELL: And which pipes would not
14 meet the definition in Part 54, which buried pipes
15 that contain radioactive fluid would not meet that
16 definition of 54?

17 MS. SEXTON: Your Honor, I can't give you
18 a specific list of those pipes and tank systems?

19 JUDGE LATHROP: What category of pipes?

20 MS. SEXTON: It's any of the pipes and
21 tanks that have a safety function.

22 JUDGE LATHROP: So any pipe or tank that
23 could lead to loss of safety function must be
24 monitored, is that correct?

25 MS. SEXTON: I would say that those pipes

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1 and tanks that contain a safety function would be
2 within the scope. Whatever aging management plan that
3 Entergy would then put forward in order to manage the
4 aging effects of those plants would be within the
5 scope, but monitoring or inspections or whatever
6 occurs from that is a separate issue than just merely
7 scoping in the systems.

8 MR. TURK: Could I have one second?

9 JUDGE WARDWELL: We'll now move onto to
10 Entergy to answer that unless it's real quick.

11 MR. BESSETTE: Your Honor, I guess, the
12 B.1.6 says it pertains -- the buried pipe and tanks
13 inspection program, pertains to the pressure retaining
14 capability of buried carbon steel, gray cast iron, and
15 stainless steel components. And then it lists eight
16 systems in which the program applies to; safety
17 injection, service water, fire protection, field oil,
18 security generator, city water plant drains and aux
19 feedwater. And those are the programs to which it
20 applies. It says of these six --

21 JUDGE WARDWELL: You say, you're quoting
22 from the GALL report, from the Standard Review Plan,
23 I'm sorry.

24 MR. BESSETTE: No, we're quoting from our
25 -- no, we're quoting from the Aging Management Program

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1 in the application.

2 JUDGE WARDWELL: Okay, thank you.

3 MR. BESSETTE: And of those, only the
4 safety injection system contains radioactive fluids
5 during normal operation, of those eight systems, only
6 one contains radioactive fluid.

7 CHAIRMAN McDADE: Okay, if I could sort of
8 two things administratively right here before we
9 proceed, three things actually. One, let me just
10 again remind people to try to keep your voice up. As
11 it gets later in the day people get tired, their
12 voices tend to go down.

13 Secondly, after the break what I'm going
14 to do, we have one of our administrative assistants
15 here and I will ask her to sit in the back and if she
16 isn't able to hear you, to raise her hand and then I
17 will be able to urge you to speak. I don't want the
18 spectators just getting up and saying, "I can't hear".
19 So we'll put my administrative assistant out there and
20 again, remind you, please speak up to make sure that
21 as many people as possible can hear you.

22 The other thing, what I would propose to
23 do is that we proceed through Contention 5. The
24 question is probably another 10 minutes or so, take a
25 10-minute break and then come back after that break

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1 and go until about 5:00 o'clock. Is that agreeable?
2 Does anyone have any objection to that by way of
3 schedule for the rest of the afternoon? Okay.

4 MR. SIPOS: No, your Honor.

5 CHAIRMAN McDADE: Okay, apparently not.
6 Okay. So let's go back.

7 JUDGE WARDWELL: We're back at staff. I
8 forgot why you wanted a break but -- why you needed
9 that break.

10 MS. SEXTON: I'd just like to bring your
11 Honors' attention to 10 CFR 54.4(a)(1) which defines
12 the scope of safety related systems which would be
13 encompassed of license renewal.

14 JUDGE WARDWELL: Thank you.

15 CHAIRMAN McDADE: Okay, if I could, just
16 a brief question for New York. I mean, one of the
17 issues here is whether or not this is within the
18 scope. Another issue certainly raised by the staff
19 and by the applicant in their reply is saying that,
20 you know, we have an adequate system. The system that
21 we currently have in place is adequate and it will
22 remain adequate.

23 They specifically site to various parts of
24 the license renewal application in that regard, you
25 know, B1.18, B63, you know, B1.29, you know, Surface

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1 Water Integrity Program, Water Chemistry Control,
2 Auxiliary Systems, Water Chemistry Control, Primary
3 and Secondary.

4 I guess a question is to as succinctly as
5 possible why is what they're doing inadequate, if you
6 can just sort of summarize New York's position.
7 They've put forward what programs they're doing.
8 They're claiming it's adequate not just for now but
9 for the license renewal period. Why is it inadequate?

10 MR. SIPOS: Those programs, Judge McDade,
11 which you just referenced are not specifically
12 tailored to the concern that New York has to the
13 buried pipes and tanks. And there is, to be sure, a
14 proposal, a specific proposal, for that issue but New
15 York's contention supported by the declaration of Dr.
16 Hausler, is that that doesn't go anywhere near far
17 enough.

18 He identifies the systems at issue and
19 that the -- that the program, as contained -- the
20 suggested or described program as contained in the
21 license renewal application lacks meaningful
22 specificity.

23 CHAIRMAN McDADE: And to the staff first
24 and then to the applicant, why doesn't Dr. Hausler's
25 application raise a genuine issue that should go to

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1 hearing?

2 MS. SEXTON: Your Honor, the thrust of the
3 contention is focused way -- entirely too broad and
4 that their concerned with small leaks or -- and leaks
5 of radioactive liquid. Small leaks and leaks of
6 radioactive liquid are current operating issues that
7 are dealt with on a day-to-day basis at the plant.
8 They're not specific to license renewal or a period of
9 extended operation.

10 And I just want to point out that the
11 Aging Management Plan that Entergy has to submit to us
12 only has to manage aging so that leaks that could
13 interfere with the system structure or component's
14 ability to perform its safety function will not occur
15 because of aging. That AMPs are not meant to focus on
16 small leaks or leaks that don't interfere with the
17 safety function.

18 And to their contention is entirely just
19 too all-encompassing for what's necessary for the
20 staff to sign off on the LRA.

21 CHAIRMAN McDADE: Well, I mean, when you
22 talk about all-encompassing, I mean, one of the things
23 says and you in your reply, the staff in the reply
24 says it's not specific enough. They say all. Now, it
25 seems to me that all is pretty specific.

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1 MS. SEXTON: As we stated before, all of
2 the systems, structures and components that may or may
3 not contain radioactive fluid or liquid, those --
4 that's just saying -- throwing the kitchen sink at you
5 and then hoping that at some point that you, as the
6 board, is going to sharpen or clarify the contention
7 which the staff doesn't feel is the proper function of
8 a licensed -- of a board to do.

9 CHAIRMAN McDADE: But they're saying,
10 "We're concerned about those whole kitchen sink, we're
11 concerned".

12 MS. SEXTON: And --

13 CHAIRMAN McDADE: And they also said,
14 "We've looked at what's happened at other plants and
15 that informs the concern that we have. We've looked
16 at what's happened, you know, not just at Indian
17 Point. We've looked at what's happened elsewhere. It
18 raises a concern. We're concerned about all of these
19 systems and we don't think that what Entergy, as
20 proposed, adequately addresses the potential for all
21 of these systems. We want a hearing on it". And, you
22 know, maybe it will turn out to be correct, maybe it
23 will turn out not to be correct, but you know, haven't
24 they at least raised a sufficient question here to
25 warrant further inquiry at a hearing?

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1 MS. SEXTON: They're going --

2 CHAIRMAN McDADE: And if not, why not?

3 MS. SEXTON: They're going beyond the
4 scope of what the AMPs are intended to cover. The
5 AMPs are not intended to cover the kitchen sink and so
6 therefore, it's not -- it's going entirely outside of
7 what the Commission requires Entergy to submit and to
8 manage in the period of extended operation.

9 CHAIRMAN McDADE: Okay, but they're saying
10 that if the kitchen sink has radioactive fluids in it,
11 it covered.

12 MS. SEXTON: But that's not what the
13 regulations specify. The regulations don't specify
14 that every system that contains radioactive fluid is
15 subject to an Aging Management Plan.

16 CHAIRMAN McDADE: Okay, what's Entergy's
17 take on this, Mr. Besette?

18 MR. BESSETTE: Your Honor -- excuse me?

19 CHAIRMAN McDADE: Mr. Besette?

20 MR. BESSETTE: Yes, we'd just like to
21 briefly, the State is relying on the declaration of
22 Dr. Hausler. We don't believe there's enough
23 specificity in it and if you read his declaration
24 itself, there's many statements of speculation. He
25 states he hasn't reviewed much actual data on page 6.

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1 He has statements like "One might suspect" on page 7,
2 "the actual source of corrosion is not clear" on page
3 7.

4 CHAIRMAN McDADE: But isn't he saying
5 because you guys don't monitor, he can't be more
6 specific?

7 MR. BESSETTE: But your Honor, statements
8 of his guesses of "it is possible", you know, "what
9 can be expected" is certainly not basis to say why
10 this Aging Management Program is insufficient. The
11 only example he provides is an example of a service
12 water leak that was identified above ground of five
13 drops per minute.

14 Clearly that is what we're talking about.
15 His speculation with regard to minor leakage is not
16 the intended function we're trying to protect by this
17 Aging Management Program and it's not governed by the
18 license renewal rules.

19 MR. TURK: May I add just one thing, your
20 Honor. I don't mean to double-team this but just to
21 make sure that this statement gets into the record, in
22 pleading a contention, it's a petitioner's obligation
23 to point to specific parts of the license renewal
24 application which it deems to be inadequate.

25 It's the state's burden here to point to

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1 specific AMPs that they think are not adequate for
2 monitoring. The proper scope of the program is
3 defined in 54.4 in (a) (1), (a) (2) and (a) (3) both with
4 respect to safety systems and non-safety systems.
5 It's the state's obligation to point to the AMPs
6 within that scope and say "This won't do the job.
7 You're not doing what the regulation requires you to
8 do". And in essence, it's our position that they've
9 raised a lot of different matters, including
10 radioactive leaks that may or may not be part of
11 systems covered in scope and they haven't pointed to
12 specific aspects of the AMPs that are deficient, which
13 is their obligation.

14 JUDGE WARDWELL: What's your response to
15 that?

16 MR. SIPOS: Briefly, your Honor, and by
17 way of example, in response to what Mr. Turk just
18 said, I'd refer the court -- I'd refer the Board
19 again, just by way of example, to Dr. Hausler's
20 declaration, paragraph 43. He discusses and analyzes
21 Aging Management Section B.2.2, quote, "Buried piping
22 and tanks inspection in the AMP". Associated with
23 that and discusses it and critiques it in detail.

24 Second, with respect to Entergy's attack
25 on Dr. Hausler, we did note in our reply a document

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1 that they had docketed in the Pilgrim licensing
2 renewal case which we only found out about in January
3 after it was docketed on Adams, this is Entergy's
4 buried piping and tanks inspection and monitoring
5 program and it follows along the systems that Dr.
6 Hausler identified in his declaration. So we believe
7 that the criticism of Dr. Hausler is ill-based.

