

# 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

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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

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Richard A. Daronco Courthouse  
 Courtroom 200  
 111 Dr. Martin Luther King Boulevard  
 White Plains, New York  
 Tuesday, March 11, 2008

The above-entitled conference was  
 convened, pursuant to notice, at 9:00 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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P-R-O-C-E-E-D-I-N-G-S

9:00 a.m.

CHAIRMAN McDADE: On the record. We are continuing in the license renewal application matter submitted by Entergy for Indian Points 2 and 3. We continue to have the State of New York as an Intervenor. We're going to be continuing with questions this morning with regard to the State of New York.

Before we get into the questions about the specific intentions, we are getting to a group of contentions involving SAMAs and what I would like to do is let me pose a question to Entergy here. In the context of a license renewal application, how do we determine what SAMAs are necessary? And again, we're talking about Severe Accident Mitigation Alternatives. Which ones do you have -- How do you determine which of those you need to address in the course of your license renewal application to sort of set the context of the next several contentions?

MR. O'NEILL: My understanding is the scope of SAMAs considered is based largely on the IPEEE, the Individual Plan Examination of External Events that the Applicant prepared during the early '90s and it was updated in 2005 and it focuses

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1 principally on external hazards such as fires, seismic  
2 events, flooding, tornadoes, things of that sort. And  
3 in preparing a SAMA analysis, I believe, Entergy  
4 really built largely off its prior IPEEEs as well as  
5 analyses that were performed by other applicants and  
6 I think that's consistent with guidance, the  
7 regulatory guidance, NEI 0501 Revision A which has  
8 been approved by the NRC and I believe Reg. Guide 4.2  
9 specifically directs applicants to look to prior  
10 analyses. It says, "Preparing SAMA analyses,  
11 applicants may be guided by analyses performed for  
12 previous applications for renewal of operating  
13 licenses."

14 CHAIRMAN McDADE: What are you reading  
15 from?

16 MR. O'NEILL: This is actually from our  
17 pleading, but this was a quote from a Supplement 1 to  
18 Regulatory Guide 4.2.

19 CHAIRMAN McDADE: Okay. But we start  
20 basically, there was a reactor safety study that NRC  
21 commissioned, done by MIT, to make a determination as  
22 to what were the potential severe accidents that based  
23 on that there were then according to  
24 51.53(c)(3)(ii)(L) "if the severe accident mitigation  
25 alternative has already been considered then it need

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1 not be considered at this point in time."

2 So starting with that, where do we look to  
3 get a list of what SAMAs would be necessary in the  
4 context of the Indian Point relicensing application?

5 MR. O'NEILL: Just give me a moment here  
6 to confer.

7 (Off the record discussion.)

8 MR. O'NEILL: Again, we do it with the  
9 prior analyses, but also you look at your internal  
10 PRAs.

11 CHAIRMAN McDADE: Okay, and also let me  
12 remind you because you've been away from the  
13 microphone, Mr. O'Neill.

14 MR. O'NEILL: Yes.

15 CHAIRMAN McDADE: So if you could speak up  
16 to make sure that everybody can hear you.

17 MR. O'NEILL: My understanding is you  
18 reviewed your internal PRAs and just see if there are  
19 any additional reasonable measurements that you can  
20 take beyond what you considered in your initial PRA  
21 and it's a very technical determination.

22 JUDGE WARDWELL: If it is a technical  
23 determination, then, in fact, a challenge that says,  
24 gee, you haven't looked at enough severe accidents in  
25 your mitigation alternatives. It would be an issue

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1 worth litigating in this situation, wouldn't it?

2 MR. O'NEILL: Not in this particular case.  
3 Are we talking generally about all SAMAs contention  
4 work or not?

5 JUDGE WARDWELL: Just in a general sense,  
6 wouldn't a challenge to a completeness of the severe  
7 accidents that are being mitigated and what goes into  
8 the analysis for a severe accident in regards to  
9 evaluating mitigation alternatives, it would seem to  
10 be a very ripe area for contentions in general that  
11 would be within the scope of licensee renewal  
12 proceeding.

13 MR. O'NEILL: I think our view is that the  
14 burden here is on the Petitioner to come forward to  
15 potentially identifying some other SAMAs and  
16 explaining why our analysis isn't sufficient, isn't  
17 reasonable. I mean, it is governed after all by  
18 NEPA's rule of reason. You perform alternatives  
19 analysis and I don't think it's enough just to say you  
20 need to consider X, Y or Z without explaining why it  
21 would materially effect the outcome of our SAMA  
22 analysis.

23 JUDGE WARDWELL: What's the basis for the  
24 rule of reasoning application of NEPA towards the  
25 SAMAs? Where does that -- Could you reference me to

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1 what the reference for that is?

2 MR. O'NEILL: Ultimately, it's SAMA  
3 analysis is a NEPA-driven requirement and it really  
4 flows largely from the 3rd Circuit's decision in the  
5 Limerick case. In that particular proceeding, the NRC  
6 considered excluding consideration of SAMAs, severe  
7 accident mitigation design alternative, at the initial  
8 licensing stage and they considered doing it through  
9 a policy statement and the Court held that the Agency  
10 couldn't do that. They could do it for a rulemaking  
11 and, as a result, the Agency decided through a  
12 licensing phase to include consideration of SAMAs.  
13 And I think that also reflected the fact that at the  
14 time they promulgated the SAMA requirement of Part 51  
15 all licensees hadn't completed their IPEs and IPEEEs.

16 JUDGE WARDWELL: So just to complete this  
17 now.

18 MR. O'NEILL: Yes.

19 MR. WINES: Where does -- Because it falls  
20 under 51, are you saying by definition that the rule  
21 of reasoning applies to that?

22 MR. O'NEILL: Yes, I mean it falls within  
23 the scope of NEPA. Part 51 are the Agency's NEPA  
24 implementing regulations and I want to point you to a  
25 very good reference. It's the Statement of

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1 Considerations for Part 51, June 5, 1996, 61 Federal  
2 Register 28.481 provides a lot of useful background  
3 about the nature and scope of the SAMA analysis and  
4 how it relates to the IPEs and IPEEEs that licensee  
5 had conducted.

6 CHAIRMAN McDADE: Now with regard to your  
7 license renewal application, are SAMAs restricted to  
8 those severe accidents that could be the result of  
9 aging issues or is it broader than that?

10 MR. O'NEILL: It is broader than that and  
11 recognize in our pleadings we cited some Commission  
12 case law as well as some prior staff EISs state that  
13 if a particular cost in official SAMA doesn't relate  
14 to aging management it's not required to be  
15 implemented and that is, in fact, the case. SAMA  
16 analysis is a form of NEPA alternatives analysis and,  
17 as you know, NEPA is purely procedural statute. It  
18 prescribes a mandatory process but it doesn't dictate  
19 any particular results.

20 So we just wanted to emphasize that point  
21 that even if you identify particular cost beneficial  
22 SAMAs it's not necessarily incumbent upon the licensee  
23 to implement those SAMAs. They may -- Yes, that are  
24 not aging management related. But the analysis is  
25 done fairly broadly.

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1 JUDGE LATHROP: So to start your  
2 application, you made a list of all of the severe  
3 accidents that you were going to analyze for  
4 mitigation alternatives and then you did that and put  
5 that in the application. I'm trying to get at the  
6 process.

7 MR. O'NEILL: Yes.

8 JUDGE LATHROP: And then the staff, I turn  
9 to the staff, did the staff have to agree that that  
10 list was sufficient?

11 MR. O'NEILL: Yes. We start with a  
12 probabilistic risk assessment. But the staff will  
13 also have to do a review of the ER to determine that  
14 the scope of the SAMA analysis is reasonable.

15 JUDGE LATHROP: And there's a particular  
16 probabilistic risk analysis for Indian Point's 2 and  
17 3?

18 MR. O'NEILL: Yes, for both plants and  
19 they cover internal events as well as external events.  
20 My recollection is that they were updated as of  
21 December 2005. I believe that's in the application  
22 and that's another point I'd emphasize that the  
23 applicant can only prepare a SAMA analysis based on  
24 the information that's available to it at the time it  
25 prepares its application.

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1 JUDGE WARDWELL: You really do the SAMAs.  
2 Right?

3 MR. O'NEILL: Pardon me?

4 JUDGE WARDWELL: I'm a little confused on  
5 your terminology and maybe I'm just thinking of what's  
6 in Part 51 in regards to the description of the SAMAs  
7 in that. But I believe in Part 51 it says that the  
8 staff shall analyze or something to the effect like  
9 that the SAMAs that you prepare is the way I interpret  
10 it.

11 MR. O'NEILL: Yes, that's correct.

12 JUDGE WARDWELL: And so they're really  
13 doing the evaluation of your SAMAs. Is that correct?

14 MR. O'NEILL: That's correct.

15 JUDGE WARDWELL: Sorry. I just wanted to  
16 clarify that point. Go ahead.

17 MR. O'NEILL: So again, just back to what  
18 we were talking about before, I know it really builds  
19 largely off the prior analyses and as far as the  
20 specific SAMAs that we consider within our ER, that  
21 really is a technical determination that's made by the  
22 PRA folks.

23 JUDGE WARDWELL: And is there a list in  
24 your ER of those SAMAs that you performed and that you  
25 consider to be sufficient for IP 2 and 3 as part of

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1 this license renewal application?

2 MR. O'NEILL: Yes, I believe there's a  
3 complete listing of the SAMAs as well as the SAMAs  
4 that were screened out and ultimately the six or seven  
5 SAMA candidates list, yes, and that's in the  
6 environmental report.

7 JUDGE WARDWELL: And why are you screening  
8 out SAMAs? Why do certain ones -- Why is there a  
9 screening on your part of the SAMAs? I don't  
10 understand that.

11 MR. O'NEILL: I think it's part of the  
12 cost/benefit analysis. At some point, it's going to  
13 be immediately evident that certain SAMAs are going to  
14 require such a large expenditure that the benefits of  
15 the SAMA are not going to outweigh the costs.

16 JUDGE WARDWELL: So you terminate your  
17 analysis more than screen it out. You go so far and  
18 you --

19 MR. O'NEILL: Yes.

20 JUDGE WARDWELL: This is obvious though.  
21 This is in a group that's so obvious it doesn't  
22 warrant further calculations.

23 MR. O'NEILL: It's a win and win process.  
24 You can still see it all in the application and if you  
25 want a specific citation, we can get that for you.

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1 CHAIRMAN McDADE: I think or at least I  
2 hope that sets the stage of the SAMAs that we're going  
3 to be talking about for the next little bit.

4 New York Contention No. 12 involves a  
5 SAMA, specifically that the SAMA for Indian Point 2  
6 and 3 does not accurately reflect decontamination and  
7 clean-up costs associated with severe accident in the  
8 New York Metropolitan area and therefore does not  
9 satisfy 51.53(c)(3)(ii)(L). Judge Lathrop.

10 JUDGE LATHROP: There are two points made  
11 in this contention, one about the particle size that  
12 is used in the MACCS Code. The argument is as I  
13 understand it that the particle size that was used was  
14 large. The clean-up costs are more expensive for  
15 small particles and that small particle size should  
16 have been used. Is that your understanding of the  
17 contention?

18 MR. O'NEILL: Yes, that's consistent with  
19 my understanding.

20 JUDGE LATHROP: That's one part. And the  
21 other part is about the cost used in the evaluation.

22 MR. O'NEILL: That's correct.

23 JUDGE LATHROP: How do you respond about  
24 the challenge for the particle size?

25 MR. O'NEILL: I would begin by saying that

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1 we just don't see the relevance of the particular  
2 study they've cited before I even get to the issue of  
3 particle size.

4 CHAIRMAN McDADE: You're talking about the  
5 Sandia report.

6 MR. O'NEILL: Yes, the Sandia report.  
7 Sorry.

8 CHAIRMAN McDADE: The Sandia. I'm sorry.

9 MR. O'NEILL: It was the report of 1996  
10 study which is evident from its title it pertains to  
11 nuclear weapons of plutonium dispersal. My  
12 understanding is that the report was prepared to a  
13 large extent to address the Government's  
14 responsibilities under CIRCA (phonetic) or Superfund  
15 and unique socio-economic costs that might flow from  
16 accidents involving releases of plutonium from  
17 weapons. I think it mentions commercial reactors in  
18 passing, but there's really no attempt by the State to  
19 connect the dots to our SAMA analysis as far as we're  
20 concerned.

21 Now as far as the issue of --

22 CHAIRMAN McDADE: Let me just ask by way  
23 of a preliminary question there. One of the defenses  
24 to this contention as I understand it is that it is  
25 impermissible challenge to the MACCS2 Code. Now why

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1 can't they challenge the MACCS2 Code.

2           Forget for the moment whether or not it is  
3 an adequate, whether or not it's viable. But just why  
4 can't they challenge it? The Code isn't a regulation.

5           If the Code is defective, wouldn't that be a basis  
6 for further litigation?

7           MR. O'NEILL: Again, they need a  
8 sufficient basis to explain why the Code is defective  
9 and we really don't think the State does that here.  
10 They're just simply saying that you should use this  
11 other study as a surrogate for the MACCS Code.

12           CHAIRMAN McDADE: So you're saying then  
13 that it is permissible for them to challenge the Code.  
14 It's just they haven't done it adequately based on  
15 what they've submitted.

16           MR. O'NEILL: I think it might be possible  
17 to entertain a particularized challenge to specific  
18 input parameters in the Code or how the Applicant uses  
19 the Code. But I will emphasize this is a very time  
20 past, time worn Code that's been used in numerous SAMA  
21 analyses and it's been used by the Agency in various  
22 context, too, and you just don't think a general  
23 challenge as the adequacy really gives rise to  
24 litigable issue.

25           I mean I think the concern is what is the

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1 relief. How do we address it? Do they do the  
2 analysis using an entirely different Code? And I  
3 think it flies smack in the face of a lot of the prior  
4 SAMA analyses that have been thoroughly reviewed the  
5 Agency.

6 JUDGE LATHROP: But isn't the assumption  
7 of particle size an input to the Code?

8 MR. O'NEILL: My understanding again, this  
9 is getting into a very technical issue that maybe that  
10 I don't do daily as a lawyer. But I believe it's  
11 based on the 4 rem criteria and the habitability  
12 criteria. It's not based specifically on particle  
13 size.

14 JUDGE WARDWELL: By definition, isn't that  
15 an issue then that should be litigated? I mean, I  
16 would argue or someone could argue that New York State  
17 isn't saying the Sandia report is a surrogate to the  
18 MACCS Code but merely a demonstration why the MACCS  
19 Code is not appropriate at this particular site and  
20 isn't that sufficient enough to say, "Hey, we don't  
21 have an accurate SAMA here and it needs to be  
22 reevaluated"?

23 MR. O'NEILL: Our position here is  
24 assuming for the sake of argument that that is a  
25 legitimate approach that they haven't met the

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1 threshold. It's a really fast and generic terms.

2 JUDGE WARDWELL: How far do you think they  
3 should go?

4 MR. O'NEILL: I mean, this argument could  
5 apply to any plant, any site. It's couched in generic  
6 terms.

7 JUDGE WARDWELL: Do you think they should  
8 have to redo the SAMA in order to demonstrate that  
9 there's a difference in order to have it a viable  
10 contention? Is that your position?

11 MR. O'NEILL: No, it's not our position  
12 that they need to redo the SAMA analysis. I mean,  
13 it's the expenditure of substantial resources and a  
14 team of probabilistic or PRA experts which the State  
15 incidently didn't offer here.

16 Again, we just view it as a generic  
17 challenge. They didn't tackle the specific input  
18 parameters. One thing I'd emphasize is that the  
19 Agency has recommended that applicants follow the NEI  
20 05.01 Rev. A guidance and that's in License Renewal  
21 Interim Staff Guidance 2006-03 and the staff  
22 specifically says that "following a guidance  
23 facilitates preparation of complete SAMA submittals."

24 And if you look at NEI 05.01, just give me  
25 a moment here, it has a section that deals with

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1 economic data and that encompasses the cost of  
2 decontaminating land and buildings and actually in one  
3 of the attachments to the Guidance, Table 5, it gives  
4 you sample MACCS2 economic parameters and I'm  
5 referring, of course, to the Code. And if you go to  
6 the application, Attachment E to the Environmental  
7 Report, pages E.1-88 to E.1-89 there's a table that  
8 contains the actual MACCS2 parameters that Entergy  
9 used that entered in the Code to do this analysis and  
10 there is no challenge from the State to the adequacy  
11 of any of those individual parameters.

12 JUDGE WARDWELL: Where does the size of  
13 the particle come into the analysis that you  
14 performed? Is it an input parameter or does it not --  
15 is it insensitive to the particle size?

16 MR. O'NEILL: Give me a moment.

17 (Off the record discussion.)

18 MR. O'NEILL: My understanding is that  
19 particle size per se is not an actual input parameter  
20 in the Code. I mean, it's probably --

21 JUDGE WARDWELL: So this Code is  
22 insensitive --

23 MR. O'NEILL: It's an implicit assumption  
24 in the Code.

25 JUDGE WARDWELL: So this Code is

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1 insensitive to the particle size. It doesn't --  
2 Regardless of what the particle size is you're going  
3 to have the same analysis results using this Code.

4 MR. O'NEILL: That's my understanding.

5 JUDGE WARDWELL: Okay.

6 MR. O'NEILL: You're not going to tweak  
7 the inputs to reflect different particle sizes.

8 JUDGE LATHROP: There's a question about  
9 what is meant by inputs. Do inputs include the data  
10 that used to run a specific calculation plus the  
11 assumption built into the analysis?

12 MR. O'NEILL: Could you repeat the  
13 question? I apologize.

14 JUDGE LATHROP: Things that are built into  
15 the Code and the argument is that the clean-up costs  
16 for small particles is much more expensive than for  
17 large particles and the Sandia report is cited to say  
18 that the weapons-based particle sizes are large;  
19 whereas in reactor accidents the particle size  
20 released in the severe accident are likely to be  
21 small. So if the small particles are released in a  
22 reactor accident, the clean-up costs will be more  
23 expensive and so the Code is inaccurate in that sense.  
24 That's the general argument.

25 MR. O'NEILL: Again, it's a generic

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1 challenge to that to the Code and I would again cite  
2 the Board's decision in Pilgrim and I recognize that  
3 this Board is not bound by that decision. But we  
4 certainly view it as persuasive authority.

5 CHAIRMAN McDADE: But you say it's a  
6 generic challenge. Why isn't that a specific  
7 challenge? It seems to me that certainly from the  
8 standpoint of New York it's not generic. So can you  
9 just explain what you mean by that in this context?

10 MR. O'NEILL: It's a challenge to the use  
11 of the Code at any particular power point and the same  
12 challenge would apply anywhere and the thing is the  
13 Board at Pilgrim emphasize that the use of the MACCS2  
14 Code has been explicitly recognized by the NRC. It's  
15 endorsed in NRC approved NEI guidance and it promotes  
16 uniformity in the performance of staff review. These  
17 are things that the Code report emphasizes. It's been  
18 widely used and accepted as an appropriate tool and a  
19 general challenge as to the adequacy of the Code  
20 really doesn't constitute what are the real issues.

21 JUDGE WARDWELL: Do you think that the  
22 allegation of the impacts of the smaller particle size  
23 would be as relevant at, say, Vermont Yankee, say,  
24 Maine Yankee, if it was still operational as it would  
25 here at Indian Point?

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1 MR. O'NEILL: Yes, I believe so.

2 JUDGE WARDWELL: New York State, would you  
3 think that your allegation in regards to the small  
4 particle size would have as much influence on Maine  
5 Yankee's, at the Maine Yankee site, if they were going  
6 through a license renewal as your allegation is that  
7 the small particle size would influence the costs here  
8 at Indian Point?

9 MR. SIPOS: Judge Wardwell, I'm generally  
10 familiar where Maine Yankee was located.

11 JUDGE WARDWELL: Let's pick a  
12 hypothetical. I tried to find one in my mind.

13 MR. SIPOS: And I'm ready to --

14 JUDGE WARDWELL: Thinking the name was  
15 Maine was Maine.

16 MR. SIPOS: I could answer.

17 JUDGE WARDWELL: If you're talking about  
18 a site that's in a remote area, would the impacts of  
19 the small particle size be as significant as they here  
20 at Indian Point where you have a large population and  
21 a large area that would require more exotic  
22 decommissioning efforts?

23 MR. SIPOS: I think there could be a  
24 difference between the two scenarios that you propose.  
25 However, in each scenario there could be a component

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1 for cleaning up vacant land or farmland. There is  
2 farmland near Rockland, Maine. There is farmland here  
3 in Westchester. But there are significant differences  
4 between the New York-New Jersey-Connecticut  
5 metropolitan area in that same area in Maine. There  
6 are more structures and there is a greater probability  
7 of the small particle sizes binding to residents,  
8 businesses, just as a result of this area is more  
9 developed than those counties in --

10 JUDGE WARDWELL: And then if you say the  
11 impacts in a rural location for a plant may very well  
12 be similar to what they are here at Indian Point, then  
13 isn't it a generic attack on the approach that Entergy  
14 is using?

15 MR. SIPOS: It is -- I'm sorry. It is  
16 not. It is not intended to be a generic attack. It  
17 is intended to be specifically tailored to this  
18 situation. Based on the reports that we cited, given  
19 the development in this area and the extensive  
20 development and how difficult it would be to  
21 decontaminate buildings in White Plains or in  
22 Tarrytown or in the town of Buchanan or coming down  
23 the river towards Yonkers, New Rochelle, Manhattan.  
24 It's an entirely different situation.

25 JUDGE WARDWELL: Thank you.

1                   CHAIRMAN McDADE: To make sure I  
2 understand it, it's the position of your state that,  
3 first of all, this Code is not a regulation.  
4 Therefore, it's subject to attack. We have to look at  
5 it. We have to make a decision as to its  
6 applicability, its viability, under the circumstances  
7 here.

8                   Secondly, whatever the case law is in  
9 Vermont Yankee or elsewhere, it may be instructive to  
10 us, but it's not binding on us. So we need to make  
11 our own decision and in any event we have to look at  
12 the different factual circumstances that exist here in  
13 Westchester, say, than exists near Vermont Yankee and  
14 given those circumstances you think the contention is  
15 viable. It's a different contention than the  
16 Commonwealth of Massachusetts submitted in Vermont  
17 Yankee.

18                   MR. SIPOS: Yes, I believe the answer is  
19 yes to all of those questions. We believe that the --  
20 I believe the reference was to Pilgrim in the Pilgrim  
21 decision.

22                   CHAIRMAN McDADE: I'm sorry.

23                   MR. SIPOS: Which Entergy references is  
24 the Pilgrim decision from, I believe, October 31, 2007  
25 which is at the summary deposition stage and I think

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1 what Entergy did not tell you this morning is that  
2 that contention was admitted at the contention  
3 admissibility stage. Moreover, we believe as we have  
4 set up the contention here -- We believe that this  
5 contention which is different from a SAMA-type  
6 contention that was at issue in Pilgrim it has merit.  
7 It is focusing on the specific calculations and  
8 inputs, Judge Lathrop, as you said and assumption that  
9 are in the analysis and in the Code.

10 And just because it has been done this way  
11 previously, for example, at other locations does not  
12 necessarily mean that the staff and the Board and the  
13 Commission should not take a different look, a  
14 different view, of it.

15 And I would just note that to Entergy  
16 comment that the Sandia report doesn't really carry  
17 the day, the Sandia report is a very detailed report  
18 sponsored by the Department of Energy, I believe, and  
19 among other things there are numerous statements in  
20 the Sandia report that we set to concerning the issue  
21 of particle size. But the Sandia report also says,  
22 "Data on recovery from nuclear explosions that have  
23 been publicly available since the 1960s appear to have  
24 been misinterpreted which has led to long-standing  
25 underestimates of the potential economic costs of

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1 severe reactor accidents. We've provided the  
2 citations. That's at Sandia page 2-10. There are  
3 many other statements in Sandia which I'd be happy to  
4 discuss if the Board had any questions about them.

5 JUDGE LATHROP: I do have a question about  
6 it, particularly about the particle size. In your  
7 reply to this contention, you state, "There is  
8 fortunately a dire of practical experience with  
9 widespread radioactive contamination from a reactor  
10 severe accident with which to examine radioactive  
11 dispersion." So what is the evidence that the  
12 particle size is actually different?

13 MR. SIPOS: Your Honor, in the appendices  
14 to the Sandia report there are a number of case  
15 studies from various Defense Department accidents over  
16 the years regarding various military installations or  
17 accidents involving the Armed Forces. And there is a  
18 very detailed analysis of each of those and there is  
19 also, I believe, some references back to tests that  
20 had been done in the Southwest in the `50s and in the  
21 `60s.

22 JUDGE LATHROP: But those are all from  
23 military devices or the military applications. How do  
24 they apply to reactor particle size?

25 MR. SIPOS: There is a specific

1 discussion, specific nexus, to that in the Sandia  
2 report and, if I may, I will try to locate it. One of  
3 the pages that touches on that is I believe is page 2-  
4 3 and 2-4. I believe there are other pages as well  
5 that also discuss that and I don't wish to delay the  
6 proceeding, but perhaps I could hand that up at a  
7 break or at lunchtime.

8 JUDGE LATHROP: Yes. In your reply, you  
9 state there is little experience with this. So how do  
10 we know what the particle size is?

11 MR. SIPOS: There is -- I know it is  
12 discussed in the Sandia report. I'm sorry. I don't  
13 have the page right at my fingertips now.

14 JUDGE LATHROP: It's understandable. So  
15 if you could look that up, I would appreciate it.

16 Let me return to Entergy. The second part  
17 of this contention argues that the costs of real  
18 estate in the New York area are not current in the  
19 MACCS Code and that's surely an input into the Code.  
20 So how do you respond to that?

21 MR. O'NEILL: My response is that the  
22 specific economic parameters that were entered into  
23 the Code are listed in Attachment E to the  
24 Environmental Report. They're there. New York State's  
25 petition as well as its reply contained those specific

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1 references to those parameters. There is no direct  
2 challenge to the parameters and it's incumbent upon  
3 the State to make particularized challenges to the  
4 application, to cite the application with specificity  
5 and explain why the parameters we use are inadequate.

6 And you're correct. If you look at the  
7 list of parameters in the NEI guidance that are  
8 generally reflected in the application, there's  
9 property depreciation data, investment rate of return,  
10 daily costs for a person who has been evacuated. We  
11 get into cost of farm decontamination, cost of non-  
12 farm decontamination. These are all very specific  
13 inputs, none of which the State has even mentioned and  
14 they've also failed to establish any nexus between the  
15 assumptions that are used in the Sandia report and the  
16 assumptions that are used in the MACCS2 Code. There  
17 appear to be apples to oranges.

18 JUDGE LATHROP: And how does New York  
19 respond to that?

20 MR. SIPOS: The MACCS2 Code we understand  
21 was developed by David Chanin out at Sandia. David  
22 Chanin is also one of the authors of the Sandia report  
23 that we studied. Clearly, Sandia has experience in  
24 this and there are specific situations, very unique  
25 situations, here at Indian Point in the area that the

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1 Sandia report clearly supports that the typical or  
2 what has happened in the past in terms of calculations  
3 just do not come to grips with the clean-up costs that  
4 will be associated with an accident here.

5 MR. O'NEILL: Our response to that is that  
6 they have not specifically challenged any of the input  
7 parameters in the application and there's not a single  
8 reference to application and this is not supported by  
9 any expert opinion. It's just a generalized attack on  
10 the MACCS2 Code.

11 JUDGE WARDWELL: Do you have any other  
12 information in regards back to the particle size that,  
13 in fact, there won't be -- that a reactor accident  
14 would only have larger sized particles size?

15 MR. O'NEILL: I don't specifically, but  
16 again my understanding, Judge Wardwell, is that the  
17 MACCS2 Code is not based specifically on particle size  
18 locations. I think it accounts for the cost  
19 associated with decontaminating pieces of property to  
20 certain levels.

21 JUDGE WARDWELL: But you have to define  
22 the size of the area for decontamination in order to  
23 come up with a cost associated with the SAMA. Isn't  
24 that correct?

25 MR. O'NEILL: The size of the particles.

1 JUDGE WARDWELL: I'm sorry. You need to  
2 define the size of the decommissioning area in order  
3 to come up with the SAMA. Is that correct?

4 MR. O'NEILL: Yes, and that's certainly --  
5 That's different than particle size.

6 JUDGE WARDWELL: Let's take it a piece at  
7 a time because I'm this hard-scribble  
8 little hick. So I need to go slowly here. You have  
9 to define the size of the area. Correct?

10 MR. O'NEILL: Yes.

11 JUDGE WARDWELL: Would not the size of the  
12 area be affected by the size of the particles that are  
13 being released during an accident? Isn't that logical  
14 to assume? Forget any codes or anything else. Just  
15 pure logic.

16 (Off the record discussion.)

17 MR. O'NEILL: Having conferred with my  
18 technical consultants, what we don't see is --

19 JUDGE WARDWELL: It really helps -- I know  
20 styles. I hate to dictate styles to people. We're in  
21 a courtroom that doesn't have microphones.

22 MR. O'NEILL: Yes, I know that.

23 JUDGE WARDWELL: And as I -- And I do  
24 this, too. So as soon as we do this, let's try to  
25 remember not to do it because it really influences the

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1 volume of your answer.

2 MR. O'NEILL: We don't think that particle  
3 size is directly linked to the surface area. Maybe  
4 I'm not understanding your question.

5 JUDGE WARDWELL: I don't care if it's  
6 necessarily the size of the surface area or the amount  
7 of particles or the amount of internal surface area or  
8 whatever else it is. But it seems to me that it's  
9 logical that the magnitude of decontamination might  
10 very well be influenced by the size of the particles  
11 that emanate from it in some fashion.

12 MR. O'NEILL: But the size of the  
13 particles would effect the dispersion.

14 JUDGE WARDWELL: I don't even need you to  
15 get that specific. Keep it more general than that.  
16 You have smaller particles. It seems to me that the  
17 decommissioning -- It's logical to assume that the  
18 decommissioning costs might be influenced by that.

19 MR. O'NEILL: Yes, to the extent you're  
20 saying it could effect the difficulty of  
21 decontaminating.

22 JUDGE WARDWELL: There's that. I think  
23 there will be more areas, more internal parts that  
24 might get influenced by that be contaminated with  
25 smaller particles and I'm not so sure the particles

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1 wouldn't go further that you would have a larger area.  
2 But maybe that's wrong in my logic.

3 But to me, isn't that something that's  
4 handled during the hearing? We're not trying to  
5 resolve that now. All we're trying to resolve is is  
6 there sufficient bases to say, "Hey, maybe this SAMA  
7 isn't done correctly in regards to trying to come up  
8 with a good estimate for this particular site" and  
9 that's what New York State is contending and I'm  
10 trying to probe why what they have isn't enough to  
11 say, "Yes, maybe it is something that needs further  
12 addressing."

13 Maybe you've done a perfectly adequate  
14 one. We'd have to get into that at a hearing in  
15 regards to the technical merits which we've been  
16 scratching the surface at for the last 20 minutes  
17 probably. But I think it's worthwhile to do that  
18 here. But it seems to me isn't there enough logic  
19 there that says there's a potential for that to be  
20 taking place here.

21 MR. O'NEILL: Again, as a very generic  
22 matter, I would have to go back to what I said before.  
23 There's no specific challenges to that parameters that  
24 we use that are present in the application and this  
25 particular argument could apply to any plant and in an

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1 urban area.

2 JUDGE WARDWELL: And how do you respond to  
3 that? Now you've -- That's the first time I heard you  
4 qualify it in an urban area. Is it only in an urban  
5 area?

6 MR. O'NEILL: No, you would apply it to  
7 any plant. But we recognize also that certainly  
8 population has to be taken into account which I  
9 believe it is in the MACCS2 input point.

10 JUDGE WARDWELL: But then again, as soon  
11 as we start looking at the details of the input  
12 parameters, shouldn't we let it in as a contention and  
13 explore that and to the degree that it's applicable to  
14 urban versus rural areas as part of the hearing?

15 MR. O'NEILL: This is the first time we're  
16 discussing input parameters and that's simply because  
17 we're pointing out the fact that the State didn't do  
18 so in its petition or in its reply contrary to 2.309,  
19 I believe it's (f) (1) (v).

20 JUDGE WARDWELL: Do you believe your  
21 challenge is generic for all urban areas, New York  
22 State?

23 MR. SIPOS: No. We are here in this  
24 proceeding for this facility. That's what we're  
25 trying to bring to the Board for the Board's review

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1 and the Commission's review.

2 This is a unique area. Of all the 104  
3 reactors in the country, these two have the highest  
4 population density around them. There's no dispute  
5 about that and the practical purpose of this  
6 contention is that whether we call it an input or an  
7 assumption the Sandia report supports the contention,  
8 supports the argument that that assumption or that  
9 input for this situation here at Indian Point is not  
10 appropriate and that the clean-up costs, the  
11 decontamination costs, for this New  
12 York/Connecticut/New Jersey metro area are going to be  
13 higher.

14 JUDGE LATHROP: But isn't it true that the  
15 clean-up costs for small particles are generically  
16 more expensive than for large particles?

17 MR. SIPOS: Yes, I believe that is an  
18 accurate statement. It is -- You can imagine how  
19 difficult it would be to clean up small particles on  
20 the upper west side.

21 JUDGE LATHROP: That's a separate  
22 argument. The terrain here is more complex, is it  
23 not? That's a separate question.

24 MR. SIPOS: Did you say that terrain,  
25 Judge?

1 JUDGE LATHROP: The terrain, the building  
2 structures, the population density.

3 MR. SIPOS: Yes.

4 JUDGE LATHROP: That's peculiar to this  
5 area.

6 MR. SIPOS: Yes. That is correct.

7 JUDGE LATHROP: I meant peculiar in the  
8 unique sense.

9 MR. SIPOS: Understood.

10 (Laughter.)

11 JUDGE LATHROP: Now let's return to the  
12 cost. You say the costs are listed in your analyses,  
13 clearly spelled out. Are those up-to-date and  
14 discounted properly and so on?

15 MR. O'NEILL: My understanding is that  
16 they are up-to-date as of the time the application was  
17 prepared. I'm certain that we used certain parameters  
18 that are built into the MACCS2 Code and made  
19 adjustments as necessary. That brings me to --

20 (Off the record comment.)

21 MR. O'NEILL: I'm sorry. I was just going  
22 to emphasize the point that again it's not clear to us  
23 what the nexus of the Sandia report is to our specific  
24 SAMA analysis.

25 There has been no attempt by the State to

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1 really address the relative cost and benefits. I  
2 think the Commission has emphasized the case law that  
3 any number of SAMAs are theoretically possible to  
4 identify and Petitioner has to provide some initiative  
5 of the relative cost and benefit. Why is this  
6 material to the outcome of our SAMA analysis?

7 JUDGE WARDWELL: Turning to New York State  
8 on that issue, are you contesting any of the unit  
9 costs that are used in regards to calculating out the  
10 total decommissioning costs in your contention?

11 MR. SIPOS: Decontamination costs, Your  
12 Honor?

13 JUDGE WARDWELL: Yes. I'm sorry. What  
14 did I say? Decommissioning? I might have. I meant  
15 decontamination. Sorry.

16 MR. SIPOS: I believe that to the extent  
17 we are citing the Sandia report which says that the  
18 costs have been underestimated given this issue of  
19 particle size that, yes, that assumption is a  
20 litigable assumption for this facility given the area  
21 that is around it. That's the sort of injury if you  
22 will that New York is experiencing as a result of the  
23 flawed, what we believe is the flawed SAMA approach  
24 here.

25 JUDGE WARDWELL: In the Sandia report and

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1 your reading of the Sandia report, did you believe  
2 that they are talking about the unit cost or just the  
3 total decontamination cost or are they talking about  
4 both?

5 MR. SIPOS: I believe it was on a square  
6 kilometer basis in the chapter on costs and I would  
7 just -- I would refer the Board to paragraph 16 of our  
8 petition for an extended decontamination remediation  
9 operation in a mixed use urban area with an average  
10 national population density site restoration, that's  
11 the Sandia report, predicted in a clean-up cost of  
12 \$311 million per square kilometer with an onsite waste  
13 disposal cost of \$402 million per square kilometer  
14 with offsite disposal. And again we cite that Sandia  
15 report 6-4.

16 JUDGE WARDWELL: Thank you.

17 MR. SIPOS: And then we continued on and  
18 we did note that the cost would be much higher here  
19 for further reasons and given the time value of money  
20 1996 dollars, bringing those forward.

21 JUDGE LATHROP: And how does New York --  
22 That's a specific enough challenge to the cost used in  
23 the Code based on the particle size.

24 MR. O'NEILL: Again, Your Honor, we're  
25 talking about plutonium dispersal accidents. I just

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1 do not see the nexus in this particular action.

2 JUDGE LATHROP: The connection is that the  
3 plutonium dispersal accidents that were analyzed and  
4 are used, this is the allegation, resulted in large  
5 particle size; whereas, if there were a severe  
6 accident at a reactor the particle size would be  
7 smaller. Therefore, the decontamination costs would  
8 be larger and here's a specific statement in a  
9 reference saying that they would be larger. So why  
10 isn't that an input to the Code to calculate?