8 And also in our reply, we cited NRC
9 decisions that supported the contention that
10 highlights questions and concerns about all systems.

11 JUDGE WARDWELL: And by your saying that
12 Entergy's criticism of Dr. Hausler, you mean in
13 regards to him not being specific enough. It wasn't
14 necessarily a direct criticism of his particular
15 skills or ability that they were referring to earlier.
16 You're referring to their -- Entergy's allegations
17 associated with the non-specificity of those
18 arguments.

19 MR. SIPOS: I think Entergy had both those
20 criticisms if I may, and we believe a reading of Dr.
21 Hausler's declaration demonstrates that he was
22 detailed, that it does support the contention but
23 moreover, the Entergy document which we provide the ML
24 number for, further supports Dr. Hausler's analysis of
25 systems which should have an augmented inspection

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1 program and what that program -- and the components of
2 what could be in that program.

3 CHAIRMAN McDADE: Okay, it's now five
4 after. Why don't we take a 10-minute break and come
5 back at 3:15? Is that sufficient time? Anyone need
6 longer? Apparently not.

7 (A brief recess was taken.)

8 CHAIRMAN McDADE: Please take your seats.
9 Okay. We'll come to order.

10 Before we proceed, there's one thing that
11 I did want to address by way of administrative. Our
12 current schedule calls for us to begin tomorrow with
13 the Town of Cortlandt, the State of Connecticut, and
14 then Riverkeeper. There is a question as to whether
15 we will finish with New York, given the fact that
16 we've finished five contentions, and it's 3:15, and
17 we're going to break at 5, so there's an outside
18 possibility we may not finish with New York today.

19 That said, I question how far we're going
20 to get with Riverkeeper tomorrow, so what I would ask
21 is when we break at 5:00, if the representatives of
22 Riverkeeper could just coordinate, so we could figure
23 out - instead of having people necessarily just
24 waiting, if we can at least address the possibility of
25 what time we might be starting with Riverkeeper

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1 tomorrow, instead of making sure that everyone gets
2 here at 9:00 in the morning, and then waits for a
3 considerable period.

4 Okay. We're now moving on to Contention
5 Six. Okay. Contention Six is that the application
6 is inadequate because it does not have a specific plan
7 for aging management of non-environmentally qualified
8 inaccessible medium-voltage cables and wiring, for
9 which such aging management is required.

10 JUDGE WARDWELL: Why don't I start with
11 Entergy? And I think maybe I'll address both Six and
12 Seven, just to speed up time, because seven,
13 basically, is the same thing for low-voltage. And
14 while we've got a couple of other questions on low-
15 voltage, there's many I think that are together with
16 this, so I'll ask.

17 Entergy, do these -- the inaccessible
18 medium and low-voltage cables fall within the issues
19 that need to be addressed as part of the license
20 renewal application?

21 MR. BESSETTE: Yes, Your Honor.

22 JUDGE WARDWELL: And has Entergy provided
23 a specific aging management plan for these components?

24 MR. BESSETTE: That takes -- I'd like to
25 take them one at a time. For the medium-voltage

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1 cables, yes, there's a particular Aging Management
2 Program, and Appendix B of the application, B.1.23,
3 it's specific to Aging Management Program for medium
4 -- inaccessible medium-voltage cables. It is entirely
5 consistent with the GALL, no exceptions.

6 The Aging Management Program for
7 inaccessible low-voltage cables is encompassed within
8 Appendix B.1.25, Non-EQ Insulated Cables and
9 Connections Program.

10 JUDGE WARDWELL: Can you say that again,
11 that last bit again?

12 MR. BESSETTE: Yes. The low-voltage
13 cables are encompassed in the license renewal
14 application, Appendix B.1.25, and the Aging Management
15 Program is entitled "Non-EQ Insulated Cables and
16 Connections."

17 JUDGE WARDWELL: And is it clear within
18 that appendix that these -- that that specifically
19 applies to the low-voltage cables also?

20 MR. BESSETTE: No, Your Honor, but it is
21 encompassed. It doesn't apply to any particular
22 voltage. There was a -- the medium-voltage cables, my
23 understanding, has its own program because it was a
24 unique phenomenon associated with medium-voltage
25 cables. We have our experts here if we need to

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1 consult on that.

2 The low-voltage cables, they're just not
3 called out for a specific program. But the Non-EQ
4 Insulated Cables and Connection Program encompasses
5 all those components without specific regard to the
6 voltage.

7 JUDGE WARDWELL: Is there specificity
8 within those plans for both the medium and low-voltage
9 for the inaccessible cables?

10 MR. BESSETTE: The medium-voltage program
11 is specific to inaccessible cables, so, yes. The low-
12 voltage program has inspections of accessible cables,
13 and based on the results of that, you then would apply
14 that to other accessible and inaccessible cables.

15 I'd like to clarify. B.1.25 references
16 the applicable program in the GALL, and the GALL
17 program has that specific requirement that the results
18 of the inspections of the accessible cables would then
19 be extrapolated to inaccessible cables. It's
20 specifically called out in the GALL. And, again,
21 we've committed to that program with no exceptions.

22 JUDGE WARDWELL: But someone could very
23 well challenge the adequacy of that leap of faith in
24 applying the inspections for the accessible low-
25 voltage cables to the inaccessible cables, that might

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1 warrant a hearing to affect all the issues associated
2 with that.

3 MR. BESSETTE: Your Honor, to do so, they
4 would have to -- in our opinion, they would have to
5 establish why the program that we've committed to in
6 B.1.25 is not acceptable for the Indian Point
7 facility. Considering that it is consistent with the
8 Standard Review Plan, as Mr. O'Neill said, and it's
9 persuasive authority, we don't believe that there is
10 any basis, or that New York has provided any basis to
11 state why that program isn't satisfactory. Just
12 saying it's not good enough, for us, is not good
13 enough.

14 CHAIRMAN McDADE: Isn't what New York
15 saying is that you have committed to a program, but
16 that you have not provided details of the program to
17 be implemented; and, therefore, that it's
18 insufficient? In other words, they're looking to
19 criticize your program, and they say we don't know
20 what it is. We can't criticize it, because you're
21 saying we can't be specific enough, and we're saying
22 we, New York is saying we can't be specific enough
23 because your program, at this point, isn't specific
24 enough. It's sort of we will develop a program, but
25 you don't have adequate sufficiency.

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1 MR. BESSETTE: Your Honor, the program is
2 defined in the application. It's in B.1.23, and
3 B.1.25, and it references the applicable sections of
4 the GALL. So for them to say it's not defined,
5 candidly, it is defined. It's in the Appendix B in
6 the license renewal application, which references the
7 applicable sections of the GALL, where it's further
8 defined. And, also, pursuant to 54.29, the applicant
9 is allowed to state actions haven't been identified,
10 or will be taken with respect to matters identified.
11 So, therefore, we are allowed to make commitments, as
12 a preliminary matter. And, second, the programs are
13 defined, they're defined in Appendix B, and they're
14 defined in the GALL, which is referenced in Appendix
15 B.

16 JUDGE WARDWELL: Are you saying that
17 there's enough specificity in GALL that's unambiguous
18 in regards to anyone reading it to challenge that
19 particular program?

20 MR. BESSETTE: Certainly, Your Honor. And
21 if you wanted to challenge it, you'd have to be
22 specific with regard to why is it sufficient, and to
23 what components it's not sufficient, and provide a
24 basis, and there simply is no basis.

25 CHAIRMAN McDADE: Okay. Well, let me just

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1 again clarify in my own mind here, because as I kind
2 of see this, I've got everybody on a different base.
3 You're saying we have adequately described the
4 program. And as I read the staff's reply, the staff
5 reply is not that you have adequately defined the
6 program, but, rather, the regulation allows you to
7 make a commitment to develop a program that will
8 comply with NUREG 1801, and that's what you've done.
9 And then we have New York that says no, you haven't,
10 and no, the commitment is inadequate. So I'm just
11 trying to get everybody on the same base so I know
12 where to throw the ball.

13 MR. BESSETTE: Your Honor, we believe the
14 basic elements of the program are defined in our
15 application and the GALL. The GALL does have elements
16 that rely on future commitments and future
17 inspections, so that's perhaps where the confusion is.
18 The programs we are relying we believe are adequately
19 defined, but they do rely on future commitments, and
20 future development. But we believe that's
21 satisfactory. For New York to say that there's no
22 program is disingenuous.

23 JUDGE WARDWELL: You said no plan, and I
24 guess that's maybe where the difference in terminology
25 comes in.

1 MR. BESSETTE: Well, Your Honor, we could
2 pull out the GALL and go through the various elements
3 of the GALL, and if we need to, to identify each of
4 the elements.

5 JUDGE WARDWELL: What is the purpose for
6 allowing commitments to be determined in the future?
7 Why not do it now?

8 MR. BESSETTE: Well, it is based on
9 operating experience. And the fact is that you
10 haven't entered the renew term yet.

11 JUDGE WARDWELL: What more operating
12 experience do you need than the past how many years
13 it's been that you've been operating the plant?

14 MR. BESSETTE: Your Honor, are you asking
15 why the regulations allow us to make future
16 commitments?

17 JUDGE WARDWELL: Well, I thought these
18 were in the GALL that you were addressing in regards
19 to future commitments.

20 MR. BESSETTE: I am, Your Honor, but I
21 also quoted the appropriate sections of the regulation
22 that allow us to make commitments. So, therefore, the
23 commitments for future action in the GALL are
24 authorized by the regulations.

25 JUDGE WARDWELL: And how does one draw the

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1 line of whether it's an appropriate future commitment
2 that's allowable by that, or one that's really just
3 trying to circumvent any vetting by public discussion
4 of it? Because I assume that these future commitments
5 will take place under normal operating conditions that
6 won't have any chance whatsoever to be heard or
7 discussed in regards to differences of opinion of how
8 those should be addressed and implemented.

9 MR. BESSETTE: We believe the programs --
10 again, we meet the definitions of the program for the
11 GALL. GALL, as Mr. O'Neill stated earlier, is based
12 on ample and detailed industry and staff consultation,
13 and we believe the programs are adequate. We believe
14 there's an assumption of adequacy there based on
15 operating experience, based on all the plants that
16 have gone before us. So, therefore, we believe
17 there's a presumption of adequacy, unless otherwise
18 shown not to be based on the particular circumstances
19 of this site.

20 CHAIRMAN McDADE: Okay. From the
21 standpoint of the NRC staff, as I said, perhaps I
22 misinterpreted the statements of the NRC staff in
23 their answer, but do you agree with what Entergy has
24 just said, that they do have a program. The program
25 is adequate, or is it your position that they simply

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1 made a commitment to develop an adequate program?

2 MR. ROTH: Well, as I understand what they
3 said, is that their program is a commitment to have a
4 program that meets GALL. I heard them mention ten
5 elements, and it may be helpful to run through what
6 this means to have the commitment for GALL.

7 The GALL is the Generic Lessons Learned
8 for Aging, and the staff have taken the position that
9 if you have a program that will demonstrate that it
10 meets the elements of GALL, that that is one way to
11 show you're adequately managing the effects of aging.

12 In our NUREG, I was looking for the GALL,
13 but I pulled the NUREG up first. And the Standard
14 Review Plan NUREG, there's a table in the back that
15 talks about ten elements. I'll have the table number
16 here in a second. It's Table A1-1, Elements of an
17 Aging Management Program for License Renewal. And
18 those ten elements, which include the scope, include
19 preventive actions, include parameters monitored or
20 being inspected, detection of aging effects,
21 monitoring and trending, and there's five others, of
22 course.

23 What the staff would use, is the staff are
24 looking to see is there enough information to show
25 that this future commitment is adequately described.

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1 CHAIRMAN McDADE: Okay. And that's --
2 what was the Table, again, you referenced?

3 MR. ROTH: In the Standard Review Plan,
4 it's Table A1-1.

5 CHAIRMAN McDADE: Okay. And is that NUREG
6 1801?

7 MR. ROTH: NUREG 1800 is the Standard
8 Review Plan.

9 CHAIRMAN McDADE: 1800, okay.

10 MR. BESSETTE: Your Honor, the GALL
11 program we discussed is in Section 11.E(3) for
12 inaccessible medium-voltage cables.

13 JUDGE WARDWELL: 11.E(3). What is it for
14 the low-voltage, as a general one, right, that isn't
15 specific in regards to voltage?

16 MR. BESSETTE: I'll get back to you, Your
17 Honor. We're searching for it.

18 CHAIRMAN McDADE: New York, what's your
19 reaction?

20 MR. SIPOS: Where's the beef? There is
21 nothing in the license renewal application that
22 provides much in the way of specificity, nor, dare I
23 say, GALL. It says test every 10 years, and look in
24 manholes every 2 years. That opens so many questions.

25 Moreover, it's a program -- I think we

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1 heard just recently, just a few moments ago, it's a
2 commitment to have a program. That's like a promise
3 to agree, a promise to promise. And staff was very
4 clear in their answer that this is a new program. And
5 we have a very, very thin attempt to briefly describe
6 it. And New York's contention provides the adequate
7 specificity that this program for medium-voltage
8 inaccessible non-environmentally qualified cables is
9 not sufficient, and it provides citations to reports
10 concerning cable aging management realities.

11 And to come to Section 54-29, the Board
12 and the Commission need to make these determinations
13 before the license is renewed. And interveners,
14 petitioners must have the ability to challenge it. It
15 can't be beyond the scope simply by saying well, we'll
16 get around to that when we consider our operating
17 experiences, whenever that may be. It's a promise to
18 promise, and it's nothing more than that.

19 JUDGE WARDWELL: Can you elaborate a
20 little bit more on how specific you are in regards to
21 challenging this for both medium and low-voltage, and
22 is there a difference, in your opinion? What's the
23 difference, also, in your contentions between medium
24 and low?

25 MR. SIPOS: Yes, there is a difference.

1 With respect to low-voltage inaccessible non-
2 environmentally qualified cables, New York State
3 submits that the plain text of the license renewal
4 application contains no program whatsoever. It
5 doesn't exist, and it's inadequate. And Entergy's
6 suggestion --

7 JUDGE WARDWELL: If it doesn't exist, how
8 can it --

9 MR. SIPOS: Well, it doesn't exist. And
10 Entergy's suggestion that the Board provide some
11 assistance by inserting the words "low-voltage" is --
12 again, New York submits it runs afoul of the strict
13 by design rule. Entergy knows how -- Entergy surely
14 understands the difference between high-voltage,
15 medium-voltage, and low-voltage. They've used the
16 term low-voltage elsewhere in their documents.
17 Clearly, if they meant it to include low-voltage, they
18 could have easily done so here; yet, for whatever
19 reason, they decided that they would not.

20 Also, in our Contention, this is
21 Contention Seven, the low-voltage contention, New York
22 made clear that Indian Point relies upon low-voltage
23 cables for various safety-related functions. And that
24 I won't say it is unique for reactors in the country,
25 but it is -- that is a distinguishing feature for

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1 Indian Point. So the low-voltage cables are very
2 important for consideration, and for operation during
3 the license renewal period.

4 Coming back to Contention Six, the medium-
5 voltage inaccessible non-environmentally qualified
6 cables, the contention there is what is proposed is
7 inadequate, and that the promise, and I believe it's
8 V.1.23, is some test in 10 years, and we're going to
9 get around to fleshing that out in the future.
10 Stating that that is inadequate, clearly falls within
11 2309, as it does for Contention Seven. And we identify
12 the aging management mechanisms that affect cables.

13 JUDGE WARDWELL: Well, how do you address
14 their criticism of you saying it's just inadequate is
15 not being specific enough. In what regards is it not
16 inadequate?

17 MR. SIPOS: We cited various --

18 JUDGE WARDWELL: Not adequate.

19 MR. SIPOS: We cited various governmental
20 -- I'm sorry. We cited various governmental
21 documents. I believe the first one was a Sandia
22 report on cable aging mechanisms, which discussed
23 those mechanisms in detail, and made certain
24 suggestions about how one could manage it. We
25 contrasted it with the program for accessible cables

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1 and how those are reviewed. Those are two examples of
2 the specificity that we provided on that, Your Honor.

3 MR. BESSETTE: Your Honor, we promised to
4 get back to you on the program that we were talking
5 about, the low-voltage. It's in the GALL, Section
6 XI.E.1. And if we could briefly address some of the
7 comments of New York.

8 They point to the fact that we don't have
9 a particular program for low-voltage cables, because
10 there simply is no requirement for one. The aging
11 phenomenon for medium-voltage cable, as described in
12 the GALL, it's very different for low-voltage cable.
13 That's why there's a particular program for medium-
14 voltage cable. There's no requirement for a specific
15 program for low-voltage cables, and they have not
16 cited one. And with regard to the medium-voltage
17 cables, again, they've just said it's inadequate.
18 They simply haven't said it's inadequate.

19 With regard to the industry standards that
20 they say we haven't addressed, they're all included as
21 references in the GALL report, so the GALL report, on
22 which we rely, considers the very references they're
23 saying we should consider, including the Sandia
24 report.

25 And, finally, Your Honor, Item 4 in all

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1 these programs includes inspection criteria, detection
2 of aging effects. And that's very specific types of
3 aging effects and inspections that will be conducted
4 for the medium-voltage cables, and the program in
5 XI.E.1. So, again, the references they say we haven't
6 addressed are included in the GALL report. There's no
7 requirements for the program they say we should have,
8 and the detection of aging effects, they say there's
9 no criteria. It's specifically laid out in the GALL,
10 itself, which we specifically reference in the
11 application. So, again, we just don't see that
12 there's any basis for them to say that what we've done
13 is inadequate.

14 JUDGE WARDWELL: Didn't you admit that the
15 low-voltage cables do fall under components that are
16 within the scope of the license renewal application,
17 and for aging management review?

18 MR. BESSETTE: Yes, we do, Your Honor, and
19 they're covered by the license renewal application
20 program, B.1.25, Non-EQ Insulated Cables and
21 Connections. We believe it's encompassed in there.

22 JUDGE WARDWELL: But you're referencing --
23 I mean, you're saying it's not part -- it's not
24 required, and you, I believe, are alluding it's not
25 required by the GALL report. Correct?

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1 MR. BESSETTE: Your Honor, I was saying it
2 was not -- I apologize if I was confusing you. I'm
3 saying it's not required to have a particular program
4 of its own, such as medium-voltage cables.

5 JUDGE WARDWELL: But couldn't that be an
6 issue that's up for hearing, that one could take the
7 position the reason it isn't is because most plants
8 don't rely on it for safety issues, and it's not part
9 -- it's generally not considered part of the
10 components that are required for aging management
11 review at most other plants. So it's obvious why they
12 haven't required, or presented a specific plan in the
13 GALL report, and that being only a guidance document
14 as it is.

15 MR. BESSETTE: Well, that may be a basis
16 for a revised contention, Your Honor, but that's not
17 the contention they've raised. They haven't said why
18 we're different. They haven't said why these cables
19 function different than any other plant around the
20 country. Again, they just haven't said why -- what
21 the industry program, and the NRC-approved program
22 that we're relying on is insufficient for this
23 application. By saying that low-voltage cables play
24 an important function, we don't disagree. They're in
25 our programs. They're addressed by our programs.

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1 That's just not a basis a contention that says you
2 need a separate program.

3 JUDGE WARDWELL: Are low-voltage cables at
4 all your other plants when you go through a license
5 renewal fall under, within scope of that?

6 MR. BESSETTE: One minute, Your Honor.
7 Your Honor, the license renewal applications we're
8 familiar with for other Entergy's plants include that
9 Non-EQ Insulated Cables and Connections Program, and
10 that does not exclude any voltage levels. So, yes,
11 it's very -- it's consistent with the other plants,
12 and it's consistent with the GALL.

13 JUDGE WARDWELL: I think where I was
14 trying to go with the questioning was to get a feeling
15 for how many other plants have low-voltage cables that
16 fall within the scope of the license renewal
17 proceedings, specifically that require aging
18 management review. Do all of them, none of them, or
19 half of them, whatever?

20 MR. BESSETTE: Your Honor, all the cables
21 are in scope, but due to the bounding effect, I mean,
22 the bounding analysis. We don't pick out particular
23 cables. Through the process allowed pursuant to the
24 license renewal program, you're allowed to take
25 bounding approach to electrical cables, and that's

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1 what we've done here, so they're all in scope.

2 JUDGE WARDWELL: Thank you.

3 CHAIRMAN McDADE: Let me ask, on
4 Contention Eight, which is basically a similar
5 contention having to do with transformers, the NRC
6 staff represents that Section 54.21(a)(1)(i) does not
7 require an aging management review for transformers.
8 Can you explain how the staff came to that conclusion?

9 MR. ROTH: Sure, Your Honor. Now for
10 transformers, transformers are considered to be active
11 components.

12 CHAIRMAN McDADE: I'm sorry. I couldn't
13 hear you.

14 MR. ROTH: I said transformers are
15 considered to be active components. They're not long-
16 lived passive components. They're not something that
17 is going to require a separate AMP by it, and that's
18 how we've interpreted this through our Standard Review
19 Plan.