11 MR. O'NEILL: The inputs to the Code are  
12 what they are. I mean, like I said, the MACCS2  
13 parameters are not based specifically on particle  
14 size.

15 JUDGE LATHROP: Somewhere in that Code  
16 there must be an assumption about how much it costs to  
17 clean up a square kilometer and that's based on  
18 particle size according to the allegations of New  
19 York. So that's a nexus, is it not?

20 MR. O'NEILL: If there's a nexus, it's a  
21 very tiny weighted one in our view. Again, this is  
22 based simply on a plutonium dispersal scenario.

23 CHAIRMAN McDADE: What's your reaction to  
24 the statement by New York that specifically at page  
25 210 of the Sandia report it discusses reactor

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1 accidents. It isn't exclusively plutonium and weapons  
2 accidents. It also indicates specifically that the  
3 cost would be underestimated with regard to reactor  
4 accidents at 210 of the Sandia report.

5 MR. O'NEILL: Could you give me a moment,  
6 Your Honor, just to look at it?

7 (Pause.)

8 MS. MIZUNO: If I may, Your Honor.

9 CHAIRMAN McDADE: Yes, we were just  
10 talking about that whether you had any comments on  
11 this.

12 MS. MIZUNO: Thank you. Good morning,  
13 Your Honor. This is Beth Mizuno for the NRC staff.  
14 With respect to the question you just asked about the  
15 reference in the Sandia report at page 210 regarding  
16 severe reactor accidents and the economic costs of  
17 such, as the NRC pointed out in its written filing,  
18 it's our view that this is simply an aside. It's not  
19 the focus of this report. This is not a judicial  
20 document. So you wouldn't call it dicta. But it's an  
21 aside because the focus of the Sandia report is on  
22 accidents with respect to nuclear weapons, not  
23 accidents at commercial nuclear power plants and the  
24 relevance of that was the basis of the staff's  
25 objection.

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1 JUDGE WARDWELL: What information do you  
2 have that says what the particle size is from nuclear  
3 reactor accidents?

4 MS. MIZUNO: Just a moment, Your Honor.  
5 Thank you.

6 (Off the record discussion.)

7 MR. O'NEILL: Your Honor, can I speak for  
8 a moment?

9 CHAIRMAN McDADE: Yes.

10 MR. O'NEILL: It was just interesting  
11 conferring with my consultants she happened to use the  
12 same term that the discussion that State references  
13 was "an aside." It really is not the central focus of  
14 the report and to the extent it discusses commercial  
15 reactors, it's talking about studies as Wash 14 that  
16 were done decades ago and there's just no indication  
17 in that report that the assumptions used in those  
18 earlier studies from the '60s are the same as those  
19 that are built into the MACCS2 Code. There's no clear  
20 link between the Sandia report and the assumptions  
21 that it discussed and those that are used in the  
22 MACCS2 Code.

23 CHAIRMAN McDADE: But assume that we  
24 accept that and view it as well that this is an aside.  
25 It's certainly not the focus of the Sandia report.

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1 But nevertheless it is there that as New York pointed  
2 out the author of the Sandia report, one of the  
3 authors, is also integral in the creation of the  
4 MACCS2 Code and again not dispositive, but as I  
5 understand what New York is saying is that it raises  
6 a question as to the adequacy of the MACCS2 Code in  
7 this particular context and it raises it to a level  
8 that warrants further inquiry. In other words, they  
9 have raised a genuine issue as to the adequacy of the  
10 MACCS2 Code, not that demonstrated that it is  
11 inadequate at this point in the proceeding.

12 They're saying they don't need to do that  
13 at this point in the proceeding. All they have to do  
14 is raise an issue and even though it is not the focus  
15 of the Sandia report that it is sufficient in there  
16 particularly given who the author is and the  
17 relationship of that author to the MACCS2 Code that we  
18 now have an issue that needs to be explored during the  
19 course of the hearing.

20 What's the fallacy of that argument?

21 MR. O'NEILL: With all due respect and not  
22 quite the common authorship established, the Sandia I  
23 believe was prepared over ten years ago and that the  
24 MACCS2 Code has been in wide use and specifically for  
25 the preparation of SAMA analyses and again we do not

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1 view this as a specific challenge to this particular  
2 action, this relicensing action. This could be raised  
3 in any context and call into question the adequacy of  
4 all prior SAMA analyses done using the MACCS2 Code.

5 CHAIRMAN McDADE: Okay.

6 (Off the record discussion.)

7 CHAIRMAN McDADE: From the NRC staff, do  
8 you wish to --

9 MS. MIZUNO: Yes. Thank you, Your Honor.

10 CHAIRMAN McDADE: Yes.

11 MS. MIZUNO: We'd like to point out  
12 granted the Sandia report was authored by Chanin and  
13 granted Chanin was one of the authors that had  
14 responsibility and input to the MACCS2 Code. But the  
15 MACCS2 Code was a study that was -- The MACCS2 Code  
16 was generated based on the study by a broad set of  
17 experts. Plutonium study, Chanin study, I think it's  
18 Chanin and Dr. Walter B. Murfin and these are two  
19 individuals. The MACCS2 Code was developed by a broad  
20 set of experts and it was developed particularly for  
21 nuclear power plant, commercial power plant, reactor  
22 accidents and the Sandia report was not.

23 Also just another matter to keep in mind  
24 because this came up during the course of the back and  
25 forth, the panel, I'm not sure which one, asked about

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1 the clean-up costs (1) and (2) also about the size of  
2 the particles and with respect to the clean-up costs,  
3 some of the questions were asked, "Doesn't the size of  
4 the particles determine how they travel and how much  
5 area is contaminated" and the NRC staff would just  
6 like to point out (1) the contention that was raised  
7 by New York went to particle size, that cleaning up  
8 smaller particles is more expensive than larger  
9 particles for one thing. That was their contention.

10 To the extent that the contention is now  
11 meta-morphisizing and becoming a different kind of  
12 contention, the NRC staff would remind the panel that  
13 Petitioners or Intervenors are responsible for  
14 crafting their contentions and sticking to them. And  
15 rather than them being changed in the course of the  
16 hearing potentially by input from other sources, it's  
17 the Petitioner's contention and it's the contention  
18 that they filed and they wrote and it's their  
19 responsibility and it's bounded by that.

20 CHAIRMAN McDADE: But isn't that still  
21 within the scope? I mean, their contention was not so  
22 narrow as to say it's increased clean-up costs per  
23 square kilometer. It's increase clean-up costs and  
24 that would include both the costs per kilometer and  
25 also the number of kilometers that were contaminated,

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1 wouldn't it? Isn't that still within the scope of the  
2 contention as drafted?

3 MS. MIZUNO: We would read that, the  
4 staff. I actually, Your Honor, would read that rather  
5 narrowly. I would read that more narrowly.

6 CHAIRMAN McDADE: Okay. We've been  
7 kicking this one around a long time. I think we  
8 understand the positions of the parties and we just  
9 have to make a decision based on that. I don't know  
10 that the positions are going to become any clearer if  
11 we continue to ask questions. We're just going to be  
12 probably getting ourselves more confused rather than  
13 clarified.

14 So it might be worthwhile to move onto the  
15 next contention which is New York Contention 13 saying  
16 that the SAMA analysis is deficient because it does  
17 not include the increased risk of fire barrier failure  
18 and the loss of both cable trains of important safety  
19 equipment in evaluating a severe accident and I guess  
20 the first question is why to New York is the fire  
21 barrier failure not within the current operating  
22 basis. Why is this something that needs to be done as  
23 part of the license renewal application? Any  
24 exemption was granted from the standard one hour to 20  
25 to 30 minutes. Why is that not outside the scope of

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1 this proceeding?

2 MR. SIPOS: We're not seeking to  
3 relitigate or challenge that decision from last  
4 September and last October here. We're taking the  
5 plant as we find it today and looking forward to the  
6 license renewal period.

7 We understand that we can't ask this Board  
8 to reconsider the staff's determination from September  
9 or October 2007. But going forward as part of the  
10 SAMA analysis given that a part of the plant has fire  
11 protection of only 24 minutes and another area has  
12 protection only for 30 minutes, we believe that as  
13 part of the SAMA analysis that that area should be  
14 looked at and what mitigation steps could be taken to  
15 reduce the consequences of that action and this area  
16 where the waiver was granted, our understanding is  
17 that it is not an area that was reviewed as part of  
18 the SAMA analysis.

19 CHAIRMAN McDADE: Part of what the  
20 Applicant and the staff are saying here is that you  
21 have not presented anything that would indicate that  
22 the SAMA analysis would be different whether or not  
23 this exemption had been granted or not. How do you  
24 respond to that?

25 MR. SIPOS: First, it hasn't been done.

1 So I think it's -- Unless staff and Entergy have done  
2 it and we don't know that. I don't believe that is  
3 the case.

4 CHAIRMAN McDADE: But they're saying that  
5 before it's done, there has to be at least some reason  
6 to believe, some reason to suspect, that you would get  
7 a different result and they said that you haven't put  
8 forward that sort of threshold evidence to give a  
9 reason to believe it would be different. Therefore,  
10 the analysis doesn't have to be done.

11 MR. SIPOS: These power lines that are the  
12 focus of New York's Contention 13 go to critical  
13 safety components and I believe if they are  
14 compromised, if those components are compromised in 24  
15 minutes, that could have great consequences.

16 Staff has said that the purpose of SAMA is  
17 to look at economically defensible mitigation. It is  
18 hard to imagine a type of mitigation that could be an  
19 easier fix. There is a problem with the fire  
20 barriers. It's been documented by the NRC's Office of  
21 Inspector General as sort of a general matter.

22 We know it's an issue with respect to  
23 these power trains and they are related to critical  
24 safety features of the plant. Upgrading them from 24  
25 and 30 minutes to what is required or upgrading them

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1 from 24 to 30 minutes or longer would seem that that  
2 would be a very economical fix with a significant  
3 benefit.

4 CHAIRMAN McDADE: But at the same time,  
5 doesn't that effectively say then that the exemption  
6 that was granted by the staff that that should be  
7 effectively redone by Entergy, in other words, saying  
8 that the staff has said in this circumstance 24 to 30  
9 minutes is adequate. But that nevertheless even  
10 though the staff has said that, you're not challenging  
11 the appropriateness, is the staff doing that, that  
12 Entergy should nevertheless make a determination as to  
13 what the costs would be to make it an hour instead of  
14 the 20 minutes and then based on those costs to  
15 increase it to an hour.

16 MR. SIPOS: As part of the SAMA analysis  
17 for the license renewal, the answer is yes, Your  
18 Honor.

19 JUDGE WARDWELL: Okay. And do you agree  
20 that the SAMA analysis as an entity doesn't require  
21 then to do anything necessarily? It's just part of  
22 the decision making process.

23 MR. SIPOS: It's costs --

24 JUDGE WARDWELL: So you're not testifying  
25 then or you're not stating --

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1 MR. SIPOS: Arguing.

2 JUDGE WARDWELL: Arguing that, I get back  
3 to being just -- We won't go into that. You're not  
4 arguing that they should implement anything that's  
5 associated with this contention. You're just saying  
6 there isn't a SAMA associated with a fire protection  
7 at the levels that now are allowed at Indian Point 2  
8 and 3?

9 MR. SIPOS: Yes, Judge. Right now there's  
10 an empty set. We're suggesting it should be costed  
11 out and an analysis of alternatives made.

12 CHAIRMAN McDADE: And to Entergy, assume  
13 for the sake of argument that you did a SAMA analysis,  
14 made a determination that it would cost \$1.08 in order  
15 to upgrade this to an hour. All they're saying is  
16 that you should cost it out as part of the SAMA to do  
17 an alternative.

18 JUDGE LATHROP: Let me ask a question  
19 first. Did you do a probabilistic risk assessment of  
20 the loss of both electrical systems?

21 (Off the record discussion.)

22 MR. O'NEILL: Yes, I'm told -- My expert  
23 said it was part of the IPEEE assessment.

24 JUDGE LATHROP: And how did it rank in the  
25 order of risks that you decided to do SAMA analysis

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1 for? I mean, you stated earlier that you do it based  
2 on the PRAs for the various accidents that you decide  
3 which ones to do SAMA analysis for. So how did the  
4 analysis for this one rank among those that you chose?

5 MR. O'NEILL: Please give me a minute,  
6 Your Honor.

7 (Off the record discussion.)

8 CHAIRMAN McDADE: If you could just hold  
9 on for a second and the reason I do that is having sat  
10 on that side of the table for a while, I know it's  
11 very difficult. Mr. O'Neill is trying to talk with  
12 his expert and get some information. At the same time  
13 if the staff is making a statement, he probably wants  
14 to hear that as well and although he has two ears, it  
15 may be difficult for him to process both at the same  
16 period of time. So I think it puts him in a difficult  
17 position responding without hearing it.

18 I realize it does waste a little bit of  
19 time. But I think in fairness to all the litigants  
20 it's good to allow them not to be trying to do too  
21 many things at once. Let's hear from Mr. O'Neill  
22 first and then from the staff.

23 MR. O'NEILL: We don't want to take  
24 anything away from anybody's discussions. My expert  
25 here -- I'm sorry. I apologize. I'm putting my hand

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1 up to my face again.

2 The analysis that we did would have looked  
3 at impacts much more severe than the impacts that  
4 might result from a difference between 30 minutes and  
5 one hour. In other words, it was a very conservative  
6 bounding assessment. I'm not sure that's directly  
7 responsive to your question. In the nutshell, it was  
8 very bounding conservative analysis that would  
9 encompass the difference between the 30 minutes and  
10 one hour.

11 JUDGE LATHROP: Bounding. What I asked  
12 was had you bounded it by doing the actual risk  
13 assessment.

14 CHAIRMAN McDADE: The initial answer was  
15 yes and then the question is where did it rank and  
16 then I'm not sure I understood the answer.

17 MR. O'NEILL: And I'm not sure --

18 MS. SUTTON: Could you please, Your Honor,  
19 rephrase the question?

20 MR. O'NEILL: Could you repeat the  
21 question?

22 JUDGE LATHROP: There is a possibility  
23 that both of these cable trains will fail at the same  
24 time. That's a probability and the consequence of  
25 that all applied times the probability is the risk.

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1 Did you do that assessment for this particular  
2 accident and then the second part was did it rank low  
3 enough that you didn't feel you had to do a SAMA  
4 analysis for it.

5 MR. O'NEILL: Yes to both questions, Your  
6 Honor.

7 MS. MIZUNO: Beth Mizuno for the NRC  
8 staff. Thank you, Your Honor. It's our understanding  
9 to answer your question that the -- Let me put it the  
10 way that we see it and that might be helpful to you.  
11 It's our understanding that the contention is that the  
12 Applicant did not address the increased risk  
13 associated with the change with respect to the fire  
14 barriers and that increased risk was the loss of both  
15 redundant electrical cable trains.

16 It's our understanding that based on the  
17 Applicant's submission and also their pleadings that  
18 the reason why it's not addressed in the SAMA analysis  
19 per se is because the fire barriers are assumed to  
20 fail, that the cable trains are assumed to fail. When  
21 they talk about conservatism and bounding analyses,  
22 I believe that's what they're trying to get at.  
23 They're just using different language.

24 But it's our understanding that these are  
25 not credited as having any positive effect. They're

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1 assumed to fail and the increased risk is completely  
2 included within the SAMA analysis because the risk of  
3 failure is 100 percent pursuant to the analysis they  
4 did. That is the staff's understanding, Your Honor.

5 And also we would like to -- I would again  
6 like to point out that the Petitioner's contention as  
7 written regards increased risk, not about  
8 alternatives. They simply say in their contention if  
9 you read it which I'm sure you all have that their  
10 focus is on increased risk. It's not on benefit.  
11 It's not on alternatives. It's the failure to address  
12 increased risk and it's our understanding that it is  
13 completely addressed. That's all, Your Honor.

14 JUDGE LATHROP: So you're saying that they  
15 did an analysis. In your opinion, they did an  
16 analysis assuming both of these cable trains failed in  
17 a SAMA analysis.

18 MS. MIZUNO: That's our understanding,  
19 Your Honor, but the Applicant is here. I'm sure he  
20 can answer your question himself.

21 MR. O'NEILL: We agree with that  
22 characterization.

23 CHAIRMAN McDADE: If I can, let me just  
24 ask a question. What you're saying is, yes, it's  
25 based on the increased risk, but that increased risk

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1 is what mandates them doing the SAMA analysis, that  
2 given the increased risk they have to consider what  
3 the alternative is and then make an assessment based  
4 on that as to the comparative costs and whether or not  
5 given the increased risk and assessment of how much  
6 that risk is, how much it would cost to mediate that  
7 risk, that's what they need to do. That's the  
8 analysis.

9 MR. SIPOS: Yes, Judge McDade. And the  
10 comments we've heard from Entergy and staff in the  
11 last five minutes or so I believe they may have added  
12 additional information than is in the record.

13 But I would like to come back to our  
14 contention, our petition, and we specifically  
15 identified the risk that's at the fire will disable  
16 both trains and make it impossible to safely achieve  
17 a hot shutdown or maintain a hot shutdown. That's not  
18 a trivial matter and we also set forth that the risk  
19 was no evaluated in SAMA for the analysis for Indian  
20 Point 3. We cite to the Environmental Report and we  
21 cite to IPEEE. We believe we've provided more than  
22 adequate specificity in support of this contention.

23 And if they believe to the contrary, it  
24 should have been put forth in the opposition and it  
25 was not.

1 JUDGE WARDWELL: And by that last  
2 statement you mean in regards to saying that their  
3 severe accidents that they looked at assume that the  
4 fire barrier wasn't there at all and that both trains  
5 failed.

6 MR. SIPOS: Yes.

7 JUDGE WARDWELL: But even with that you're  
8 also saying that your contention is still viable  
9 because you want them to look at and feel that it's  
10 needed to look at what is the incremental cost  
11 associated with the different fire barriers in  
12 relationship to how it might improve the safety  
13 aspects associated with keeping those trains online.

14 MR. SIPOS: Yes, Judge.

15 JUDGE WARDWELL: Thank you.

16 CHAIRMAN McDADE: Mr. O'Neill, anything  
17 further on that?

18 MR. O'NEILL: Your Honor, I just want to  
19 emphasize the fact that again this appears to be  
20 largely a challenge to the current licensing basis,  
21 the recently approved fire exemption, and to the  
22 extent it is couched as a SAMA contention I just want  
23 to emphasize the fact that it's a NEPA-driven  
24 requirement and the rule of reason applies and the  
25 Commission has said, "It would be unreasonable to

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1 trigger full adjudicatory procedures based merely upon  
2 a suggested SAMA under circumstances which a  
3 petitioner have done nothing to indicate the  
4 approximate relative cost and benefit of the SAMA."  
5 New York has simply not done that here.

6 MR. SIPOS: Judge, if they have done the  
7 analysis, then they should produce it and we'll look  
8 at it. But this is -- I think this morning is the  
9 first time we've heard that.

10 CHAIRMAN McDADE: Okay. Moving on to --  
11 Does the staff have anything further on that before we  
12 move on?

13 MS. MIZUNO: Yes, Your Honor. We've been  
14 focusing on page 95 of Entergy's answer docketed  
15 January 23, specifically the portion that reads, "The  
16 IPEEE did not credit those -- in preventing the fire  
17 damage." And that's the reference we were referring  
18 to, Your Honor.

19 Also I mentioned I think some case law  
20 regarding redrafting contentions and focusing instead  
21 on the contentions as written and provided by the  
22 Petitioners themselves and the case in that regard  
23 which we've cited in our reply is the Savannah River  
24 --

25 (Aside) Pardon? I'm sorry.

1           The case that I would be looking at, Your  
2 Honor, would be Savannah River. It's a MOX case and  
3 it's a Commission decision. It's CLI 01-13 and can be  
4 found at 53 NRC 478. It's a 2001 decision. Thank  
5 you.

6           CHAIRMAN McDADE: Okay. Contention 14,  
7 that the SAMA analysis are incomplete and  
8 insufficient, failed to include more recent  
9 information regarding the time, frequency and severity  
10 of potential earthquakes, failed to include an  
11 analysis of severe accident mitigation alternatives  
12 that could reduce the effect of an earthquake damage  
13 in Indian Point 1 and its systems, structures and  
14 components that support Indian Point 2 and 3.

15           (Off the record discussion.)

16           JUDGE LATHROP: Entergy, how do you  
17 respond to this contention?

18           MR. O'NEILL: Our view initially is again  
19 even though it's couched as a SAMA contention that  
20 it's a challenge to the current licensing basis and  
21 the adequacy of the IP 1 seismic design which we don't  
22 even see as being really relevant here at all. I  
23 mean, the relicensing action is focused on IP 2 and IP  
24 3. IP 1 is only relevant to the extent that certain  
25 systems or components may be relied upon by IP 2 and

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1 IP 3 operations and only relevant to the extent that  
2 we're talking about the aging effects of those IP 1  
3 structures, systems or components.

4 Another point we'd emphasize is that  
5 seismic issues associated with this plant were  
6 thoroughly considered during the initial licensing of  
7 the plant some 30 years ago and there's a decision  
8 documenting that analysis. Again, we would believe  
9 the contention lacks specificity as well as  
10 materiality.

11 They're not really challenging any  
12 specific aspects of our SAMA analysis, particularly  
13 the seismic portion thereof not suggesting that this  
14 new seismic information or supposedly new seismic  
15 information is going to effect the outcome of our SAMA  
16 analysis which we believe is a requirement under  
17 controlling condition case law.

18 CHAIRMAN McDADE: Let me ask sort of a  
19 generic question about SAMA analysis and the first  
20 statement that you made and this has been in the  
21 papers as well and it's been the papers with regard to  
22 many of the contentions based on alleged inadequacies  
23 of SAMA analysis that is's effectively a challenge to  
24 the current operating basis. Question, don't SAMAs  
25 presuppose that the plant is operating in conformance

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1 with the current operating basis in every instance,  
2 that the SAMA is something entirely separate? So it  
3 doesn't challenge whether the plant is operating in  
4 accordance with the current licensing basis. It says  
5 there are additional things that may be done that can  
6 further mitigate the possible consequences of severe  
7 accidents and it is appropriate to do an analysis and  
8 effectively a cost/benefit based on what is the  
9 likelihood, what is the possibility, the  
10 probability/possibility, of this severe accident, what  
11 would it take to mitigate it and after doing that  
12 analysis that's all that's required.

13 Now depending on the result of the  
14 analysis, it's expected that you would then take  
15 appropriate action or that the staff would encourage  
16 the Applicant to take appropriate action. But isn't  
17 it a situation where whenever you have a SAMA analysis  
18 it presupposes that you're already operating in  
19 conformance with the current operating basis, current  
20 licensing basis?

21 MR. O'NEILL: Yes. You're operating your  
22 performance with the current licensing basis.

23 CHAIRMAN McDADE: So why is this done each  
24 instance it's characterized as a challenge to the  
25 current licensing basis?

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1 MR. O'NEILL: Because again we think it's  
2 thinly veiled attempt to urge the Applicant or the  
3 Agency to change the current design basis for the  
4 plant. There's much ado made about the allegedly new  
5 seismic information, but not much is said about how it  
6 would materially effect the outcome of the SAMA  
7 analysis that's contained in our application and it,  
8 as discussed in the application, employs a lot of  
9 conservative assumptions. It discusses certain  
10 enhancements that were made previous beyond the IPEEE  
11 analysis and that's documented NUREG 1742 as well.

12 Again, there are two parts to this  
13 equation where you can say to the Applicant you must  
14 consider this information or you haven't to considered  
15 properly and then you have to explain why, you know,  
16 why your alleged failure to consider that information  
17 properly has effected the outcome of your SAMA  
18 analysis.

19 CHAIRMAN McDADE: Okay.

20 MR. O'NEILL: I don't think the State has  
21 taken it to that level.

22 CHAIRMAN McDADE: But I think you're going  
23 one beyond where my question is at least in my mind  
24 and again I'm trying to clarify. You have done a  
25 number of SAMA analysis. That is a significant

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1 portion of the Environmental Report. In none of those  
2 do you indicate that you haven't been in compliance  
3 with the current operating basis. Even though you're  
4 in compliance you still have found it appropriate to  
5 do a SAMA analysis and in the circumstance here  
6 they're saying that this is another instance where you  
7 should have done a SAMA analysis.

8 They're not saying that you're in  
9 violation of the current licensing basis. They're  
10 just saying that because of this new data here having  
11 to do with seismic, and again not talking as to  
12 whether or not this is new and significant, that's  
13 another issue, but just the allegation is it's new and  
14 significant and this new and significant information  
15 should have been enough not to indicate that you're  
16 not in compliance, but for you to do this analysis of  
17 does this effect the likelihood of a severe accident,  
18 are there things that could be done to mitigate the  
19 possibility of a severe accident that could be caused  
20 by this new data and that you should do an analysis of  
21 it.

22 So if that's the argument, why do you  
23 characterize this as an attack on the current  
24 licensing basis?

25 MR. O'NEILL: Like you said, Your Honor,

1 I mean the analysis is based on the current licensing  
2 basis and they're asking us to assume or presuppose  
3 certain changes to the design basis of the plant  
4 apparently to accommodate this new information.

5 CHAIRMAN McDADE: Okay. And, New York,  
6 correct me here if I'm wrong. That's not what I read  
7 or the way I interpreted what you said. It has  
8 nothing to do with the design basis of the plant. The  
9 design basis of the plant occurred based on the data  
10 that was available at the time and they did it  
11 appropriately. Your allegation here is that  
12 subsequently new information was developed and based  
13 on that new information, not that the plant was  
14 incorrectly designed initially, but just based on that  
15 new information it raises a possibility of a severe  
16 accident and therefore the cost associated with  
17 mitigating that increased possibility of a severe  
18 accident should be analyzed and that that should have  
19 been part of the Environmental Report. Is that -- Am  
20 I correctly interpreting what your allegation is?

21 MR. SIPOS: You are correct, Judge McDade.  
22 We're not challenging the current licensing basis.  
23 We're asking for an analysis.

24 CHAIRMAN McDADE: Based on new  
25 information, in this contention, seismic data that was

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1 not available when the plant was designed but is  
2 available now and your allegation, again not saying  
3 whether it's correct or not, but you're saying that  
4 this seismic data that's available now is sufficiently  
5 different that it warrants further analysis.

6 MR. SIPOS: Yes. Indian Point 1 received  
7 its construction license in 1956. Things have changed  
8 since then in terms of information.

9 CHAIRMAN McDADE: So shouldn't we just  
10 focus on whether or not the new information is  
11 sufficient to warrant an analysis, that it raises an  
12 increased possibility of a severe accident to the  
13 degree that a SAMA is mandated?

14 MR. O'NEILL: Your Honor, again I really  
15 think this is an attempt to inform the Agency or the  
16 Applicant to change the design basis. They say right  
17 in their pleading, "In order to reduce the earthquake  
18 risk for IP 1 and to critical conjoin in adjacent  
19 Units 2 and 3 is necessary to improve the ability of  
20 IP 1's critical components to withstand the effects of  
21 an earthquake." That is directly related to the  
22 plant's design basis.

23 JUDGE WARDWELL: But not if it's only in  
24 regards to the application associated with a SAMA, is  
25 it? That's what the whole contention deals with. It

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1 has nothing to do with the current licensing basis it  
2 doesn't seem to me.

3 MR. O'NEILL: I don't see how you can  
4 separate or divorce them for purposes of NEPA.

5 JUDGE WARDWELL: Could you explain how the  
6 seismic information is incorporated in your SAMAs that  
7 you have done and what areas or give some examples?  
8 I mean, you don't do a separate SAMA based on seismic.  
9 You do some SAMA that the seismic has an influence on  
10 the severe accident or the degrees of them or the  
11 numbers of them or whatever. So how would it fit into  
12 this?

13 MR. O'NEILL: Give me a minute, Your  
14 Honor.

15 (Off the record discussion.)

16 CHAIRMAN McDADE: Following up on an issue  
17 that was raised yesterday, Mr. Turk, even though  
18 Entergy is still located at the same table, we have  
19 been able to find them for questioning today.

20 MR. TURK: Thank you, Your Honor. However  
21 these contentions are not being addressed by me, but  
22 by Ms. Mizuno. So I'm not the direct beneficiary of  
23 your new intent. But I appreciate it.

24 (Laughter.)

25 MR. O'NEILL: Your Honor, could you repeat

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1 the question again? You're asking?

2 JUDGE WARDWELL: How does the seismic data  
3 and analysis thereof influence your SAMAs?

4 MR. O'NEILL: My understanding is they  
5 have to take into account how ground motion might  
6 effect, and the core damage frequency, that's the  
7 thing, how it's going to effect plant systems and it's  
8 reflected in the IPEEE, the original IPEEE.

9 JUDGE WARDWELL: When was the IPEEE  
10 analyses performed or your SAMA analyses if in fact  
11 it's different than what you did for the IPEEE?

12 MR. O'NEILL: The IPEEEs, I believe, were  
13 performed in the mid `90s and updated in -- They  
14 weren't. Okay. So they're telling me that they  
15 weren't updated. They were performed in the `90s.

16 JUDGE WARDWELL: And what did you use?  
17 Seismic information available at the `90s or did you  
18 use the information that was previously used or in the  
19 design of the plant?

20 (Off the record discussion.)

21 MR. O'NEILL: Yes. The NUREG that we used  
22 to prepare the IPEEE specified which information was  
23 available at that time and we used the Lawrence  
24 Livermore seismic data. The IPEEE was prepared in  
25 accordance with NUREG 1407 which is entitled

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1 Procedural --

2 JUDGE WARDWELL: So whatever earthquake  
3 approach or analysis or data that was in 1407 that was  
4 used for the IPEEE.

5 MR. O'NEILL: Yes.

6 JUDGE WARDWELL: How would anyone go about  
7 in a license renewal proceeding handling a situation  
8 where an existing plant was designed and approved at  
9 a location that is now obvious as a much more severe  
10 earthquake area in regards to the SAMA analysis? And  
11 I can give you an example if it helps. Are you  
12 familiar with the Humboldt Plant Licensing site?

13 MR. O'NEILL: I'm not intimately familiar  
14 with it.

15 JUDGE WARDWELL: Have you ever heard of  
16 it?

17 MR. O'NEILL: Yes, certainly.

18 JUDGE WARDWELL: And it's a plant from my  
19 understanding that was licensed but was never built.  
20 Is that correct as far as you know?

21 MR. O'NEILL: Yes.

22 JUDGE WARDWELL: If you don't know that's  
23 fine, too. I just would rather use a hypothetical.  
24 I thought I'd use that.

25 MR. O'NEILL: Okay. That's my

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1 understanding.

2 JUDGE WARDWELL: That was licensed and  
3 has, as I understand it, subsequently been indicated  
4 to be right at a frequent point of the plates along  
5 the West Coast that was not known at the time it was  
6 licensed. That's my understanding. Is that your  
7 understanding or do you have no understanding in that  
8 regard?

9 MR. O'NEILL: That I don't know.

10 JUDGE WARDWELL: Okay. Will you accept my  
11 understanding of it then for an example?

12 CHAIRMAN McDADE: Why don't we assume for  
13 sake of argument?

14 JUDGE WARDWELL: That's what I just said.  
15 So assuming that that's the situation, how does one --  
16 are you arguing that that information if, in fact,  
17 that plant was built and if, in fact, that plant was  
18 going through the licensing renewal process for the  
19 sake of argument, are you suggesting that that  
20 information should be ignored and only use the  
21 previous seismic information in regards to doing the  
22 SAMAs for that situation?

23 MR. O'NEILL: I believe it's really a  
24 licensing design basis issue that would have to be  
25 taken up in Part 50 space.

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1 JUDGE WARDWELL: I'm sure it would. But  
2 separate from that, would it also not have to be taken  
3 up in the SAMA analysis if, in fact, it was done as a  
4 current licensing basis or wasn't it?

5 MR. O'NEILL: The problem I'm having with  
6 the analogy is that it seems like it could be -- That  
7 was an extreme case, Your Honor, and there is  
8 substantially different seismic conditions.

9 JUDGE WARDWELL: We would address the  
10 magnitude of whether that comes to the level of a  
11 threshold. That's a separate issue and I'll have some  
12 questions on that for New York. But for you, I'm just  
13 interested in what appears to be a categorical denial  
14 on your part of anything associated with changes in  
15 situations like this being ignored in the SAMA  
16 analysis in regards to contentions raised by the  
17 potential Intervenors and I wanted to explore whether  
18 or not a situation like that would meet your same  
19 approach or whether or not you would, in fact,  
20 entertain or think it's reasonable to entertain  
21 consideration of those different seismic conditions  
22 like would occur at that particular site.

23 MS. SUTTON: Your Honor, one of the  
24 primary inputs for the SAMA analysis as we've  
25 explained is the IPEEE and the IPEEE is part of your

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1 current licensing basis. So if it needed to be  
2 updated in the situation that you've indicated with  
3 new information that would have to occur as part of  
4 the current plant operating history and would not be  
5 driven by a SAMA analysis for purposes of license  
6 renewal.

7 JUDGE WARDWELL: But if, in fact, it  
8 hadn't been updated yet by the IPEEE, should it still  
9 be excluded from this hearing?

10 MS. SUTTON: Yes, Your Honor, because that  
11 is part of the current licensing basis. The process  
12 that the NRC has established for purposes of license  
13 renewal recognizes that the current licensing basis is  
14 not to be changed for purposes of license renewal.  
15 You rely on your CLB. If it needed to be changed, it  
16 would be changed as part of Part 50 and if an  
17 intervenor believes that it needs to be changed for  
18 that reason, they should raise that as current Part 50  
19 issue.

20 JUDGE WARDWELL: And how do they do that  
21 as current Part?

22 MS. SUTTON: Again, they can go through  
23 2.206 and yesterday we mentioned that and I'll be  
24 specific. "Any person may file a request to institute  
25 a proceeding pursuant to 2.206 to modify, suspend or

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1 revoke a license." And that's what they should do.  
2 The same applies to the fire barrier issue earlier.

3 JUDGE WARDWELL: Thank you. New York, how  
4 do you respond to that and then also how do you  
5 respond to the statements or implications that suggest  
6 that there is a significant enough difference in the  
7 earthquake information to warrant any reevaluation of  
8 it, that there wouldn't result in any differences in  
9 the SAMA analysis?

10 MR. SIPOS: In this proceeding, New York  
11 does not seek to directly or indirectly initiate a  
12 2.206 enforcement proceeding. We understand the scope  
13 of Part 54. We're not trying to do it and I'll repeat  
14 that as long as I have to. It's not what we're about  
15 here.

16 In these contentions, we're trying to  
17 follow through on the SAMA analysis as provided by  
18 Part 51 of the regulations and as we understand those  
19 regulations, they may provide, they provide a platform  
20 to conduct an analysis of costs. Are there mitigation  
21 actions that could be implemented? What are those  
22 costs? And how does it work out on a cost/benefit  
23 analysis?

24 And we hear from Entergy they're  
25 challenging the CLB. They can't do this. They can't

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1 do that. Again, that's not what we're trying to do  
2 here. However, SAMA provides a platform on a going-  
3 forward basis for licensing renewal to weigh the cost  
4 and benefit and depending on how that analysis is  
5 done, if it's done appropriately and accurately which  
6 is all we're seeking, which is what we're seeking to  
7 do here in this contention, that may inform staff's  
8 position. It may inform the Board's position. It may  
9 inform the Commission's decision as to what  
10 conditions, if any, would be imposed for the period of  
11 license renewal, that period now that's four or five  
12 years out in the future.

13 JUDGE WARDWELL: But yet what you're  
14 challenging in this situation is a difference in  
15 seismic information and that as an entity isn't used  
16 as -- You don't evaluate seismic as a SAMA that feeds  
17 into the SAMA analysis. Is that correct>

18 MR. SIPOS: That is correct.

19 JUDGE WARDWELL: Why aren't there  
20 arguments that have been made by Entergy appropriate,  
21 that your avenue to change those parameters in the  
22 SAMA analysis be restricted to petitions for changes  
23 in the current licensing basis as the first step  
24 before you can go to the second step and incorporate  
25 them in the SAMA analysis as I interpret their

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1 argument?

2 MR. SIPOS: I don't know that Part 51 says  
3 before a petitioner may raise an issue for SAMA it  
4 first has to exhaust a 2.206 enforcement proceeding.  
5 I don't think there is the nexus Entergy is trying to  
6 make out here. I believe they can operate on separate  
7 tracks. I believe it's the Petitioner's option to  
8 decide which one of those tracks it wishes to go  
9 depending on the timing, depending on the schedule or  
10 it may pursue both. But I don't think it's a  
11 condition precedent to raise an issue for SAMA  
12 analysis to have completely exhausted a 2.206 or  
13 indeed to even have initiated 2.206.

14 CHAIRMAN McDADE: Isn't it just the  
15 opposite though? Isn't it a situation that they are  
16 necessarily on different tracks, that the SAMA  
17 analysis is just that? It is an analysis. It doesn't  
18 require anything. You do the analysis. It doesn't  
19 affect the current licensing basis.

20 Now depending on the result of the SAMA,  
21 the applicant, Licensee in this case, may decide, "We  
22 have done it. Here is the SAMA. We're not going to  
23 change a darn thing." You as an interested party may  
24 look at it and say, "Looking at that cost/benefit  
25 analysis, we think they should do something. Now we

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1 are going to go to 2.206 and we are going to file a  
2 petition with the NRC to require that they do  
3 something. But at this point, all that we're asking  
4 as an intervenor is that the analysis be done." Is  
5 that correct?

6 MR. SIPOS: Yes, Judge. That is correct.

7 CHAIRMAN McDADE: Okay.

8 MR. SIPOS: And I might have one --

9 CHAIRMAN McDADE: And you would have no  
10 basis at this point for saying that any specific  
11 action under 2.206 should be done at this point until  
12 the analysis is done and you have the result of the  
13 analysis and that you shouldn't be required as a  
14 potential intervenor to do the SAMA yourself in the  
15 first instance, that that obligation is on, in the  
16 first instance, the Licensee to do the SAMA and then  
17 for the NRC staff to analyze it and then for at that  
18 point if you are unsatisfied with what action, if any,  
19 is taken as a result of the SAMA, then you would be in  
20 a position to pursue remedies under 2.206. Am I  
21 correctly understanding your position?

22 MR. SIPOS: May I consult just one moment,  
23 Your Honor?

24 CHAIRMAN McDADE: Okay.

25 (Off the record discussion.)

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1 MR. SIPOS: Thank you, Your Honor, and the  
2 answer is yes. You are correct and one caveat to what  
3 -- Actually one counterpoint to what Entergy is  
4 saying, they have discussed the IPEEE. But as we read  
5 it, that is not part of the current licensing basis.  
6 It was an analysis done 12 or more years ago.

7 JUDGE WARDWELL: What indications do you  
8 have that there would be any changes in the SAMA if,  
9 in fact, the current earthquake information was used?

10 MR. SIPOS: We believe that there are  
11 deficiencies in IPEEE and we have outlined them.  
12 They're in the next contention, Contention 15, and  
13 with specificity we have underscored what those  
14 deficiencies are.

15 JUDGE WARDWELL: And could you repeat  
16 those here now?

17 MR. SIPOS: Right. I'm sorry. There is  
18 also no IPEEE for Unit 1. My understanding is that it  
19 was done for 2 and 3 and not Unit 1 and I would refer  
20 to paragraph 4 of Contention 15 where we are  
21 discussing the IPEEE and specifically the  
22 Environmental report pages 4-64 to 4-67. I believe  
23 it's Appendix E, Attachment E to Appendix E at pages  
24 1-72 to 1-73, the ER at 4-68 to 4-71 and then  
25 Attachment E 3-68 to 3-69 and then the paragraphs that

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1 follow thereon in the Petitioner paragraphs for  
2 paragraph 4, 5, and 6 discuss the deficiencies.

3 CHAIRMAN McDADE: And we have been talking  
4 in the context of Contention 14, but do you agree that  
5 Contentions 14 and 15 are very similar and perhaps it  
6 might be helpful to discuss them together?

7 MR. SIPOS: Yes, and we did that in our  
8 reply.

9 CHAIRMAN McDADE: And let me turn to  
10 Entergy right here. Perhaps a more compelling  
11 argument, as I understand, one of the arguments that  
12 you are making is that the burden is on New York as  
13 the Intervenor to demonstrate that the seismic  
14 information available at the time of licensing and  
15 available now is sufficiently different to trigger a  
16 SAMA, that that is a threshold burden that they have  
17 in order to bring this contention. Is that correct?

18 MR. O'NEILL: That it could result in the  
19 identification of new and/or additional SAMAs that are  
20 potentially cost beneficial.

21 CHAIRMAN McDADE: Okay. But they have the  
22 burden of demonstrating how this data is significantly  
23 different in order to trigger an additional SAMA  
24 analysis.

25 MR. O'NEILL: That is our position. We

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1 believe it's consistent with Commission case law, CLI  
2 -- 17 in particular.

3 CHAIRMAN McDADE: Okay. And how does New  
4 York respond specifically? Where can you point to us  
5 in your petition that explains why the data is  
6 sufficiently different to significantly increase the  
7 possibilities of a severe accident in order to trigger  
8 the additional SAMAs?

9 MR. SIPOS: We had attempted to do that  
10 throughout the entire contentions. There are many  
11 paragraphs in there that have specificity. Before I  
12 had mentioned paragraph 4 and the following paragraph  
13 in Contention 15 and actually it continues on beyond  
14 paragraphs 5, 6, and 7. I would underscore that these  
15 contentions are supported by declarations from  
16 Leonardo Seeber from Columbia University and Dr. Lynn  
17 Sykes also from Columbia University and they review  
18 the progression of seismic data in the past generation  
19 and attempt to set forth, attempt to identify the  
20 significant changes, the advances, the differences in  
21 understanding that we now know in 2007 and that this  
22 region is more susceptible, has higher seismic risk,  
23 than was previously thought.

24 JUDGE WARDWELL: Did they provide any  
25 indication of whether or not that would actually

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1 change any of the results of the SAMAs?

2 MR. SIPOS: No.

3 JUDGE WARDWELL: And do you in your  
4 petition make any statements related to that?

5 MR. SIPOS: Our contention is that the  
6 analysis hasn't been done correctly. We're not  
7 predicting how if Entergy did it correctly what the  
8 results would be and we don't believe it's our burden  
9 at this time to do that. We believe we've raised the  
10 contention.

11 (Off the record discussion.)

12 MR. SIPOS: Right. We do point out and as  
13 I mentioned before that the new data is substantially  
14 different and it's also bolstered by the United States  
15 Geological Survey's review and seismic hazard maps and  
16 analyses.

17 JUDGE WARDWELL: What components of IP 1  
18 are you concerned about that are utilized by IP 2 and  
19 IP 3 that would make any significant difference in  
20 regards to justifying the need for your Contention 14?

21 MR. SIPOS: Yes, Judge Wardwell. We  
22 attempted to set that out in the petition, but also we  
23 repeated it in the reply. But in a file identified as  
24 UFSAR for Unit 1 and it's a misnomer, that file name,  
25 there is the decommissioning plan for Unit 1 and in

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1 those series of documents that are nested in that PDF  
2 file, there are several statements by Con Ed  
3 identifying system and system which will still be in  
4 use. Con Ed uses various terms saying these systems  
5 are integral to the continued operation of 2 and 3 and  
6 they are extensive systems.

7 I would refer the Court to, I believe,  
8 Appendix B to our reply in which we took quotes from  
9 the UFSARs for Unit 2 and Unit 3. But also flipping  
10 back to Contention -- I'm looking in Contention 14.  
11 It may also be in the supporting declarations as well.

12 Just one moment, Your Honor, if I may.

13 (Pause.)

14 MR. SIPOS: I'm sorry, Your Honor. I was  
15 in the wrong contention. Paragraph 4 for Contention  
16 14 has various quotes from that PDF file and it says,  
17 "Unit 1 contains extensive common facilities that are  
18 required for the operation, for the continued  
19 operation, of Units 2 and 3." That's the  
20 decommissioning plan for Indian Point October 1980 at  
21 Section 2.1. "For example, the Indian Point Nuclear  
22 Power Station uses several IP 1 systems including  
23 without limitation" and this is from Con Ed's  
24 statement, "water supply, service boilers,  
25 electricities, integrated rad waste system and a

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1 nuclear steam blowdown purification system."

2           There are additional ones, I believe,  
3 identified in the UFSARs for 2 and 3. Entergy can't  
4 get away from the fact that the systems, structures  
5 and components from this facility which had been  
6 around for a long time are crucial to the continued  
7 operation of 2 and 3.

8           JUDGE WARDWELL: Turning to Entergy, are  
9 there any components, systems and structures that are  
10 from IP 1 that are integral to the safety aspects  
11 associated with the operations of IP 2 and IP 3?

12           MR. O'NEILL: My understanding is certain  
13 structures and components have been s scoped in and  
14 they are certainly looked for purposes of aging  
15 management.

16           JUDGE WARDWELL: That's sufficient to  
17 answer my question. Thank you.

18           JUDGE LATHROP: You mentioned Entergy in  
19 your SAMA calculations that you used conservative  
20 calculations. Does that refer to your use of the  
21 seismic source term in these calculations?

22           MR. O'NEILL: At this point I can't speak  
23 specifically to the source term but I would say that  
24 application, the Environmental Report, does discuss at  
25 some length why the seismic PSA analysis was

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1 conservative. It discusses the various conservative  
2 assumptions, none of which the State really directly  
3 controverts. It talks about sequences and the seismic  
4 PSA involving loss of offsite power were assumed to  
5 unrecoverable. A single conservative surrogate  
6 element whose failure leads directly to core damage  
7 was used in the seismic risk quantification to model  
8 the most seismically rugged components.

9 So there are examples of conservatisms in  
10 the application. This is page 4-65 of the  
11 Environmental Report and those are examples with  
12 respect to IP 2.

13 JUDGE LATHROP: And, Staff, have you  
14 reviewed these SAMA calculations?

15 (Off the record discussion.)

16 MS. MIZUNO: Thank you, Your Honor. The  
17 quick answer to your question is no, we have not. We  
18 are in the process of doing a SAMA analysis of the  
19 Applicant's SAMA submission and the results of that is  
20 going to be published in the supplement to the GEIS.  
21 So we're in process now. So the answer to your  
22 question is no, but we are doing it.

23 And there were questions earlier about  
24 shared systems, structures and components for IP 1  
25 versus IP 2 and IP 3 and it's the staff's

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1 understanding based on the submittal that, yes, there  
2 are shared systems, structures and components and to  
3 the extent that they don't show up in the SAMA  
4 analysis, that's not an example of a deficiency per se  
5 because under probability risk assessment as I've been  
6 educated by my experts when you do the probability  
7 risk assessment if the system, structure or component  
8 is viewed as failing, if you're not going to credit  
9 it, it's not going to show up in the analysis. So  
10 that's one end of the spectrum.

11 On the other end of the spectrum, if this  
12 system, structure or component does not contribute to  
13 risk in any substantial way it's also not going to be  
14 addressed. Both of those ideas make sense. Either it  
15 fails so that's why it's not included because it's not  
16 credited. They don't give it any credit for longevity  
17 or sustained surviving or it's not important.  
18 Therefore, it's not considered.

19 So the fact that a shared system,  
20 structure or component is not in the SAMA analysis  
21 does not mean the analysis is deficient. Thank you.

22 MR. TURK: Your Honor, may I --

23 MR. SIPOS: I'm sorry, Sherman.

24 MR. TURK: May I add a comment in response  
25 to Judge Lathrop's question? Judge Lathrop had asked

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1 about the conservativeness of the seismic source term.  
2 It's my understanding that the seismic PSA in the  
3 seismic analysis done by the Applicant, this was not  
4 a deterministic analysis where you take a ground  
5 motion and you say here is the event that you have to  
6 plan for and what are the consequences or the  
7 mitigation alternatives that come when you have that  
8 event. Rather it's a probabilistic determination  
9 where you look at a whole range of events including  
10 events that far exceed the design basis event.

11 So it's my understanding, for instance,  
12 that the seismic analysis went all the way up to --  
13 Did it go to 1G? I'm informed by our probabilistic  
14 SAMA expert that it went all the way up to 1G as  
15 opposed to the 0.18G that the State said should be  
16 looked at now. But the way that the analysis is done  
17 is you get a different probability for different  
18 magnitude events and that's what's then factor into  
19 the SAMA analysis.

20 If you were to say here's new information  
21 that should be considered, what you would do  
22 essentially is lift the curve. You would get a  
23 different probability for different magnitudes. But  
24 it wouldn't be that you're suddenly considering events  
25 that haven't been considered. You're just looking at

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1 a different curve.

2 JUDGE WARDWELL: Which in turn could  
3 influence the results of the SAMA.

4 MR. TURK: And that's important because  
5 what if the new information was you should assume a  
6 lesser probability for different magnitude events. In  
7 that case your SAMAs might be skewed in the other  
8 direction.

9 So the proper approach we believe is to do  
10 exactly what the Applicant has done. You use the  
11 current design basis for the plant and you use their  
12 individual plant examination of external events to  
13 decide what is the range of events we need to look at,  
14 what is the probability, and how does that affect our  
15 analysis. So we think that our approach is right. We  
16 think going to new information that's not part of  
17 current design basis would skew the analysis and not  
18 necessarily in the right direction.

19 JUDGE LATHROP: Thank you. That was the  
20 kind of discussion I was looking for.

21 MR. SIPOS: Judge, if I may.

22 JUDGE LATHROP: Please.

23 MR. SIPOS: We did call into question the  
24 seismic source term. We believe we pointed out new  
25 information which would undercut the assumptions in

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1 Entergy's submission in IPEEE and just briefly to  
2 respond to a comment made by NRC counsel and merely to  
3 be illustrative, these conjoined systems are crucially  
4 important for one. For example, one is the  
5 circulating water system involving sodium  
6 hydrochloride which may be stored in 4,000 gallon  
7 tanks. This is the substance that's used to spray in  
8 as I understand in containment in various accidents,  
9 clearly, important for safety.

10 CHAIRMAN McDADE: I think basically we  
11 have a good idea with regard to Contentions 14 and 15  
12 of the positions of the parties. It's now about 10:55  
13 a.m. By way of scheduling what I would propose to do  
14 is that we take a ten minute break at this point.  
15 It's only taken us eight hours to get through the  
16 first 15 contentions. So we could be optimistic and  
17 hope to get through the next 17 in an hour and a half  
18 and take a lunch break at 12:30 p.m.

19 So what I would propose is that we take a  
20 ten minute break now, come back at 11:05 a.m., at that  
21 point continue until about 12:30 p.m. and then take a  
22 one-hour lunch break at 12:30 p.m. Is that agreeable  
23 with New York?

24 MR. SIPOS: Yes, Your Honor.

25 CHAIRMAN McDADE: With the staff?

1 MS. SUTTON: Yes, Your Honor.

2 CHAIRMAN McDADE: Entergy?

3 MR. TURK: Yes, Your Honor.

4 CHAIRMAN McDADE: Anything we should take  
5 up before the break?

6 (No verbal response.)

7 CHAIRMAN McDADE: No. We'll see you in  
8 ten minutes. Off the record.

9 (Whereupon, at 10:58 a.m., the above-  
10 entitled matter recessed and reconvened at 11:10 a.m.)

11 CHAIRMAN McDADE: Let's come to order.  
12 Take your seats, please.

13 Let's get started with Contention 16 which  
14 indicates that Entergy's model will not accurately  
15 predict the geographic dispersion of radionuclides  
16 released in a severe accident and Entergy's SAMA will  
17 not give an accurate estimate of the cost of human  
18 exposure as a result. Again this takes into  
19 consideration the applicability of the MACCS2 code  
20 which I think I was referring to earlier as the MACCS2  
21 code. I don't know if that means I was updating it.

22 Judge Lathrop?

23 JUDGE LATHROP: In this contention, the  
24 allegation is that ATMOS model which is part of the  
25 MACCS2 system is not valid for long ranges.

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1           So that strikes me as a direct attack on  
2 the validity of the code system being used outside the  
3 range of that applicability. So how does Entergy  
4 respond to that?

5           MR. O'NEILL: Your Honor, we're going to  
6 stick to our guns on this one and we view it as yet  
7 another generic challenge to the MACCS2 code. It  
8 could apply to any particular proceeding here. We  
9 recognize the distinction that counsel or State has  
10 made relative to the Pilgrim proceeding in terms of  
11 the procedural posture, but we believe that holding is  
12 very persuasive here that generalized attacks on the  
13 adequacy of the MACCS2 code did constitute litigable  
14 issues in this proceeding.

15           JUDGE LATHROP: But New York argues that  
16 in this case the population density outside 32 miles  
17 is sufficiently high, that this is a very important  
18 part and so that seems to me to be unique to this  
19 particular application, not generic.

20           MR. O'NEILL: Well, Your Honor, again, we  
21 don't think they've taken it quite far enough. As the  
22 Pilgrim Board held material with regard to SAMA  
23 analysis, it must be a fact which reasonably can be  
24 expected to impact the conclusion that any particular  
25 mitigation alternative may or may not be cost

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1 effective. So there's got to be some indication that  
2 the asserted errors would cause the results to be less  
3 conservative or in fact to be nonconservative.  
4 Unreasonable for purposes of a NEPA analysis.

5 JUDGE LATHROP: But is the dose is  
6 significantly increased, the population outside 32  
7 mile, then isn't that significant?

8 MR. O'NEILL: Your Honor, I don't think  
9 they've made a showing that that would, in fact, be  
10 the case. They're just suggesting that we use an  
11 alternative model. Again, we're following NRC-  
12 endorsed guidance here using a code that's been used  
13 repeatedly in various SAMA analyses to the approval of  
14 the NRC and they're suggesting that we use an EPA-  
15 approved code, the relevance of which is not  
16 thoroughly explained to us.

17 JUDGE LATHROP: So you're suggesting that  
18 although it might not be accurate outside 32 miles, it  
19 might, in fact, overestimate the dose?

20 MR. O'NEILL: Repeat that, please?

21 JUDGE LATHROP: Well, what I'm saying is  
22 that they haven't shown -- or they might not have  
23 shown a particular result.

24 MR. O'NEILL: Yes, that's correct.

25 JUDGE LATHROP: So how does New York feel

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1 about that?

2 MR. SIPOS: Entergy's burden is to do an  
3 appropriate SAMA analysis. That is a burden that  
4 remains with them throughout this entire proceeding.  
5 We have specifically identified in Contention 16 what  
6 we believe is a deficiency, what we believe is an  
7 inaccuracy. And we believe we have identified that  
8 deficiency with specificity, supported by expert  
9 declarations, excuse me, an expert declaration by Dr.  
10 Egan who has raised questions about how this model  
11 that -- how this aspect of the model, this straight-  
12 line Gaussian plume assumption, how that will affect  
13 the analysis here.

14 Indian Point has unique terrain around it  
15 that can affect the application of the straight-line  
16 Gaussian plume, so it's not only beyond 32 as I  
17 understand it, Judge Lathrop, but it's also closer in,  
18 but indeed, as you point out, there are concerns about  
19 how this model will project dispersion beyond 32  
20 miles. If you get beyond 32 miles, you're well into  
21 the six counties, the six burroughs of New York, in  
22 very densely-populated areas. It's their burden to do  
23 it properly. We believe we have met our burden of  
24 production, if you will, that they haven't.

25 JUDGE LATHROP: As I understand the

1 Staff's answer earlier, that in these systems a whole  
2 range of possibilities is considered, particularly for  
3 the weather and the climate and the terrain, but the  
4 probability of the weather affecting the severe  
5 weather, mild weather, affecting the dispersion of the  
6 plume is covered by doing a whole range of  
7 calculations and then they are weighted, based on the  
8 probability of them happening. So why haven't they  
9 covered everything by doing it that way?

10 MR. SIPOS: A whole range of assumptions  
11 that are inaccurate do not necessarily make the result  
12 somehow more accurate. There are -- our expert, Dr.  
13 Egan has, with a great deal of expertise, has called  
14 into question -- this is an outmoded, obsolete node,  
15 if you will, in the analysis and should not the  
16 analysis be done correctly. New York submits, given  
17 this siting of this plant, that if this is the place  
18 to be very sure that it's done accurately. That's  
19 what New York is interested here, given the population  
20 density. Things we've already discussed I don't wish  
21 to belabor the point, but it has to be done right  
22 here.

23 CHAIRMAN McDADE: Let me ask a couple of  
24 questions. First of all, a procedural question and  
25 then follow it up with a substantive question. The

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1 procedural question you've indicated that you followed  
2 the MACCS2 code has effectively had the imprimatur of  
3 the NRC Staff. It's been used for years. You've done  
4 the best that you could with it.

5 That said, if the Petitioner were able to  
6 demonstrate that that code resulted in an inaccurate  
7 or unreliable result, wouldn't it be appropriate for  
8 them to challenge it here in this proceeding and for  
9 us to have a hearing to determine whether or not that  
10 code was going to produce appropriate data?

11 MR. O'NEILL: Your Honor, we don't believe  
12 so. Again, we believe it's a generic attack on a code  
13 that's had numerous applications.

14 CHAIRMAN McDADE: But first of all, the  
15 question is can they attack the code? That's the  
16 procedural question. Is it permissible for them to  
17 attack the code?

18 The next question is going to be more  
19 substantive which is based on what they've presented,  
20 have they adequately attacked that code to raise a  
21 genuine issue as to its viability in this proceeding?

22 MR. O'NEILL: Yes, Your Honor. They can  
23 attack our particular use of the code, but they have  
24 to do so -- this is where perhaps I disagree. The  
25 burden here is on the Petitioner to proffer an

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1 admissible contention. Certainly, if we have an  
2 admitted contention, we bear the burden of proof, but  
3 the initial burden is on the Petitioner and we don't  
4 believe that the State has met that.

5 This goes to the materiality issue. Is  
6 this going to substantively affect the outcome of our  
7 SAMA analysis? They're not pointing into any  
8 additional SAMAs that may become cost beneficial as a  
9 result of this alleged deficiency in the MACCS2 code.  
10 Their argument, necessarily, must be that we're  
11 somehow underestimating health costs or economic costs  
12 and that has properly skewed our SAMA analysis in a  
13 way that's let us not to include or to identify or to  
14 properly evaluate certain costs beneficial SAMAs.  
15 And we don't think they've made the requisite showing  
16 in that regard.

17 CHAIRMAN McDADE: Well, they claim that  
18 they have suggested that the ATMOS model is  
19 inadequate, that the inadequacy of that ATMOS model  
20 has been noticed by the NRC Staff and specifically  
21 that there are other models, EPA models, that are  
22 demonstrably better at predicting dispersion and that  
23 therefore to continue to rely on the ATMOS model when  
24 these other models are available is inappropriate and  
25 that they should be able to litigate whether or not

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1 the ATMOS model or the other models, the EPA models  
2 better create or estimate what the reality would be.  
3 What's wrong with that argument?

4 MR. O'NEILL: Well, we don't think they've  
5 actually showed any nexus between the models that are  
6 cited. EPA's models which were used to model  
7 dispersion of chemical, there are air pollutants for  
8 purposes of Clean Air Act compliance and they haven't  
9 been used in the nuclear context before, to my  
10 knowledge.

11 CHAIRMAN McDADE: But specifically,  
12 procedurally there's not a problem with their doing  
13 it. Substantively, what you're saying is that the EPA  
14 models on which they rely have to do with the  
15 dispersion of chemical pollutants, that it has to do  
16 with the dispersion of chemical pollutants as it would  
17 affect violations of the Clear Air Act, and that there  
18 needs to be a demonstrable nexus between that and the  
19 ATMOS model that's used in the MACCS2 code here with  
20 regard to the dispersion of radionuclides and it's  
21 your position that they have the burden of showing  
22 that nexus of why the EPA code, the EPA code chemical  
23 pollutants would be applicable here, would be more  
24 applicable and then the next step is that if that were  
25 used, they have the burden not of doing a new SAMA,

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1 but at least demonstrating that it creates a  
2 reasonable potential for the result of the SAMA to be  
3 different.

4 MR. O'NEILL: Yes, that's correct.

5 CHAIRMAN McDADE: Okay. How have you  
6 demonstrated that, do you think? First of all, that  
7 the applicability of the EPA, and again, they point  
8 out in their papers that these have to do with  
9 dispersion of chemical pollutants, not radionuclides,  
10 so how have you demonstrated that these models would  
11 be more accurate than the ATMOS model that they used  
12 in the MACCS2 code here for radionuclides? And then  
13 the next question is why would that affect, even if  
14 that were so, why would it affect -- why do you  
15 believe that there's a reasonable possibility that the  
16 SAMA would be affected?

17 MR. SIPOS: May I have one moment?

18 (Pause.)

19 MR. SIPOS: There were a lot of questions  
20 in there. Let me see if I can answer them in  
21 something of a coherent fashion.

22 First off --

23 CHAIRMAN McDADE: That presupposes they  
24 were asked in somewhat of a coherent fashion.

25 MR. SIPOS: I know they were, Your Honor.

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1 First off, Entergy says this model is not appropriate,  
2 the model that New York is proposing. New York and  
3 its experts say it is. Right there, there's a  
4 dispute. We believe that should qualify this  
5 contention for admission.

6 Going a step further into Entergy's  
7 criticism that the EPA model concerns only chemicals,  
8 radionuclides are a type of chemical. EPA has a  
9 radiation program and is very expert on air  
10 dispersions of a myriad of chemicals. We believe that  
11 it can and should and does include the scenario that  
12 we have here.

13 As to I think the second part of your  
14 question and it may carry over to something that Judge  
15 Lathrop asked before, what's the effect? If one is  
16 mapping out the plume and it's inaccurate, and the  
17 straight-line Gaussian plume, Judge, leads one to  
18 suspect that the plume is going across the river in a  
19 westerly direction to a state park, sparsely  
20 inhabited or an area that is not densely inhabited,  
21 that's by definition going to have an impact on the  
22 outcome whereas an accurate, a more accurate model, 32  
23 miles out, even closer in given the water, given the  
24 effects of the river, given the effects of the  
25 topography could lead to a different result.

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1           At the end of the day, why not use the  
2 best information? It's a theme, I think we're  
3 hearing, actually not only in this contention, but  
4 perhaps this morning. There's new information out  
5 there. We don't think we should look at it. We want  
6 to continue with the way -- we want to continue with  
7 the way we've presented it to the Staff here.

8           It is almost incomprehensible that Entergy  
9 could continue to refuse and Staff supporting them, to  
10 have the -- to do the best job possible here. And if  
11 I could pick up on another point that's been made,  
12 there's been repeated statements this morning, oh,  
13 this is some type of attack on a regulation. It's not  
14 in here. It doesn't say you have to use the straight-  
15 line Gaussian plume. It is something that NRC has  
16 used elsewhere, but we're raising it as an issue here  
17 in this specific context. Our expert has a great deal  
18 of experience in doing air dispersion models,  
19 identifies the large population areas, provides the  
20 distance, Judge Lathrop. That model could well impact  
21 those cities and towns that he identifies. And I come  
22 back to the issue that it is their burden to do it  
23 right and I would also call to the Board's attention,  
24 the Statement of Considerations, when the Commission  
25 promulgated, I believe it's part 2309 and it says

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1 where the Intervenor believes the application and  
2 supporting material do not address a relevant matter,  
3 it will be sufficient for the Intervenor to explain  
4 why the application is deficient. That's the  
5 Statement of Consideration citing to 54 Fed. Reg.  
6 33168 and the jumpsite is 33170.

7 We identify this in our reply at page 84.  
8 That's our burden under 2309. It's their burden to do  
9 it right.

10 And there is actually, I am reminded about  
11 another point, in Pilgrim, first of all, at the  
12 contention admissability stage, the contention was  
13 admitted. Then Entergy went back and they reran their  
14 SAMA analysis. They reran it with new assumptions,  
15 different parameters, and they presented that rerun of  
16 SAMA to the Board at the summary disposition stage and  
17 at that stage the Board said well now that this has  
18 been fully ventilated we don't think going forward in  
19 a split decision that there necessarily needs to be an  
20 evidentiary hearing on that.

21 That Pilgrim decision from October 2007 is  
22 apples and oranges to where we are here. We're at a  
23 completely different procedural juncture.

24 MR. O'NEILL: Your Honor?

25 CHAIRMAN McDADE: Mr. O'Neill.

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1 MR. O'NEILL: Just with respect to the  
2 last point, we think that despite the different  
3 procedural posture, the Board's statements are  
4 directly apposite. I mean if you look at page 22,  
5 footnote 22 of the slip opinion from Pilgrim, the  
6 Board says we note that for a fact to be material with  
7 regard to the SAMA analysis, it must be a fact which  
8 can reasonably be expected to impact the Staff's  
9 conclusions that any particular mitigation alternative  
10 may or may not be cost effective. And they  
11 specifically talk about an affidavit that Mr. Egan had  
12 submitted to that very proceeding. And said Mr.  
13 Egan's vague conclusory statement that the approach  
14 used in MACCS2 modeling changing an uncertain  
15 meteorological pattern has caused the Applicant to  
16 drop -- emphasized -- incorrect cost benefit  
17 conclusions. That fails entirely to address whether  
18 the errors he suggests are present, would or even  
19 could cause the results to be less conservative or in  
20 fact, to be nonconservative.

21 We believe that's the burden of the  
22 Petitioner here, that the State bears and the State  
23 has not met.

24 MR. SIPOS: Judge, in that case they went  
25 back and they did it all over again and that's what

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1 the Board was responding to there. I believe Mr.  
2 O'Neill, what he was describing is what possibly could  
3 be the burden on the State if we were having an  
4 evidentiary trial right in front of the Board at this  
5 time. But we're in front of that. We're not at that  
6 juncture yet.

7 JUDGE LATHROP: Correct me if I'm wrong,  
8 but I don't believe they went back and did everything  
9 again.

10 MR. SIPOS: You're correct.

11 JUDGE LATHROP: They went back and did the  
12 NOAA evaluation scenario again. And that answered one  
13 of the particular objections. They didn't do  
14 everything again. Is that --

15 MR. SIPOS: I believe that's correct, Your  
16 Honor.

17 MR. O'NEILL: We firmly believe this  
18 principle applies here and it's very consistent with  
19 what the Commission said in McGuire, COI217, that  
20 there's got to be some showing of the relative cost  
21 and benefit, but different SAMAs.

22 And I think that flows a lot from the  
23 Statement of Considerations for part 51 which the  
24 Commission said that the IPEEEs that were conducted by  
25 licensees really constituted broad and robust searches

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1 for potential plant enhancements and the Commission  
2 said expressly that it believes it is unlikely that  
3 any site-specific consideration of severe accident  
4 mitigation alternatives for license renewal will  
5 identify major plant design changes or modifications  
6 that will prove to be cost beneficial. They're more  
7 likely to be in the nature of procedural or  
8 programmatic fixes or minor hardware changes.

9 And here there's just been absolutely no  
10 suggestion as to what type of mitigation alternatives  
11 might come into play here as a result of the alleged  
12 deficiencies in the ATMOS model.

13 MR. SIPOS: That's shifting the burden.  
14 And what he has said is standard to win at a hearing,  
15 not a contention of admissability stage.

16 CHAIRMAN McDADE: Okay, I think we  
17 understand the positions on Contention 16. Contention  
18 17, the environmental report fails to include an  
19 analysis of adverse impacts on offsite land use of  
20 license renewal and erroneously concludes that  
21 relicensing of Indian Point 2 and Indian Point 3 will  
22 have a significant positive economic impact on the  
23 communities surrounding the station and under  
24 estimates the adverse impact of offsite land use.

25 Now a question that I have up front is the

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1 Staff indicates item number one is this a category one  
2 or category two environmental issue and the Staff  
3 represents that only tax revenue changes were intended  
4 to be considered as category two issues, the rest  
5 category one, and therefore outside the scope of the  
6 proceeding.

7 Am I correctly understanding what the  
8 Staff's position is?

9 MR. CHANDLER: Christopher Chandler for  
10 the Staff, Your Honor.

11 I'd like to clarify that position a little  
12 bit. That is mostly accurate. The GEIS and Reg.  
13 Guide 4.2 discuss and actually Table B1 in the back of  
14 part 51 discuss population-driven and tax-driven  
15 changes in the license renewal term.

16 The GEIS determined that across the board,  
17 population impacts would be small. Reg. Guide 4.2  
18 explains that both of these issues are considered  
19 category two issues in Table B1 of part 51, so they  
20 are both category two. But until the table is  
21 rewritten, the only thing that the Applicant needs to  
22 consider in the environmental report is they need to  
23 do an analysis of the tax-driven impacts and they need  
24 to only cite back to the GEIS and its conclusion that  
25 population impacts will be small. So there are, in

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1 fact, two category two issues, but there's only one of  
2 which the staff expects an actual analysis because the  
3 analysis of population impacts is done in the GEIs.

4 And the Applicant has done that here.  
5 They have provided an analysis of tax-driven impacts  
6 and they have cited the conclusion in the GEIS about  
7 population.

8 JUDGE WARDWELL: Can you elaborate a  
9 little bit more on why there's necessarily a  
10 prohibition from evaluating the population or relative  
11 impacts associated with that?

12 MR. CHANDLER: Well, Your Honor, I don't  
13 know that I would characterize it as a prohibition  
14 exactly, but certainly it is not required. It is  
15 required that they -- as I said, it is required that  
16 they refer back to the analysis done in the GEIS, but  
17 they don't have to do their own independent analysis.

18 JUDGE WARDWELL: What are the land use  
19 components that you have to evaluate when you prepare  
20 your EIS, your SEIS?

21 MR. CHANDLER: One moment, if you please,  
22 Your Honor.

23 (Pause.)

24 MR. CHANDLER: Your Honor, in the  
25 Supplemental Environmental Impact Statement, the Staff

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1 considers the same two major components, population  
2 and tax-driven changes. The reason for that is when  
3 the GEIS was drafted, those were the two major land  
4 use issues that were found to have any sort of impact  
5 in license renewal terms.

6 JUDGE WARDWELL: Turning to New York, do  
7 you want to elaborate a little bit more on the  
8 analysis of the adverse impacts of the offsite land  
9 use that you feel needs further addressing? You see  
10 how some people feel about the question.

11 (Laughter.)

12 MR. SIPOS: Yes, we'd be happy to address  
13 that. The contention is not meant to be a challenge  
14 to any regulations as some imply. In fact, it takes  
15 the regulations as they exist and looking forward to  
16 the license renewal or looking forward to 20.13 and  
17 20.15, it asks that one of the adverse -- excuse me,  
18 it asks that one of the impacts that be reviewed on  
19 the positive side of the equation is the increase, the  
20 significant increase in land value that will result  
21 from a decision not to renew the license. And  
22 although Staff may not require or not prefer the  
23 Applicant to address it, it is clear that the  
24 regulation provides for this and when Staff says well  
25 --

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1 JUDGE WARDWELL: Where do you feel it  
2 provides for that, just to fix that point?

3 MR. SIPOS: On Table B-1, and last year's  
4 version it's on page 51 of the CFR, offsite land use  
5 license renewal term. And it's significant changes in  
6 land use may be associated and it continues on with  
7 population and tax revenue changes resulting from  
8 license renewal. But that's not all that -- that's  
9 not all that can flow from that decision and it has  
10 not been excluded by the regulation. It has not been  
11 excluded by the Statement of Considerations and it is  
12 a distinct impact, a positive impact, that should be  
13 factored into the equation here. We have submitted a  
14 declaration from an expert who suggests or offers his  
15 opinion that there will be a significant increase in  
16 value when -- if the decision is made not to renew the  
17 license and the site is decontaminated and  
18 decommissioned. It will have a very distinct positive  
19 economic impact on the community, on the surrounding  
20 community.

21 JUDGE WARDWELL: Did I understand you  
22 correctly to say that it is not a direct requirement  
23 of the regulation that that be addresses, it's more  
24 what you are contending should be addressed to  
25 complete the land use evaluation?

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1 MR. SIPOS: One moment, Your Honor.

2 (Pause.)

3 MR. SIPOS: Judge Wardwell, coming back to  
4 this table B-1, the category or the issue is offsite  
5 land use. And there is a description of population  
6 and tax revenue, but it does not exclude changes in  
7 property value. It is certainly not excluded and  
8 because there is an impact on offsite land use, it is  
9 fair, it may fairly be litigated here as part of a  
10 contention, but more generally as part of the NEPA  
11 analysis.

12 JUDGE WARDWELL: In regards to this stage,  
13 are we now addressing what's in the ER?

14 MR. SIPOS: Yes.

15 JUDGE WARDWELL: And is that required to  
16 be submitted by the regulations in the ER?

17 MR. SIPOS: The regulations require an ER  
18 to be submitted and NEPA would or the NEPA regulations  
19 do not preclude this. It is fair -- it is a fair  
20 issue within NEPA. It's an impact that's going to  
21 flow. The ER doesn't address it. We suggest that it  
22 should.

23 JUDGE WARDWELL: Doesn't 51.53(c) outline  
24 very specifically what's required in an ER?

25 MR. SIPOS: Just one moment, Your Honor.

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1 I'm sorry.

2 (Pause.)

3 CHAIRMAN McDADE: If I could interject  
4 while you're thinking about that because I have a  
5 related question to the Staff, I mean specifically  
6 addressing 51.53(c)(3)(ii) and you start with the  
7 premise that the economic, the ER, the Environmental  
8 Report, needs to include the environmental impact of  
9 the action. And it includes the environmental impact  
10 of the action unless it is excluded as a category one  
11 item which is handled generically. If it hasn't been  
12 handled as a category one, then it is open for  
13 litigation in the course of this proceeding. If we go  
14 to the Appendix B to Part 51 as specifically counsel  
15 referred us to -- what was the page you referred us to  
16 earlier?

17 MR. SIPOS: Page 51 of last year's  
18 version, the brown cover.

19 CHAIRMAN McDADE: Okay, 51, and  
20 specifically, it refers to offsite land use license  
21 renewal term and it has that as a category two item  
22 which generally speaking would indicate that it would  
23 be not excluded. It is an environmental impact. It  
24 is not a category one. It would not be excluded.