20 JUDGE WARDWELL: So you're saying that no
21 transformer is within the scope of the license renewal
22 application?

23 MR. ROTH: Well, we're separating scope
24 from need and aging management program. Something can
25 be -

1 JUDGE WARDWELL: Could you speak a little
2 louder, please?

3 MR. ROTH: Something could be within
4 scope, but be active. You look at it and say is this
5 something we need to look at? Is this a passive long-
6 lived component that performs one of the functions
7 described in 10 CFR Part 54.4. If it's a passive
8 component, then you're going to have to make sure you
9 do aging management review on it. You might have an
10 Aging Management Plan for it. If it's considered to
11 be an active component, as transformers are, then you
12 don't need to have the plan on it. If the equipment
13 starts to act up and fail, it's not passive, it's
14 something that has continuous monitoring through day-
15 to-day operations.

16 CHAIRMAN McDADE: Okay. And what specific
17 language in 54.21 do you refer to there?

18 MR. ROTH: A.1(i).

19 CHAIRMAN McDADE: Okay. And are you
20 specifically using the language "without moving
21 parts", or what language are you looking at?

22 MR. ROTH: Well, I believe in our answer
23 that we're clear that we interpret the transformers to
24 be the same. They are considered to be an active
25 component. That's how the staff interpret them.

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1 Clearly, it's --

2 JUDGE WARDWELL: How did you determine
3 them to be active? That's, I think, the heart of the
4 question that I have.

5 MR. ROTH: Let me consult with Tech Staff
6 for a second here.

7 JUDGE WARDWELL: Sure.

8 MR. ROTH: All right. Thank you, Your
9 Honors. In NEI 95.10, which is a document that
10 describes how the staff conducts its standard, or how
11 the staff conducts license review plans, there is
12 Attachment -- there is a description that describes
13 how the staff came to that conclusion in the NEI
14 documents. And if you pardon me for a moment, I can
15 pull up the exact reference. Basically, it's the
16 staff's determination as to why transformers are
17 considered to be active components in the same genre
18 as power supplies.

19 CHAIRMAN McDADE: Well, how about discuss
20 any of it? I mean, you said that the staff interprets
21 the regulation as excluding transformers, just as it
22 excludes other power supply-related structures and
23 components. So what is the language in 54.21 that you
24 rely on?

25 MR. ROTH: The explicit language does not

1 exist in 54.21.

2 CHAIRMAN McDADE: Then why did you say
3 that it's because of 54.21? You said 54.21 doesn't
4 require it, so what specific language in there do you
5 rely on? And you say there is none, so then 54.21
6 does not explicitly exclude it. Correct?

7 MR. ROTH: Correct. It specifically
8 excludes power supplies.

9 CHAIRMAN McDADE: Where?

10 MR. ROTH: In the NEI 95.10 guidance, in
11 the attachment to it. The staff have taken the
12 position that a transformer is equivalent to a power
13 supply for purposes of that regulation.

14 CHAIRMAN McDADE: Okay. What is the
15 language, specifically, again for that -- look at the
16 transcript, whether it's the fifth or sixth time I
17 asked the question. What's the language in 54.21 you
18 rely on?

19 MR. ROTH: The language would be excluding
20 power supplies in the 54.21. And then that has to be
21 interpreted with the staff's interpretation that a
22 transformer is treated as a power supply. And, Your
23 Honors, the transformer is not listed in 54.21. It's
24 not listed as an exclusion. And I apologize if that
25 was unclear from our pleading, but the intent was to

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1 say the staff is interpreting transformers to be
2 incorporated as power supplies.

3 JUDGE LATHROP: Could you elaborate
4 further on the distinction between active and passive
5 components, and why an active component doesn't
6 require a plan?

7 MR. ROTH: Because the plans are for the
8 passive components, the passive long-lived components.
9 I'll try pull up some better explanation for us.

10 CHAIRMAN McDADE: Perhaps, if you could
11 help me. I'm still going back -- where is the
12 language? Are you dealing with the 10 CFR book?

13 MR. ROTH: Yes.

14 CHAIRMAN McDADE: Okay. And,
15 specifically, on 54.21, you're on page 105?

16 MR. ROTH: Yes.

17 CHAIRMAN McDADE: Column One?

18 MR. ROTH: Yes, 54, it's Column One, about
19 a third of the way down the page. It talks about
20 "components that perform an intended function, as
21 described in 54.4, without moving parts, without a
22 change in configuration or properties". Then it says,
23 "These structures or components include", then it goes
24 through a long list, and after about halfway through
25 the include is the word "excluding, but not limited to

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1 pumps, motors", and keeps going, and eventually hits
2 "power supplies". It's actually "power supplies is
3 the third and second to last words in 54.21-A.1.(i).

4 CHAIRMAN McDADE: Okay. And then the jump
5 to that is in NEI 95-10, is you interpret that
6 language to include transformers.

7 MR. ROTH: Correct, Your Honor.

8 CHAIRMAN McDADE: Okay. I may have
9 stepped on your question, Judge Lathrop. I apologize.

10 MR. ROTH: And, Your Honors, I have the
11 page in 95-10. And it would be Attachment at C-11.

12 JUDGE LATHROP: And the rationale is that
13 these active components can be determined to be in
14 difficulty before they fail, is that the idea?

15 MR. ROTH: That's, essentially, the idea.
16 The NRC staff position is described there, and I could
17 try to summarize it, if you give me a minute to look
18 through it, but that is the essential rationale behind
19 it. And my co-counsel has pointed out that's not the
20 staff's position, that's Commission's position.

21 CHAIRMAN McDADE: And how -- you say
22 Commission position, articulated how?

23 MR. ROTH: Let me consult with co-counsel
24 for a moment, please.

25 CHAIRMAN McDADE: And you had some

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1 comment, Entergy?

2 MR. BESSETTE: Yes, Your Honor. In
3 particular, if you look at the language in the
4 regulations regarding moving parts, in 10 CFR 54.21-
5 A.1.i, at the first sentence it says, "That perform an
6 intended function as described in 54.4 without moving
7 parts, or without a change in configuration or
8 properties." So that language is in regulation,
9 itself.

10 The letter that I believe counsel for the
11 staff was talking about is a letter dated September
12 19th, 1997 from the Nuclear Regulatory Commission
13 staff specifically on the function of transformers.
14 And the staff position references a statement of
15 consideration on this issue, where the Commission
16 concluded that an aging management review is required
17 for passive long-lived structures and components
18 within the scope of license renewal. "The Commission
19 has determined that passive structures and components
20 for which aging degradation is not readily monitored
21 are those that perform an intended function", again,
22 "without moving parts or a change in configuration and
23 properties. The statement's consideration also
24 states, "The Commission has concluded that a change in
25 configuration or properties should be interpreted to

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1 include a change in state which is a term sometimes
2 found in the literature relating to passive." So the
3 Commission has determined exactly what the staff is
4 talking about.

5 With regard to transformers, the NRC's
6 position is, "Transformers perform their intended
7 function or change in state by stepping down voltage
8 from a higher to a lower value, stepping up voltage to
9 a higher value, or providing isolation to a load.
10 Transformers perform their intended function through
11 a change in state similar to switch gear, power
12 supplies, battery chargers, and power invertors, which
13 have been excluded in 54.21-A.1.i from an aging
14 management review."

15 Skipping on, "Any degradation to the
16 transformer's ability to perform its intended function
17 is readily monitored by a change in the electrical
18 performance of the transformer and associated
19 circuits. Trending electrical parameters during
20 transformer surveillance and maintenance, such as
21 Dolby test results and advanced monitoring methods,
22 such as infrared thermography, electrical circuit
23 characterization and diagnosis provide a direct
24 indication of the performance of the transformer.
25 Therefore, transformers are not subject to an aging

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1 management review."

2 CHAIRMAN McDADE: Okay. And you were
3 reading from?

4 MR. BESSETTE: This is the -- I was
5 reading from the regulations, the Statement of
6 Considerations, and a September 19th, 1997 letter from
7 Christopher Grimes, Director of the License Renewal
8 Project at the NRC to the Nuclear Energy Institute.
9 And it's called, "Determination of Aging Management
10 Review for Electrical Components."

11 And, again, just to clarify, we're not
12 saying transformers are not within the scope of
13 license renewal. There are transformers that perform
14 an intended function. It's just that if they have an
15 active component, they don't require an aging
16 management program, and we just need to make that
17 clear. Certain transformers are in scope, but that
18 doesn't mean you need an aging management program, and
19 that's how we evaluate it, whether they're passive or
20 active components. And that's pursuant to 54.21-
21 A.1.i.

22 CHAIRMAN McDADE: Okay. Thank you.

23 JUDGE WARDWELL: Now you just confused me.
24 He thanks you, but I now --

25 CHAIRMAN McDADE: Well, that goes back, I

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1 think, to the question I asked originally, is whether
2 or not they were relying on that, on the language
3 "without moving parts", or "without a change in
4 configuration or properties." And, initially, I
5 thought the answer was no, we're not relying on that,
6 so that's what sort of led us on. Now you're
7 indicating that that language is operative here in
8 setting the standard.

9 MR. BESSETTE: Yes, Your Honor.

10 CHAIRMAN McDADE: And then the rest flows
11 from that as an interpretation --

12 MR. BESSETTE: Yes, Your Honor.

13 CHAIRMAN McDADE: -- of certain
14 transformers based on that language.

15 MR. BESSETTE: And many other components
16 subject to aging management programs.

17 CHAIRMAN McDADE: Okay.

18 JUDGE WARDWELL: I don't know where to
19 begin. You said that some transformers do require
20 aging management review, or what was it you said in
21 regards to some transformers do this, and some
22 transformers aren't.

23 MR. BESSETTE: If you take the role of the
24 transformers at the plant.

25 JUDGE WARDWELL: Yes.

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1 MR. BESSETTE: You then do your initial
2 scope and say which components are within license
3 renewal scope if you perform a function of 54.4? So
4 then you take the larger -- the world of transformers
5 at the site, and then you take a smaller subset of
6 those transformers that perform a function for 54.4,
7 so you have a smaller subset. And then -- and that's
8 what you do with all the components at the site. And
9 then you determine are those transformers -- do they
10 need an aging management program? And that's based on
11 the criteria we just talked about, as whether they
12 perform a function without moving parts, or without a
13 change in configuration or properties. So they could
14 very well be in scope, but managed by ongoing
15 maintenance programs, or they could be in scope and
16 need an aging management program. And based on the
17 function of transformers, the electrical properties of
18 a transformer, and consistent with the same properties
19 that are excluded for switch gear, transistors,
20 batteries, power invertors, battery chargers, and
21 power supplies, it's generally accepted that the
22 transformers are similar to that, and perform their
23 function by having a change of state; therefore, no
24 aging management program is required.

25 JUDGE WARDWELL: And no aging management

1 program is required for some transformers, but not
2 all. Is that what you're saying?

3 MR. BESSETTE: No, Your Honor. All
4 transformers.

5 JUDGE WARDWELL: For all transformers.

6 MS. SUTTON: Your Honor, if I may, license
7 renewal is a two-step process. You begin with
8 scoping, Part 54.4, and this is for any equipment.
9 And then you move to screening, so-called screening
10 analysis for aging management review. And what we're
11 saying is the equipment is scoped in because it meets
12 the criteria of 54.4, but then when you perform the
13 screening analysis under 54.21, it gets screened out
14 because it's active short-lived equipment.

15 JUDGE WARDWELL: So when you were talking
16 before about some are in, and some are out, you were
17 referring only in regards to the scoping, not in
18 regards to the aging management.

19 MR. BESSETTE: Yes, Your Honor.

20 MS. SUTTON: That's correct.

21 JUDGE WARDWELL: Thank you.

22 MR. TURK: I have a response for Judge
23 Lathrop. You had asked about active components versus
24 passive components. And in the 1995 Statement of
25 Consideration accompanying those revisions to 10 CFR

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1 Part 54 at page 22.471, Volume 60 of the Federal
2 Register, the Commission stated:

3 "On the basis of consideration of the
4 effectiveness of existing programs which monitor the
5 performance and condition of systems, structures, and
6 components that perform active functions, the
7 Commission concludes that structures and components
8 associated only with active functions can be generally
9 excluded from a license renewal aging management
10 review. Functional degradation resulting from the
11 effects of aging on active functions is more readily
12 determinable, and existing programs and requirements
13 are expected to directly detect the effects of aging."

14 JUDGE LATHROP: Thank you.

15 JUDGE WARDWELL: New York State in their
16 reply said that based on one of your requests for
17 additional information in September, that they allege
18 that you, staff, has admitted that transformers fall
19 under aging management review. What's your response
20 to that reply?

21 MR. ROTH: Our response to that is as we
22 put in our pleading, they are misreading what the RAI
23 was asking for. The staff were not asking for an
24 aging management program on the transformer, they
25 were, instead, going up to the high-voltage breaker

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1 and other components in the switch yard, so that's not
2 up to and including the transformer, that's up to the
3 transformer. I believe that's what the staff's RAI
4 was.

5 JUDGE WARDWELL: Thank you.

6 MR. ROTH: So that's a scoping question.

7 MR. SIPOS: Your Honor, if I may briefly
8 respond to a question that Judge Lathrop had. In our
9 supporting Declaration from Paul Blanche, there is a
10 statement that "transformers function without moving
11 parts, or without a change in configuration or
12 properties as defined in the regulation. A current
13 runs through them, but they don't move." I'm
14 paraphrasing there.

15 The documents that are cited by Entergy
16 and staff in the last 10 minutes do not preclude this
17 Declaration. And as Deputy Attorney General
18 Denerstein pointed out this morning, just last year
19 there was an explosion and fire of a transformer that
20 required the plant to come down, one of the units to
21 come down. So we believe following the test set forth
22 in 54.21, that transformers certainly may be included
23 within that, and we cited Paul Blanche's Declaration
24 in support of that.

25 JUDGE WARDWELL: Have you provided any

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1 challenge to the linkage that staff and Entergy has
2 provided here in regards to comparing transformers to
3 power supplies, where one might also say gee, a power
4 supply doesn't have any moving parts, and doesn't
5 change configuration; yet, it's been excluded because
6 of its not obvious moving parts and configuration, but
7 the more abstract moving parts changing in
8 configuration as I interpret what was read to me in
9 regards to the rationale for the linkage.

10 MR. SIPOS: Power supplies are
11 specifically mentioned in the regulation, transformers
12 are not. We submit that based on the definition of
13 moving parts and change in properties that they may -
14 safety-related ones may fall within the scope for AMR
15 and AMP.

16 CHAIRMAN McDADE: Okay. How do you
17 address what Mr. Turk read; specifically, the 60
18 Federal Register 22.471, the Statement of
19 Consideration, which would imply that transformers are
20 not required to have an aging management plan? I
21 understand your reading of the regulation, and we sort
22 of kicked that around a little bit. I understand the
23 Declaration from Paul Blanche, but what do we do with
24 the Statement of Consideration in the Federal
25 Register?

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1 MR. SIPOS: May I have one moment, Your
2 Honor? Thank you, Your Honors. As New York
3 understands the excerpt that Mr. Turk just read from,
4 it does not specifically preclude transformers from
5 falling within the scope. We have submitted a
6 Declaration from an electrical engineer, former
7 executive in the nuclear industry, who has put forth
8 the opinion that they do fall within, and has also
9 explained -- has set forth his view that there are no
10 moving parts, and no change in configuration of
11 properties. So we suggest that the Statement of
12 Considerations, as read by Mr. Turk, do not foreclose
13 the contention raised here with respect to
14 transformers that are safety-related.

15 CHAIRMAN McDADE: Okay. Mr. Turk, how
16 would you address that?

17 MR. ROTH: Before Mr. Turk answers, I
18 would just like to point out that 54.21, the lists in
19 it say, "excluding, but not limited to", meaning that
20 not every item that the staff interprets as being
21 excluded is shown in that list. That's why it says,
22 "excluding, but not limited to."

23 CHAIRMAN McDADE: Right. So we're now
24 going to the Statement of Consideration to inform us
25 as to what the Commission intended, to give us an idea

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1 of those things, understanding that the list is
2 demonstrative, but not all-inclusive. So the
3 Statement of Consideration informs us as to what the
4 Commission was thinking in promulgating the
5 regulation.

6 Now, New York is saying that they think
7 it's still an open issue, and that given the
8 Declaration of their expert, that they have
9 sufficiently raised it. And the question is whether
10 or not the Statement of Consideration is specific
11 enough from the Commission to exclude it, in our
12 trying to give intent, or action to the intent of the
13 Commission in promulgating the regulation.

14 MR. TURK: May I have just a moment, Your
15 Honor?

16 CHAIRMAN McDADE: Please.

17 JUDGE WARDWELL: Is there something you
18 want to add while we're waiting?

19 MR. SIPOS: Your Honor, if I may just
20 briefly respond to what Mr. Roth said. There are two
21 such phrases in that regulation. There are two, "but
22 are not limited to", both for inclusion and exclusion,
23 focusing only on the latter, leaves out the former,
24 which would open the door for transformers.

25 MR. TURK: I'm learning about transformers

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1 in part, Your Honor. My major was in Liberal Arts,
2 unfortunately, so I have to learn as I go. At page
3 22-477 of that same Federal Register Statement of
4 Consideration that I cited, there's a statement at the
5 bottom of the first column in describing passive
6 structures and components. The Commission states, as
7 follows:

8 "The Commission has concluded that a
9 change in configuration or property should be
10 interpreted to include a change in state, which is a
11 term sometimes found in the literature relating to
12 passive." And it goes on to talk about transistors.
13 It says, "For example, a transistor can change its
14 state, and, therefore, would not be screened in under
15 this description."

16 I'm informed that a transformer,
17 essentially, changes its state. The current goes in
18 at a certain voltage, and comes out at a different
19 voltage. As a result, that is considered to be an
20 active component. And, for that reason, it would not
21 be screened in as a passive component subject to aging
22 management review.

23 JUDGE WARDWELL: The transformer doesn't
24 change its state.

25 CHAIRMAN McDADE: It's the electricity.

1 JUDGE WARDWELL: It's the electricity that
2 changes state. And isn't it here that it's the device
3 which we're considering, the component that we're
4 considering, and it's a change in state of that
5 component, not a change in state of some material
6 coming in and out of it, like water into and out of a
7 pump, because you change the state of water coming
8 into and out of a pump, moving it faster.

9 MR. TURK: The staff has evaluated the
10 process, and back in '97, as stated in the letter from
11 Mr. Grimes to NEI, which was cited by the applicant,
12 the staff determined that transformers are, in fact,
13 active, that there is a change in state, and that
14 makes them active.

15 JUDGE WARDWELL: But isn't it a valid
16 challenge to that to determine at a hearing whether or
17 not that interpretation carries the day or not?
18 Doesn't it raise a general dispute?

19 MR. TURK: It raises a challenge to the
20 staff's interpretation of the regulation.

21 CHAIRMAN McDADE: Okay. And you have
22 pointed us to the right place, so at our leisure,
23 without having you guys hang around, we can study 60
24 Federal Register 22-471 et seq.

25 JUDGE WARDWELL: And that's what I do when

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1 I'm at leisure.

2 (Laughter.)

3 CHAIRMAN McDADE: Okay. Anything further
4 on Contention Eight, or can we move to Contention
5 Nine?

6 MR. BESSETTE: Your Honor, if I might, I
7 have one point, just to point out, with all due
8 respect to Mr. Blanche's Declaration, the entire
9 support for this transformer issue is one sentence
10 that simply states, "Transformers function without
11 moving parts, and without a change in configurations
12 or properties as defined in that regulation." That's
13 all it says. It doesn't cite any of the documents
14 we've talked about. It doesn't cite why that's any
15 different from any of the components we've talked
16 about today, including power supplies, relay switches,
17 invertors, batteries, which have, by regulation, are
18 excluded from aging management programs. No support,
19 no explanation, no differential, but no basis. So,
20 again, while they can point to a statement in
21 affidavit just saying I disagree, is not enough. And
22 that's all Mr. Blanche has done. Putting it in a
23 declaration is simply not enough to save the day here.
24 Thank you.

25 JUDGE WARDWELL: Thank you.

1 MR. SIPOS: May I respond to that? If I
2 may just supplement our remarks, briefly. Staff's
3 position proves too much. Judge Wardwell, I think you
4 put your finger right on it. It's something --

5 CHAIRMAN McDADE: You're just pandering to
6 him, that's all --

7 (Laughter.)

8 MR. SIPOS: If a box or component changes
9 what flows through it, that doesn't necessarily take
10 that box or component out, changing water to steam
11 doesn't necessarily take whatever that widget is, and
12 that seems to be what staff is saying here. We
13 believe that proves too much, and that Mr. Grimes'
14 letter is only that, it's the letter of Mr. Grimes,
15 it's the letter of staff. We take issue with that.

16 MR. TURK: One brief statement, Your
17 Honor. It's not just the Grimes' letter, it's also
18 the staff's endorsement of the position stated in the
19 NEI document, the staff's safety review, is it the
20 SRP? I'm sorry, Regulatory Guide 1.188 endorses that
21 position, so it is an official staff regulatory
22 position.

23 CHAIRMAN McDADE: And New York's answer
24 would be the same today, as well.

25 MR. SIPOS: Yes. Your Honors, before we

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1 move on, I was wondering if there might be some
2 opportunity just to make a brief comment regarding
3 Contentions Six and Seven. I'm very mindful of the
4 time, but there were one or two points. And if I may,
5 with the Court's indulgence --

6 CHAIRMAN McDADE: please.

7 MR. SIPOS: Towards the end of the
8 presentations on Six and Seven, there was some
9 discussion of, I believe 1.23 and 1.25, and there was
10 reference made to the Non-Environmentally Qualified
11 Insulated Cables and Connections. And I think that
12 was brought up with respect to low-voltage. Two terms
13 are missing in that program, or reference that was
14 cited to. One is, inaccessible, and the other is low-
15 voltage.