25 My question to the Staff is how -- can you

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1 explain to me how you have limited this to only the  
2 tax revenue changes here because I'm having a  
3 difficult time sort of following from the regulation,  
4 from the appendix, to the limitation that you're  
5 putting on it.

6 (Pause.)

7 MR. SIPOS: Your Honor, in answer to your  
8 question, the requirements that the Applicant can look  
9 at, population and tax-driven changes, are sort of  
10 focused, as I said, I think I said earlier, it's  
11 driven by what was performed in connection with the  
12 Generic Environmental Impact Statement and is also  
13 spelled out in the Reg. Guide. And the Staff  
14 discussed in considering these issues when creating  
15 the GEIS that those were the two main issues that  
16 would likely cause any sort of significant impact.  
17 And that's why there is sort of a -- it's not  
18 necessarily a limitation exactly, but it's designed to  
19 focus the Applicant's environmental report to these  
20 things which we consider to be the major impacts.

21 CHAIRMAN McDADE: Okay, but as far as the  
22 applicability of the generic environmental impacts,  
23 here New York is saying we have an extremely unique  
24 situation. This is not Grand Gulf, Mississippi. This  
25 is not one of a hundred other nuclear plants in the

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1 United States. This is the situation where we have  
2 presented evidence that if the license renewal were  
3 denied, that I think the evidence they presented was  
4 that the property value within two miles would  
5 increase by in excess of \$500 million and that that is  
6 unique to this particular site and that should be  
7 taken into consideration in the environmental report.

8 MR. CHANDLER: I think the difficulty,  
9 Your Honor, the problem with that argument is that  
10 what -- essentially what they're arguing is that we --  
11 not we, the Applicant in the environmental report  
12 should consider what is basically the no action  
13 alternative. Section 51.53(c)(3) discusses mitigating  
14 alternatives. If you're considering the impact of not  
15 renewing the license, that is basically the no action  
16 alternative, that's considered elsewhere in the  
17 environmental report and it's not considered in  
18 conjunction with this offsite land use requirement.  
19 It's an entirely separate section of the environmental  
20 report.

21 CHAIRMAN McDADE: Why is it not equally  
22 applicable here? I mean what they're saying is -- and  
23 generally speaking if they close down a plant, the way  
24 the Agency looks at it and the way licensees generally  
25 look at it, it's going to have an adverse effect on

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1 surrounding land values. It's going to have an  
2 adverse effect on surrounding tax revenues that in  
3 many instances and I mention some where almost all of  
4 the taxes in the county are directly traceable to the  
5 nuclear plant within that particular county.

6 Here, they're saying it's the opposite,  
7 that if the plant were to close down, that yes, this  
8 is a multi-billion dollar plant, but if the plant were  
9 to close down, there would not be a decrease in land  
10 values, there would be an increase in land values and  
11 that based on that we should at least have a hearing  
12 as to the economic impact of that no action  
13 alternative, that alternative of not renewing the  
14 license, that that's something that needs to be, based  
15 on what they have presented through their expert,  
16 further understood, further explored, and taken into  
17 consideration in making that decision whether or not  
18 to do a license renewal that specifically it needs to  
19 be in their environmental report so that it can then  
20 be taken into consideration in the Agency's  
21 Environmental Impact Statement.

22 What's the fallacy of that argument?

23 MR. CHANDLER: One moment, please, Your  
24 Honor.

25 (Pause.)

1 MR. CHANDLER: Thank you, Your Honor.  
2 There are a couple of points I'd like to make. First  
3 of all, there's an inherent fallacy in trying to  
4 assert the no action alternative as a mitigating  
5 alternative. For one thing, when you're talking about  
6 a mitigating alternative, you're assuming that you are  
7 going to take some action and then do something in  
8 order to mitigate that action.

9 The no action alternative is the exact  
10 opposite of that and so it doesn't mitigate -- it  
11 doesn't mitigate the actions so much as it does not  
12 perform the action and if we were to say the Applicant  
13 should consider denial of the extended operating  
14 license as a mitigating alternative here, there would  
15 be no reason for them to not do that and with every  
16 other category two issue in Table B-1 they could say  
17 well, the mitigating alternative would be to just do  
18 nothing and that would completely undercut the purpose  
19 of having an environmental report. They would never  
20 consider any sort of meaningful mitigating  
21 alternatives. They would just say either do it or  
22 don't do it.

23 The other point I would like to make, Your  
24 Honor, is that --

25 CHAIRMAN McDADE: But it doesn't undercut

1 the environmental report and again, maybe I'm not  
2 making myself clear and I'm just trying to clarify in  
3 my own mind. What they're saying as I understand it  
4 is just that the environmental report is inadequate  
5 because it does not take into consideration the  
6 increase in land values that would occur if the  
7 license renewal were not to occur, and that because  
8 the environmental report is inadequate, the Agency has  
9 to make a decision.

10 The Agency action here is to grant or deny  
11 the license renewal and doing that the Agency has to  
12 take a look at the environmental impact and discuss  
13 that in its Environmental Impact Statement. It can  
14 only do that based on the environmental report that's  
15 submitted by the Applicant and this is a significant  
16 factor as to the environmental impact of that  
17 alternative that isn't taken into consideration. All  
18 they're saying at this point in time is that it should  
19 have been addressed in the environmental report and it  
20 wasn't and it's not expressly excluded as a category  
21 one item, ergo, the environmental report is deficient.

22 And so I'm just looking from the Staff's  
23 standpoint to explain to me in your papers you have  
24 said we don't look at it that broadly. We're looking  
25 only at the tax revenue implications of this and

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1       arguably this does have tax revenue implications  
2       because if the value of the land is going to go up by  
3       hundreds of millions of dollars, generally speaking,  
4       the tax revenues go down because the value of the land  
5       goes down.

6                       Here, the tax revenues go up, but why  
7       shouldn't this just be considered in the environmental  
8       report so that the Agency can then take it into  
9       consideration in preparing its Environmental Impact  
10      Statement?

11                      MR. CHANDLER: Well, for one thing, Your  
12      Honor, the tax revenue impacts that are ordinarily  
13      considered are the tax revenues generated by the plant  
14      itself and the revenues that the plant operator pays  
15      into the coffers of the local government. It's not  
16      local property values. It literally is the land that  
17      the plant itself is on.

18                      CHAIRMAN McDADE: I understand, but why is  
19      it so limited? Doesn't it make sense to include all  
20      of the tax implications?

21                      And I understand generally speaking where  
22      nuclear plants are sited, the significant tax impact  
23      is the tax impact that the plant pays. And in many  
24      instances that has a very significant impact on the  
25      local economy. But here, they're saying that there's

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1 two sides to the coin and that there's money to be had  
2 tax revenues based on the increase in land value and  
3 this is unique, what they're saying as far as any  
4 other license renewal to this point, this is unique.

5 There is no nuclear plant which has land  
6 values within two miles surrounding it that anywhere  
7 approaches that of land values in Westchester County,  
8 around Indian Point. This is unique. It should be  
9 discussed.

10 Why shouldn't it? What in the regulation  
11 excludes it?

12 MR. CHANDLER: Nothing in the regulation  
13 excludes it, Your Honor.

14 CHAIRMAN McDADE: Okay.

15 MR. SUTTON: Nothing in the regulation  
16 requires it and we believe consistent with NEPA we've  
17 had a reasonable approach to this. We've adhered to  
18 the GEIS and the regulatory guidance which does not  
19 require one to look at this.

20 In addition, the proposed federal action  
21 here is continued operation and one would expect as  
22 you're looking at property values at a continued term  
23 you don't see an impact. I can only speculate as to  
24 why the NRC regulations are as they are in their  
25 guidance, but it seems to me there isn't necessarily

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1 a decrease in property value from the point of current  
2 ops to continued ops where you would look for a  
3 decrease in property values (a) in conjunction with  
4 the no action alternative; or (b) ultimately  
5 decommissioning.

6 MR. SIPOS: Your Honor, if I may respond  
7 briefly?

8 As a general matter, backing up a step,  
9 Ms. Sutton says that the major federal action here is  
10 the renewal of a license. That may or may not be, but  
11 we're talking about the impacts -- we're talking about  
12 analyzing this under no action alternative, and the no  
13 action alternative is the decision not to renew the  
14 license and NEPA requires that the impacts of the no  
15 action alternative to be reviewed. And it should not  
16 be a situation where only the disadvantages are looked  
17 at from a license denial decision, but that there also  
18 are some advantages.

19 Second point, Entergy raised this issue in  
20 its environmental report right there. That is grounds  
21 for us to raise a contention. They opened the door.  
22 We are seeking to litigate it.

23 Third, Judge Wardwell, I apologize. I was  
24 unable to answer your question when you posed it.  
25 There's been a fair amount of colloquy which may I

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1 suggest went perhaps to providing an answer, but if it  
2 hasn't, 51.53(c)(3)(i) operates that unless the item  
3 is excluded that it is -- it may be considered and we  
4 submit that is the regulatory vehicle to bring it in.

5 And finally, and perhaps most specifically  
6 to respond to a number of comments that have been made  
7 and questions from the Board, there was a statement  
8 earlier that the GEIS determined that this was -- did  
9 not need to be addressed. And that is an inaccurate  
10 statement.

11 The GEIS did not exclude this issue and  
12 moreover, I would refer the Board to the GEIS at  
13 Section 4.7.4.2, the conclusion and there are several  
14 sentences there.

15 JUDGE WARDWELL: Is this the new reg. of  
16 the GEIS specifically you're quoting or where are you  
17 getting this from? What's this 4 point --

18 MR. SIPOS: I believe it is. The new reg.  
19 of the GEIS, Section 4.7.4.2 conclusion. It does  
20 discuss population and tax impacts, but then it  
21 continues on and it says "because land use changes may  
22 be perceived by some community members as adverse, and  
23 by others as beneficial, the Staff is unable to assess  
24 generically, the potential significance of site-  
25 specific, offsite land use impacts." This is a

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1 category two issue that's beyond the population,  
2 that's beyond the tax impacts. It's clearly squarely  
3 something that we can litigate, given the unique facts  
4 of this case.

5 JUDGE WARDWELL: Turning to the Staff,  
6 will you evaluate the changes in property values as  
7 part of the no action alternative?

8 (Pause.)

9 MR. CHANDLER: Your Honor, we're actually  
10 not sure yet if we will consider that in the  
11 Supplemental Environmental Impact Statement.

12 JUDGE WARDWELL: What determines whether  
13 or not you will consider it or not?

14 And to clarify that while you're chatting  
15 to see if you can listen in to something different out  
16 of each ear, to me you're going to consider -- you  
17 could consider it and then rule it's insignificant  
18 here in regards to the changes in land use values, but  
19 it seems to me that you ought to know now whether or  
20 not you're even going to address that or not. It's  
21 either a threshold thing that comes in and something  
22 you do at each case or you don't.

23 It seems to me it was a generic question,  
24 really.

25 (Pause.)

1 JUDGE WARDWELL: I'm going to withdraw my  
2 question. No seriously. I didn't mean that as a  
3 joke. I'd like to withdraw it and move on because I  
4 think I've got an indication I needed out of that.  
5 It's taken way too long in these technical discussions  
6 over all, in my opinion. It's fine to allow a little  
7 bit of time. We're talking, we're trying not to get  
8 into technical details here in my opinion and to have  
9 this much time spent in this tells me the answer I  
10 think I want to know. So we'll move on.

11 MR. TURK: Your Honor, if I may just  
12 respond briefly? The reason for the discussion is  
13 we're considering the extent to which we would  
14 determine this to be necessary in this case. Really,  
15 the analysis comes down to the -- the Staff's analysis  
16 comes down to what is the reasonableness of what the  
17 Applicant presented in its ER and do we believe that  
18 that meets more and we have not reached that --

19 JUDGE WARDWELL: I hadn't gotten to that  
20 stage. That wasn't my question. My question was do  
21 you -- will you consider land use impacts in your no  
22 action alternative for your SEIS and that's where I  
23 was going to go --

24 MR. TURK: The answer is yes, and --

25 JUDGE WARDWELL: That's all I needed.

1 MR. TURK: And it was considered by the  
2 Applicant in the ER. In their no action alternative  
3 they discuss land use impacts, but they address the  
4 positive effect of the tax benefits of operation and  
5 I do not see in my brief perusal of this section of  
6 the environmental report a discussion of the  
7 countervailing tax benefit that might be caused by  
8 nonoperation of the plant and a rise in values.

9 I would note, however, that the present of  
10 the contention is that the site will be decommissioned  
11 and available for unrestricted use by the year 2025  
12 and I think that's a tremendous stretch and it would  
13 be contrary to anything that has ever happened in the  
14 past.

15 So the premise for the contention,  
16 suddenly you've got this great clearing of the land of  
17 all potential radioactive hazard is -- has no basis.

18 JUDGE WARDWELL: Regardless, I would  
19 appreciate it if you try to limit the answer to the  
20 question that is asked, at least when I'm asking so  
21 that -- I may have a train of thought of where I'm  
22 going with it and that was way beyond where I was  
23 going with it and it consumed too much time in this  
24 hearing.

25 MR. TURK: I apologize, Your Honor.

1 CHAIRMAN McDADE: Anything further with  
2 Contention 17?

3 Okay, if we can perhaps move on to  
4 Contention 18 and sort of grouping Contentions 18  
5 through 22 are I believe sort of safety-based and  
6 analogous to environmental-based Contention 2, 3, 13,  
7 14, and 15.

8 Contention 18, that the license renewal  
9 application fails to comply with the requirements of  
10 50.71(e) because information from the safety analysis  
11 and evaluations performed at the NRC's request are not  
12 identified or included in the UFSAR.

13 Why isn't this part of the CLB and outside  
14 the scope of the proceeding?

15 MR. SIPOS: For the reasons we discussed  
16 yesterday, the UFSAR as Staff and as the NRC has  
17 acknowledged, is a vital part of the CLB, but as Mr.  
18 Lochbaum identified in his declaration, there are  
19 significant gaps in the UFSAR which lead to the CLB  
20 being unascertainable and because of that the  
21 prohibition, I believe it's in 54.30, would not apply.  
22 We're not seeking to challenge the CLB. We're saying  
23 it's unascertainable and therefore these safety  
24 contentions and Judge McDade, you are right to group  
25 them and you're right about their antecedents in your

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1 description, these safety contentions can come into  
2 play.

3 CHAIRMAN McDADE: But specifically, you're  
4 saying that because those safety evaluations have not  
5 been made part of the updated safety evaluation  
6 report, that you have no way of properly assessing  
7 whether the aging management plans are adequate?

8 MR. SIPOS: Yes. But these contentions  
9 are safety-related whereas the previous ones, the ones  
10 we discussed yesterday were discussing ascertaining  
11 and the contours of the CLB and how one would go about  
12 determining whether an AMR was done correctly. Now  
13 we're moving beyond that, we're taking that predicate  
14 and we're moving them here from 18 to 22.

15 JUDGE WARDWELL: Say that again? I mean  
16 that confused me, because 2 and 3 are definitely  
17 safety issues, aren't they? Certainly 4 is a NEPA --2  
18 and 3 are safety issues, so that is not merely going  
19 from NEPA issues to safety issues. We're going from  
20 one type of safety issue to another type.

21 MR. SIPOS: I used safety imprecisely  
22 there. I'm sorry, Your Honor. Two and three are  
23 safety contentions, but these are safety contentions  
24 that we believe -- 18 to 22, I think as we put forth  
25 in our petition, there could be a bar, but for the

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1 fact that we're seeing the CLB is not ascertainable.  
2 And then we can bring these five contentions in.

3 54.30 would bar us from raising a  
4 contention that someone is not in compliance with  
5 their CLB. We're saying because there is no readily  
6 ascertainable CLB that bar in 54.30 allows us to raise  
7 these contentions because that bar is not applicable  
8 and then -- we're saying that they're not in  
9 compliance with the regulations we cite here in the  
10 contentions. And the regulations we cite in the  
11 contentions in the bold text are different provisions  
12 from what we cited -- we may have cited earlier in  
13 other contentions.

14 CHAIRMAN McDADE: And again, I don't want  
15 to plow a lot of ground that we plowed yesterday.  
16 Lord knows we spent enough time plowing it. Am I  
17 correct that with regard to these, the position of  
18 Entergy is our CLB is ascertainable. You explained  
19 yesterday where to go find it, what goes into it based  
20 on the definition in the regulation. The NRC staff  
21 indicated that those documents are docketed. Those  
22 documents that are docketed are what constitutes the  
23 CLB. Since it is ascertainable, this is an attack on  
24 the CLB. That attack on the CLB is precluded by 54.30  
25 and basically, the same arguments as we addressed

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1 yesterday.

2 Is there anything further that we need to  
3 address? I mean specifically, let me ask of New York,  
4 are there any specific safety analysis and evaluations  
5 that you want to bring to our attention today that you  
6 say are not ascertainable, or have not been docketed?  
7 We know they exist. They have not been docketed,  
8 therefore they are not part of an ascertainable CLB?

9 MR. SIPOS: Mr. Lochbaum's declaration in  
10 the accompanying chart lists a number of such issues.  
11 I won't repeat them here in the interest of time, but  
12 it provides great specificity.

13 One point, to follow up on a comment  
14 Entergy made yesterday, they said well, look at the  
15 general design criteria regarding GDC 19. They  
16 provided the citations. We went and looked at it  
17 yesterday afternoon for Unit 2. And the text is quite  
18 telling. There's two different versions of GDC 19 and  
19 they say different things and they appear to be  
20 substantively different. It further underscores New  
21 York's concerns which we discussed yesterday regarding  
22 which GDC is it?

23 (Pause.)

24 Your Honor, just perhaps in summary, we're  
25 saying there is no CLB and because there's no CLB,

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1 54.30 doesn't apply. We get to raise these five  
2 contentions which challenge the failure to comply with  
3 NRC regulations and 54.35 requires compliance.

4 (Pause.)

5 JUDGE WARDWELL: Why haven't you already  
6 said this in 2 and 3? Why isn't this a repeat on an  
7 elaboration of what was already covered in 2 and 3 and  
8 merely just additional bases disguised as individual  
9 contentions?

10 Time's up. I do apologize if I was a  
11 little curt to you, Mr. Turk, but I had reached my  
12 limit.

13 CHAIRMAN McDADE: Start with the premise  
14 that old people get crotchety towards lunch time.

15 (Laughter.)

16 JUDGE WARDWELL: Notice I didn't deny  
17 that, any of those components.

18 MR. SIPOS: The underlying facts are the  
19 same, but the implications are different. Two and  
20 three were raising questions about would these  
21 deficiencies that we identify, how can we be sure that  
22 a proper AMR, Aging Management Review, is done and  
23 what are the implications for that? We believe that's  
24 straightforward generic.

25 These five contentions are sharing factual

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1 predicates to be sure, however, the implications are  
2 different and 54.35 says there must be compliance with  
3 all regulations and we are saying if there is no CLB,  
4 no readily ascertainable CLB, we get to now raise  
5 these contentions as well here because the bar of  
6 54.30 which we acknowledge would ordinarily apply does  
7 not apply here. Same facts, different implications.

8 JUDGE WARDWELL: Thank you.

9 CHAIRMAN McDADE: Moving forward to New  
10 York Contention 23 which indicates that the license  
11 renewal application fails to comply with the  
12 regulations because the Applicant has not proposed  
13 comprehensive baseline inspections to support its  
14 relicensing application and proposed 20-year life  
15 extension.

16 Where do we look to determine that they  
17 need to do a comprehensive baseline inspection?

18 MR. SIPOS: Ms. Matthews will be  
19 responding.

20 MS. MATTHEWS: I don't have a microphone  
21 right here, but I'll do my best and I think you will  
22 be able to hear me.

23 Joan Leary Matthews.

24 CHAIRMAN McDADE: Can the audience hear?  
25 Would it be possible for you to just move up to the

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1 desk?

2 MS. MATTHEWS: Sure.

3 (Pause.)

4 MS. MATTHEWS: Your Honor, I'm being  
5 requested if we can make this move after lunch?

6 MR. SIPOS: To save some time.

7 CHAIRMAN McDADE: Well, I mean it's not  
8 that far to move.

9 MR. SIPOS: No, but it's a lot of stuff.

10 MS. MATTHEWS: Do you want to break now  
11 and we'll come back earlier?

12 CHAIRMAN McDADE: Not really.

13 MS. MATTHEWS: Okay, I'll do whatever you  
14 want.

15 CHAIRMAN McDADE: Do you need to schlep a  
16 lot of stuff up there or don't you already know it?

17 (Laughter.)

18 MS. MATTHEWS: I think it was a matter of  
19 clearing out first.

20 CHAIRMAN McDADE: Everybody is abandoning  
21 you. They don't want to sit with you.

22 MR. SIPOS: No, we want everyone to hear  
23 her.

24 CHAIRMAN McDADE: You just want to get  
25 away from us, I know.

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1 MS. MATTHEWS: Your Honor, I think your  
2 question was what is the requirement --

3 CHAIRMAN McDADE: We want to find the  
4 requirement that they do this kind of baseline  
5 inspection.

6 MS. MATTHEWS: Well, it's really a basic  
7 engineering 101 requirement. We know that under the  
8 regulations they are supposed to identify those  
9 systems, structure, and components that fall within  
10 the scope of 54.21(a) and therefore is subject to  
11 aging management review.

12 So the baseline inspection will provide a  
13 -- and there is a need for a more extensive  
14 characterization of the plant to begin with. So that  
15 you have this baseline against which you can compare  
16 the performance of the plant 20 years into the future.

17 So it really is a basic engineering  
18 principle --

19 CHAIRMAN McDADE: Putting aside  
20 engineering 101 and putting it in context, what you're  
21 saying is 54.21 requires an integrated plant  
22 assessment and that this baseline is integral to the  
23 integrated plant assessment that's required by 54.21?

24 MS. MATTHEWS: Precisely.

25 JUDGE WARDWELL: Why doesn't the IPA serve

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1 the role of your baseline inspections that you're  
2 talking about?

3 MS. MATTHEWS: Our expert, Dr. Richard  
4 Leahy from RPI had looked at that and had determined  
5 that it was lacking and he identified specific parts  
6 of it. And as I understand Entergy's response, they  
7 are saying that while we have all of these inspection  
8 requirements, we have submitted extensive information.  
9 But they never came back and disputed the type of more  
10 extensive characterization of the plant and the  
11 specifics that Dr. Leahy had provided in his  
12 declaration in which we incorporated into the  
13 contention.

14 JUDGE WARDWELL: Turning to Entergy, why  
15 isn't it reasonable to require or perform more  
16 extensive baseline inspections as part of the IPA in  
17 order to provide that baseline that's really needed to  
18 track AMP during the license renewal period?

19 MR. O'NEILL: Your Honor, it's simply not  
20 required by the regulations. Our view is that we've  
21 complied with Part 54 and the relevant guidance in  
22 terms of preparing our IPA. It's discussed or  
23 described in Section 2 of the LRA. We did the  
24 necessary scoping and screening processes that are  
25 called for by the regulations and as far as we're

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1 concerned this is just a flat out challenge to what's  
2 required by the regulations.

3 JUDGE WARDWELL: Are those regulations  
4 specific enough such that the differences between what  
5 they're suggesting, what New York is suggesting and  
6 what you performed are clear that it's beyond what's  
7 necessary to actually track any aging management  
8 associated with the real period?

9 I'm asking are the regulations and I  
10 assume it's not specific in the regulations, but  
11 you're also using reg. guides or some other documents  
12 that you use for guidance to indicate how you're going  
13 to approach your IPA and how you had implemented your  
14 IPA and whether or not there's enough specificity in  
15 those that it's clear that what they're suggesting  
16 would never fall within the realms of that suggested  
17 by the guidance that you used in doing your IPA?

18 MR. SUTTON: Well, Your Honor, we have  
19 used the regulation, not just the guidance in  
20 performing our scoping and screening for purposes of  
21 the IPA in fully complying with those regulations, we  
22 believe our scoping and screening methodology is  
23 robust and complete. It's fully described in the  
24 application. And if New York disagrees with the  
25 nature of the scoping and screening process, then it

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1 has to proceed through a rulemaking process to change  
2 those rules. We are in full compliance with the  
3 rules.

4 JUDGE WARDWELL: And are you suggesting  
5 that the differences that Leahy has presented in the  
6 declarations are in direct conflict with those rules?

7 MR. SUTTON: Yes, Your Honor.

8 JUDGE WARDWELL: And did you point that  
9 out in your answer?

10 MR. O'NEILL: I believe we did, Your  
11 Honor.

12 MR. SUTTON: One second.

13 (Pause.)

14 MR. O'NEILL: Well, Your Honor, on pages  
15 127 to 128 of our answer, I mean we specifically  
16 stated that the requests that Petitioner is making in  
17 terms of inspections go beyond what's set forth in the  
18 regulations and that certain encompasses what was said  
19 by their expert here.

20 JUDGE WARDWELL: Could one not say that's  
21 a pretty general statement though that doesn't really  
22 address the items that they have raised, but matter --  
23 a conclusory statement on your part in regards to  
24 addressing what they had brought up specifically -- as  
25 I understand was specifically presented in the Leahy

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1 declaration?

2 MR. O'NEILL: You know, again, Your Honor,  
3 I'd have to go back to the fact that part 54 calls for  
4 scoping components to determine which ones are within  
5 license renewal and screening to determine which ones  
6 are subject to aging management.

7 As Ms. Sutton pointed out, that process is  
8 described wholly in the application and we submit that  
9 it's compliant with the current NRC requirements.

10 JUDGE WARDWELL: Thank you.

11 MR. SUTTON: Yes, Your Honor, there are --  
12 on page 126 of our answer, there are instances in  
13 which we are citing to the Leahy declaration,  
14 particular paragraphs therein as to why we believe  
15 that Petitioner's claims are unfounded.

16 JUDGE WARDWELL: Thank you.

17 CHAIRMAN McDADE: Let me go to New York.  
18 We start off with the regulation itself which is  
19 54.21. That regulation specifically has a requirement  
20 for an integrated plant assessment and it then goes on  
21 and explains in the regulation what an integrated  
22 plant assessment consists of.

23 Can you give us some examples specifically  
24 of where in your view the integrated plant assessment,  
25 as described in 54.21, is deficient?

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1 MS. MATTHEWS: Yes. In Dr. Leahy's  
2 declaration in paragraph 24, and we're pulling that up  
3 now. He provides those kinds of specifics. He says  
4 that, what he's suggesting for the inspections, visual  
5 and physical characterization and non-destructive  
6 testing, the NDT of structures and components,  
7 including the RPV, RPV heads and fittings, control rod  
8 drive mechanisms, and associated RPV penetrations,  
9 most RPV internal hardware, and all key welds and  
10 fittings in the primary and secondary systems of the  
11 reactors. I think I'm answering your question.

12 CHAIRMAN McDADE: Well, he is saying, as  
13 I understand it, that he thinks that that would be  
14 advisable. But specifically my question is Entergy  
15 has described what they have done in their IPA. And  
16 one could argue, and I think Entergy has argued that  
17 Dr. Leahy has expressed his opinion, and he has  
18 expressed his opinion that these kinds of inspections  
19 would better inform the IPA. However, what Entergy is  
20 saying is that at nowhere does Dr. Leahy demonstrate  
21 that what they have done is inadequate under the  
22 express language of the regulation, that it well may  
23 be advisable in Dr. Leahy's opinion, it might be a  
24 better way of going, but that the scoping and  
25 screening that they have done complies with the

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1 regulation.

2 As a result, their IPA is adequate under  
3 54.21 and what I'm looking for is something in the  
4 Leahy declaration that you could point to that  
5 specifically says one or more aspects of the IPA are  
6 in fact inadequate.

7 MS. MATTHEWS: Okay, there is a lot there.  
8 If I could break it down just a bit. First, if I  
9 could address Entergy's approach to what they have  
10 done and what the regs do or do not require and then  
11 move into what Dr. Leahy said.

12 What Entergy is saying is that they have  
13 just described for you now, today, and in their papers  
14 before today, an approach that they have taken to  
15 constructing the IPA. And then they have said that  
16 they have filed the guidance, and the guidance is just  
17 guidance. That's just what it is. It's an opinion  
18 just as Dr. Leahy is offering an opinion. The  
19 regulations do not spell out in great detail what kind  
20 of an IPA that they are required to do. It is, it  
21 really comes down to a dispute between the experts.

22 Now if I could go into what Dr. Leahy's  
23 position is, and why that is so important, and I don't  
24 mean to be flippant when I say that it is engineering  
25 101. But his position is that you need to have a more

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1 extensive characterization of the plant so that you  
2 can measure the performance of the extended plant  
3 operations over time. And if you don't know what  
4 you're dealing with right now, and he provides a clear  
5 road map for how to figure out what you're dealing  
6 with now, then you won't know what you got as you're  
7 going down that 20-year road.

8 So I think I'm answering your question,  
9 Your Honor? And also in his paragraphs 25 and 26 of  
10 his declaration, that's discussed in more detail.

11 (Pause.)

12 CHAIRMAN McDADE: I certainly understand  
13 the theory, and I guess I'm just looking for some more  
14 help in understanding the Leahy declaration. I mean,  
15 the theory is that without the kind of an audit,  
16 without the kind of investigation that Dr. Leahy  
17 suggests, it is impossible to properly inform oneself  
18 as to the identity of the structures and components  
19 subject to aging management and what the aging  
20 management plan for those structures should be over  
21 the next 20 years.

22 But understanding that as a premise and as  
23 an argument, what I am looking for are if you could  
24 just address me to the specific statements, the  
25 specific facts that Dr. Leahy puts forward that you

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1 believe support that conclusion that demonstrate that  
2 the IPA, as submitted in the license application, is  
3 inadequate.

4 MS. MATTHEWS: Again, Your Honor,  
5 paragraphs 24, 25, and 26 help to inform the  
6 discussion here. The real answer is whose burden is  
7 it to devise and divine and submit an inspection  
8 program, and that's Entergy's burden. Our expert has  
9 reviewed that inspection program and said it is  
10 insufficient right now to provide the backstop, or the  
11 baseline, to which we can measure performance in the  
12 future. I don't mean to keep repeating myself, but  
13 that's really what it is.

14 And those kinds of details, you know, once  
15 we determine that it is deficient right now, if it is  
16 a dispute between the experts, and by the way, Entergy  
17 didn't have much to say about Dr. Leahy. They have  
18 one paragraph on pages 126 of their answer, just  
19 deriding him and attacking him personally. They  
20 didn't say anything about the specifics that he had  
21 raised.

22 But as far as those specifics and moving  
23 forward, we have a dispute between the experts now and  
24 then we're headed into a hearing if this Board accepts  
25 this as a contention. That's really what it comes

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1 down to is dispute between experts.

2 CHAIRMAN McDADE: But isn't there an  
3 additional step? There's nowhere in the regulations  
4 that in hoc verba requires the kind of inspection you  
5 suggest. The regulation requires an integrated plant  
6 assessment. Entergy has provided an integrated plant  
7 assessment. Entergy is saying, based on the  
8 regulation and based on NRC case law that the burden  
9 is on the intervenor, initially, to demonstrate a  
10 deficiency with the integrated plant assessments.  
11 Specifically, where it is deficient and then what the  
12 basis is that you have generally said that it can't be  
13 sufficient because there's inadequate underlying  
14 inspection, investigation, which is necessary to put  
15 it together.

16 What I guess I'm looking for you to do is  
17 to tell me something other than just go to the Leahy  
18 declaration, it's there, but to give me some examples  
19 of some of the concrete things in the Leahy  
20 declaration that you think is not only suggesting a  
21 better way of doing it, a better investigation,  
22 inspection, create a better baseline, but to  
23 demonstrate that a specific portion of the IPA that  
24 they have submitted is deficient within the meaning of  
25 the regulation, within the meaning of 54.21.

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1 MS. MATTHEWS: Yes, and I would say two  
2 parts, two answers to your question, Your Honor.  
3 Number one, the regulations do not define the  
4 boundaries of that inspection either. Okay, it's not  
5 a checklist where it clearly defines the boundaries of  
6 it. And so Dr. Leahy looked at what Entergy had  
7 prepared and submitted and said it is insufficient.  
8 And for example, they had not done a thorough visual  
9 and physical characterization of, and what I had read  
10 before, of the nondestructive testing of at least the  
11 RPV, etcetera. And a whole litany, a whole list of  
12 areas that he found to be deficient to which Entergy  
13 never responded, never responded.

14 And in paragraph 25, Dr. Leahy explains  
15 the significance of not having what he describes in  
16 paragraph 24. So we connect the two.

17 CHAIRMAN McDADE: Okay, anything further  
18 from Entergy on this?

19 MR. SUTTON: No, Your Honor, just that  
20 counsel for the State makes it clear that there is "a  
21 dispute between the experts". There is no dispute  
22 between the experts. There is a dispute Dr. Leahy and  
23 the NRC regulations and that's what is clear in our  
24 answer.

25 CHAIRMAN McDADE: Nothing further with

1 regard to New York Contention -- I'm sorry, Mr. Turk.

2 MR. TURK: I'm not interrupting, I was  
3 waiting for you to conclude.

4 CHAIRMAN McDADE: I thought you had a  
5 question. Do you have something to comment on  
6 Contention 23?

7 MR. TURK: No.

8 CHAIRMAN McDADE: Okay, what I was going  
9 to do is suggest that we break for lunch. Did you  
10 have something before we break for lunch?

11 MR. TURK: I had two housekeeping matters  
12 before we broke for lunch that I wanted to address.

13 CHAIRMAN McDADE: Okay.

14 MR. TURK: First of all, it appears that  
15 you passed Contention 22, which is fine because I  
16 don't see a need to argue it. I would just point out  
17 that there is an error on page 71 of our response to  
18 the State. There is something appears to be quotation  
19 from the Commission, statement of consideration that  
20 actually should be a paraphrase. I just didn't want  
21 you to rely on that.

22 CHAIRMAN McDADE: Okay, this is the other  
23 than with respect to language?

24 MR. TURK: Yes, sir. I can get you the  
25 exact language. It is a quotation on page 71, in the

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1 first full paragraph --

2 CHAIRMAN McDADE: You've indicated that it  
3 is part of the Statement of Consideration, the  
4 Commission stated other than with respect to aging  
5 issues and issues that arise when significant new  
6 information becomes available, the NRC does not  
7 inquire into safety issues in the license renewal  
8 process, but presumes that the current regulatory  
9 process is adequate. You're saying they didn't say  
10 that directly, that's a paraphrase.

11 MR. TURK: That's a paraphrase by someone  
12 who is writing this answer and it is actually slightly  
13 incorrect. The Statement of Considerations speaks for  
14 itself.

15 CHAIRMAN McDADE: Okay.

16 MR. TURK: And the second matter I would  
17 note is the Board had directed us to advise whether or  
18 not we are available for April 1st for arguments on  
19 WestCAN's petition?

20 CHAIRMAN McDADE: Yes.

21 MR. TURK: And I believe you asked us to  
22 do that by 5 p.m. yesterday, so unfortunately I didn't  
23 think of doing that when we concluded yesterday.

24 CHAIRMAN McDADE: Neither did we.

25 MR. TURK: But the Staff is available.

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1 CHAIRMAN McDADE: Okay, thank you. What  
2 about Entergy?

3 MR. BESSETTE: Entergy is available also,  
4 Your Honor.

5 CHAIRMAN McDADE: Okay, and we have not  
6 heard anything back on that that we're aware of from  
7 the intervener there. It's 12:35 now. Should we come  
8 back at 1:35 from lunch and take up where we left off?

9 (Whereupon, at 12:35 p.m., proceedings  
10 werer recessed, to reconvene at 1:35 p.m.)

11 CHAIRMAN McDADE: We will start with New  
12 York contention number 24, "The license renewal  
13 application fails to comply with the regulations  
14 because the applicant has not certified the integrity  
15 of the containment structures and has not committed to  
16 an adequate aging management program to ensure the  
17 continued integrity of the containment structures  
18 during the proposed life extension."

19 New York indicates that NUREG 1801  
20 requires enhanced inspection because the  
21 water/concrete ratio exceeds the ratio set by NRC.  
22 And this inspection is necessary in order to manage  
23 aging. Specifically where in 1801 do you refer us?

24 MS. MATTHEWS: We'll try to get that  
25 specific reference for you, Your Honor.

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1 CHAIRMAN McDADE: Okay. Let's start from  
2 the standpoint of the NRC staff. Do you consider that  
3 the water/cement ratio here is a problem? If not, why  
4 not?

5 MR. ROTH: No, Your Honor, we do not  
6 consider it to be a problem. Look, as we are reading  
7 part of the contention, they are alleging that the  
8 current water to concrete ratio was unacceptable. And  
9 the NRC should exercise regulatory discretion and take  
10 some action now.

11 That is clearly a current licensing issue,  
12 not a license renewal issue. And with regards to  
13 their statement that the NUREG supports this expanded  
14 inspection, that is simply not in the NUREG.

15 CHAIRMAN McDADE: Okay. Is there anything  
16 in 1801 that you're aware of that would suggest that  
17 enhanced inspection is necessary under these  
18 circumstances in order to support an aging management  
19 plan?

20 MR. ROTH: For the containment? No, Your  
21 Honor.

22 CHAIRMAN McDADE: Okay. Is that  
23 consistent with Entergy's position?

24 MR. O'NEILL: Yes, Your Honor.

25 MS. MATTHEWS: Your Honor?

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1 CHAIRMAN McDADE: Yes?

2 MS. MATTHEWS: We're not saying, of  
3 course, that they need to rebuild the domes. We're  
4 just saying that if this plant were built today, it  
5 would be built to a different construction standard.  
6 And since it is not, then it needs an additional look  
7 over the extended licensing period.

8 That's the basis of our contention.  
9 That's what our contention is all about.

10 CHAIRMAN McDADE: Okay. But the  
11 containment structure is subject to an aging  
12 management plan, is it not?

13 MS. MATTHEWS: Yes, it is.

14 CHAIRMAN McDADE: Okay. And what  
15 specifically do you indicate is not adequate about it?

16 \*\*MS. MATTHEWS: Well, in the contention, we are  
17 asking for an enhanced inspection. And NRC staff is  
18 correct when they say that they have gotten their  
19 papers that this is a current licensing basis issue.  
20 That is their position.

21 However, it is not treated as a current  
22 licensing basis issue. In fact, these enhanced  
23 inspections are not occurring. And so this is the  
24 moment in time for the extended licensing review, the  
25 extended license review, where we can seek to have

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1 that enhanced inspection be imposed for 20 years into  
2 the future.

3 It is not being addressed now. They say  
4 that it is a current licensing basis issue, but it, in  
5 fact, is not being addressed as a current licensing  
6 basis issue. And, in any event, this arises because  
7 of the extended license period. \*\*CHAIRMAN McDADE:  
8 Okay. But specifically, as I understand, the position  
9 of Entergy is that they have addressed an aging  
10 management plan for the containment structure, that  
11 that is specifically addressed in the license renewal  
12 application 2.4-2.

13 And the question then is, is there  
14 anything specifically that is deficient in their  
15 treatment of the aging management plan for the  
16 containment structure?

17 MS. MATTHEWS: Yes. They are not  
18 proposing to do any enhanced inspections given that  
19 the cement/water ratio is different, the old standard  
20 is different, than what it would be built today.

21 CHAIRMAN McDADE: Okay. And what they are  
22 saying is that there is no regulatory requirement for  
23 them to do an enhanced inspection, that they met the  
24 applicable -- and I believe at the time, it had to do  
25 with -- was it the Concrete Institute?

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1 MR. O'NEILL: Yes, the ACI-318.

2 CHAIRMAN McDADE: Yes, was the applicable  
3 standard, that they met that applicable standard. So  
4 that there was not a problem at the time that the  
5 plant was built, that under the regulation, they do  
6 have an aging management plan. But their position is  
7 that there is no requirement under the regulation for  
8 enhanced inspections, as suggested by New York. \*\*And  
9 my question, then, went back. You know, the original  
10 reference had been at some place in NUREG 1801, it is  
11 suggested that these enhanced inspections were  
12 necessary and that the question is, you know, where do  
13 you rely.

14 MS. MATTHEWS: Your Honor, if I can direct  
15 you to NUREG 1801, table 5, September 2005, page 80?  
16 And it's a table. And there is a category that says,  
17 "Further evaluation recommended." And there is a  
18 series of "Yeses" under that for further evaluation,  
19 specifically referring to the concrete elements.

20 CHAIRMAN McDADE: Okay. And specifically  
21 what about the aging management plan that they have  
22 put forward do you think is deficient based on that?

23 MS. MATTHEWS: They had not proposed that  
24 kind of further evaluation based on the different  
25 standards: the old standard and today's standard.

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1           And, again, we're not criticizing the  
2 construction based on those prior standards. We are  
3 not criticizing that. We're just saying that here  
4 they are asking for 20 additional years of operation  
5 when we know that if they were building this plant  
6 today, it would have a different standard, that they  
7 need to have this further evaluation, enhanced  
8 inspection. And they have not proposed to do that.

9           \*\*JUDGE WARDWELL: But is the term "enhanced  
10 inspections" your term or an 1801 term?

11           MS. MATTHEWS: I believe it does relay the  
12 term "enhanced inspections," but I'll refer to it as  
13 the further evaluation. I think they are used  
14 interchangeably.

15           JUDGE WARDWELL: How do you know they  
16 haven't done a further evaluation on their own and  
17 just said, "Well" --

18           MS. MATTHEWS: Dr. Leahy -- I'm sorry.

19           JUDGE WARDWELL: And there's nothing that  
20 strikes us that that is needed. Yet, they didn't  
21 bother documenting it.

22           MS. MATTHEWS: Dr. Leahy had reviewed what  
23 they had submitted as part of their application. And  
24 he did not see it. He knows that there are these two  
25 different standards in his professional opinion that

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1 warrant something further. They did not propose that.

2 JUDGE WARDWELL: And in that table, when  
3 does that mark get added and against what? What is  
4 the line in that table that you're using that says the  
5 water/cement ratio falls within there or is the  
6 water/cement ratio an absolute parameter in that  
7 table?

8 MS. MATTHEWS: It's line 14 on that page,  
9 "Concrete elements, dome, basement," et cetera, and  
10 the aging effect/mechanism is "loss of material,  
11 scaling, cracking, and spalling due to freeze/thaw"  
12 and all the specifics we had provided in our  
13 contention and again in our reply.

14 CHAIRMAN McDADE: Okay. But what is the  
15 indication that any of that has occurred?

16 MS. MATTHEWS: Do you mean today or --

17 CHAIRMAN McDADE: Yes.

18 MS. MATTHEWS: Well, we're talking about  
19 a 20-year license extension here for a plant that has  
20 a different water/cement ratio than would be required  
21 today. So they have to look at it, review it, and  
22 keep looking at it to make sure that these things  
23 don't happen.

24 CHAIRMAN McDADE: Is the difference  
25 between the water/cement ratio and NRC regulations or

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1 NRC guidance today significant? I mean, where is it?  
2 In your declaration, it indicates that that variance  
3 is significant, that you would expect a different  
4 result.

5 MS. MATTHEWS: We did provide the  
6 differences in the standard in the declaration, in Dr.  
7 Leahy's declaration.

8 CHAIRMAN McDADE: No. I understand the  
9 differences in the standard.

10 MS. MATTHEWS: Okay. Yes. \*\*CHAIRMAN  
11 McDADE: But I am looking for the significance. Why  
12 is that of consequence in this particular context? We  
13 have a different water/cement ratio.

14 MS. MATTHEWS: Yes.

15 CHAIRMAN McDADE: But why should that  
16 matter in this context here?

17 MS. MATTHEWS: Paragraph 7 of our petition  
18 on page 222. We explain that containment structures  
19 by their nature play a critical role in the safe  
20 operation of a nuclear power facility.

21 This is particularly important for the two  
22 operating reactors at Indian Point, which has the  
23 highest population density of any nuclear power plant  
24 integrity and that Entergy has not proposed to conduct  
25 those enhanced inspections.

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1           We had also mentioned -- I believe it was  
2           in the reply, the discussion of the weather impacts,  
3           too, given the location of this plant.

4           CHAIRMAN McDADE: Okay. I guess what I'm  
5           getting at is not obviously the integrity of the  
6           containment structure is a significant matter. What  
7           I am trying to get at is where do we look in what you  
8           have submitted that would suggest to us that the  
9           integrity of the containment structure would be  
10          materially different using one water/cement ratio, as  
11          opposed to another, not is it better or worse, a more  
12          updated one, but that that different water/cement  
13          ratio would result in a materially different level of  
14          integrity for the containment structures during this  
15          extended period of operation?

16          MS. MATTHEWS: Respectfully, Your Honor,  
17          it really speaks for itself in terms of when you have  
18          a prior standard and then you have an updated  
19          standard, a construction standard, and when an  
20          applicant is coming in seeking an additional 20 years  
21          of license extension that you would obviously look at  
22          this.

23          There is a reason why the NRC has  
24          developed updated standards for the containment  
25          structure, for the integrity of the containment

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1 structure. And we're asking given the location of  
2 this facility in the Northeast, that it's appropriate  
3 to have this further evaluation, this enhanced  
4 inspection.

5 So I think I am answering your question.  
6 Tell me if I'm not.

7 JUDGE LATHROP: I don't think you answered  
8 it.

9 MS. MATTHEWS: Okay. \*\*JUDGE WARDWELL:  
10 Let me ask you --

11 JUDGE LATHROP: Do you know what the  
12 reason for the updated standard is?

13 MS. MATTHEWS: I do not right now. I  
14 mean, I can --

15 JUDGE LATHROP: That is what is being  
16 asked. What is the significance of the updated  
17 standard? \*\*MS. MATTHEWS: Construction standards  
18 change all the time -- \*\*JUDGE LATHROP: That's right.

19 MS. MATTHEWS: -- for lots of different  
20 facilities. It's giving experience and aging.

21 JUDGE WARDWELL: Let me ask the staff this  
22 to see if maybe this will help. Do you know if it's  
23 relatively apparent that changes in water/cement ratio  
24 influence the freeze/thaw resistance of concrete?

25 MR. ROTH: Could you repeat the question,

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1 please, Your Honor?

2 JUDGE WARDWELL: I doubt it.

3 (Laughter.)

4 JUDGE WARDWELL: Is it common engineering  
5 knowledge that changes in water/cement ratio of  
6 concrete have a direct influence on the freeze/thaw  
7 resistance of concrete?

8 MR. ROTH: Let me consult with staff.

9 JUDGE WARDWELL: Sure. And it should be  
10 fairly quick, the answer. It's not a detailed one.

11 (Pause.)

12 MR. ROTH: I would have to consult with a  
13 structure staff person to determine if that's common  
14 engineering knowledge among the structural people.

15 \*\*JUDGE WARDWELL: Okay,

16 MR. ROTH: And I don't have a structure  
17 staff person by me.

18 JUDGE WARDWELL: Thank you.

19 Entergy, would you be willing to respond  
20 to that question?

21 MR. O'NEILL: I was going to say I would  
22 be willing to respond to another question. \*\*JUDGE  
23 WARDWELL: Well, I'm sure you would, but I would like  
24 if you would respond to my question.

25 MR. O'NEILL: Give me a moment to confer.

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1 (Pause.)

2 JUDGE WARDWELL: Again, I'm not looking  
3 for the relationship between it. I'm looking for a  
4 simple answer of whether or not you feel it is common  
5 knowledge that the water/cement ratio directly  
6 influences --

7 MR. O'NEILL: Well, in a nutshell --

8 JUDGE WARDWELL: -- freeze/thaw  
9 resistance.

10 MR. O'NEILL: It's a guide to be used. I  
11 mean, it's not the principal controlling factor. So  
12 we've done --

13 JUDGE WARDWELL: It's fairly common  
14 knowledge that water/cement ratio does influence  
15 freeze/thaw resistance, not to what degree or what  
16 significance. It's knowledge that changes in that  
17 will change the freeze/thaw resistance. Is that  
18 correct?

19 MR. O'NEILL: It's the number one guide to  
20 strength, compressive strength.

21 JUDGE WARDWELL: Say your answer again.

22 MR. O'NEILL: It's considered to be the  
23 number one guide or useful indicator for strength,  
24 compressive strength. \*\*JUDGE WARDWELL: And would it  
25 also be, is there a relationship between water/cement

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1 ratio and not a relationship? Is it common knowledge  
2 that water/cement ratio influences the freeze/thaw  
3 resistance?

4 MR. O'NEILL: It influences it but not  
5 directly. \*\*JUDGE WARDWELL: Okay.

6 JUDGE LATHROP: Excuse me. You were  
7 saying that the ratio determines the compressive  
8 strength?

9 MR. O'NEILL: It's considered a guide,  
10 understanding the compressive strength, but we do  
11 28-day cylinder tests to confirm the strength,  
12 confirmation.

13 JUDGE LATHROP: So the possible reason for  
14 the updated standard would be to give more compressive  
15 strength to the concrete?

16 MR. O'NEILL: It's just one of many  
17 factors that goes into concrete strength.

18 But there is one point that I would really  
19 like to emphasize. First of all, I think we  
20 vigorously object to the use of the term "standard."  
21 It is not a standard. It is contained in the  
22 guidance.

23 And the other point I would really like to  
24 emphasize is that -- and this is a point that the  
25 staff made in its pleadings -- the GALL report

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1 distinguishes between containment structures and  
2 structures and component supports.

3 And this ratio, the 0.35 to 0.45 ratio,  
4 which appears to form the linchpin of the state's  
5 argument here applies to the latter category, to  
6 structures and component supports. It's not even  
7 discussed with respect to containment structures.

8 JUDGE WARDWELL: Earlier you made a  
9 reference reminding us that it's only guidance. I  
10 find that ironic that you would use that phrase after  
11 all the hearing that we've had the last two days.

12 MR. O'NEILL: I understand, but the point  
13 is that we address in our application the fact that we  
14 complied with the ACI-318 and have a ratio of .576.  
15 And we specifically explain in section 3.522 why that  
16 ratio is acceptable.

17 JUDGE WARDWELL: And that's fine, and I'm  
18 not questioning that.

19 MR. O'NEILL: Yes.

20 JUDGE WARDWELL: What I am questioning is  
21 why are you besmirching New York for referencing  
22 guidance when you seem to rely on an awful lot of  
23 their other situations? It seems like it's a  
24 contradiction in approaches. \*\*MR. O'NEILL: Again,  
25 suggesting or imputing that it's more than guidance.

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1 You know, it's a specific regulatory requirement.

2 \*\*JUDGE WARDWELL: So you agree --

3 MR. O'NEILL: Certainly we have extolled  
4 the merits of guidance. I won't deny that, Your  
5 Honor, and I think for good reason. I think it adds  
6 a lot of uniformity and standardization to the  
7 process. And applicants have every right to rely on  
8 guidance.

9 JUDGE WARDWELL: Thank you. \*\*MS.

10 MATTHEWS: Your Honor, if I could refer the Board to  
11 page 120 of our reply, provides more of the specifics  
12 of GALL and more cites and identifies the concern  
13 about where this plant is located. The GALL reference  
14 is 3.5-12.

15 JUDGE WARDWELL: Back to Entergy. I was  
16 just thinking about your comment, statement in regards  
17 to what this applies to and your saying that it  
18 doesn't apply to the containment structure. Is the  
19 containment structure considered a systems structure  
20 or component that's eligible for aging management  
21 review?

22 MR. O'NEILL: Yes, but --

23 JUDGE WARDWELL: Is there any reason why  
24 that wouldn't be listed in the list that you had just  
25 recited? I'm curious why it isn't there.

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1 MS. SUTTON: One moment, please.

2 (Pause.)

3 MR. O'NEILL: I've been informed -- and I  
4 guess I will retract my prior statement. You know,  
5 one of our experts believes it does apply to both.

6 CHAIRMAN McDADE: Okay. New York  
7 contention number 5, "The license renewal application  
8 does not include an adequate plan to monitor and  
9 manage the effects of aging due to embrittlement of  
10 the reactor pressure vessels and the associated  
11 internals." Okay.

12 Can New York explain why you believe that  
13 the monitoring is inadequate?

14 MS. MATTHEWS: Yes. Dr. Leahy reviewed  
15 the license renewal application. And he saw that  
16 Entergy had not addressed this concern sufficiently.  
17 The --

18 CHAIRMAN McDADE: Well, it is addressed at  
19 3.1 in the license renewal application. What  
20 specifically is inadequate in the way it is addressed?

21 MS. MATTHEWS: That the license renewal  
22 application mentioned thermal shocks but not in any  
23 sufficient detail and there are no age-related  
24 accident analyses.

25 He also reviewed the tests that Entergy

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1 had included in its application. And Entergy's own  
2 tests demonstrated a concern. Paragraphs 14 to 18 of  
3 Dr. Leahy's declaration point out specifically the  
4 deficiencies in Entergy's application.

5 The concern here, of course, is that a  
6 component will fail, which will lead to a meltdown of  
7 the core. As this Board well knows, the RPV is the  
8 primary container that holds the core. And a main  
9 concern that Dr. Leahy has identified is in the  
10 beltline region, which is closest to the reactor core.  
11 And one of his concerns, of course, includes both the  
12 bolts and the welds, among other components.

13 So Entergy has put forth some information  
14 in its application. Dr. Leahy has reviewed that  
15 information and has determined that it is not  
16 sufficient. So we have a clear-cut dispute of the  
17 experts, which warrants a hearing on the merits.

18 \*\*CHAIRMAN McDADE: What is Entergy's response that  
19 this is a genuine dispute that should be resolved at  
20 a hearing?

21 MR. O'NEILL: We just don't think the  
22 state has proffered sufficient basis to support the  
23 claims, notwithstanding the fact that there is a  
24 declaration, which contains a lot of bare assertions  
25 about what should be considered as part of the license

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1 renewal relative to embrittlement, not what the  
2 regulations actually require. \*\*CHAIRMAN McDADE: But  
3 doesn't Dr. Leahy suggest that based on his analysis,  
4 the TLAAAs don't demonstrate that they will perform  
5 their intended function?

6 I mean, it's not at this point a  
7 definitive decision. It's just simply that there are  
8 questions raised by Dr. Leahy as to whether or not  
9 these will perform appropriately during the time  
10 period of the extension.

11 How much more do you think that they need  
12 to put in there? I mean, he does specifically address  
13 them. Yes, they are addressed in your application.  
14 You do address these particular -- they're not saying  
15 that you didn't address them. They're challenging the  
16 adequacy of the way that it is addressed. And they  
17 have proffered expert opinion that suggests that they  
18 are inadequate.

19 Now, why would this not be something that  
20 would be best decided with the witnesses in front of  
21 us, your witnesses explaining why they are adequate,  
22 Dr. Leahy explaining why they are not?

23 MR. O'NEILL: Again, we just don't see  
24 specific references to the license renewal  
25 application. I mean, there are a lot of conclusory

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1 statements in there. For instance, you know, as we  
2 pointed out in our pleading, we think he confuses  
3 embrittlement in RPV with embrittlement of the reactor  
4 vessel internals.

5 New York quotes Dr. Leahy for the notion  
6 that embrittlement applies to the core barrel,  
7 particularly in the beltline region of the reactor  
8 core, the thermal shield, the baffle plates,  
9 informers, and the loads on the associated bolts, and  
10 the intermediate shells in the core.

11 However, the core barrel, the thermal  
12 shield, baffle plates, and baffle informer plates,  
13 they're all made of stainless steel and are not  
14 susceptible to decrease in fracture toughness as a  
15 result of neutron embrittlement.

16 CHAIRMAN McDADE: Okay. But not all of  
17 the items he raises are made of stainless steel,  
18 correct? I mean, there are many. And your response  
19 to those is they are made of stainless steel. He  
20 didn't take that into consideration. He hasn't raised  
21 an issue. But that doesn't go to every item mentioned  
22 by Dr. Leahy.

23 MR. O'NEILL: Well, that relates  
24 specifically to 50.61, the fracture toughness  
25 requirements. But he also discusses the sharpey test

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1 issue. And he really ignores the explanation that's  
2 in the application, section 8.22-13, that the minimum  
3 acceptable upper shelf energy for reactor vessel plate  
4 material in the four-loop Westinghouse plants is 43  
5 pounds, rather than 50 pounds.

6 The application demonstrates that the  
7 upper shelf energy values below 50 pounds are  
8 acceptable. \*\*CHAIRMAN McDADE: Okay. I'm sorry.  
9 Where was this --

10 MR. O'NEILL: We just think the testimony  
11 is fraught with errors, erroneous.

12 CHAIRMAN McDADE: Can you just give me  
13 that cite again? Where in your application?

14 MR. O'NEILL: It's section A. Well, this  
15 would be the appendix, A.2.2.1.3.

16 CHAIRMAN McDADE: Okay. And forgive me.  
17 Just do that once more just to make sure I have  
18 written it down correctly so when I go to read it,  
19 I'll find it.

20 MR. O'NEILL: The citation?

21 CHAIRMAN McDADE: Yes.

22 MR. O'NEILL: Yes. It's A.2.2.1.3.

23 CHAIRMAN McDADE: Okay.

24 MR. O'NEILL: We also think that the claim  
25 relative to the NDT, the non-disruptive test, lacks a

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1 basis as well. New York asserts that the internals in  
2 IP-3 apply operational limits for extended life  
3 operations due to the high nil-ductility temperature  
4 associated with the predicted irradiation-induced  
5 embrittlement.

6 To the extent the statement seeks to  
7 challenge our control of embrittlement or Entergy's  
8 control of embrittlement, it lacks support because  
9 Entergy is complying with 50.61.

10 So our bottom line here is we think the  
11 contention lacks adequate factual or expert support,  
12 that it fails to directly controvert the application,  
13 I mean, in any material way, whether it be an omission  
14 or incorrect treatment of an issue.

15 CHAIRMAN McDADE: New York, do you have  
16 anything further on that?

17 MS. MATTHEWS: Yes. Well, Dr. Leahy had  
18 reviewed the application, of course. And they had  
19 included these two tests. He had reviewed those two  
20 tests. He reviewed the explanations. It's still a  
21 problem.

22 And, as Your Honor had noted a moment ago,  
23 the answer is not, well, some of these components are  
24 made of stainless steel. Not all of them are made of  
25 stainless steel. And even the welds of the in-course

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1 structures are a potential safety problem, even if  
2 they are comprised of stainless steel.

3 And Dr. Leahy also opined that there was  
4 evidence that Entergy considered decompression shock  
5 loads during the original design basis LOCA. And  
6 these loads can damage the core so that if it is  
7 uncoolable -- and we had explained that sufficiently  
8 in both the petition and in the reply and in Dr.  
9 Leahy's declaration in extensive detail that they did  
10 not consider that.

11 CHAIRMAN McDADE: Okay. A couple of  
12 things to Entergy specifically and in their petition  
13 and in the Leahy declaration, they suggest that your  
14 license renewal application did not indicate that you  
15 had performed age-related accident analysis or even  
16 took a look at embrittlement into account when  
17 assessing the effect of transient loads.

18 Question in this paragraph 14 of the Leahy  
19 declaration, did you? If so, where do we look in the  
20 license application? If you didn't, why is that not  
21 necessary? \*\*MR. O'NEILL: Excuse me, Your Honor.

22 (Pause.)

23 MR. O'NEILL: I have been informed that  
24 complying with 50.61 on an ongoing basis satisfies  
25 your accident analyses assumptions. In other words,

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1 you don't perform separate tasks, transient analyses  
2 for purposes of license renewal.

3 CHAIRMAN McDADE: So the answer to that is  
4 not that you contest what Dr. Leahy is saying. What  
5 you're saying, rather, is that those are not required  
6 in the context of and specifically paragraphs 14  
7 through 16 of this declaration, where he says that  
8 there are certain things that you did not do? It's  
9 your position that crediting what Dr. Leahy has said,  
10 they are not required in the context of your license  
11 renewal application?

12 MR. O'NEILL: That's correct.

13 CHAIRMAN McDADE: Okay. And where would  
14 we look in the regulations that would demonstrate that  
15 they are required?

16 MS. MATTHEWS: Our burden here is to  
17 demonstrate that what they have done, what they have  
18 presented to the NRC and to this Board is inadequate.  
19 And we have done that.

20 So it's not our burden to demonstrate more  
21 of the details of how they have to do something but  
22 what they have done, what they have put forth is  
23 inadequate. That's the proposed intervenor's burden.

24 CHAIRMAN McDADE: Okay. But when you say  
25 that it's inadequate, clearly Dr. Leahy says that in

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1 his opinion, this should have been done.

2 MS. MATTHEWS: Yes.

3 CHAIRMAN McDADE: The answer by Entergy is  
4 whatever Dr. Leahy's position is in this regard, the  
5 regulation doesn't require us to do it. Ergo, our  
6 application is not deficient because we failed to do  
7 it.

8 So what I am looking for is some what is  
9 the regulatory tag that you are seeking to hang Dr.  
10 Leahy's testimony on.

11 MS. MATTHEWS: Their burden is to bring  
12 forth an adequate aging management program based on an  
13 adequate aging management review. That is their  
14 burden.

15 Dr. Leahy reviewed what they had  
16 submitted. He has serious concerns, serious safety  
17 concerns, about this embrittlement issue. That could  
18 be addressed in certain ways, which he does suggest.  
19 He points out the deficiencies in what they had  
20 submitted to the NRC. And he explains why those  
21 deficiencies create a significant aging and  
22 safety-related problem. That is the intervenor's  
23 burden. And we have met that burden.

24 So the regulations require them to have a  
25 sufficient aging management review and a sufficient

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1 aging management program to go 20 years into the  
2 future for the extended licensing period. And they  
3 don't have that.

4 They have put forth information. We have  
5 countered that information. And we should have a  
6 hearing on the merits. The regulations do not limit  
7 the scope. They don't narrowly bound the scope of  
8 what is to be included to promote an adequate aging  
9 management review or an adequate aging management  
10 program. It's bounded by safety considerations. And  
11 that is what Dr. Leahy has focused on. \*\*CHAIRMAN  
12 McDADE: Okay. Mr. O'Neill, was the cite that you  
13 gave me 51.61?

14 MR. O'NEILL: 50.61.

15 CHAIRMAN McDADE: Okay. 50.61? \*\*MS.

16 SUTTON: Correct.

17 CHAIRMAN McDADE: Okay. Moving on to New  
18 York contention 26, Entergy's license renewal  
19 application does not include an adequate plan to  
20 monitor and manage the effects of aging due to metal  
21 fatigue on key reactor components.

22 Okay. There was a license amendment  
23 filed, license amendment 2, on June 22nd, '08.  
24 Question to --

25 MS. MATTHEWS: January.

1 CHAIRMAN McDADE: Okay. \*\*MS. MATTHEWS:  
2 We knew what you meant.

3 CHAIRMAN McDADE: Yes. When I write in my  
4 notes, my handwriting, June and January look an awful  
5 lot alike, particularly if I am writing late at night.  
6 Okay. But if it was done on June 22nd, '08, by golly,  
7 it would be very efficient in dealing with it now.  
8 Okay.

9 Why does that not cure whatever defect  
10 that you identified in your original contention? \*\*MS.

11 MATTHEWS: According to section 2.309(f)(2),  
12 contentions must be based, must be based, on documents  
13 or other information available at the time the  
14 petition is to be filed, such as the application  
15 supporting safety analysis report, environmental  
16 report, or other supporting document filed by an  
17 applicant or a licensee or otherwise available to a  
18 petitioner. We filed our petition on November 30th,  
19 2007.

20 This license renewal application amendment  
21 was not in existence at the time, though later events  
22 have demonstrated that Entergy did have all of the  
23 information within its ken at the time that it filed  
24 its April 2007 license renewal application.

25 There is a process for amending

1 contentions. And that is set out also in 2.309(f)(2).  
2 And we would have to seek leave to file that. There  
3 is an orderly process that the Commission has  
4 established in its regulations, which, by the way, are  
5 strict by design. And we are following that.

6 We are trying to be very careful here. We  
7 have filed those contentions based on the information  
8 that we had available at the time. Entergy has since  
9 come in with additional information, coincidentally  
10 along same date as its reply. They refer to that  
11 license renewal application amendment in its answer,  
12 but, yet, they didn't annex it to the answer. And it  
13 appeared about a week later or ten days later on  
14 ADAMS.

15 So it doesn't change anything now. Might  
16 it change something later? Yes. After this Board has  
17 ruled on the contentions and established a scheduling  
18 order for any additional contentions to be filed, as  
19 is customary in other cases, but right now it is of no  
20 moment.

21 CHAIRMAN McDADE: Well, assume for the  
22 sake of argument that you might consider it of moment  
23 that the license application includes amendment 2 at  
24 this point in time, that if it had come in after we  
25 had admitted the contention, effectively it would be

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1 a contention of omission that they would then say had  
2 been cured.

3 Isn't the appropriate remedy on the part  
4 of the Board here, which would be to allow you to file  
5 an amended contention so that you would be again  
6 apples to apples, oranges to oranges that you would be  
7 addressing the license application as it exists? What  
8 is the point of admitting a contention and litigating  
9 the adequacy of a license application that is no  
10 longer pending, that has been modified?

11 In this particular case, for example,  
12 Riverkeeper came in and filed an amended contention  
13 based on the amendment. Here would not the remedy  
14 have been if you think that they were late, they  
15 should have filed it earlier, they could have filed it  
16 earlier, and that put you at a disadvantage just to  
17 make a request to say, "We need additional time. This  
18 contention should not be ruled on at this point in  
19 time. We need time to assess what impact amendment 2  
20 has" and then determine whether or not we still have  
21 a quibble? It may well be that we are satisfied that  
22 that answers our questions and ensures safety, but we  
23 have to look at it, you know.

24 MS. MATTHEWS: That's right.

25 CHAIRMAN McDADE: What is the benefit of

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1 our going forward at this point?

2 MS. MATTHEWS: And I do understand the  
3 concern. I do. But we are trying to be very careful  
4 in following the regulations. And we don't believe --  
5 and I don't think Your Honor is suggesting this at  
6 all, but we don't believe that we should be blamed or  
7 penalized because Entergy had withheld information,  
8 for whatever reason, and has come in late with that  
9 information.

10 That really is years old because they were  
11 relying on what they call an approach at two units in  
12 an Arkansas plant that were a number of years ago. So  
13 they had all of this information.

14 I think, as this Board knows, this issue  
15 is front and center in Vermont Yankee also. And there  
16 were amended contentions there. But that amended  
17 contention occurred after the initial contention had  
18 been filed.

19 So this Court has the inherent authority  
20 to say we will hold a certain contention in abeyance  
21 and we will provide a scheduling order for additional  
22 contentions. And that would be fine. But we were  
23 trying to follow the rules as we saw them.

24 There is an orderly process. Entergy  
25 could have moved to dismiss our contention or the NRC

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1 staff, by that matter. They could have moved for  
2 summary disposition.

3 I think, as the Board knows, we have an  
4 outstanding motion to strike the staff's unauthorized  
5 pleading letter on this very issue, the letter that  
6 really didn't provide much of any analysis at all.

7 So we are concerned that what is happening  
8 is going outside the normal practice for these  
9 proceedings.

10 JUDGE WARDWELL: But what regulation did  
11 Entergy violate in regard to submitting this license  
12 amendment?

13 MS. MATTHEWS: Well, there is a  
14 regulation, 5413, in terms of the completeness and  
15 accuracy of information. They must submit complete  
16 and accurate information. But it's more a matter of  
17 their strategy. Okay?

18 They have information solely within their  
19 ken that they knew about. And they are timing their  
20 strategy in a way and their submissions in a way that  
21 do disadvantage intervenors, not only New York but  
22 other intervenors who are interested in this issue  
23 also.

24 And this I think is a concern not only for  
25 this Board but for boards in other cases as well to

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1 allow and to permit the practice of operators holding  
2 back information and really draining the resources of  
3 petitioners.

4 And I am not really just saying that about  
5 the State of New York, but a lot of other petitioners  
6 do not have the money to keep litigating these issues.

7 We can keep going on this, but they can't.  
8 But they can sit back and try to time how they are  
9 going to submit their information. And it does work  
10 at a disadvantage to getting to the truth of these  
11 matters.

12 CHAIRMAN McDADE: Okay. Well, someone  
13 might argue that, in fact, by responding early; i.e.,  
14 not waiting until this contention gets admitted or  
15 not, but, in fact, taking some action on the proposed  
16 contention at this point helps reach a better  
17 amendment, a better amendment and a better license  
18 application.

19 And so that, in turn, all parties are  
20 served because, in fact, things are unproven in  
21 regards to what they're proposing in their license  
22 renewal application.

23 MS. MATTHEWS: And I think I would agree  
24 with you if we were sitting here in April 2007, but  
25 we're not. We're in 2008, when there was plenty of

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1 time for Entergy to have come forward with this  
2 amendment, well before we submitted our initial  
3 petition.

4 So again we come down to this timing issue  
5 and Entergy playing a certain strategy. And it really  
6 works to a disadvantage to the intervenors. It really  
7 does.

8 CHAIRMAN McDADE: Okay. Well, at least at  
9 this point in time and sort of to give my views very  
10 quickly here, one, with regard to the letter that Mr.  
11 Turk submitted, perhaps it better could have been  
12 captioned as an amended answer and put in the form of  
13 a pleading. However, it certainly was designed, I  
14 think, to correct the record as quickly as possible.

15 In the answer, they had indicated that  
16 they did not oppose the admission of this contention.  
17 They wanted to bring to the attention of the Board as  
18 quickly as possible and did it in a form as quickly as  
19 possible with a copy to New York so that New York was  
20 not blind-sided at all, but based on the amendment,  
21 they now took a different view.

22 That said, there is no indication that  
23 Entergy has acted in bad faith on this. So we are now  
24 in a situation where we have the amended license  
25 application before us. And the question is what to do

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1 with it.

2 New York seems to say that we should begin  
3 to litigate something that is no longer in existence.  
4 I don't think we're predisposed to doing that. So the  
5 remedy then is, at this point in time, does New York  
6 need additional time within which to respond to this  
7 license amendment to make a determination: one, does  
8 this cure our problem, as the NRC staff indicates it  
9 does for them, or do you wish to redraft the  
10 contention in light of that? And the question then  
11 is, how much time would you need?

12 And, rather than put you on the spot right  
13 now, when you have been here and you are going to be  
14 here for a little bit longer, why don't we just simply  
15 say that if you could by Monday of next week notify us  
16 whether or not you wish to file an amended contention  
17 based on the new information, the license amendment,  
18 and if so, how much time you are going to request in  
19 order to do that?

20 And we may or may not find that we are of  
21 a mind to give you that much time.

22 MS. MATTHEWS: Right.

23 CHAIRMAN McDADE: It obviously depends on:  
24 a) whether you want to do it, b) how much time you  
25 request.

1 Other than that, it doesn't seem like it  
2 is worthwhile discussing this at this point in time  
3 any further. And I wonder if we are ready to move to  
4 the next contention.

5 MS. MATTHEWS: Okay. And I would also  
6 refer the Board to page 129 of our reply, where we do  
7 offer a limited critique of what Entergy had  
8 submitted. So we didn't just ignore it. I just want  
9 you to know. \*\*CHAIRMAN McDADE: I understand.

10 MS. MATTHEWS: Okay.

11 CHAIRMAN McDADE: And if you want to just  
12 --

13 MS. MATTHEWS: Absolutely. \*\*CHAIRMAN  
14 McDADE: -- stick with that, you can, now.

15 MS. MATTHEWS: Yes.

16 CHAIRMAN McDADE: But if you want more  
17 time to file something more extensive, you know, I'm  
18 saying that by next Monday, let us know.

19 MS. MATTHEWS: And we will propose a time.  
20 Okay. Thank you, Your Honor.

21 CHAIRMAN McDADE: Okay. Contention number  
22 27, "The NRC should renew its licensing proceeding,  
23 its relicensing proceeding, the safety on the on-site  
24 storage of spent fuel, and the consequences of a  
25 terrorist attack on any of its three spent fuel pools

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1 at Indian Point."

2 I think that it is very clear what the  
3 parties' positions are from the pleadings with regard  
4 to contention number 27. I don't have any questions  
5 with regard to that.

6 That being said, again, we're not ruling  
7 on any of these contentions at this point in time.  
8 It's just we don't have any questions that aren't  
9 answered by the pleadings.

10 New York contention number 28,  
11 "Radionuclides leaking from the Indian Point 1 and  
12 Indian 2 spent fuel pools are contaminating  
13 groundwater in the Hudson River. And NEPA requires  
14 that the NRC examine the environmental impacts of  
15 these leaks in the context of a license renewal  
16 proceeding."

17 Okay. The first question to New York is,  
18 why isn't this a category 1 issue and outside the  
19 scope of this proceeding, specifically now addressing  
20 the Commission decision in Turkey Point on this  
21 particular point?

22 MS. MATTHEWS: Because the GEIS did not  
23 address these types of leaks. The GEIS at 4.8.2 only  
24 addressed tritium getting into the groundwater from  
25 one plant. And that was the Prairie Hill plant.

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1           It was one paragraph in the GEIS. It did  
2 not address strontium-90 leaks or cesium. There was  
3 no discussion in that paragraph or in that example of  
4 how tritium had gotten into the groundwater. There  
5 was no mention of leaks and especially no mention of  
6 leaks from spent fuel pools.

7           So the scope, if you will, of what was in  
8 the GEIS did not encompass this particular issue. So,  
9 really, it is neither a category 1 nor a category 2  
10 issue. And NEPA requires that given the significant  
11 environmental impact issue, that it be looked at in  
12 the context of this proceeding. And Entergy did  
13 address it in its environmental report.

14           JUDGE WARDWELL: Isn't it premature to  
15 challenge what the NRC is examining in regards to the  
16 impacts associated with these leaks?

17           MS. MATTHEWS: Right now? Well, we are  
18 here now because we do have this application for a  
19 20-year license. And so the rules require that  
20 Entergy submit an environmental report. The law  
21 requires that the NRC review the environmental impacts  
22 from this action. This is certainly one of the  
23 impacts that is going on at this site.