16 Moreover, again not belaboring the point,
17 but we would respectfully suggest that a reading of
18 GALL does not bear out the positions that were
19 presented by staff and Entergy, and that there is not
20 a specific detailed program in their, in that
21 document. And, also, if I could just refer the Court
22 to, I believe it's GALL X-E.3. Could we just get that
23 up on the screen here? And this is, again,
24 illustrative. And it just says, "In scope medium-
25 voltage cables exposed to significant moisture and

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1 significant voltage are tested to provide an
2 indication of the condition of the conductor
3 insulation". Again, it doesn't provide the specifics
4 of the test.

5 And then it goes on and says: "The
6 specific type of test performed will be determined
7 prior to the initial test, and is to be a proven
8 test", et cetera, et cetera. Again, New York submits
9 there's no substance there, and that supports our
10 contention.

11 CHAIRMAN McDADE: And you're reading from
12 GALL X?

13 MR. SIPOS: I believe I'm reading from
14 GALL XI.E.3, Paragraph 3 entitled, "Parameters
15 monitored/inspected." Thank you.

16 CHAIRMAN McDADE: Okay. Contention Nine,
17 that the Environmental report fails to evaluate energy
18 conservation as an alternative that could displace the
19 energy production of one or both of the Indian Point
20 reactors; and, therefore, that the Environment report
21 is inadequate.

22 A question that I have up front, it talks
23 about, first of all, what is the goal of the proposed
24 action? And it seems like the parties have a
25 differing view as to what the goal of the proposed

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1 action is.

2 On one side it is to allow for power
3 generation capacity after the term of the current
4 license expires, and the other option is to insure
5 adequate electric power generation after the license
6 expires. So, I mean, one, you could have adequate
7 generation if you have a smaller need for power. You
8 still have adequate generation, or the goal is, in
9 fact, to produce power generation capacity. So, first
10 of all, let me turn to the staff.

11 Why should the goal of the proposed action
12 be limited to power generation, as opposed to the goal
13 being to insure that there is adequate power
14 generation?

15 MR. CHANDLER: Your Honor, if I may take
16 just one moment. Your Honor, Christopher Chandler for
17 the staff. Our position is that the purpose and need
18 is defined within the Generic Environmental Impact
19 Statement. And to consider energy conservation as an
20 alternative would be -- energy conservation is
21 something that's beyond the ability of an energy-
22 producing company, like Entergy, to implement, and so
23 it would not be a reasonable alternative.

24 JUDGE WARDWELL: But isn't the ability for
25 a company to implement other alternatives, basically,

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1 beyond their power? I mean, they don't have any
2 capabilities to produce power by coal, or other
3 mechanisms, do they?

4 MR. CHANDLER: Well, I think, Your Honor,
5 I think maybe the distinction would be that they could
6 -- they're an energy-generating company. They could
7 construct a coal plant. They can't require residents,
8 or provide tax breaks for residents to use less
9 energy, or require people to use more energy-efficient
10 appliances in their homes. That's the type of
11 distinction, I think, that is most informative.

12 CHAIRMAN McDADE: Okay. But the proposed
13 action here is the proposed action of the Nuclear
14 Regulatory Commission. The proposed action is to
15 grant or not to grant the license extension. And
16 focusing on it that way, at least for right now, if
17 there is no need for the electric power generated,
18 effectively, I think what the State is trying to say
19 is that that's part of the no-action alternative. If
20 the NRC says no, we're not going to re-license the
21 plant, what are the implications of that? And what
22 they're saying is that one of the things that should
23 be considered is that with conservation, there would
24 be little or no effect of that, when you're doing that
25 balancing; that we don't need the power. There are

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1 other ways of getting the power.

2 Now just as there are other ways of
3 getting the power by putting up a coal plant, of
4 putting up a wind farm of conservation, and say that,
5 at least, should have been considered. Now, what's
6 the fallacy in that argument?

7 MR. CHANDLER: Well, I guess to just
8 reiterate my position, Your Honor, is that the --
9 again, the fundamental distinction is that this isn't
10 something that they can do. And we don't want to
11 define the purpose too narrowly to say, for example,
12 the purpose of the project is to provide electricity
13 from Indian Point. That would be, I think, too narrow
14 a reading of the purpose and need concept. But we
15 don't want to define it too broadly to say that we
16 just need power, period, because that's just -- that's
17 too broad to include reasonable alternatives.

18 CHAIRMAN McDADE: Okay. To New York, have
19 I accurately summarized your argument? Do I
20 understand it the way you intended it?

21 MR. SIPOS: Yes, by and large. Yes.

22 CHAIRMAN McDADE: Okay. How do you deal
23 with the decision in Clinton, that was cited by the
24 NRC staff? Specifically, there they say that NEPA
25 does not require an analysis of conservation as an

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1 alternative. There it was an early site permit, but
2 why would the result be any different here?

3 MR. SIPOS: May I have one moment?

4 CHAIRMAN McDADE: I mean, it appears as if
5 in that case the Commission accepted the argument that
6 the goal here is the goal of the Nuclear Energy
7 Project, as opposed to the goal, as I understand
8 you're stating it. So how do we get around Clinton,
9 if we were to accept your position?

10 MR. SIPOS: Clinton was an early site
11 approval permit case, and I believe there was a
12 concern expressed that analyzing that issue at that
13 point was premature, because the plant would not come
14 on line under any scenario for many years, and that
15 analyzing need at that point was premature. This is
16 quite a different situation, and in Clinton, I believe
17 there was also reference that that inquiry, that
18 analysis would take place at some future time, that it
19 was not a categorical exclusion, but it was more of a
20 timing issue, and that need would most definitely be
21 analyzed under NEPA further down the road.

22 CHAIRMAN McDADE: Okay. But didn't the
23 Commission also say that energy efficiency "was not a
24 reasonable alternative that would advance the goals of
25 the project", in that particular instance? And isn't

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1 that exactly what the staff is saying here?

2 MR. SIPOS: In the GEIS, there is
3 reference that it is an issue that is appropriate to
4 examine. So speaking -- well, we cited that in our
5 papers, but that is a basis that supports the
6 contention.

7 JUDGE WARDWELL: But doesn't the GEIS
8 limit those alternatives to single discrete electrical
9 generating sources, commercially available?

10 MR. SIPOS: That's slight -- I believe
11 that might go to a different Contention, but under the
12 No-Action Alternative, the answer is no, it is not.

13 JUDGE WARDWELL: So you're saying that
14 where this -- the only place that this energy
15 conservation falls in in this Contention is in the No-
16 Action Alternative, not in other alternatives
17 comparing as options to the production of 2,000
18 megawatts of power.

19 MR. SIPOS: Yes.

20 JUDGE WARDWELL: It's only falling within
21 the No-Action --

22 MR. SIPOS: Under the No-Action
23 alternative. And it should be examined under the
24 rubric.

25 JUDGE WARDWELL: Did the Clinton decision

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1 relate to anything associated with the No-Action
2 alternative, or did that decision relate to other
3 alternatives to the sources of power, do you know?

4 MR. SIPOS: I believe it is the latter.
5 One moment, Your Honor. Your Honor, I've been trying
6 to get to a second point in my mind, and I keep losing
7 it. There is a distinction here between Clinton --

8 JUDGE WARDWELL: The second point, or your
9 mind?

10 (Laughter.)

11 MR. SIPOS: There's a significant
12 distinction here between Clinton, and the situation
13 we're faced here. Clinton early site permit, very,
14 very early in the process. Here, the facility is
15 built, and the question is should it be continued,
16 should it be continued for the additional 20 years
17 should that option be available? And it is entirely
18 appropriate, in fact, to the extent Clinton was too
19 early, this case is clearly - if it was postponed, it
20 would be too late. This is the opportunity, this is,
21 perhaps, the opportunity to review that issue under
22 the No-Action Alternative here as we're looking at do
23 we go forward beyond the 40 years.

24 JUDGE WARDWELL: But it seems to me that
25 this is also a mechanism to address the need for

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1 power, and is that a viable option to be considered --
2 specifically, do the regulations allow for the
3 reassessment of the need for power in a license
4 renewal application proceeding?

5 MR. SIPOS: Correct. And if there's no --

6
7 JUDGE WARDWELL: That was a question. I
8 was asking you whether or not the regulations allow
9 for a review of the need for power as part of the
10 license renewal application proceedings.

11 MR. SIPOS: Under the NEPA regulations, it
12 may be examined as part of the No-Action Alternative.
13 What is the need? Is there conservation? What is the
14 effect of conservation? If I just may have one
15 moment?

16 Part of the answer to the question you
17 just posed, I believe, may have been anticipated in
18 Judge McDade's question. The ER here forms, is the
19 initial document that goes to the staff so that the
20 staff can conduct its review. That ER should be as
21 comprehensive, and as accurate as possible, and to not
22 evaluate these issues is a substantive failing of the
23 ER, so the answer is it may be reviewed. Indeed, New
24 York suggests it should be reviewed, it must be
25 reviewed in this proceeding. And I would refer to the

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1 Court to GEIS at Section 8.2, which contains greater
2 discussion of this. And, specific, there's a long
3 section there, but taking one sentence out by way of
4 example, or two sentences.

5 "In other cases, denial may lead to
6 conservation measures and/or decisions to import
7 power. In addition, denial may result in a
8 combination of these different outcomes. Therefore,
9 the environmental impacts of such resulting
10 alternatives would be included as the environmental
11 impacts of the No-Action Alternative."

12 CHAIRMAN McDADE: Anything further from
13 the staff on this?

14 MR. CHANDLER: Yes, Your Honor. Actually,
15 I would like to call your attention to the Clinton ESP
16 proceeding, and talk about that just a little bit
17 more. Actually, the Commission, and, subsequently,
18 the 7th Circuit upheld the view that energy
19 conservation is not reasonable alternative to
20 electrical generation. And the opinion of the 7th
21 Circuit, there are actually two discrete challenges.
22 One is that the Board in that case unreasonably
23 excluded the contention regarding energy conservation.
24 The second argument had to do with the need for power,
25 so they're actually two different points. And the

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1 Court in that case did say that the need for power
2 analysis was premature, and it could be done down the
3 line. But the Court also explicitly stated, "We are
4 persuaded by the Board's analysis with respect to
5 energy conservation." They said, "Because Exelon was
6 a private company engaged in generating energy for the
7 wholesale market, the Board's adoption of base-load
8 energy generation as the purpose behind the ESP was
9 not arbitrary, capricious, an abuse of discretion, or
10 otherwise not in accordance with law."

11 And they continued by stating, "The
12 adopted purpose was broad enough to permit
13 consideration of a host of energy-generating
14 alternatives. Moreover, it was reasonable for the
15 Board to conclude that NEPA did not require
16 consideration of energy efficiency alternatives when
17 Exelon was in no position to implement such
18 alternatives."