24           The action is a 20-year action. The  
25 action isn't a one-day or a one-week or a one-year

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1 action. It is a 20-year action. And so the impacts  
2 of these leaks, which are not going to end any time  
3 soon, need to be reviewed in the context of this  
4 20-year proceeding.

5 JUDGE WARDWELL: How do you know that NRC  
6 won't review them?

7 MS. MATTHEWS: Well, they have to review  
8 it in the context of this proceeding. They are  
9 reviewing it. We have a final hydrogeologic report.  
10 You know, we are not suggesting that nobody is looking  
11 at this. And certainly the State of New York has  
12 looked at it, too.

13 JUDGE WARDWELL: How do you know they  
14 aren't going to review them as part of this  
15 proceeding?

16 MS. MATTHEWS: Well, what Entergy has done  
17 is --

18 JUDGE WARDWELL: Not Entergy. I'm asking  
19 the NRC. That's what you have in your contention.  
20 The NRC reviewing these impacts is what you are  
21 contending.

22 MS. MATTHEWS: Yes.

23 JUDGE WARDWELL: And my question is, how  
24 do you know they won't be reviewing them?

25 MS. MATTHEWS: Well, I guess at this point

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1 because we don't have the supplemental environmental  
2 impact statement, we don't know that. And that is  
3 true for -- \*\*JUDGE WARDWELL: Isn't it premature?

4 MS. MATTHEWS: -- any environmental issue.

5 JUDGE WARDWELL: Isn't your contention  
6 premature, then?

7 MS. MATTHEWS: Well, we are challenging  
8 the environmental report here and the adequacy of the  
9 environmental report. And Entergy, the information  
10 that Entergy is putting forth, we believe is not  
11 accurate. And Entergy under the rules has an  
12 obligation. It is mandated to submit accurate  
13 information. \*\*They are saying that these leaks and  
14 the levels of contamination are not significant. And  
15 we take issue with that.

16 JUDGE WARDWELL: Well, this gets us back  
17 to what happens when we have a dichotomy between your  
18 contention and some of your comments within the  
19 write-up of your contention. Your contention clearly  
20 states that it's a NEPA issue requiring NRC to  
21 examine.

22 And you then do mention the environmental  
23 report in your analysis of that. But, yet, it's not  
24 a part of your contention. Your contention strictly  
25 talks about the NRC examining them.

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1           And you admit that it is premature because  
2 they haven't issued their SEIS yet. So you don't know  
3 whether or not they're going to. Isn't that the time  
4 to bring up this contention?

5           MS. MATTHEWS: Well, it could be. And  
6 certainly the rules contemplate that we can file  
7 additional contentions. And we wouldn't have to seek  
8 leave for that if it's based on the environmental  
9 impact statement, the supplemental environmental  
10 impact statement.

11          JUDGE WARDWELL: Only if you can show the  
12 information wasn't available; --

13          MS. MATTHEWS: That's correct.

14          JUDGE WARDWELL: -- isn't that correct,  
15 beforehand? \*\*MS. MATTHEWS: That's correct. But  
16 Entergy is required to submit this environmental  
17 report, which informs the NRC's analysis for the  
18 supplemental environmental impact statement.

19           And so our position is that Entergy has to  
20 do that correctly. And in our view, Entergy has not  
21 done that correctly. And so it is a step by step by  
22 step process that the NRC relies, in part, on the  
23 Entergy's environmental report. And the regulations  
24 require, certainly, the submission of the  
25 environmental report and that it be accurate. \*\*JUDGE

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1 WARDWELL: So why didn't you submit a contention to  
2 that? \*\*MS. MATTHEWS: We believe that it is in our  
3 contention. It is in the contention.

4 JUDGE WARDWELL: Thank you.

5 CHAIRMAN McDADE: Okay. To the NRC staff,  
6 Mr. Turk or whoever else wants to answer this, in your  
7 view, is this a category 1 issue outside the scope of  
8 the proceeding?

9 MS. MIZUNO: No, Your Honor, it's not.  
10 Let me briefly, very briefly, quote from the GEIS.  
11 I'm looking at GEIS. It's page 4-84. And I am  
12 reading now, "For the purposes of assessing  
13 radiological impacts, the Commission has concluded  
14 that impacts are of small significance if doses and  
15 releases do not exceed permissible levels in the  
16 Commission regulations."

17 This is a section talking about  
18 radiological impacts of normal operation section 4.6  
19 of the GEIS. We believe the GEIS covers this as a  
20 category 1 issue, generically addressed.

21 That is all, Your Honor. \*\*CHAIRMAN  
22 McDADE: Okay. When you first answered, I thought you  
23 said no, that it was not a category 1.

24 MS. MIZUNO: I'm sorry. I misheard the  
25 question, Your Honor. It is a category 1 issue. I'm

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1 sorry. I misheard or misspoke.

2 CHAIRMAN McDADE: Okay. And in order to  
3 make that determination that it is a category 1 issue,  
4 you are going to to the NUREG?

5 MS. MIZUNO: I am quoting from the NUREG  
6 1437, volume 1, the GEIS, generic environmental impact  
7 statement, for license renewal.

8 CHAIRMAN McDADE: Okay. And specifically  
9 you are looking to 4-84 within that?

10 MS. MIZUNO: Page 4-84. That's correct.

11 CHAIRMAN McDADE: Chapter 4, page 84?

12 \*\*MS. MIZUNO: Sorry. Yes, that's right. Sorry.

13 CHAIRMAN McDADE: Okay. Is there anything  
14 that we could look to specifically in appendix B to  
15 subpart 51 that we could rely on in making the  
16 determination that this is a category 1 issue?

17 MS. MIZUNO: Just a minute, Your Honor.  
18 We are flipping through the CFR.

19 (Pause.)

20 MS. MIZUNO: Thank you, Your Honor. The  
21 part of appendix B that we are looking at, subpart A,  
22 appendix B, this section that's entitled "Human  
23 Health," starts at page 50 of the 2007 Brown version  
24 of the CFR.

25 CHAIRMAN McDADE: Okay. And which

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1 specific section under there are you relying on?

2 MS. MIZUNO: The specific sections are  
3 radiation exposures to public during refurbishment.  
4 That would be small occupational radiation exposures  
5 during refurbishment. That would also be small,  
6 category 1's both of them.

7 CHAIRMAN McDADE: Okay. But this isn't  
8 refurbishment. This is --

9 MS. MIZUNO: Sorry.

10 CHAIRMAN McDADE: This is the leakage from  
11 the spent fuel pools that they're referring to.

12 MS. MIZUNO: Sorry. Sorry. The last two  
13 entries, radiation exposures to the public during the  
14 license renewal term, that's a category 1 issue. And  
15 the impact is small. And occupational radiation  
16 exposure is also category 1 issue and also with a  
17 small impact.

18 JUDGE WARDWELL: And where do you believe  
19 that the background for those two category 1's in the  
20 GEIS considered those radiological releases to  
21 groundwater had been considered?

22 MS. MIZUNO: Well, the GEIS that I quoted  
23 talks about permissible doses. And the GEIS is  
24 talking in terms of doses. I wasn't referring to the  
25 portion of the GEIS that talks about leaks. So if you

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1 want that, I am going to need a little bit of time to  
2 -- \*\*JUDGE WARDWELL: I think that is the crux of the  
3 matter that I think it is the position of New York  
4 State that that hasn't been evaluated nor anticipated.  
5 And that's why it's become such a visible and  
6 concentrated effort extended by the Commission and the  
7 staff in regards to evaluating these inadvertent  
8 impacts over the past many months.

9 MS. MIZUNO: Yes, Your Honor. I  
10 understand. \*\*JUDGE WARDWELL: It hasn't been  
11 anticipated before.

12 MS. MIZUNO: No. I think I understand  
13 where you were coming from and the gist of your  
14 question. Let me explain. The GEIS is framed in  
15 terms of dosage. And this is how it addresses leaks  
16 and other --

17 JUDGE WARDWELL: I understand. Just to  
18 speed things up, I understand what you are saying.

19 MS. MIZUNO: Yes.

20 JUDGE WARDWELL: But, yet, my question is,  
21 when they considered the doses to be small from normal  
22 operations such that the radiation exposures to the  
23 public during a license renewal term would be small,  
24 did they include and consider what has now become  
25 apparent to be radiological releases to the

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1 groundwater that hadn't been anticipated at least  
2 before the last five years or so?

3 MS. MIZUNO: I understand. But those  
4 releases it's our understanding that they're within  
5 regulatory limits, Your Honor. And that's what the  
6 GEIS is talking about.

7 JUDGE WARDWELL: And I believe that's New  
8 York State's opinion, but that doesn't make it a  
9 category 1 issue.

10 MS. MIZUNO: No, it does not.

11 JUDGE WARDWELL: It doesn't fall --

12 MS. MIZUNO: No.

13 JUDGE WARDWELL: This category 1 was given  
14 to this without the consideration of that. And maybe  
15 it would have been some other category if, in fact,  
16 they had considered releases from groundwater saying  
17 that it is a more site-specific issue that needs to be  
18 addressed for each individual plan and not a generic  
19 one because of the fact that each plant has a  
20 different situation with regards to its inadvertent  
21 radiological releases to groundwater.

22 MR. TURK: Your Honor, the GEIS, if I may  
23 interject for a moment --

24 JUDGE WARDWELL: Sure.

25 MR. TURK: The GEIS considers the impacts

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1 of operation. Operation includes not just  
2 accident-free or non-leaking situations. It considers  
3 normal operations, which may include some leakage.

4 At page 4-85 of the GEIS, there is a  
5 discussion of public exposure. And it states, "During  
6 normal operations after license renewal, small  
7 quantities of radioactivity." It goes on to describe  
8 fission, corrosion, and activation products, "will  
9 continue to be released to the environment in a manner  
10 similar to present operation."

11 So possibility of continued releases is  
12 considered. As long as releases are within NRC  
13 limits, then the GEIS has concluded and the regulation  
14 concludes that the impacts to the public are small.  
15 And that is a category 1 issue.

16 JUDGE WARDWELL: Hasn't the term "release"  
17 prior to -- I'm just using five years now as a break  
18 point between when, in fact, groundwater was started  
19 to be encountered at many of these sites. Hasn't the  
20 term "release" really been related to those licensed  
21 releases associated with radiation to the environment  
22 and not the inadvertent releases and specifically that  
23 the GEIS never anticipated or even recognized that, in  
24 fact, there were these radiological releases that were  
25 inadvertently made to the groundwater?

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1 MR. TURK: My recollection is that the  
2 releases typically are considered in terms of releases  
3 that are planned, but they also would include  
4 unplanned releases. It's not necessarily that these  
5 are like the batched releases that go up the stack.

6 JUDGE WARDWELL: So you believe that the  
7 GEIS considered inadvertent releases?

8 MR. TURK: Yes, we do.

9 JUDGE WARDWELL: You think that is  
10 consistent with the conclusions of the task force that  
11 looked into this in regard to the inadvertent  
12 releases, their conclusions?

13 MR. TURK: May I have a moment? \*\*JUDGE  
14 WARDWELL: The NRC task force, I'm looking at the  
15 inadvertent releases of radioactivity to the  
16 groundwater lessons learned task force that address  
17 this issue when, in fact, it became apparent that many  
18 plants, including Indian Point, were saying, "What  
19 should we do with all of these that we are now seeing  
20 that have occurred?"

21 You look confused. You haven't heard of  
22 the -- \*\*MR. TURK: No. I personally am not familiar  
23 with the issue, but if you give me a moment, I will  
24 confer.

25 (Pause.)

1 JUDGE WARDWELL: Just to cut this short,  
2 if you just say you're not familiar with it, it's  
3 fine. I'm not holding you to hold that. You wouldn't  
4 necessarily be in the position. That's no problem.

5 \*\*MR. TURK: Your Honor, I am looking at something  
6 entitled "The Groundwater Contamination: Tritium at  
7 Nuclear Plants." This is on the U.S. NRC Web site.  
8 I am informed this is part of the task force report.  
9 And it states that tritium is a mildly radioactive  
10 type hydrogen, et cetera.

11 Water containing tritium and other  
12 radioactive substances and is normally released from  
13 nuclear plants in our controlled/monitored conditions.  
14 The NRC mandates to protect public health and safety.

15 "The NRC recently identified several  
16 instances of unintended tritium releases. And all  
17 available information shows no threat to the public.  
18 Nonetheless, the NRC is reviewing these incidents to  
19 ensure nuclear plant operators have taken appropriate  
20 action and to determine what extent, if any, changes  
21 are needed to the" --

22 JUDGE WARDWELL: That's not the  
23 conclusions. You are not reading from the conclusions  
24 of the --

25 MR. TURK: This is a summary that appeared

1 on the Web site.

2 JUDGE WARDWELL: -- task force.

3 MR. TURK: I don't have the task force  
4 report.

5 JUDGE WARDWELL: And do you know the date  
6 of that that you were just reading from approximately?

7 MR. TURK: I don't know the --

8 JUDGE WARDWELL: Just approximately?

9 MR. TURK: I believe it's November 2007.

10 \*\*JUDGE WARDWELL: Okay.

11 CHAIRMAN McDADE: Let me --

12 JUDGE WARDWELL: The point is that do you  
13 believe that the -- when was the GEIS published?

14 MR. TURK: Nineteen ninety-six, Your  
15 Honor. \*\*JUDGE WARDWELL: Thank you.

16 CHAIRMAN McDADE: Let me just clarify  
17 something in my own mind here and see if we can work  
18 through it very quickly. It seems that the argument  
19 that the staff is making here and that Entergy is  
20 making is totally consistent with the Board's opinion  
21 in Turkey Point. Turkey Point board clearly  
22 considered this to be a category 1 issue under  
23 appendix B. \*\*However, my question is this. The  
24 specific section of appendix B which talks about  
25 radiation doses to the public will continue at current

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1 levels associated with normal operations.

2 Now, it strikes me that nowhere has the  
3 NRC said that leakage from a spent fuel pool is part  
4 of normal operations. It seems like it would be  
5 anathema to normal operations.

6 So the question then is, how does one get  
7 from this appendix, which is binding upon us, -- if  
8 it's a category 1, it's a category 1 -- to the  
9 conclusion in the generic environmental impact  
10 statement that it's a category 1?

11 MR. TURK: The answer is that the doses  
12 tell you whether this is something within limits or  
13 not within limits, whether it is something that the  
14 GEIS considered or not. If the releases to the public  
15 are monitored, as they have been under the current  
16 operations, -- there has been well monitoring -- and  
17 determination of where the releases are occurring from  
18 and what the public impacts are, as long as those  
19 impacts are within regulatory limits, then the GEIS  
20 applies. The impacts are determined to be small on a  
21 generic basis. \*\*Whether it comes from a spent fuel  
22 pool leak or some other sort of an accidental  
23 condition or unintended condition, the precise source  
24 is not the issue. The question is, have the exposures  
25 to the public stayed within regulatory limits?

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1 CHAIRMAN McDADE: But at this point in  
2 time, in normal operations, one would anticipate that  
3 there would not be any leaks from a spent fuel pool,  
4 that there have been some leaks.

5 Question, isn't it necessary to make  
6 inquiry into how much, what is going to happen over  
7 the extended life of the operations under the license  
8 renewal in order to determine whether or not this  
9 appropriately fits within category 1 because category  
10 1 talks about normal operations, small exposure? \*\*And  
11 I think what the State of New York is saying is over  
12 the extended life of this license, we at this point in  
13 time have no way of knowing whether it will be small  
14 exposure; ergo, this really isn't appropriately  
15 treated in the generic way that it has been as a  
16 category 1, there should be a preliminary decision by  
17 the Board because they're saying this is sort of  
18 outside the scope of normal operations.

19 Therefore, it hasn't been characterized  
20 either as category 1 or category 2 at this point in  
21 time. And having not been categorized, it's an open  
22 question. It's something that they can properly  
23 demand a hearing on, the environmental impact of this.  
24 \*\*MR. TURK: Two responses. I don't know if the mike  
25 is picking me up. Two responses, Your Honor. Number

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1 one, the GEIS at page 4-84 states that "Radiation  
2 exposures occurring after license renewal are  
3 projected based on present levels of exposures."

4 Current levels of exposures are well  
5 within regulatory limits. The state has not shown any  
6 evidence to indicate that the current limits are being  
7 exceeded or are being close to being exceeded.

8 Further, they concede that both New York  
9 State and the NRC are on top of the current problems.  
10 The applicant recently I believe, in January of this  
11 year, submitted what has been described by some as a  
12 comprehensive groundwater report. That report is  
13 under study by the NRC at this time.

14 The applicant has committed to draining  
15 the unit 1 spent fuel pool, which had been the source  
16 of much of the leakage in the past, particularly of  
17 leakage associated with radionuclides other than  
18 tritium. And they also have repaired the defects in  
19 the spent fuel pool for unit 2 or perhaps it's the  
20 transfer canal for the spent fuel pool at unit 2,  
21 which was the source of tritium leaks.

22 So on a current operating basis, the leaks  
23 are being addressed. The GEIS says look to the future  
24 based on what the present levels of exposure are. And  
25 those levels are within regulatory limits.

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1           The GEIS goes on to say if you are within  
2 regulatory limits, the impacts are small on a generic  
3 basis. And that's the answer.

4           CHAIRMAN McDADE: Okay. And that brings  
5 us back to page 50, appendix B, the next to last  
6 entry.

7           JUDGE WARDWELL: First I want to ask  
8 another question in this regard. GEIS is making that  
9 statement in regards to the current exposures from all  
10 plants. And I'll wait until I'm sure that you are  
11 listening.

12           The GEIS made that statement in regards to  
13 an evaluation of general radiation exposures from all  
14 plants at the time it was written and made what you  
15 just quoted to us, saying that it was based on the  
16 current operations that the doses are below that.

17           But at the time that the GEIS was written,  
18 they did not include, am I correct in saying, any  
19 inadvertent releases associated with groundwater  
20 contamination because it wasn't an issue at that time?

21           Given that, they went ahead and said,  
22 "Fine. We can give it a category 1," meaning that  
23 it's a generic issue for all plants. You were saying  
24 that you were related to the current operations at IP.

25           That isn't what GEIS is saying. GEIS is

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1 saying it's generic for all plants across the United  
2 States. Therefore, it doesn't have to be looked at on  
3 a site-specific basis.

4 You then went on to talk about  
5 site-specific. And I think that is New York State's  
6 argument. It is not a generic issue across all plants  
7 but, in fact, has to be looked at and addressed on a  
8 site-specific basis.

9 Therefore, it must be either a category 2  
10 or an unclassified category at this point because it  
11 hadn't been considered when GEIS was written.

12 MR. TURK: May I have a moment, Your  
13 Honor?

14 CHAIRMAN McDADE: Sure.

15 (Pause.)

16 MR. BESSETTE: Your Honor, we may have to  
17 clarify some things that --

18 JUDGE WARDWELL: Sure. Let's just let --

19 MR. BESSETTE: All right. \*\*JUDGE

20 WARDWELL: I think that would be good.

21 (Pause.)

22 JUDGE WARDWELL: If you want more time,  
23 staff, do you mind if we can go to them just so we can  
24 move the hearing along and you won't mind? \*\*MR. TURK:  
25 Oh, please.

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1 JUDGE WARDWELL: One of you can keep an  
2 ear on and let them know what happens so we're not  
3 unfair to you, but I would like to hear from them.  
4 And I don't want to interrupt if you want more time  
5 here.

6 So go ahead. Entergy would be pleased to  
7 hear what your response is.

8 MR. BESSETTE: Thank you, Your Honor.

9 I think we are dancing around the issue  
10 because we are not resting on our category 1 laurels,  
11 so to speak. The regulations require us -- and it is  
12 incorrect that if there is any new and significant  
13 information with regard to a category 1 issue, we need  
14 to evaluate it. We did so.

15 We're not saying we don't need to evaluate  
16 it. There's an entire section in the ER on the  
17 groundwater issue. Consider doing significant  
18 information. And it's all in chapter 5.

19 So the debate of whether we need to or not  
20 need to we think is moot because it is in there. And  
21 with regard to the data itself, the data indicates  
22 that there is no significant impact. We're only a  
23 small fraction of the dose limits even considering  
24 that new and significant, potentially significant,  
25 information.

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1           With regard to New York's contention, as  
2           our colleagues from the NRC said, they have been  
3           working with Entergy on this issue. There is no  
4           dispute over the radiological data in their petition.  
5           They agree with the data we have taken. We have  
6           submitted in support of this contention the GZA report  
7           is a comprehensive two-year study of all of these  
8           issues.

9           So, again, there is no dispute over that.  
10          We see no challenge to that. So we don't quite know  
11          what the material issue is. We believe we have done  
12          exactly that New York has requested. We have  
13          evaluated the impacts of this.

14          One thing Ms. Leary had said is that we  
15          have to look at new and significant information going  
16          into the license renewal term. And right now if we  
17          look at what the groundwater issue is, the majority of  
18          environmental concerns are associated with strontium.

19          Strontium is only coming from unit 1.  
20          Unit 1 spend fuel pool is not in the scope of license  
21          renewal. And it will be emptied in 2008. So unit 1  
22          will no longer be a source of groundwater  
23          contamination. This year nothing to with license  
24          rework, unit 3 there are no known leaks and on one has  
25          provided any facts, any data to controvert that other

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1 than perhaps a vague assertion that there may be leaks  
2 in the future, completely unsupported.

3 The two identified leaks, all based on  
4 accurate data is that the leak occurred in 1990. That  
5 was prepared in that same time frame. And the ongoing  
6 leak of tritium was associated with an original  
7 defect, original fabrication defect, in the transfer  
8 canal. That has been repaired. And there is the  
9 leakage that has been monitored from unit 2, has  
10 essentially stopped.

11 So right now based on all of those  
12 studies, the maximum dose per our radiological and  
13 environmental program shows less than one percent of  
14 the appendix I dose limits being seated.

15 And that is now. So if you go forward  
16 into license renewal, there is absolutely no basis to  
17 assert that there is any data that is going to  
18 indicate that it is going to be maybe a more  
19 significant environmental impact in a license renewal  
20 term.

21 So we believe that we have thoroughly  
22 addressed all of the issues New York is raising on a  
23 site-specific basis and may have not refuted any of  
24 the data. \*\*JUDGE WARDWELL: Thank you for that. I  
25 was going to get to that. And I am glad you brought

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1 that up.

2 In regards to that, because of your  
3 submittal, do you agree that, in fact, these  
4 inadvertent releases can't be treated as a category 1  
5 issue, then?

6 MR. BESSETTE: We believe groundwater  
7 contamination is a category 1 issue, but the  
8 groundwater releases at the site are new and  
9 significant but potentially significant information  
10 that should be considered on a site basis. And we  
11 have done so. So if it were a purely category 1  
12 issue, we wouldn't have done anything.

13 JUDGE WARDWELL: Do you agree, then, with  
14 the contention, then, that your aging management plan  
15 must include some process by which you can determine  
16 whether or not those releases change over the license  
17 renewal period such that they would be able to be  
18 picked up in the future to assure that they don't  
19 exceed the dose limits?

20 MR. BESSETTE: One minute, Your Honor.

21 (Pause.)

22 MR. BESSETTE: Your Honor, we do have  
23 aging management plans for the structures, but with  
24 regard to ongoing monitoring for leaks, that is  
25 addressed by your normal radiological environmental

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1 monitoring program. That is an ongoing regulatory  
2 program. And those issues have been addressed in  
3 several decisions recently.

4 JUDGE WARDWELL: Does your REMP currently  
5 include assessing whether or not doses are exceeded of  
6 radiological releases that include both the license  
7 releases and inadvertent releases?

8 MR. BESSETTE: Your Honor, the  
9 radiological environmental program looks at all  
10 releases. I mean, it looks at downstream wildlife,  
11 fish, exposures. It doesn't consider the typical  
12 source.

13 JUDGE WARDWELL: But they had no data to  
14 include inadvertent releases for many years, nor do  
15 most plants have anything with that. Is that a fair  
16 assessment associated with it?

17 MR. BESSETTE: One minute, Your Honor.  
18 \*(Pause.)

19 MR. BESSETTE: Your Honor, in addition to  
20 the radiological environmental program, the site has  
21 committed to a long-term groundwater monitoring  
22 program on this issue. That is a current operating  
23 issue because it is dealing with current radiological  
24 conditions on the site.

25 So we believe that, to answer your

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1 question, there is a radiological environmental  
2 monitoring program, and there is also a site-specific  
3 groundwater, long-term groundwater, monitoring program  
4 that will address this issue. But, again, that is  
5 current operating issue, not aging management.

6 JUDGE WARDWELL: Thank you.

7 New York, why don't the current operating  
8 systems in place serve the needs that are being asked  
9 for in regards to this contention?

10 MS. MATTHEWS: Well, first of all, Your  
11 Honor, that does not appear to be anywhere in  
12 Entergy's answer. But, secondly, we are looking at  
13 the long-term impacts. And you have got a 20-year  
14 review here that this issue is required to be looked  
15 at.

16 What they are looking at now in the  
17 current review is not taking into account extended  
18 operations in that long-term review. We are here now  
19 for the 20-year relicensing application. There is a  
20 process for evaluating environmental impacts.

21 And when I hear staff cite to some of  
22 these provisions in the GEIS, they simply don't apply.  
23 The one that they have cited to, 4.6, radiological  
24 impacts of normal operation, I don't know that I need  
25 to address the latter part of that about normal

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1 operation. We don't believe that leaks in spent fuel  
2 pools are in any way a part of normal operation.

3 But this section refers to radiological  
4 impacts on occupational personnel and members of the  
5 public during normal operation following license  
6 renewal, et cetera. It's not talking about the  
7 impacts to the New York resource, the New York  
8 resource of groundwater, the New York resource of the  
9 Hudson River. The section that they have cited, 4.6,  
10 simply does not address New York's concern.

11 I think I have answered your question, but  
12 maybe I haven't. And I am happy to provide some more  
13 information.

14 We are also very concerned about the  
15 levels of contamination. Entergy characterizes those  
16 levels as being low. We very much dispute that. We  
17 have got strontium-90 levels at 14 times the drinking  
18 water standard at one well, 3.4 times the drinking  
19 water standard at another well.

20 We have tritium from the IP-2 spent fuel  
21 pool at 30 times the drinking water standard. We also  
22 have residual contamination. It's not enough that the  
23 spent fuel pool in unit 1 will be emptied by 2008.  
24 There will be residual contamination. Tim Rice  
25 mentions that in paragraph 26 of his declaration.

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1           So these are ongoing, into the future.  
2           And this is the proceeding where that gets looked at.  
3           And the Board is correct that the 1996 GEIS simply did  
4           not look at this issue. And, in any event, that GEIS  
5           is now woefully out of date. And there really is no  
6           end in sight for the update.

7           JUDGE WARDWELL: Regardless of how you  
8           characterize the numbers, whether you characterize  
9           with low, medium, or high or severe, the numbers are  
10          what they are. And it's a question of how does that  
11          relate to a dose limit. Isn't that the issue?

12          MS. MATTHEWS: That is part of it, but it  
13          also goes to the New York resource. When you're  
14          talking about a public health impact, you are also  
15          talking about the impact to the resource itself.

16          And the groundwater is a New York  
17          resource. The Hudson River is a New York resource.  
18          And we have this radiological material into these two  
19          resources. And that is a concern for New York State.  
20          And that is an environmental concern that needs to be  
21          looked at in this proceeding.

22          CHAIRMAN McDADE: Okay.

23          JUDGE WARDWELL: Thank you.

24          CHAIRMAN McDADE: Mr. Turk, did you have  
25          something further?

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1 MR. TURK: Yes. And I forgot what the  
2 question was that you were pursuing, my memory of what  
3 you were pursuing and what you found out. I believe  
4 your question went to whether unplanned releases were  
5 considered or whether the Indian Point releases were  
6 considered within the GEIS. Am I paraphrasing?

7 JUDGE WARDWELL: Yes. I think I remember  
8 what I was saying. I was trying to say that GEIS was  
9 based on an evaluation of all plants at that time that  
10 didn't include the inadvertent releases. And then  
11 when they were talking about saying, "Gee, the result  
12 in exposures is all within NRC limits. Therefore,  
13 generically we can consider it to be a category 1  
14 issue that doesn't need to be addressed on a  
15 site-specific basis.

16 MR. TURK: My answer is the GEIS does  
17 address releases up to the point of exceeding NRC  
18 limits. I cannot give you a specific reference to  
19 show you that off-normal releases are included. I  
20 would have to get that for you after this session,  
21 after we go back to Washington. But I would point to  
22 page 4-84 of the GEIS, which talks about radiological  
23 impacts of normal operation.

24 And I won't contend, as the state  
25 suggests, that spent fuel pool leaks are normal.

1       However, that is within the scope of normal; i.e.,  
2       non-accident, operation. I think that is the context  
3       in which this discussion appears. The GEIS looks at  
4       normal operations versus accident conditions.

5               And the GEIS says at 4-84 that "In  
6       response to comments on the draft GEIS and the  
7       proposed rule, the standard defining a small  
8       radiological impact has changed from a comparison with  
9       background radiation to sustain compliance with the  
10      dose and release limits applicable to the activities  
11      being reviewed."

12             And our position is that as long as Indian  
13      Point is within NRC dose limits, then the impact has  
14      been determined by the GEIS to be small. And that  
15      would apply to the spent fuel leaks as well.  
16      \*\*Incidentally, I note that the state referenced  
17      drinking water standards. It is my understanding that  
18      the wells at which this level of radioactivity was  
19      detected -- and this is a current operation issue, but  
20      just for information, those are not drinking wells.  
21      Those are monitoring wells.

22             There are no drinking wells in that  
23      vicinity. And there is no claim by the state that any  
24      members of the public are drinking water that is  
25      contaminated with the levels of radioactive

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1 contamination that they are addressing. \*\*JUDGE

2 WARDWELL: But aren't they used --

3 MR. TURK: That is a current operating  
4 issue.

5 JUDGE WARDWELL: But aren't they using it  
6 similar to what is used in a hydrogeologic report that  
7 Entergy submitted strictly as a baseline for  
8 discussion purposes and not in any allegation, either  
9 direct or implicit, implicit or explicit, in regards  
10 to drinking water?

11 MR. TURK: I believe the two sides of the  
12 room are using the same data. They're using the same  
13 well data.

14 JUDGE WARDWELL: And they're using the  
15 same comparison in regards to coming up with a handle  
16 of to what magnitude are these levels. And oftentimes  
17 it's compared to drinking water standards, regardless  
18 of whether there is a drinking water activity taking  
19 place now.

20 MR. TURK: That's correct.

21 JUDGE WARDWELL: And there's no guarantee,  
22 isn't it true, that it won't be used as a drinking  
23 water sometime in the future?

24 MR. BESSETTE: Your Honor, we would just  
25 like to clarify we are not comparing our well samples

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1 to drinking water samples. We're comparing it through  
2 our radiological environmental program to appendix I  
3 dose consequences. And, just to clarify --

4 JUDGE WARDWELL: There are no comments in  
5 your hydrogeologic report in comparing detected levels  
6 to drinking water standards?

7 MR. BESSETTE: Only to say that drinking  
8 water standards don't apply, our dose evaluation and  
9 radionuclide evaluations are compared in accordance  
10 with our approved regulatory program for appendix I.

11 And, just one final comment, we don't  
12 dispute New York's concern with this issue. We  
13 believe it is a valid concern. However, it is not a  
14 concern for this proceeding. \*\*The New York's concern  
15 over the resources is not an aging management issue.  
16 Ms. Leary stated it all. When unit 1 empties its  
17 pool, there is going to be their concern with the  
18 remaining contamination from unit 1. That is simply  
19 not an issue for this proceeding.

20 JUDGE WARDWELL: Thank you.

21 MR. BESSETTE: Thank you.

22 CHAIRMAN McDADE: Okay. I think we  
23 understand the parties' views on that contention. New  
24 York contention 29, "The environmental report fails to  
25 address emergency preparedness and evacuation planning

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1 for Indian Point and, thus, violates the requirement  
2 of the National Environmental Policy Act."

3 The first question to New York is, why is  
4 this inquiry not precluded in this proceeding by 10  
5 CFR 50.47? And then, secondly, if it is an  
6 environmental issue, why isn't it a category 1 issue?

7 Do you want to address first the 50.47?  
8 Why isn't it precluded by 50.47?

9 MS. MATTHEWS: My colleague John Parker  
10 will be addressing that, Your Honor.

11 MR. PARKER: John Parker for DEC, if it  
12 pleases the Board. 50.47 is the requirement for  
13 emergency preparedness planning. I think there is no  
14 question about that. I also think there is no  
15 question that that requirement is to be met for the  
16 operation of a nuclear generating facility.  
17 Nonetheless, that is the requirement for the plant.

18 We talk about the agreement with that,  
19 with fixing the importance of this issue for the  
20 environment. It is also discussed, however, as an  
21 environmental issue with respect to the generic  
22 environmental impact statement.

23 So yes, it is a requirement. Yes, there  
24 are issues with respect to the criteria that must be  
25 met. We have issues with that. And then it is a

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1 separate environmental impact issue recognized in the  
2 generic EIS. \*\*CHAIRMAN McDADE: Okay. But initially  
3 under 50.47, this would be part of the current  
4 licensing basis, part of the ongoing operations of the  
5 facility and, therefore, outside the scope of a  
6 license renewal proceeding, would it not?

7 MR. PARKER: I'm not sure if that is  
8 accurate with respect to the question that there  
9 really -- when NRC staff in 1996 looked at this issue,  
10 there was really no question that it needed to be  
11 addressed in the context of an environmental impact.

12 Evacuation planning is at the heart,  
13 essentially a mitigating measure with respect to the  
14 accidents at a nuclear power plant. And they  
15 recognized that that was a significant environmental  
16 impact. I don't think to say that if there is a  
17 requirement that it be met, that it be met with  
18 respect to FEMA's approval and NRC approval, that it  
19 removes it from the aspects of the environmental  
20 review, as NRC itself has acknowledged with what they  
21 have done with respect to the comments they make in  
22 the generic EIS.

23 CHAIRMAN McDADE: Okay. Specifically, at  
24 56 Federal Register 64-967, hasn't the Commission  
25 clarified 50.47 to make it clear that no new finding

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1 on emergency preparedness will be made as part of a  
2 license renewal decision?

3 So, that said, where do we get any  
4 authority to revisit this issue here, as opposed to  
5 the Commission's ongoing oversight of the operations  
6 of Indian Point? Now, they need to make sure that  
7 there is an updated adequate emergency plan at all  
8 times. But the Commission has told us it's not part  
9 of the license renewal process.

10 MR. PARKER: The State of New York is not  
11 asking the NRC to make the reasonable assurance  
12 determination of 50.47. We have proffered this  
13 contention in the context of the environmental review  
14 for its mitigative purposes for a variety of reasons.

15 We are not asking or challenging directly  
16 all of the contents that would be used to meet the  
17 criteria, 50.47, nor the safety determination which  
18 must be made, both by FEMA and NRC. With respect to  
19 that determination initially and the fact that it  
20 doesn't have to be made in the relicense goes to the  
21 mitigation of the environmental impacts or postulated  
22 or a severe accident occur.

23 CHAIRMAN McDADE: Okay. But to the degree  
24 that it would be considered an environmental issue,  
25 why would it not be considered a category 1

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1 environmental issue and, likewise, outside the scope  
2 of the proceeding?

3 MR. PARKER: Excuse me. In this context,  
4 the issue gets a little bit less clear for a variety  
5 of important reasons. Number one is, as put forth in  
6 the Williams declaration, the evacuation plan, the  
7 meteorological emergency preparedness plan for Indian  
8 Point units 2 and 3 has perhaps been one of the most  
9 studied of the documents of its type with respect to  
10 these facilities. And these reviews have uncovered  
11 the unique nature of this region.

12 The unique nature is multi-fold. It deals  
13 with topography. It deals with a variety of issues,  
14 which we can discuss, that are covered in the Williams  
15 declaration.

16 So, number one, yes, generically it was  
17 addressed as saying it is generic for all. We believe  
18 it is not generic for all, and we believe we have laid  
19 that out.

20 Two, under the regulations, I think it is  
21 subpart B to appendix A. The first paragraph  
22 discusses the ten-year window with respect to the  
23 generic EIS. And I would like to pull it out. This  
24 also gets to the heart of yes, it was studied  
25 comprehensively the last couple of years. And no, the

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1 ten-year review, which I am about to discuss, has not  
2 occurred.

3 The regulations require the NRC on a  
4 ten-year cycle it states, "The Commission intends to  
5 review the material in the appendix and update it if  
6 necessary. A scoping notice must be published in the  
7 Federal Register, indicating the results of the NRC's  
8 review and inviting public comments and proposals for  
9 other areas that should be updated."

10 We believe that directly addresses the  
11 issue here. We are in this situation where a  
12 regulation is stale, where we are being asked to look  
13 at conclusions reached a decade-plus ago on issues of  
14 grave safety and mitigation with respect to the  
15 environmental impacts of nuclear facility.

16 Yet, the agency that is requiring that of  
17 us has failed to comply with the updated requirements.  
18 The information that would have been or could have  
19 been put into that context does exist.

20 The basic conclusions of those analyses  
21 are put forward in the declaration of Ray Williams and  
22 the incorporation by reference of the Wood report,  
23 upon which it is based.

24 CHAIRMAN McDADE: Okay. Assume for the  
25 sake of argument the NRC determined this to be a

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1 category 1 issue more than ten years ago, back in  
2 1996. Doesn't it remain a category 1 issue unless and  
3 until they issued new guidance on this? \*\*MR. PARKER:  
4 It is our position because this issue involves an NRC  
5 regulation, it must be by its terms updated within ten  
6 years, in essence, is akin to a sunset provision.  
7 That these issues are so important and so crucial and  
8 one is producing sunsets, it pulls out of that strict  
9 view of further applicability.

10 CHAIRMAN McDADE: Let me ask the NRC  
11 staff. There is a determination made specifically in  
12 NUREG 1437 that this is a category 1 issue. That  
13 said, one could argue that given the unique  
14 circumstances surrounding Indian Point, if ever  
15 something should not be treated as a generic issue  
16 given the uniqueness of this particular site, it has  
17 to do with emergency planning and evacuation planning  
18 for Indian Point.

19 Simply because it is in NUREG 1437 does  
20 not preclude us from revisiting the determination as  
21 to its category 1 status, where in the regulation  
22 would you point us that says we are bound to the  
23 determination that it's a category 1 status.

24 Is there a regulation, as opposed to a  
25 NUREG, that you can point us to?

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1 MR. TURK: The first regulation I would  
2 point to is that a challenge to a regulation would  
3 require a waiver petition. And the state has not  
4 filed a petition for waiver of Commission regulations.

5 CHAIRMAN McDADE: Right. But at this  
6 point, that is what I am asking. What is the  
7 regulation? The NUREG 1437 isn't the regulation. So  
8 it wouldn't require a waiver. So what I am looking  
9 for is the regulation that underpins 1437.

10 Fourteen thirty-seven, is it not, is the  
11 agency's interpretation? It's giving life to a  
12 regulation. It's implementing a regulation. So I am  
13 just asking where that regulatory basis is.

14 MR. TURK: The regulations in 10 CFR part  
15 51 direct that the GEIS shall be complied with, not  
16 complied with, but that establishes the issues for  
17 consideration in an environmental impact statement to  
18 be developed by the staff.

19 A category 1 issue would be treated as  
20 stated in the GEIS. Category 2 issue would be a  
21 site-specific evaluation. The GEIS determines this is  
22 a category 1 issue. \*\*CHAIRMAN McDADE: So the  
23 regulation underlying the GEIS is 10 CFR part 50?

24 MR. TURK: Fifty-one.

25 CHAIRMAN McDADE: Fifty-one. Entergy, do

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1 you have anything to add on this?

2 MS. SUTTON: Yes, Your Honor. In  
3 particular, you're referring to 10 CFR section  
4 51.53(c)(3)(i), which incorporates into the rule the  
5 findings in the generic environmental impact statement  
6 as well as appendix B to part 51, which does the same.  
7 This Board does not have the authority to change the  
8 regulations themselves absent a rulemaking. \*\*CHAIRMAN  
9 McDADE: You're saying we don't have the authority,  
10 with or without rulemaking, since we can't make rules?

11 MS. SUTTON: No. That would be correct:  
12 without a rule.

13 CHAIRMAN McDADE: Okay. So the Commission  
14 can do it through rulemaking? We can't do it?

15 MS. SUTTON: That's correct, Your Honor.

16 CHAIRMAN McDADE: Okay. Do you have any  
17 other? Okay.

18 MR. PARKER: One question quickly?

19 CHAIRMAN McDADE: Okay.

20 MR. PARKER: The issues raised, the  
21 evacuation plan is used with respect to Indian Point  
22 units 2 and 3 are not insignificant issues for the  
23 communities of this area. As you probably well  
24 understood, it has been an issue of great importance.

25 In that context, it is with great

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1 difficulty and careful attention to detail that we  
2 attempted to put together for you and your  
3 consideration the reasons underlying why evacuation  
4 planning should be reviewed in the context of this  
5 proceeding. In that review, we looked at category 1,  
6 category 2, and the sound analysis.

7 In essence, this is a mitigation issue.  
8 We believe the Board is not precluded from  
9 consideration of mitigation issues with respect to  
10 impacts, particularly if postulated accidents or  
11 severe accidents in the context of these proceedings.  
12 In the --

13 CHAIRMAN McDADE: Can you lean into the  
14 microphone, please?

15 MR. PARKER: I'm sorry. I'm kind of like  
16 off kilter here. The Williams declaration at  
17 paragraphs 15, 16, 24, 25, and 31 puts forth a series  
18 of mitigation measures which we believe are directly  
19 applicable to the comment I just made with respect to  
20 the Board's authority to review mitigation and  
21 mitigation requirements in the context of this  
22 environmental review and any obligations underlying  
23 it.

24 With respect to the generic EIS and the  
25 situation with respect of the category 1 and category

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1 2 issues we discussed earlier, all put into context by  
2 Roni Franovich in her statement on the 19th of  
3 September of last year, 2007. She is the Chief of the  
4 NRC headquarters that is responsible for the  
5 performance of the license renewal at Indian Point.

6 In essence, what she said was with respect  
7 to that ten-year obligation, we had discussed earlier  
8 if you want to assume that that is what controls you,  
9 which we have addressed.

10 The NRC began that review in 2003. But in  
11 2006, they really kicked it off in earnest. That is  
12 what she said, in her words. And here we are. It's  
13 2008. It's 12 years later. And it just underlies the  
14 problem with trying to deal with the GEIS that's not  
15 being complied with by the NRC as we see, but it does  
16 not negate the Board's ability with respect to  
17 mitigation under the proceeding, as we discussed  
18 earlier.

19 CHAIRMAN McDADE: Okay. Thank you. I  
20 think we understand the position of the parties with  
21 regard to this contention, New York AG contention  
22 number 30. NEPA requires the NRC review the  
23 environmental impacts of the outmoded once-through  
24 cooling water intake system used at Indian Point,  
25 which causes significant heat shock, thermal discharge

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1 impacts.

2 JUDGE WARDWELL: I think I would like to  
3 start off if Entergy would be so kind to briefly  
4 describe the history of the SPDES permit that  
5 presently exists for your plant and in the process  
6 demonstrate how that might or might not serve the  
7 purposes of a 316(b) determination or a 316(a) waiver  
8 from that determination under the Clean Water Act.

9 MS. ZOLI: Your Honor, I am not going to  
10 start with ancient history.

11 JUDGE WARDWELL: Please. You have got to  
12 get it. You move seats. You do whatever you need to  
13 so everyone can hear you, including --

14 MS. ZOLI: Your Honor, I am not going to  
15 start with ancient history, but I will answer your  
16 question, which is grounded in 51.53(c). And the  
17 question that we need to answer in the ER is the  
18 provision says, "The applicant shall provide a copy of  
19 a current Clean Water Act 316(b) determination and, if  
20 necessary, a 316(a) variance in accordance with 40 CFR  
21 part 125 or equivalent state permits and supporting  
22 documentation." \*\*And so the question is, have we done  
23 that in the ER? We don't have to address here the  
24 question of whether the 1987 permit is current because  
25 New York has already conceded that. They have done

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1 that in their scoping comments, and they have done it  
2 in their petition on page 289. They actually use the  
3 word "current" in referencing the permit.

4 It's also the case that as a matter of New  
5 York law, a permit that is issued must comply with all  
6 applicable requirements. All applicable requirements  
7 include 316(a) and 316(b).

8 That New York statutory provision is  
9 section 1708.01. And, just so it's in the record and  
10 you have it, it states that the purpose of the chapter  
11 is to create a state pollutant discharge elimination  
12 system, or SPDES system, to ensure that the State of  
13 New York shall possess adequate authority to issue  
14 permits regulating the discharge of pollutants from  
15 your existing outlets or point sources into the waters  
16 of the state upon condition that such discharges will  
17 conform to and meet all applicable requirements of the  
18 federal water pollution control act, which is the  
19 Clean Water Act.

20 So necessarily any state permit issued has  
21 to comply with federal law. If it doesn't, New York  
22 runs the risk that it will lose its authorization to  
23 administer the Clean Water Act. That's also not  
24 disputed.

25 Thirdly, the 1987 permit that was

1 referenced in the ER, a copy of which was provided in  
2 the LRA, actually records the compliance. In section  
3 7, the permit states, "The Hudson River settlement  
4 agreement, dated December 19th, 1980, is annexed to  
5 this permit" --

6 JUDGE WARDWELL: It's dated what?

7 MS. ZOLI: "Dated December 19th, 1980, is  
8 annexed to this permit as appendix 2 and is  
9 incorporated herein as a condition to this permit.  
10 The settlement agreement satisfies New York State  
11 criteria governing thermal discharges." That phrase,  
12 "New York State criteria governing thermal  
13 discharges," despite what it sounds like, is the title  
14 to part 704. \*\*Part 704 includes not only the thermal  
15 discharge requirements but also part 704.5, which is  
16 the intake requirements. So the permit records  
17 compliance.

18 Now, the HRSA expired. It was replaced by  
19 consent orders. The consent orders extend into 1998  
20 and in 1998 was replaced by a voluntary agreement by  
21 the parties to continue to comply with a fourth  
22 amended consent order. It's not much of a surprise.  
23 Having gone back to court four times, they decided  
24 they could work it out themselves this time.

25 And Mr. Little, who is the New York State

1 staff counsel for New York State, DEC staff counsel,  
2 his affidavit submitted in this matter, this  
3 declaration, in paragraphs 18, 19, and 20 records --

4 JUDGE WARDWELL: What is the date of this  
5 voluntary agreement?

6 MS. ZOLI: The voluntary agreement  
7 continued after 1998. It's recorded by the staff  
8 counsel in their submission in the declaration in this  
9 proceeding. It is also included in the FEIS.

10 The FEIS is referenced in the ER. It is  
11 a staff document.

12 JUDGE WARDWELL: And this is an FEIS for  
13 what?

14 MS. ZOLI: For the SPDES permit that was  
15 issued. It's the New York State DEC staff document  
16 that they issued. It's referenced in the ER. And it  
17 states, "When the fourth amended consent order expired  
18 on February 1st, 1998, the parties who were then  
19 actively engaged in negotiations regarding elements of  
20 the draft SPDES permits did not reach agreement to  
21 continue with a fifth extension of the consent order.

22 "However, the generators agreed to  
23 continue the mitigative measures included in the  
24 continuing SPDES permit and provisions of the fourth  
25 amended consent order until new SPDES permits were

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1 issued to them."

2 This document was not only issued in  
3 final. It went out to public notice and comment. And  
4 that is on page 10 of 95 of the FEIS. \*\*JUDGE  
5 WARDWELL: And that document has no expiration date?  
6 It's until this is resolved? Until the SPDES  
7 controversy that's presently being litigated by the  
8 8GL panel, whatever they're called?

9 MS. ZOLI: Right, in front of the  
10 administrative law judges.

11 JUDGE WARDWELL: Right.

12 MS. ZOLI: The pending SPDES permit  
13 proceeding. We have a panel of two administrative law  
14 judges. And it is being litigated in front of them  
15 now.

16 And so what we have, Your Honor, is a  
17 continuous record from the HRSA in 1981 to date and  
18 which confirms that the SPDES permit is both current  
19 and effective. There is no dispute about this, no  
20 reasonable dispute.

21 JUDGE WARDWELL: Hypothetically if it  
22 could be shown that a voluntary agreement did not  
23 continue the link with the original HSA, would, in  
24 fact, you not have a valid 316(a) determination at  
25 this point?

1 MS. ZOLI: I think, Your Honor, you are  
2 asking me whether we would then not have one.

3 JUDGE WARDWELL: Correct.

4 MS. ZOLI: Correct?

5 JUDGE WARDWELL: I thought I said that.

6 MS. ZOLI: And the answer is no, Your  
7 Honor, because the permit is what the NRC is  
8 authorized to look at. And the permit includes  
9 section 7, which reflects the condition that the HRSA  
10 complied with, provided the mitigative measures that  
11 were necessary and complied with New York State law.

12 But, in addition, as a matter of New York  
13 State law, New York cannot issue a permit which  
14 doesn't include compliance with all of its provisions.

15 And so the mere fact that there is a SPDES  
16 permit means that there is a current determination  
17 with respect to all aspects of New York law that are  
18 required to be in the SPDES permit. And New York  
19 State DEC maintains that both 316(a) and 316(b)  
20 determinations are required to be in SPDES permits.

21 So unless the permit were vacated, there  
22 would be no credible position that what we have  
23 submitted to date does not satisfy 51.53. And that is  
24 the functional holding of the Entergy Vermont Yankee  
25 case.

1 CHAIRMAN McDADE: Okay. Basically  
2 summarizing all of that, do you think this is outside  
3 the scope of this proceeding?

4 MS. ZOLI: I do, Your Honor.

5 CHAIRMAN McDADE: Okay. The position of  
6 the NRC staff, as I understood it, is that you do not  
7 oppose the admissibility of its contention to the  
8 extent that it challenges the adequacy of the heat  
9 shock analysis provided in the ER.

10 Is it your view, the staff's view, that  
11 the adequacy of the heat shock analysis provided in  
12 the ER is within the scope of this proceeding? \*\*MR.  
13 CHANDLER: Well, Your Honor, I guess, to start with,  
14 I should sort of explain how we arrived at that, the  
15 decision that we wouldn't oppose it.

16 CHAIRMAN McDADE: Is the answer yes?

17 MR. CHANDLER: Well, I guess the answer is  
18 yes. When the staff received the license renewal  
19 application, the environmental report did not  
20 explicitly state that the 316(b) determinations had  
21 been met. And it also included an analysis of heat  
22 shock impingement and entrainment.

23 And since that analysis would not be  
24 required of the 316(b) determinations had been  
25 included with the environmental report, the staff's

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1 understanding was that the SPDES permit did not meet  
2 that requirement.

3           However, as counsel for Entergy explained,  
4 the section 7 of the SPDES permit, which cites the  
5 Hudson River settlement agreement and states that it  
6 meets the state thermal discharge criteria, as the  
7 staff has continued with its review, we have come to  
8 the understanding that it does, in fact, meet the  
9 316(b) requirements.

10           It wasn't readily apparent on the face of  
11 the environmental report and the attached  
12 documentation, but as we have read into this further  
13 in reviewing Entergy's answer to the contentions and  
14 also New York's reply, which does not rebut any of  
15 what Entergy has asserted, we believe that it does, in  
16 fact, satisfy those criteria.

17           JUDGE WARDWELL: So we're about to get  
18 another letter from you saying that you now retract  
19 and change your position on this?

20           MR. CHANDLER: Well, we are changing our  
21 position on that now. Yes, Your Honor. This will  
22 serve as that change in position.

23           JUDGE WARDWELL: Okay.

24           CHAIRMAN McDADE: So, again, just to make  
25 sure I understand it, initially the answer to that was

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1 yes, it is within the scope. At that point you made  
2 that determination because it was not clear that the  
3 316 requirements had been met.

4 At this point you are satisfied that the  
5 316 requirements have been met. So you are of a view  
6 that because of that, it is now outside the scope of  
7 this proceeding? \*\*MR. CHANDLER: That is correct,  
8 Your Honor.

9 CHAIRMAN McDADE: Okay. How does New York  
10 respond to that?

11 MS. MATTHEWS: I don't even know where to  
12 begin, Your Honor, but I will try. Let's talk about  
13 --

14 CHAIRMAN McDADE: Okay. Try to begin  
15 somewhere close to the end.

16 (Laughter.)

17 MS. MATTHEWS: I will try. Yes. I'm not  
18 going to start back in 1980.

19 JUDGE WARDWELL: Let me ask questions if  
20 that would help or would you rather --

21 MS. MATTHEWS: No. I'm okay. I'm okay.

22 Well, they do not satisfy 316(a) or  
23 316(b). They have a present permit. They have a  
24 permanent effect, which serves to help them. It  
25 serves as a shield against an enforcement action.

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1           The department has exercised its  
2 discretion to proceed with a SPDES renewal proceeding,  
3 rather than an enforcement action or any other kind of  
4 action. That proceeding is ongoing. That proceeding  
5 is currently within our Office of Hearings. So that  
6 is on its own track.

7           So they do not satisfy the 316(a) or the  
8 316(b) requirements.

9           JUDGE WARDWELL: Can I interrupt quickly  
10 just to cut to the chase?

11          MS. MATTHEWS: Sure. Go ahead.

12          JUDGE WARDWELL: You state that they do  
13 have, though, a valid SPDES permit at this point.

14          MS. MATTHEWS: They have a permit that has  
15 been extended for -- let's see -- 1987. It's a  
16 21-year-old permit. And it has been extended under  
17 our provision, which is similar to the federal  
18 provision for an extension when you file a timely  
19 application, yes.

20          JUDGE WARDWELL: And New York State could  
21 have taken some other action during that time frame to  
22 terminate that permit. Is that correct? Is that what  
23 I heard you say in so many words, --

24          MS. MATTHEWS: Yes. And so this --

25          \*\*JUDGE WARDWELL: -- which you decided not to?

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1 MS. MATTHEWS: This proceeding has been  
2 ongoing since -- well, the DEIS, I believe, was in  
3 1993. So this proceeding has been going on for quite  
4 a long time. These are really complex issues that  
5 date back to 1981, the ancient history with HRSA  
6 agreement.

7 JUDGE WARDWELL: I understand that.

8 MS. MATTHEWS: This has been going on for  
9 a long, long time. And now we are here and we are in  
10 the DEC proceeding to resolve these issues.

11 CHAIRMAN McDADE: But given the fact that  
12 this is a complex issue that has gone on for a long  
13 time and that there may be other complex issues in  
14 this case, why would we not just simply defer to the  
15 ALJs in the New York State, who are already wrestling  
16 with this? And they will make a determination as to  
17 the heat shock. thermal discharge impact. Why should  
18 we do it? Because of what we decide, they ultimately  
19 could decide either to issue the permit or not issue  
20 the permit.

21 And given the way the interaction between  
22 the State of New York and the federal government on  
23 the Clean Water Act, wouldn't that trump our decision.

24 MS. MATTHEWS: It doesn't trump the  
25 decision. Make no mistake about it. New York's

1 proceeding is well on its way and is ongoing. And New  
2 York will certainly address the issue on its part.

3 That is where I would ask you to do the  
4 New York job by any means. However, there is a  
5 proceeding now. There is an application for a 20-year  
6 license renewal. And the law, federal law, requires  
7 this agency to look at the environmental impacts. And  
8 one of those environmental impacts is a heat shock,  
9 thermal discharge impact.

10 And the DEIS is very clear the regulation,  
11 51.71, the analysis is very clear, that the compliance  
12 with Clean Water Act is not a substitute for and does  
13 not negate requirements for the NRC to weigh all  
14 environmental effects of the proposed action,  
15 including the degradation of any of water quality  
16 consider them alternatives to the action that are  
17 available for reducing adverse effects.

18 So for the NRC to do its job, it needs the  
19 information from the applicant in the environmental  
20 report. And, again, the applicant is required to  
21 submit accurate and complete information in the  
22 environmental report.

23 We have submitted the declaration of Dr.  
24 Dilks. He has demonstrated in great specificity and  
25 great detail that they do not meet the water quality

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1 criteria for thermal discharges into the Hudson River.

2 They have not disputed that. They have  
3 just countered with their legal argument about how  
4 since they have a permit, therefore, they are fully in  
5 compliance. And New York rejects that position.

6 CHAIRMAN McDADE: Okay. Contention 31,  
7 "NEPA requires the NRC review the environmental  
8 impacts of the outmoded once through cooling water  
9 intake system used at Indian Point, which causes  
10 massive impingement and entrainment of fish and  
11 shellfish." Do you have any questions with regard to  
12 this?

13 JUDGE WARDWELL: Yes, I'm not done yet,  
14 but I think it applies to both of these. The  
15 questions that I have apply to both. Your quote of  
16 51.71, could you repeat that again for me, please?

17 MS. MATTHEWS: Yes. It's 51.71(d).  
18 Actually, I apologize. It's footnote 3. It's note 3.

19 JUDGE WARDWELL: Go ahead and say that.

20 MS. MATTHEWS: "Compliance with the Clean  
21 Water Act is not" -- and I paraphrase just a little  
22 bit. \*\*JUDGE WARDWELL: That's fine.

23 MS. MATTHEWS: It's nearly exact. Did you  
24 want me to continue?

25 JUDGE WARDWELL: Yes, I want you to

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1 quickly just say it.

2 MS. MATTHEWS: 51.71(d).

3 JUDGE WARDWELL: Yes.

4 MS. MATTHEWS: Footnote 3.

5 JUDGE WARDWELL: You're paraphrasing now.

6 MS. MATTHEWS: "Compliance with the Clean  
7 Water Act is not a substitute for and does not negate  
8 the requirement for the NRC to weigh all environmental  
9 effects of the proposed action, including the  
10 degradation, if any, of water quality, and to consider  
11 alternatives to the action that are available for  
12 reducing adverse effects."

13 And then it goes on to say, "If there is  
14 an assessment of the aquatic impacts in the permitting  
15 authority, then the NRC will consider that  
16 assessment."

17 And then there is another track where  
18 there is not an assessment, and the NRC will establish  
19 one on its own. So it really doesn't matter.

20 If they are correct -- and we don't  
21 believe that they are correct -- then the NRC still  
22 has to establish its own assessment.

23 JUDGE WARDWELL: Doesn't that footnote  
24 refer to the fact that all it's saying is that the NRC  
25 is not relieved of their obligation to look at the

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1 impacts of the proposed action?

2 MS. MATTHEWS: Yes.

3 JUDGE WARDWELL: And that proposed action  
4 is a license renewal. Isn't that correct? \*\*MS.

5 MATTHEWS: Yes.

6 JUDGE WARDWELL: It's not the thermal  
7 discharge or the impingement, either one. The  
8 proposed action is a license renewal. It also in  
9 other areas states that, in fact, no action by the NRC  
10 can circumvent any Clean Water Act requirement. Is  
11 that correct?

12 MS. MATTHEWS: It's the environmental  
13 effects of the proposed action. Yes.

14 JUDGE WARDWELL: And that's right. But  
15 they have to take any water quality standard that is  
16 promulgated in accordance with the Clean Water Act on  
17 its face value in that assessment. Isn't that  
18 correct?

19 MS. MATTHEWS: Yes.

20 JUDGE WARDWELL: So wouldn't that include  
21 the heat shock and the thermal discharge as a  
22 controlling factor that cannot be changed in their  
23 overall assessment of the environmental impact? \*\*MS.  
24 MATTHEWS: I didn't follow that last part. I'm sorry.

25 \*\*JUDGE WARDWELL: That you agree that no action by

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1 the NRC can alter any water quality standard  
2 promulgated by the Clean Water Act?

3 MS. MATTHEWS: Yes.

4 JUDGE WARDWELL: Thermal discharge limits  
5 are a water quality standard by the Clean Water Act.  
6 Is that correct?

7 MS. MATTHEWS: Yes.

8 JUDGE WARDWELL: Therefore, no action by  
9 the NRC can change that in their overall assessment.  
10 And all footnote 3 is saying is that they still have  
11 to do the assessment, but in that assessment they have  
12 to hold fixed any water quality standard associated  
13 with the Clean Water Act, don't they?

14 MS. MATTHEWS: Yes, but can I jump ahead  
15 just one moment because I think what Your Honor is  
16 referring to is staff's position -- and, by the way,  
17 I should address the terms of condition, too. I went  
18 over that a little quickly.

19 The staff's position, at least in their  
20 papers, in their response to us, that they said they  
21 had agreed to this contention, to the admissibility of  
22 the contention, but not as far as the requirement of  
23 cooling towers.

24 Is that where Your Honor is headed? May  
25 I go there?

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1 JUDGE WARDWELL: I'm not heading, no.

2 MS. MATTHEWS: Okay. All right.

3 JUDGE WARDWELL: I'm not heading there at  
4 all.

5 MS. MATTHEWS: Okay. \*\*JUDGE WARDWELL:  
6 I'm making a more general approach that --

7 MS. MATTHEWS: May I?

8 JUDGE WARDWELL: I am asking and trying to  
9 clarify what footnote 3 means. And I think I have  
10 gotten what I needed in the response for the  
11 clarification of what footnote 3 means. And that is  
12 the process I was going through in the questioning.

13 MS. MATTHEWS: The NRC obligation to  
14 review the environmental impacts of the proposed  
15 action.

16 JUDGE WARDWELL: They still have to review  
17 the environmental impacts?

18 MS. MATTHEWS: Yes, yes.

19 JUDGE WARDWELL: I understand that.

20 MS. MATTHEWS: That is absolutely right.

21 MS. ZOLI: Your Honor, if I may, footnote  
22 3 relates to a section which is about NRC's  
23 obligations. And what is within the scope here is not  
24 that section and that footnote. The question is  
25 whether we had complied with section

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1 51.53(c)(3)(ii)(b) as it relates to the ER.

2 JUDGE WARDWELL: I'm going right there  
3 right now, exactly.

4 (Laughter.) \*\*JUDGE WARDWELL: Staff, do  
5 you agree that the only requirement as far as the ER  
6 is concerned is a valid permit that serves the purpose  
7 of the 316(a) and (b) Clean Water Act requirements?

8 MR. CHANDLER: Yes, we do.

9 JUDGE WARDWELL: Do you, New York, have  
10 any comments in regards to that or do you contend that  
11 that is not correct?

12 MS. MATTHEWS: Could you ask that question  
13 again, Your Honor?

14 JUDGE WARDWELL: That the only  
15 requirements of the NRC regulations of an application  
16 are to provide a valid permit that's in accordance  
17 with the Clean Water Act or if they can't, then they  
18 have to describe each act, thermal impingement, et  
19 cetera, but in this case, Entergy has claimed that  
20 they have a valid SPDES permit. \*\*You have stated and  
21 argued that, in fact, you agree with that. And so the  
22 only obligation now by the regulations as far as  
23 Entergy is concerned in their ER is to submit that.  
24 And that they have done. Is not that correct?

25 MS. MATTHEWS: Well, if I understand your

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1 question. May I confer for a moment?

2 (Pause.)

3 MS. MATTHEWS: We don't agree that the  
4 SAPA -- and by "SAPA," I mean State Administrative  
5 Procedure Act, the New York State Administrative  
6 Procedure Act. We don't agree that the SAPA-extended  
7 permit satisfies the 316 requirement. So we don't  
8 accept their premise at all.

9 I think that answers the question that you  
10 pose. But if it hasn't, please let me know.

11 JUDGE WARDWELL: That's fine, but you  
12 still said that they have a valid SPDES permit.

13 MS. MATTHEWS: Only for the purposes of  
14 protecting them against an enforcement action for lack  
15 of a permit because you cannot discharge into New  
16 York's waters without a permit. So they have a permit  
17 to do that, and they cannot be prosecuted for that.  
18 \*\*But as far as this proceeding and as a way of  
19 evaluating the environmental impacts of this action  
20 and indeed what is going on in the Hudson River now,  
21 it does not reflect reality. It is a legal --

22 JUDGE WARDWELL: But isn't that within the  
23 power of New York State to determine --

24 MS. MATTHEWS: And we are doing that.  
25 Yes, that was my opening. We are definitely doing

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1 that.

2 JUDGE WARDWELL: But in lieu of that, that  
3 SPDES permit still applies for Entergy's case?

4 MS. MATTHEWS: It applies to protect them  
5 against discharging without a permit, yes.

6 JUDGE WARDWELL: Thank you. \*\*MS.

7 MATTHEWS: But it does not mean that there are no  
8 adverse environmental impacts. As we sit here today,  
9 there are adverse impacts. And we have demonstrated  
10 those adverse impacts.

11 JUDGE WARDWELL: Thank you.

12 MS. MATTHEWS: May I have one moment, Your  
13 Honor, just for one final point? May I?

14 CHAIRMAN McDADE: Well, before you do,  
15 I've got a question to the staff. In answer to Judge  
16 Wardwell's question with regard to 51.53. And  
17 specifically under 51.53(c)(3)(ii)(b), which talks  
18 about providing a copy of a current Clean Water Act  
19 determination and, if necessary, a 316 variance in  
20 accordance with 40 CFR part 125 or equivalence, "If  
21 the applicant cannot provide these documents, it shall  
22 assess the impact of the proposed action on fish and  
23 shellfish resources resulting from heat shock and  
24 impingement and entrapment."

25 Now, how does this relieve the applicant

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1 of the other requirements of 51.53? In other words,  
2 it seems like you're saying that if you supply the  
3 permit, that's all I have to do with regard to this,  
4 as opposed to in (c)(2) describing in detail the  
5 modifications affecting the environment, affecting  
6 affluents that affect the environment.

7 I mean, isn't this an additional  
8 requirement, as opposed to an exemption from the other  
9 requirements of this particular section?

10 MR. CHANDLER: Well, I think, Your Honor,  
11 this requirement, the one that you cited,  
12 51.53(c)(3)(ii)(b) refers only to heat shock,  
13 impingement, and entrainment. That doesn't mean that  
14 there aren't other analyses that are required.

15 For example, Entergy in the environmental  
16 report evaluates, analyzes the closed cycle cooling  
17 alternative.

18 JUDGE WARDWELL: Let me quickly fix a  
19 point. And isn't that what footnote 3 is referring to  
20 in regards to those additional analyses that are  
21 required or -- \*\*MR. CHANDLER: I believe, Your Honor,  
22 footnote 3 in 51.71 refers to the staff's review. And  
23 the staff will include all of those analyses in the  
24 supplemental environmental impact statement. \*\*JUDGE  
25 WARDWELL: And to complete the link that Entergy has

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1 to provide that information, as stated, for example,  
2 in (c)(2) of 51.53, that information that you need to  
3 do those analyses to meet footnote 3?

4 MR. CHANDLER: Well, Your Honor, I believe  
5 that we do the analysis independent of them. So that  
6 while the (3)(ii)(b) requirement forecloses and if  
7 they attach a valid permit, they are not required to  
8 include heat shock, impingement, and entrainment  
9 analysis, but we will still do that analysis on our  
10 own in the supplemental environmental impact  
11 statement.

12 CHAIRMAN McDADE: What would you do it  
13 based on? I mean, generally speaking, you do your  
14 environmental impact statement based on the  
15 environmental report that is submitted by the licensee  
16 or the applicant.

17 Here in 51.71, it talks about your  
18 obligations in the environmental impact statement.  
19 And it says that if there is a permit, that is one of  
20 the factors that you take into consideration, but it's  
21 not everything.

22 And now what you seem to be saying is that  
23 the only thing that you're going to get from Entergy  
24 is a copy of the permit. So what is your other source  
25 of information, then?

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1 MR. CHANDLER: If I may take one moment,  
2 Your Honor?

3 MS. ZOLI: Your Honor, maybe I actually  
4 respond?

5 CHAIRMAN McDADE: Please?

6 MS. ZOLI: Because I want to clarify that  
7 the environmental report contains an entire chapter on  
8 entrainment, impingement, and heat shock. It also  
9 references documents.

10 So it's 20-odd pages of information. It  
11 references thousands of pages of supporting  
12 information, including -- this is the appendix to the  
13 DEIS, sir. This is the DEIS. This is one of the  
14 references that is summarized in the environmental  
15 report.

16 There can be no doubt that there is a  
17 complete discussion in the ER with respect to each of  
18 these issues and subjects.

19 CHAIRMAN McDADE: But there are two  
20 issues. The first issue is, is this a prior  
21 discussion within the scope of our proceeding? And  
22 then the next is, is the discussion of this issue in  
23 the ER by Entergy, then, adequate?

24 And it was my understanding before I came  
25 in here today that the staff was of the opinion that:

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1 one, it was within the scope and then the issue was  
2 joined as to the adequacy of it based on what was  
3 presented by New York and what was presented by  
4 Entergy, that the statements made by the staff today  
5 indicated that based on the existence of an adequate  
6 316 permit, that it no longer is in play. It is  
7 outside the scope of the proceeding.

8 And that is where I was getting a little  
9 bit lost because I guess I was at least initially  
10 reading the requirements of 51.53 a little bit  
11 differently than Judge Wardwell and was thinking that  
12 the subpart B there put an additional requirement on  
13 Entergy, rather than relieve them of a requirement.

14 Can you clear up this confusion on my  
15 part?

16 MR. CHANDLER: Well, I can certainly try,  
17 Your Honor. The staff has read that --

18 CHAIRMAN McDADE: And you're saying that  
19 I am so confused that you're not confident that you  
20 can do anything to help.

21 MR. CHANDLER: I certainly misspoke there,  
22 Your Honor. The staff has read this paragraph B in  
23 the same way that Judge Wardwell has, which is that if  
24 they supplied the permit, that isn't the only analysis  
25 of those particular impacts they have to do. That

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1 doesn't mean there aren't other analyses that are  
2 required, as I said before, the closed cycle cooling  
3 alternative, which they included. \*\*But with respect  
4 only to heat shock, impingement, and entrainment, a  
5 valid SPDES permit and a valid termination foreclosed  
6 the requirement for them to do that analysis in the  
7 environmental report.

8           And if I could address your earlier  
9 question about how the staff would conduct its  
10 analysis in the SEIS? Well, as counsel for Entergy  
11 has just pointed out, their environmental report does  
12 contain a large amount of information. \*\*And so this  
13 would be a rather unusual case, I suppose. But the  
14 staff in the course of doing its review sends requests  
15 for additional information to the applicant,  
16 regardless of the -- well, I suppose it's based, to  
17 begin with, on the materials in their environmental  
18 report.

19           So if they had only submitted a SPDES  
20 permit and done no analysis whatsoever in the  
21 environmental report, the staff would still be  
22 requesting information from them in order to complete  
23 our own review that will go in the SEIS.

24           CHAIRMAN McDADE: And if it were truly  
25 outside the scope of this proceeding, they could tell

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1 you to pound salt?

2 MR. CHANDLER: Well, except that we would  
3 still need the information for our own personal review

4 --

5 CHAIRMAN McDADE: Right.

6 MR. CHANDLER: -- well, not our own  
7 personal review but --

8 CHAIRMAN McDADE: But that's my question.  
9 If they are not required to provide it by the  
10 regulation, they're not required to provide it by the  
11 regulation. \*\*So your reading of the regulation and  
12 the one proffered by Judge Wardwell was that they are  
13 not required to provide it. They have provided it.  
14 And it was pointed out they provided significant  
15 amounts of it.

16 And it is going to be more than enough for  
17 you in your view to prepare the environmental impact  
18 statement, but what New York wants to say is "We  
19 disagree."

20 And we presented testimony for an expert  
21 that say that isn't adequate and, therefore, we would  
22 like to have a hearing on the adequacy of that data.

23 And I'm not getting into whether or not we  
24 agree or disagree that it's adequate, whether they've  
25 raised a genuine issue. I am just trying to get at an

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1 understanding of whether or not we need to get there,  
2 whether it is within the scope.

3 And at this point I don't want to belabor  
4 it. I think I understand the position of Entergy. I  
5 understand the position of staff and New York. And we  
6 just have to decide for ourselves how the regulation  
7 is most appropriately read and then to determine the  
8 impact of the declaration submitted by New York on  
9 this.

10 With that, unless there is something very  
11 quick, we could move on to the next contention.

12 MR. TURK: I would make a very quick  
13 statement, if I may, Your Honor?

14 CHAIRMAN McDADE: Please?

15 MR. TURK: What the Board has to review is  
16 the contention as framed by New York. New York did  
17 not -- if you look at contention 30, they did not say  
18 that the analysis in the environmental report is  
19 deficient. They said, as they said to you today, that  
20 Entergy does not have a permit. And then they went on  
21 to talk about what are the impacts of operation.

22 They are required under contention 30  
23 requirements to point to the application and say,  
24 "What is wrong with the analysis?" They didn't do  
25 that.

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1           So they really are trying to have it both  
2 ways. They are trying to say there is no permit. And  
3 you still have to look at the impacts, not even  
4 looking at their ER.

5           CHAIRMAN McDADE: New York, do you have  
6 some comments on that?

7           MS. MATTHEWS: If I might just for a  
8 moment? Two points. First of all, that they have  
9 submitted such extensive information on both of these  
10 issues means that they have weighed their legal  
11 argument based on 316(a) and 316(b). And we are  
12 entitled to question them about that and to challenge  
13 that. And we believe that we have.

14           Now, most of the information that Entergy  
15 submitted came in response to our petition. There  
16 were many declarations that they submitted on the  
17 impingement and entrainment issues.

18           So that came in after their environmental  
19 report. But there was information in the  
20 environmental report. And yes, we did include that in  
21 our contentions.

22           MS. ZOLI: Your Honor, we think that's  
23 incorrect at every level. First of all, in terms of  
24 what the ER contains, the ER reflects the GEIS and the  
25 FEIS, the SPDES permit, the HRSA, and the consent

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1 orders, and the draft permit reflected the entire data  
2 set of information that New York accepted as final in  
3 terms of making its draft SPDES permit decision.