19 JUDGE WARDWELL: But isn't New York State
20 contending that it's not to be adjudged as an
21 alternative to their power generation, but needs to be
22 included in the No-Action Alternative? Isn't that
23 different than what was reached in this decision in
24 Clinton?

25 MR. CHANDLER: Well, I believe, Your

1 Honor, that they're saying it should be, but they
2 haven't provided any sort of substantive basis for
3 that. It's just kind of a general desire for that to
4 take place.

5 JUDGE WARDWELL: At least here today, they
6 mentioned some -- they quoted something right out of
7 the GEIS. It's pretty persuasive, isn't it?

8 MR. CHANDLER: One moment, please, Your
9 Honor.

10 JUDGE WARDWELL: While you're discussing
11 that, I'll go on to Entergy. Is the need for power a
12 -- do the regulations allow for review of the need for
13 power in a license renewal application proceeding?

14 MS. SUTTON: Under 10 CFR Section
15 51.53C(2), "An applicant need not include in its ER a
16 discussion of need for power for purposes of license
17 renewal."

18 JUDGE WARDWELL: Is that conclusive enough
19 to exclude the need to address energy conservation as
20 part of the No-Action Alternative, though?

21 MS. SUTTON: The No-Action Alternative is
22 a separate issue. Conservation falls under energy
23 alternatives, which is the analysis that we have been
24 discussing. "To insure the proposed action is to
25 preserve the option for future generation through the

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1 renewal of two units." In this case, we're talking
2 over 2,000 megawatts electric. When you look at the
3 GEIS, it says in that situation that "the reasonable
4 set of alternatives should be limited to an analysis
5 of single discrete energy generation sources." That's
6 what we have discussed. And in this case, that
7 reasonable set of alternatives has been addressed in
8 the ER, and conservation does not fall within the
9 scope of the reasonable set of alternatives in view of
10 the proposed action.

11 JUDGE WARDWELL: But New York State isn't
12 contending that it should be one of those reasonable
13 alternatives to compare against your proposed action,
14 but rather should be included in your discussion of
15 the No-Action Alternative.

16 MS. SUTTON: We would argue in this
17 Contention, that's exactly what they're saying, in
18 Contention Nine, as part of their pleadings.

19 JUDGE WARDWELL: But haven't they
20 clarified that both in the arguments today, and in
21 their replies to your's, that what they were
22 discussing was the No-Action Alternative?

23 MS. SUTTON: And that, too, is addressed
24 in our Environmental report, which is essentially the
25 status quo, no license renewal.

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1 JUDGE WARDWELL: And have you addressed
2 conservation within that discussion of the No-Action
3 Alternative, as suggested by DEIS and GEIS, as was
4 quoted today?

5 MR. BESSETTE: Your Honor, we just think,
6 issue you raised earlier, we believe the Clinton
7 decision is directly on point here. Whether New York
8 is trying to shoehorn it into the No-Energy
9 Alternative, I mean, the No-Action Alternative, or
10 energy alternatives, the Clinton decision is directly
11 on point. It considered alternatives to base load
12 generation for emergent planning. There could be
13 nothing more on point here.

14 JUDGE WARDWELL: But, to me, the No-Action
15 Alternative says what would happen if, in fact, this
16 plant was not re-licensed? That's the No-Action
17 Alternative here, is that correct?

18 MR. BESSETTE: Yes, it is, but that
19 doesn't mean that Entergy then has to consider energy
20 conservation. That's an action.

21 MS. SUTTON: You're looking at the
22 environmental impact from the --

23 JUDGE WARDWELL: But that's the impact of
24 not re-licensing. That's a potential impact of not
25 re-licensing this plant. Is that not reasonable to

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1 assume?

2 MR. BESSETTE: And who -- where does the
3 --

4 JUDGE WARDWELL: That would encourage
5 things like conservation?

6 MR. BESSETTE: We don't believe that's
7 required, Your Honor, in the No-Action Alternative to
8 consider potential downstream implications that are
9 under no control of Entergy. I mean --

10 MS. SUTTON: The No-Action Alternative
11 would result in the status quo in terms of
12 environmental impacts, in terms of current plant
13 operation. What the State is really asking here is
14 for speculation as to, if the license is not renewed,
15 how will that impact conservation? Conservation is
16 beyond the power of Entergy to influence one way or
17 the other, which is the point in these cases that
18 we've cited in our answer.

19 MR. CHANDLER: Judge Wardwell, I wanted to
20 go back to your question about what the discussion is
21 in the Generic Environmental Impact Statement. On
22 page 8.2, there is a brief discussion about
23 alternatives other than discrete power generation
24 sources; specifically, environmental conservation.
25 And the GEIS states that "Energy conservation and

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1 power imports are possible consequences of the No-
2 Action Alternative. While these two alternatives are
3 not options that fulfill the stated purpose and need
4 of the proposed action, they're included in the GEIS
5 because they're important tools available to energy
6 planners and managing need." So it's included in the
7 GEIS, simply to provide background information, rather
8 than something that the applicant should actually be
9 considering.

10 JUDGE WARDWELL: And where is it included
11 in the GEIS, as part of the No-Action Alternative?

12 MR. CHANDLER: One second, please. Your
13 Honor, at Section 8.314, which is the Energy
14 Alternatives section of the GEIS.

15 JUDGE WARDWELL: And does the GEIS -- in
16 your SEIS, will you be evaluating the No-Action
17 Alternative, or are you exempt from the need to do
18 that as part of the GEIS?

19 MR. CHANDLER: We are required to do that
20 under NEPA, in the SEIS.

21 JUDGE WARDWELL: In the SEIS.

22 MR. CHANDLER: Yes, sir.

23 JUDGE WARDWELL: And in consideration of
24 the GEIS.

25 MR. CHANDLER: Yes.

1 JUDGE WARDWELL: And, so, if you're
2 required to do that, don't you, by default, require
3 the applicant to provide the information you need to
4 assess the No-Action Alternative?

5 MR. CHANDLER: Your Honor, we would say
6 that the applicant would need to mention energy
7 conservation, and they do in their Environmental
8 report mention energy conservation as an alternative,
9 and they dismiss it as a reasonable alternative. And
10 we read that as fulfilling our requirement.

11 JUDGE WARDWELL: Let me re-ask my
12 question. That's a very nice answer. It wasn't the
13 question I intended to be answered. The question I
14 intended to be answered, do you require the applicant
15 to provide the information necessary for you to
16 evaluate the No-Action Alternative, as you say you
17 need to do as part of the SEIS?

18 MR. CHANDLER: Yes.

19 JUDGE WARDWELL: Thank you.

20 CHAIRMAN McDADE: I have nothing further
21 on that. I have nothing -- no specific questions on
22 Contentions Ten or Eleven. Contention Ten is that the
23 ER is inadequate because it treats all alternatives to
24 license renewal, except natural gas or coal plants, as
25 unreasonable, and provides no substantive analysis of

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1 the potential for other alternatives in the New York
2 energy market.

3 Contention Eleven is that DER fails to
4 fully consider the adverse environmental impact that
5 will be created by leaving Indian Point II and Indian
6 Point III as an energy option beyond 2013-2015,
7 basically saying that there'd be a decreased incentive
8 for other energy options to be pursued if Indian Point
9 II and III remain open. Those are the next two
10 Contentions. I don't have any specific questions on
11 either of those. Again, I think it was clear from the
12 papers, at least to me. Judge Wardwell, do you have
13 any --

14 JUDGE WARDWELL: I may have something. I
15 do have one question I'd like to pursue in Eleven.
16 And it's to Entergy, in regards to, I think it was on
17 page 85 of your answer. You made a statement that
18 "the issuing of the license", or at least this was in
19 my notes that I've got on it. I don't know if it's a
20 quote, but stating that "the issuance of a license
21 does not mandate or guarantee plant will operate over
22 the extended period. Therefore, no bearing on the
23 motivation to create or implement energy
24 conservatism."

25 I interpreted that statement to mean that

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1 the proposed action, which is the renewal, the
2 granting of the renewal license that staff has to
3 evaluate in their EIS won't necessarily end up
4 generating any power, because you don't have to -- by
5 the granting of this license doesn't require you to
6 continue operating.

7 MS. SUTTON: That's correct, Your Honor.

8 JUDGE WARDWELL: But doesn't NEPA require
9 an agency to look beyond just what that action does,
10 but the things that are likely to occur from that
11 action? So isn't that kind of a shallow argument or
12 statement, it has really no bearing?

13 MS. SUTTON: In terms of what's been done
14 in the ER, it has no bearing. The ER looks at all of
15 the environmental impacts as if the plant were to
16 operate for an additional 20 years.

17 JUDGE WARDWELL: So why -- what was the
18 context, or why was that statement made?

19 MS. SUTTON: It recognizes that in the
20 GEIS they do define the major federal action is to
21 preserve the option, and we recognize that.

22 JUDGE WARDWELL: Say that statement again.

23 MS. SUTTON: In the GEIS, the NRC defines
24 the scope of the GEIS to preserve the option of
25 renewing the plants. It doesn't per se say that they

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1 will necessarily continue to operate.

2 JUDGE WARDWELL: You just wanted to
3 recognize that.

4 MS. SUTTON: Correct. It's just a
5 recognition of the use of that language.

6 JUDGE WARDWELL: But it really has not
7 much bearing, is it fair to say, in regards to
8 evaluating this Contention, because we still have to
9 look at --

10 MS. SUTTON: Yes, Your Honor. And our ER
11 does look at the environmental impacts over a proposed
12 term of renewal.

13 JUDGE WARDWELL: Thank you. I just wanted
14 to clarify that. That was the only thing I had.

15 CHAIRMAN McDADE: Okay. Before we proceed
16 further, just, as I said, I thought things were
17 relatively clear from the papers that were submitted.
18 Does New York have anything that you would like to
19 address on either of those two Contentions, Ten or
20 Eleven, before we move on, that you would like to
21 highlight for us, or just bring to our attention?

22 MR. SIPOS: Briefly, we believe that the
23 applicant must do more than as the staff suggests,
24 "mention the issue and discard it." And other than
25 that, we rest on the 14 pages of the Contentions and

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1 the supporting Declarations. Thank you.

2 CHAIRMAN McDADE: Okay. Does the staff
3 have anything further on those?

4 MR. CHANDLER: No, we do not, Your Honor.

5 CHAIRMAN McDADE: Entergy?

6 MS. SUTTON: Our answer is full, as well.

7 CHAIRMAN McDADE: Okay. Next, we get into
8 Contention Twelve. Contention Twelve is that
9 Entergy's Severe Accident Mitigation Alternatives for
10 Indian Point II and Indian Point III do not accurately
11 reflect decontamination or clean-up costs associated
12 with a severe accident in the New York Metropolitan
13 area. And, therefore, Entergy's SAMA, again, Severe
14 Accident Mitigation Alternatives, under-estimate the
15 cost of a severe accident.

16 Let me initially pose a question to the
17 staff. What triggers the obligation to do a SAMA?
18 When do they have to do one?

19 MS. MIZUNO: Your Honor, Beth Mizuno for
20 the staff. Our regulations provide that a SAMA
21 analysis has to be done if one already hasn't been
22 done. That being the case, here one has not already
23 been done. SAMA analysis is required for purposes of
24 license renewal.

25 JUDGE WARDWELL: And what issues are --

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1 are the universe of severe accidents addressed or
2 that haven't been addressed before, or are they
3 limited -- is it like the NEPA analysis, that you
4 don't have to have the universe of alternatives for a
5 given proposal, proposed action. Is the same true
6 with a SAMA analysis, that the universe of severe
7 accidents don't have to be addressed? And if not,
8 then how do you select the ones that are addressed?

9 MS. MIZUNO: Your Honor, in answer to your
10 question, what the SAMA analysis does, the purpose of
11 the SAMA analysis is to identify cost-beneficial add-
12 ons to activity. Sorry, cost-beneficial actions,
13 proposals, processes that could enhance the safety of
14 the plant. And, so, in order to do that, a number of
15 -- the cost of a severe accident is calculated, and
16 then compared to that cost, there are a series of
17 potential fixes or add-ons that are compared to that.
18 If a cost-benefit analysis shows that, ultimately, the
19 thing costs maybe half of the benefit that it would
20 gain, then that would be something that we would think
21 would be appropriate in the course of license renewal
22 to request, to require that the applicant do.

23 CHAIRMAN McDADE: Okay. From the
24 standpoint of Entergy, if I could --

25 JUDGE WARDWELL: Could I just -- I want to

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1 just --

2 CHAIRMAN McDADE: Okay.

3 JUDGE WARDWELL: I'm still a little
4 confused. But what's the number of severe accidents
5 that you evaluate this way in this process?

6 MS. MIZUNO: I'm not sure if this is going
7 to be responsive to your question, Your Honor, but
8 there are basically two kinds of accidents that are
9 looked at in the SAMA analysis, internally-generated
10 events, accidents resulting from internally-generated
11 events, and accidents generated by external events.
12 I'm not sure if that is what you're asking.

13 JUDGE WARDWELL: Do the regulations
14 require an applicant to evaluate all severe accidents
15 in their SAMA analysis, or can they -- is there a
16 reasonableness standard with this?

17 MS. MIZUNO: I'm sorry, Your Honor, just
18 a moment.

19 JUDGE WARDWELL: No, no problem.

20 MS. MIZUNO: Your Honor, the -- let's
21 start this way. The regulations do not require that
22 specific -- I'm sorry. The regulations don't require
23 that specific events be analyzed, as such. What we do
24 is, in part of the SAMA analysis, is to look at the
25 probabilistic risks of various events occurring, and

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1 using those to generate scenarios for severe
2 accidents. Is that helpful?

3 JUDGE WARDWELL: Yes, I think so. Are the
4 results from these SAMA analysis that are reviewed by
5 the staff -- strike that.

6 How does the staff look at the results of
7 the SAMA analysis, and incorporate it into their NEPA
8 evaluation?

9 MS. MIZUNO: Sorry, Your Honor. The staff
10 evaluates the SAMA information by looking at potential
11 risk factors, looking at and evaluating what potential
12 activities can be taken to mitigate those risks, and
13 comparing those, applying a cost-benefit analysis to
14 what is generated on the side of risk, and on the side
15 of cost, versus the benefit, and the mitigation that
16 can be achieved.

17 JUDGE WARDWELL: So you use it mostly just
18 to help and insure that you've considered these in
19 your decisions and evaluation of the NEPA analysis in
20 your EIS.

21 MS. MIZUNO: Well, to back up just a
22 second. The GEIS does talk about SAMAs. A Generic
23 Environmental Impact Statement talks about the SAMA
24 analysis, and it is very instructive. And what it
25 does say is that the severe accident -- risks of

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1 severe accidents are discussed in a number of
2 different ongoing activities. And in, for instance,
3 the individual -- sorry, the IPEEE, which, I'm sorry,
4 I can't --

5 JUDGE WARDWELL: Individual Plan and --

6 MS. MIZUNO: The acronym is IPEEE, which
7 is Individual Plant Examination for External Events.
8 And what the GEIS says is that in looking at potential
9 SAMAs, we've already done a fairly decent analysis in
10 the course of doing the individual plant examination.
11 And it does say that based on that, we think we've
12 gotten a pretty good handle on severe accident
13 mitigation. The SAMA analysis is just an opportunity
14 in license renewal to make sure that we've identified
15 any cost-beneficial mitigation activities that can be
16 pursued.

17 JUDGE WARDWELL: And you said earlier that
18 SAMAs are only conducted for those that haven't
19 previously been conducted.

20 MS. MIZUNO: Yes, because if they're
21 already been done, they're already done. This is --
22 right. And counsel has given me the regulatory
23 reference. It's 10 CFR 51.53, and it's --

24 JUDGE LATHROP: C3.IIL?

25 MS. MIZUNO: Thank you.

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1 JUDGE LATHROP: Okay.

2 MS. MIZUNO: And it reads, "If the staff
3 has not previously considered severe accident
4 mitigation alternatives for the applicant's plant in
5 an environmental impact statement or related
6 supplement, or an environmental assessment, then a
7 consideration of alternatives to mitigate severe
8 accidents must be provided." And that's what the reg
9 requires, and that's what we will do, Your Honor.

10 JUDGE WARDWELL: Thank you.

11 CHAIRMAN McDADE: Okay. It's rapidly
12 approaching 5:00, so it's getting to be time to break.
13 One of the things I wanted to address before we do
14 break, we, perhaps optimistically in our scheduling
15 anticipated getting through all of the Contentions for
16 New York today. We're now on Contention Twelve out of
17 Thirty-Two, and we're not going to get through the
18 rest in the next five minutes, so it is going to be
19 necessary to have New York come back tomorrow. Then
20 that raises the question with the other people who are
21 scheduled for tomorrow, the Town of Cortlandt, the
22 State of Connecticut, and Riverkeeper.

23 And let me specifically Riverkeeper.
24 We've got a representative of Riverkeeper here. If
25 you could come forward. If you could just identify

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1 yourself for the record.

2 MS. CURRAN: Diane Curran.

3 CHAIRMAN McDADE: Okay. And?

4 MR. TAFUR: Victor Tafur.

5 MR. MUSEGAAS: And I'm Philip Musegaas.

6 CHAIRMAN McDADE: Okay. Thank you. Let
7 me ask, I mean, the question is how many people are
8 going to be here for Riverkeeper tomorrow? I don't
9 want to require the people from Riverkeeper to be here
10 at 9:00 tomorrow morning, as indicated in our previous
11 order, because, obviously, we're not going to get to
12 you. The question then is, do we ask you to come at
13 1:00? And, again, depending on the speed with which
14 we move through New York, we may not be ready for you
15 at 1:00, or do we just put you off until Wednesday?
16 And what I wanted to do is to just get your thoughts
17 on it. What we will try to do as go as far as we
18 could tomorrow, and get to you, if at all possible.
19 But my question is just administratively for you and
20 the people who are going to be with you, whether or
21 not you would like to just -- we'll schedule you for
22 tomorrow afternoon, as soon as we get to you, or
23 whether or not you'd rather be put over until
24 Wednesday morning? If you want to take a few minutes
25 and address this, we'll be here for a while after the

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1 hearing. Again, I just don't want you to have a bunch
2 of people just sitting around who have other things to
3 do, and wasting their time. So do you want to -- if
4 we break the hearing right now and just, we will be
5 back here. Just notify us of what you want to do.

6 MS. CURRAN: Okay. Thank you.

7 MR. MUSEGAAS: We'll take five minutes and
8 confer.

9 CHAIRMAN McDADE: Okay. Ms. Curran, thank
10 you.

11 MS. MATTHEWS: Judge, another housekeeping
12 matter, while they're conferring. The power on this
13 side of the room doesn't work, so I wonder if you
14 could take that up with whomever you can, and tomorrow
15 maybe we can have some power for our computers. A
16 little ironic.

17 CHAIRMAN McDADE: Okay.

18 (Laughter.)

19 CHAIRMAN McDADE: Okay. Anything further
20 that we should take up today?

21 MR. BESSETTE: Yes, Your Honor. Paul
22 Bessette. We're wondering for a housekeeping matter,
23 hauled over many boxes through security this morning.
24 Is there any options for leaving certain materials
25 here? We don't know the rules of the courthouse.

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1 CHAIRMAN McDADE: The answer is neither do
2 I. When we break, let's find out. My guesstimate is
3 that they are probably going to want all of this out
4 of here, but as soon as we break, we will find out
5 from security here and get an answer for you.

6 Okay. The answer, basically, is if you
7 don't take them out, somebody else will, and you won't
8 see them again.

9 MR. BESSETTE: I guess that's an answer.

10 CHAIRMAN McDADE: Okay. Anything further
11 for tonight?

12 MR. TURK: If we have to transport our
13 documents out, and then go through security with them
14 again, I don't think there will be time between when
15 the front door of the courthouse opens until you
16 commence for us to be able to set up.

17 CHAIRMAN McDADE: How long -- if we start
18 at 9 tomorrow?

19 MR. TURK: They told us that they open at
20 8:30. Now, I don't know if they open sooner.

21 CHAIRMAN McDADE: Okay. If you could hear
22 that, the main doors downstairs for security will open
23 at 8, to get you through security. The door to this
24 particular courtroom to get you to set up will be at
25 8:30. We will schedule to start at 9, and recognize

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1 that there are problems getting through security, or
2 setting set up when we get here. We may have to
3 adjust that, but let's shoot for 9:00, and get started
4 as soon after that as we can.

5 JUDGE WARDWELL: I would encourage you all
6 to be here at 8 to get through security, so that you
7 can get in here at 8:30, so we can start at 9.

8 CHAIRMAN McDADE: Anything from New York?

9 MR. SIPOS: Not at this time, Your Honor.
10 However, if the power system doesn't work out, we'll
11 just go to Home Depot and bring some extension cords
12 tomorrow.

13 CHAIRMAN McDADE: Okay. The other thing
14 -- and, again, I mean, one of the things with
15 Riverkeeper about seeing us, I mean, to avoid -- even
16 though we're only talking about administrative things,
17 we want a representative from the NRC staff and the
18 applicant present, so it's going to take them a while
19 to pack up, so they'll be here for a while. So when
20 you are ready, if you could just get one of them with
21 you and then come on back. Thank you.

22 (Whereupon, the proceedings went off the
23 record at 5:05 p.m.)

24

25