4 So it cannot be adequate in terms of New  
5 York's decision-making and somehow inadequate in terms  
6 of information that NRC is entitled to use to be able  
7 to reach its determinations.

8 But all of those, the NRC's  
9 determinations, have nothing to do with the scope of  
10 admissibility. The scope of admissibility for an  
11 issue is determined by 51.53. And it says that we are  
12 entitled to provide the draft SPDES permit. And if  
13 the applicant cannot provide these documents, it shall  
14 assess impacts.

15 I don't think that there is a reasonable  
16 way of interpreting that provision as requiring us to  
17 do both. However, as a matter of prudence, Entergy  
18 did do both. And that allows the NRC to be able to  
19 fulfill their obligations with respect to the SEIS.  
20 That does not mean that it equates to admissibility.

21 In fact, if you look at the contentions,  
22 the statement of contentions reflects NRC's  
23 obligations, not ours. So, in fact, as they're pled,  
24 the contentions are inadmissible.

25 CHAIRMAN McDADE: Okay. Thank you.

1           One thing. And, you know, with regard to  
2 contention 32, which is basically cut in this same  
3 mold, very similar, I think the issues raised with  
4 regard to what have been discussed by us -- and we  
5 understand the parties' positions.

6           JUDGE WARDWELL: You mean 31.

7           CHAIRMAN McDADE: Thirty-one, yes.

8           JUDGE WARDWELL: I think you said 32,  
9 didn't you?

10          CHAIRMAN McDADE: Okay. And there's just  
11 one thing that I would like to do at this point. You  
12 know, again, we discussed the impact of the letter  
13 that was sent and whether or not New York would desire  
14 additional time.

15          Today there was a change of position on  
16 the part of the NRC staff and, again, would indicate  
17 that by Monday of next week if there is anything  
18 further that New York wishes to submit based on that,  
19 we would give them the opportunity to do so. So if  
20 you could do that by the same time of next Monday?

21          Contention 32 is that "NEPA requires that  
22 the NRC review the environmental impacts and the  
23 outmoded once through cooling water intake system used  
24 at Indian Point which harms endangered species and  
25 candidate-threatened species.

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1 I have no questions concerning this  
2 contention.

3 JUDGE WARDWELL: I have no questions.

4 JUDGE LATHROP: No.

5 CHAIRMAN McDADE: Okay. We seem to be at  
6 a good breaking point. I think we understand the  
7 positions of New York, the NRC staff, and Entergy with  
8 regard to the contentions put forth by New York.

9 Unless there is something further from  
10 either or any of these groups, we can take a break,  
11 again with the understanding that New York can make an  
12 additional submission on those two points by Monday.

13 Does New York have anything in closing?

14 MR. SIPOS: Your Honor, if I may, just  
15 briefly. John Sipos, Assistant Attorney General.

16 There was one other housekeeping matter,  
17 I believe, concerning New York's designation at the  
18 end of its petition under 2.309 concerning a  
19 contention that had been proffered by Riverkeeper,  
20 specifically Riverkeeper contention EC-2. And both  
21 staff and Entergy have raised questions about that.

22 And so that the record is clear, New York,  
23 as a sovereign state, is at this time unable to see  
24 complete authority to Riverkeeper to speak for New  
25 York on that point. And that is simply a function of

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1 state sovereign issues.

2 We fully support that contention. We  
3 believe it is an appropriate contention. It's a  
4 SAMA-based contention. But we cannot make that  
5 designation right now that New York would respectfully  
6 reserve the right depending on how this proceeding  
7 goes forward to advise the Board and the Commission on  
8 the application with respect to that contention as a  
9 possibility in the future.

10 CHAIRMAN McDADE: Just one other  
11 housekeeping matter in that regard. After we get  
12 through the contention admissibility phase, once the  
13 Board makes a determination as to the admissibility of  
14 contentions, there may well be contentions within  
15 individual intervenor that we view are appropriate to  
16 consolidate. And we will do so if we make that  
17 determination.

18 Likewise, there may well be at that point  
19 contentions made by more than one intervenor that are  
20 so similar that we would consolidate them as well. At  
21 that point, if we were to do that, we would ask those  
22 intervenors who had submitted those contentions to  
23 make a decision among themselves as to who would take  
24 the lead as to that particular contention.

25 And if the parties were not able to reach

1 an agreement with regard to that, it would then be  
2 incumbent on the Board to assign one of those  
3 intervenors to take the lead with regard to that  
4 particular consolidated contention.

5 MR. SIPOS: Understood, Your Honor. One  
6 other point I just wanted to reference on what I  
7 mentioned before. And I apologize for not mentioning  
8 it. The state's position is informed, in part, by an  
9 order by the NRC at 4 NRC 20. It's an ALAB decision.  
10 See Public Service Commission of Indiana, Marble Hill  
11 generating station.

12 And it recognizes that governmental bodies  
13 have different interests in litigation than do private  
14 parties, not that they're mutually exclusive but they  
15 might have different views on how it is to litigated.

16 And there is also provision 42 USC  
17 20.21(1) that would also, we submit, apply to the  
18 state.

19 Thank you.

20 CHAIRMAN McDADE: Okay. Thank you.

21 At that point, what I would propose to do  
22 is we take a ten-minute break. New York can be  
23 excused. We would then start with Portland at 4:00  
24 o'clock. Anyway, I believe Portland would be next at  
25 4:00 o'clock. \*\*Before we do break, I do want to

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1 commend everybody who has presented here the last  
2 couple of days. This would have been impossible to  
3 do. It took a long time as it was. Had you not been  
4 extremely prepared, it would have been impossible to  
5 get through it, even in the time that we did.

6 This is extremely complex. There is a  
7 large volume of paper involved, a large volume of  
8 regulations. And we really do appreciate how prepared  
9 you were and how ready you were to be able at a  
10 moment's notice to answer the somewhat far-ranging  
11 questions and sometimes vague questions that we had.  
12 So we appreciate it.

13 Thank you very much. And for the NRC  
14 staff and the applicant, we'll see you back in ten  
15 minutes. And thank you, New York.

16 (Whereupon, the foregoing matter went off  
17 the record at 3:54 p.m. and went back on the record at  
18 4:03 p.m.)

19 CHAIRMAN McDADE: Okay, we're back in  
20 session on the matter of Entergy Nuclear Operations,  
21 Indian Point Nuclear Generating Units 1 and 2, Docket  
22 Number 50-247 and 50-286 LR. We have with us  
23 representatives of the NRC staff and the Applicant.  
24 They've already been identified for the record. We  
25 also have with us representatives for the Town of

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1 Cortlandt. Could you identify yourself for the  
2 record, please?

3 MR. RIESEL: Yes, my name is Daniel Riesel  
4 of the law firm of Sive, Paget & Riesel and I have  
5 with me my colleague, Jessica Steinberg. We, along  
6 with Thomas F. Wood, the Town Attorney, represent the  
7 Town of Cortlandt.

8 CHAIRMAN McDADE: Okay, I appreciate it,  
9 thank you very much.

10 MR. RIESEL: I'm prepared to proceed in  
11 the pattern of the last two days, your Honor, if that  
12 is acceptable.

13 CHAIRMAN McDADE: Okay.

14 MR. RIESEL: The Town of Cortlandt, as you  
15 may gather, surrounds Indian Point 1, 2 and 3, 34  
16 square miles form an arc, to the north, east and south  
17 around Indian Points 1, 2 and 3. It's 28,000 people  
18 live in close proximity to Indian Point 1, 2 and 3.  
19 And about 87 of our residents work at Indian Point.

20 Cortlandt does not oppose the relicensing  
21 of Indian Point. However, we maintain that the plant,  
22 if it is to be operated and relicensed, must be  
23 operated in a safe manner and maintained in a manner  
24 that will not create an endangerment, and I use that  
25 word technically, an increased risk to the members of

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1 the -- of our community.

2 Indian Point, that is the operating  
3 facilities have a -- are a member of our community and  
4 they have been making valuable contributions to the  
5 community. Nevertheless, we are concerned that the  
6 continuation of the facility -- the facility continue  
7 to be operated in a manner that is consistent with the  
8 applicable rules and regulations and the -- not  
9 present, as I say, an endangerment.

10 Now, I think it was Boswell who said it  
11 takes a hanging and a fortnight to refocus your  
12 position. Although the last two days haven't been a  
13 hanging, they have been very obstructive and they have  
14 refocused some of our -- some of our positions.

15 We are prepared to withdraw several -- two  
16 of our contentions, Contention 2 and Contention -- on  
17 page 3 of our opening brief, and Contention 2 of our  
18 miscellaneous contentions. Other than that, our  
19 contentions are essentially the contentions that you  
20 have heard from the State. We would endorse their  
21 positions.

22 However, there is one issue that I would  
23 like to emphasize and it is particularly ironic to me  
24 that the spent fuel pools which have taken up a  
25 considerable amount of attention here, an also appear

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1 to be mentioned in the Environmental Report. There is  
2 less discussion in the Environmental Report on the  
3 spent fuel pools than the extinct Kichawak Indians and  
4 that I take it -- the reason for that is a ruling of  
5 the NRC in Oyster Creek and in similar -- and in  
6 similar pronouncements, that the NRC will not consider  
7 -- will not consider the effect of terrorism on the  
8 spent -- on the spent fuel pools and any resulting  
9 disaster that could evolve from that from sabotage or  
10 an ariel attack.

11 Now, that is an issue which I think  
12 presents a significant problem for resolving this very  
13 critical issue. It's almost ironic that this is the  
14 issue that dominates most of the thought in the Town  
15 of Cortlandt. That we are a few miles away from the  
16 scene of one of the greatest disasters, a plane that  
17 attacked one of the World Trade Center buildings, flew  
18 over this facility and the spent fuel pools are not,  
19 as the reactors are in hardened sites, but are in  
20 sites that are -- that are in a site that is really  
21 unimproved, unprotected from such sabotage or ariel  
22 attack.

23 The Environmental Report which I suppose  
24 will form the basis of a supplemental Environmental  
25 Impact Statement or will be the basis of it, which of

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1 course of in itself is somewhat contrary to standard  
2 NEPA procedures where the -- at least the draft  
3 Environmental Impact Statement proceeds and such  
4 substantive decision making process and as the Supreme  
5 Court has told us, accompanies, accompanies the  
6 decision making process and planning process at the  
7 earliest point of time and therefore, we have the  
8 Supreme Court in Andrus v. the Sierra Club endorsing  
9 the CEQ guidelines that say that document must be  
10 completed prior to any decision making process.

11 So particular attention might be given to  
12 the ER in this matter. The ER says that in 2006 the  
13 -- an area was cleared or designated for dry-cask  
14 storage of the spent fuel rod and as far as we can  
15 see, there has been no further progress in hardening  
16 that facility or in creating dry-cask storage which  
17 would go a long way to avoiding accidental fires for  
18 drainage from the pools or some other mishap or actual  
19 sabotage.

20 That is an issue which I suggest must be  
21 reached somehow in this public proceeding because we  
22 are in a proceeding where as you can see has drawn  
23 quite a bit of attention and I think that what we  
24 really need to do is to explore the critical issues.  
25 Now, that might be reached in the -- as the State has

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1 suggested during a SAMA proceeding or in accidents or  
2 in the Age Management Plan but somehow we must get to  
3 that critical issue and examine it, especially, of  
4 course, because we do have a very truncated ER on the  
5 subject. Thank you.

6 CHAIRMAN McDADE: Does the staff wish to  
7 respond?

8 MR. TURK: No, your Honor.

9 CHAIRMAN McDADE: Does Entergy wish to  
10 make an opening statement with regard to the Cortlandt  
11 contentions?

12 MR. BESSETTE: No, your Honor, we stand  
13 ready to answer any questions or clarifications you  
14 may have.

15 CHAIRMAN McDADE: Okay, thank you. The  
16 first contention of Cortlandt is that the licensing  
17 renewal application does not provide sufficient  
18 detailed information regarding technical and safety  
19 issues as required by 10 CFR Part 54. Now, the  
20 response of the NRC staff is that Cortlandt asserts  
21 that the applicant does not include threshold  
22 requirements but makes non-specific conclusionary  
23 statements. Specifically, of Cortlandt, can you  
24 elaborate for us on what you believe should have been  
25 there that you believe was not there?

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1 MR. RIESEL: The plans that are in the  
2 report are generally promises to carry our programs as  
3 opposed to the actual programs as applied to Indian  
4 Point 2 and 3, and perhaps 1.

5 CHAIRMAN McDADE: Okay, any specific one  
6 that you wish to point us out as an example?

7 MR. RIESEL: No, your Honor, I can't do  
8 that at this time.

9 CHAIRMAN McDADE: Okay, I mean, in your --  
10 you talked about the flow accelerated corrosion. I  
11 believe we've talked about that in other contentions  
12 as well, earlier in these proceedings.

13 MR. RIESEL: Yes, that's -- I was looking  
14 at that as a somewhat separate point, but that is a --  
15 that's a fairly good example because if you look at  
16 what the -- what the Applicant has done, the Applicant  
17 has essentially said, "We've got this program," and I  
18 think they have a paragraph on that program, and they  
19 say, and they promise to follow the program. As the  
20 State Attorney General, Assistant Attorney General  
21 addressing this point said, "That really is a promise  
22 to have a program as opposed to a detailed program  
23 which experts could examine and go over piece by  
24 piece".

25 And that is really essentially the public

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1 process that I think we're entitled to have.

2 CHAIRMAN McDADE: Okay, are there any  
3 other specifics with regard to Contention 1 that you  
4 would like to draw to our attention as examples at  
5 this point in time?

6 MR. RIESEL: No, your Honor.

7 CHAIRMAN McDADE: We've read your papers  
8 and, again, as you indicated, the contentions that  
9 you've put forward to a degree overlap with  
10 contentions of other parties and we have, you know,  
11 over the last couple of days, had an extensive  
12 discussion of many of these issues with the Attorney  
13 General of the State of New York.

14 I just wanted to make sure you had an  
15 opportunity at this point if there were any others  
16 that you specifically wanted to draw to our attention  
17 that you could do so.

18 MR. RIESEL: Your Honor, I think you have  
19 gone over this at some length with the staff, with the  
20 Applicant and the very forthcoming State  
21 representatives.

22 CHAIRMAN McDADE: Okay. Now, you  
23 indicated that you chose to withdraw Contention Number  
24 2, so we'd move to Cortlandt Number 3, which is that  
25 the license renewal application does not specify an

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1 aging management plan to monitor and maintain all  
2 structures, systems and components associated with the  
3 storage, control and maintenance of spent fuel in a  
4 safe condition in a manner sufficient to provide  
5 reasonable assurance that such structures, systems,  
6 and components are capable of fulfilling their  
7 intended uses.

8 Okay, again, is there anything  
9 specifically not in your papers that you would like --  
10 or that are in your papers that you would like to  
11 highlight for us with regard to the deficiencies in  
12 these plans?

13 MR. RIESEL: Yes, your Honor. As our  
14 expert has said, George Sansoucy, an experienced  
15 engineer, experienced in these areas, the only real  
16 way, the only safe way to handle the spent fuel rods  
17 is either dry-cask storage on site or being shipped  
18 off-site to a safe repository. That is assuming  
19 you're going to continue to generate these spent fuel  
20 rods, there's just two choices to do it in a sound  
21 management plan, in furtherance of a sound management  
22 plan.

23 And we do not have any, I think, details  
24 of when we will move these rods that are in the Pools  
25 2 and 3 and -- 2 and 3 into those dry-cask storage

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1 facilities. Although we have some indication that  
2 that is something that the Applicant and perhaps, the  
3 NRC have endorsed as a concept and certainly there is  
4 no -- that may be the only feasible alternative here  
5 to handle these fuel rods because there are no  
6 indication, is my understanding, that there is any  
7 offsite storage available now and certainly now and in  
8 the foreseeable future.

9 MR. WEBSTER: How do you respond to  
10 Entergy's statement that in fact, they do have an  
11 aging management plan for those spent fuel pools  
12 already submitted in Table 3.5 2-3?

13 MR. RIESEL: That is for the maintenance  
14 of the pools and the pools, we have proffered evidence  
15 -- proffered evidence to the fact is inherently  
16 unsafe.

17 MR. WEBSTER: Thank you.

18 CHAIRMAN McDADE: And if I understand the  
19 gist of your contention is that there's absolutely  
20 nothing you can do as long as you're talking about  
21 long-term storage in a spent fuel pool that will  
22 adequately control aging.

23 MR. RIESEL: Adequately. Yes, I mean  
24 there are things you can do to mitigate the danger but  
25 not sufficiently or not adequately and that's the

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1 trust of the Sansoucy affidavit.

2 CHAIRMAN McDADE: Okay, in this particular  
3 case with regard to the Cortlandt Contention 3, we're  
4 read the papers of the NRC staff with regard to this.  
5 Is there anything further that you would like to add  
6 that are not in the papers?

7 MR. ROTH: No, your Honor.

8 CHAIRMAN McDADE: Okay, with regard to the  
9 response by Entergy, again, we've read your papers.  
10 The answer to the Cortlandt -- and again, I mean, many  
11 of these issues we've discussed with the Attorney  
12 General over the last two days and, you know, we don't  
13 need to just ask the same question over again, because  
14 it's posed in a different format. Is there anything  
15 that you would like to add that has not been addressed  
16 and that you would like to with regard to Cortlandt  
17 Contention 3?

18 MR. BESSETTE: No, your Honor. We agree  
19 with you that the License for Renewal Application does  
20 include aging management programs for the spent fuel  
21 pool as we noted in our response and many of the  
22 issues raised by petitioner are Category 1 issues  
23 already considered by the staff and are excluded from  
24 this proceeding, including wet storage and dry storage  
25 of spent fuel during the license renewal term.

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1 CHAIRMAN McDADE: Okay, with regard to  
2 Cortlandt miscellaneous Contention Number 1, the  
3 impact of the local economy of Indian Park Units 2 and  
4 3 are not relicensed.

5 MR. RIESEL: An issue that the town has  
6 debated amongst itself and the town is really a  
7 political entity that has -- really comes to this  
8 proceeding with some difference of opinion on the  
9 facility and there is a considerable concern that we  
10 examine the issues of not licensing this facility for  
11 its relicensing its facility. As to the effect on the  
12 community, the state has made the argument that -- the  
13 state has made the argument that it will drive up --  
14 if you do not relicense this facility, it will drive  
15 up property values.

16 I think one of the issues that has struck  
17 me is that that might be so but how long would it take  
18 to decontaminate and remove the existing facilities on  
19 this site? That's an issue which I think is very  
20 critical. For a practical matter, this is probably  
21 some of the most -- could be some of the most  
22 expensive property in the United States.

23 It's west of the railroad tracks. It's at  
24 a critical junction in the river. However, if the  
25 facility is not licensed, and not cleaned up, that is

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1 fully totally remediated within a very short period of  
2 time, that would have a negative effect on property  
3 values in the Town of Cortlandt.

4 CHAIRMAN McDADE: And it's your contention  
5 that that has not yet been adequately addressed in the  
6 Environmental Report submitted by Entergy.

7 MR. RIESEL: Yes.

8 CHAIRMAN McDADE: Okay. Is there anything  
9 specifically in the Environmental Report that you wish  
10 to emphasize that has not been emphasized already in  
11 your papers or for that matter that has been referred  
12 to in your papers but you would like to emphasize here  
13 for us?

14 MR. RIESEL: Your Honor, aside from the  
15 spent fuel pool, and aside from a concept of promising  
16 to work out -- work out Aging Management Plans, I  
17 think we have covered every issue in the last two days  
18 to almost a painful degree and a very thorough degree,  
19 I might say. So I don't have anything further to add.

20 CHAIRMAN McDADE: Okay, with regard to  
21 Cortlandt Miscellaneous Contention Number 2, you  
22 indicated that that is withdrawn. Cortlandt  
23 Miscellaneous Contention Number 3 that the license  
24 application fails to address the catastrophic  
25 consequences of the potential terrorist attack on the

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1 aging Indian Point Reactors. Again, this is a matter  
2 that we've discussed over the past couple of days. Is  
3 there anything further that you would us to take into  
4 consideration?

5 MR. RIESEL: I just reread Oyster Creek  
6 and Oyster Creek talks about a particularized study  
7 and indicates that in that instance, the Board, the  
8 Commission will proceed by rulemaking. And that seems  
9 to be a long time in coming. We think it's the wrong  
10 decision. We think Indian Point is so unique, being  
11 situation out on a promontory, sort of a big target,  
12 critical area, and because it is literally within  
13 eyesight of downtown Manhattan, you could probably see  
14 downtown Manhattan on a clear day, from the end of  
15 Krueger's or Indian Point, that it is unique and  
16 should receive a unique consideration in this  
17 proceeding, Oyster Creek notwithstanding.

18 CHAIRMAN McDADE: Okay, one issue that I  
19 did want to raise with Cortlandt and an option that  
20 Cortlandt has, as you have indicated, the contentions  
21 that you have put forward are similar to in many  
22 respects, the contentions put forward by other  
23 interveners in this particular proceeding. The Town  
24 of Cortlandt, as a government entity, has a unique  
25 position in that it can proceed either under 2.309 as

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1 a party with individual contentions or under 2.315.  
2 Under 2.315, you would have the opportunity to present  
3 evidence, to cross examine, to submit findings of fact  
4 on contentions that other parties had introduced.  
5 That you would not be limited to specific contentions.  
6 And the question has arisen in our earlier  
7 proceedings, it is the position of the NRC staff and  
8 of Entergy that for governmental entities, it's  
9 basically and either/or, but that it can't proceed  
10 under both 2.309 and under 2.315.

11 Also understand that under 2.3.9 within  
12 individual contentions that it may be necessary for us  
13 to consolidate and to appoint a lead for a particular  
14 contention. And under those circumstances, the  
15 question is, has the Town of Cortlandt given  
16 consideration to whether or not they would prefer to  
17 proceed in this proceeding under 2.309 or under 2.315  
18 and so that's the initial question.

19 MR. RIESEL: Well, your Honor, we have  
20 given some consideration to that and we've eluded to  
21 that in our papers. We do not believe that this is an  
22 either/or issue. It seemed to me it would be ironic  
23 that if we are a party we would have less rights than  
24 a non-party. So our position is, we should enjoy the  
25 benefit of both sections. If you were to rule that we

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1 had to elect and if you were to rule against us on the  
2 -- what is generally -- call it the spent fuel rod  
3 pool issue, then we would elect to proceed under 23.5.

4 CHAIRMAN McDADE: Okay, well, let me ask  
5 it, perhaps, a little bit different way. Assume for  
6 the sake of argument and again, no final decision has  
7 been made, but assume for the sake of argument that we  
8 were to conclude that it was an either/or, that either  
9 you were in pursuant to 2.309 or in pursuant to 2.315,  
10 which would be your first choice?

11 MR. RIESEL: 2.315.

12 CHAIRMAN McDADE: Okay. Anything further  
13 that you would like to address during the course of  
14 this afternoon?

15 MR. RIESEL: No, your Honor.

16 CHAIRMAN McDADE: I was going to say this  
17 morning which shows that I've got a very warped sense  
18 of time after sitting here for the last two days.

19 MR. RIESEL: It has been a long two days.  
20 We've been here, too.

21 CHAIRMAN McDADE: Okay, thank you very  
22 much, sir. Thank you. Okay, Connecticut? Could you  
23 introduce yourself, please?

24 MR. SNOOK: Certainly. Thank you, your  
25 Honor. My name is Robert Snook, Assistant Attorney

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1 General for the State of Connecticut, representing  
2 Richard Blumenthal, Attorney General of Connecticut.  
3 As the New York Assistant Attorney General started  
4 yesterday, I've also been asked to extend my thanks  
5 from Mr. Blumenthal to this panel and to Entergy and  
6 also to the NRC staff, for the fine work and the  
7 opportunity that has been granted us to consider these  
8 very important matters in the public forum so that we  
9 can all address these issues and build an appropriate  
10 record.

11 We are also -- I've also been specifically  
12 instructed to say that the State of Connecticut stands  
13 with its sister governmental agencies, particularly  
14 the Westchester County and the State of New York.  
15 These are very important concerns. In my 15 plus  
16 years of government service, I have been on both sides  
17 of the table with respect to the New York Attorney  
18 General's office. Some cases we've worked together,  
19 some cases we're on opposite sides.

20 In this case, we are not only  
21 unequivocally on the same side, we were here first.  
22 We started in 2001 with Indian Point. It was only  
23 some time later that the New York AG's office got as  
24 exercised as we did about it. And part of the reason  
25 for this is that our sovereign interests and the

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1 public in the State of Connecticut are directly  
2 involved.

3 Indian Point is not a minor issue for  
4 Connecticut. One-third of the population, somewhere  
5 in excess of one million people, one-third of the  
6 population of Connecticut resides within the 50-mile  
7 congestion pathway zone and any evacuation of any  
8 significant body within the 10-mile or greater area  
9 would directly impact Connecticut. There would be the  
10 significant movement or I might add attempted movement  
11 of people into Connecticut in case of an actual attack  
12 or emergency.

13 These would -- these issues directly  
14 effect Connecticut. Furthermore, as I have heard both  
15 yesterday and today, there was some discussion of the  
16 differences between EPA and NRC in terms of wind  
17 dispersion modeling and things of that nature. I have  
18 had responsibilities with respect to Long Island Sound  
19 and other issues involving the State of Connecticut,  
20 its environmental protection, one of which involved  
21 EPA wind direction modeling from a cement factory in  
22 the Hudson River area.

23 I can assure you that it is well-known  
24 that in certain wind and weather conditions, if there  
25 were an incident or attack on Indian Point,

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1 significant amount, perhaps even the majority of any  
2 airborne material would come straight at me. It would  
3 go towards Connecticut, towards the west. Those are  
4 the prevailing wind patterns. Buffalo, New York and  
5 arguably even Albany, New York, has a less direct  
6 impact in certain weather conditions than Hartford.  
7 So Connecticut is directly involved. And as a  
8 consequence, I have been instructed by the Attorney  
9 General to point out that there are two or three very  
10 important issues here.

11 Yes, we have more of an interest in Indian  
12 Point in many different ways and yes, we support fully  
13 the comments made by both Westchester and the State of  
14 New York so far and we would adopt their contentions  
15 to the extent we are permitted to do so. We have,  
16 however, proffered two contentions of our own. In our  
17 paper, they are referred to as B and C, some people  
18 refer to them as 1 and 2. I'm perfectly happy,  
19 whatever they're called, and these are legal  
20 contentions. All the factual support is identified in  
21 the materials and the citations to the material. Much  
22 of it, in fact, is in our C material in this public  
23 record. And furthermore, they are directly related to  
24 NEPA.

25 I am aware that much of this material is

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1 duplicative. I do not wish to waste this Board's time  
2 or anyone else's. In many ways we've covered this  
3 material. I would like to point out two or three very  
4 minor points, just so we can move along. I recognize  
5 that colleagues from Entergy and the NRC staff who  
6 have provided very balanced and reasonable responses  
7 to our contentions that are raised by the State of  
8 Connecticut. In fact, I'd point out they're very  
9 polite and very appropriate responses, that they are  
10 concerned that the contentions with respect to  
11 terrorists and incidents involving spent nuclear fuel,  
12 that's our first one, and evacuation protocols, that's  
13 our second one, are outside the scope, the proper  
14 scope of a relicensing proceeding.

15 I fundamentally and respectfully disagree  
16 for the following reasons. First of all, I think we  
17 are all, particularly the attorneys here, aware that  
18 I must raise these issues here in order to preserve  
19 any rights of appeal. And we have significant  
20 concerns with the whole idea of using Category 1 and  
21 Category 2, that the policy is that the NRC have used  
22 are unique but we think have some issues. We  
23 understand this Board is bound by precedent and bound  
24 by the Commission. We do want to preserve our rights  
25 to appeal these issues in the fullness of time.

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1           Beyond that, though, even if you look at  
2           10 CFR 51 in certain Category 1 cases, if there are  
3           unique and specific material, and specific information  
4           that provides important changes, yes, these issues,  
5           even if they're otherwise have been considered generic  
6           and have been considered in the GEIS, can in fact, be  
7           raised. We have heard repeatedly about how Indian  
8           Point is unique.

9           What I'm here to day is that the  
10          population and the demographics and they unique  
11          topography and circumstances of Indian Point, part of  
12          those are in Connecticut and they are very unique to  
13          us as well. In fact, for our perspective, the  
14          evacuation and the spent nuclear fuel pool issues at  
15          Indian Point are more of a concern to Connecticut than  
16          the ones are in the Millstone Facilities which are in  
17          Connecticut because of their unique population and  
18          unique location of these facilities. They are most  
19          definitely not generic. For example, we would point  
20          out that in the Marsh case, and my citations are all  
21          contained in my briefs or my petition and my reply  
22          brief and in the Utahans' case. The decision making  
23          has to include the environmental issues. These  
24          environmental issues are, of course, set out in NEPA.

25                 They include not only direct environmental

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1 impacts, they include, for example, socio-economic  
2 impacts which are often in the NRC regs in 10 CFR 51.  
3 They are often included as Category 2. So those  
4 aren't even Category 1. And those are related to the  
5 evacuation. Evacuation effects socio-economic.  
6 Socio-economic is broadly a Category 2. I note some  
7 exceptions.

8 In this regard, these issues are  
9 controlled by NEPA and ought to be reviewed. Now,  
10 starting with the spent nuclear fuel, we have  
11 approximately 1,000 units, 1,000 assemblies, I  
12 understand there, so a few hundred more from Unit 1  
13 which I'm going to ignore because it's not in the  
14 renewal licensing. We have perhaps as many, another  
15 1,000 for another 20 years additional operation of  
16 this facility. Yucca Mountain, I've been at -- I've  
17 been under Yucca Mountain. I can assure you that  
18 there's only a finite amount of space there. We had  
19 discussions with both the NRC there as well as the  
20 French National Team and others. And they've all said  
21 the same thing, yes, there's a certain amount of --  
22 it's a large facility, but not all Indian Point can go  
23 there, and if you license this for another 20 years,  
24 you're going to have, not only some in Yucca Mountain,  
25 assuming it's open, but you're going to have Yucca

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1 Mountain without the mountain right at Indian Point  
2 and that's a substantial issue of interest to  
3 Connecticut because primarily of the accident or  
4 terrorism issue.

5 We do fundamentally disagree with the  
6 position that terrorism is too attenuated, that it is  
7 something generic, that it is something that has been  
8 considered before and we do not have to talk about it  
9 any more. We say the situation at Indian Point is  
10 fundamentally different for several reasons. As  
11 Cortlandt mentioned, one of the airplanes at least  
12 flew directly over the facilities. They know where we  
13 live. They know where the facility is. They have  
14 expressed, as my citations in my brief point out,  
15 repeated interest in attacking US infrastructure and  
16 they have even made threats against nuclear facilities  
17 and it's entirely possible they're talking about this  
18 one. We think that that's unique and needs to be  
19 addressed in the context of this relicensing because  
20 that will extend the threat period for another 20  
21 years.

22 I would also point out with respect to the  
23 evacuation as I had mentioned earlier, that we have  
24 significant changed in Connecticut on this. One,  
25 population is changing, two, the Connecticut

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1 Transportation Safety Review Board and its 20-year  
2 extended plans making significant changes to the  
3 infrastructure in Connecticut. Part of this is with  
4 respect to, in fact, among other things potential  
5 evacuation issues. I don't think I'm -- I don't think  
6 I can talk you out of it. It's good to let everyone  
7 know that we're dealing with important issues. If we  
8 move people the technical term is using both barrels.  
9 That means, you open up an interstate so that both  
10 lanes go in the same direction to move people out. I  
11 point out that it is now public record that FEMA wants  
12 to use the I-84 and 95 as both barrels out and the  
13 Merritt Parkway as one lane would be coming in towards  
14 Indian Point for their recovery and service --  
15 emergency service vehicles.

16 As I personally have pointed out, we have  
17 an issue with that because the West Rock Tunnel is  
18 nine feet high and our response vehicles are 13 feet  
19 high. As a consequence, these are the issues that we  
20 are attempting desperately to get resolved. The  
21 comment has been made in the documents by Entergy that  
22 there are other procedural mechanisms to do that that.  
23 Mr. Blumenthal has made it very clear, our  
24 responsibilities are to raise these issues in every  
25 possible forum.

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1           If they get struck down in one, no  
2 problem, we can appeal it and move on. I will not  
3 only raise them in these forum but it's also important  
4 for us to recognize evacuation protocols, not as an  
5 isolated thing but as something going forward in 20  
6 years, we have a unique situation here, but that  
7 situation is changing.

8           I'd also point out that as of now, it  
9 doesn't work. Interstate 95 is designed for 80,000  
10 VDTs, Vehicle Daily Trips. We're up to 140,000. We  
11 test our emergency evacuation protocols very day and  
12 we fail at rush hour. These are matters of great  
13 importance to the State of Connecticut and not  
14 adequately identified or addressed in the GEIS and,  
15 therefore, should be done now. I understand that  
16 Oyster Creek, the Vermont case and other cases raise  
17 these issues and feel that they are too far removed.  
18 I understand this panel may feel compelled to follow  
19 in that direction.

20           I would respectfully point out that we  
21 believe that there are unique and specific  
22 circumstances at this facility which give this Board  
23 the opportunity to, in a sense, consider these issues  
24 outside of the classic Category 1 because of these  
25 unique circumstances. And I am available to answer

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1 any questions.

2 CHAIRMAN McDADE: Okay, specifically with  
3 regard to Contention B, the first question has to do  
4 with the spent fuel pools and the possibility of  
5 terrorist attack. You have drawn a distinction  
6 between the decision of the Ninth Circuit at Diablo  
7 Canyon and the decision of the Commission in Oyster  
8 Creek. Are there any factual distinctions between the  
9 circumstances here and the circumstances in Oyster  
10 Creek that you believe would allow this panel to not  
11 follow the precedent of Oyster Creek at this level.

12 MR. SNOOK: Yes, your Honor, respectfully,  
13 we do feel that there are importances, again -- the  
14 important differences. Again from the perspective of  
15 a terrorist attack, those who are experts in this area  
16 consider that there are many things that are looked at  
17 by terrorists. In doing so, we are not free to  
18 discuss them all here. Some of them, in fact, are  
19 classified.

20 The high profile targets, targets that are  
21 well-known to which they have adequate information,  
22 and targets which would have a distinct political  
23 impact. The New York environment is distinctly so.  
24 Indian Point, there are strong indications which I'm  
25 not at -- opportunity to discuss here that some of the

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1 information about Indian Point is well-known to those  
2 who would seek to do harm to the United States and its  
3 economic infrastructure. And in fact, the situation  
4 as Cortlandt pointed out, that Indian Point's spent  
5 nuclear fuel facilities are in fact, vulnerable and  
6 compared to the dry-cask facilities in Connecticut,  
7 they are, in fact, even -- the planned one which  
8 hasn't been built yet will also be someone more  
9 vulnerable. Therefore, it would be unique.

10 CHAIRMAN McDADE: Okay, with regard to the  
11 spent fuel pools and the possibility of equipment  
12 failures, are there any facts here specifically that  
13 you would like to draw our attention to whether  
14 addressed in your papers or not but would like to  
15 emphasize that would distinguish this from the Vermont  
16 Yankee case?

17 MR. SNOOK: No, other than what's been  
18 said in our papers.

19 CHAIRMAN McDADE: Okay, with regard to  
20 Contention C, that has to do with the emergency  
21 planning and the evacuation, the staff response is  
22 that pursuant to 10 CFR 50.74 it is not necessary in  
23 the context of a licensing renewal for seeding to have  
24 a specific decision based on that and again, this is  
25 very similar to Contention 29 by New York, just as the

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1 previous contention was very similar to Contention, I  
2 believe it was 27 of New York and we have discussed  
3 this and heard a great deal about the positions of the  
4 NRC staff and Entergy with regard to these, but is  
5 there anything else that you would like to add with  
6 regard to the applicability of 50.74 on the evacuation  
7 plans and whether it is properly or not properly  
8 within the scope of this relicensing proceeding.

9 MR. SNOOK: The evacuation plans, of  
10 course, being one issue, changes in population as  
11 being another but we're also thinking of the socio-  
12 economic impacts of an evacuation, which we have not  
13 yet seen fully categorized. The GEIS actually that's  
14 referred to, some of it is a Category 1, some of it is  
15 a Category 2. I regret that in my reply brief and in  
16 my initial petition we talk about the dislocation that  
17 is caused by an evacuation. That is the term we tend  
18 to use in Connecticut, emergency response to refer to  
19 the socio-economic effects. That is not immediately  
20 apparent and obvious from the text of my petition.  
21 Therefore, I wanted to bring that up here this  
22 morning, this afternoon.

23 CHAIRMAN McDADE: Okay, thank you. At  
24 this point in time, is there anything further that the  
25 NRC staff would like to say with regard to Connecticut

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1 Contentions B or C?

2 MS. MIZUNO: No, your Honor.

3 CHAIRMAN McDADE: And again, to the degree  
4 that you've already said it in response to New York  
5 Contentions 27 and 29, there's no need to repeat it.  
6 If we've forgotten it already, we're in big trouble.  
7 So with regard to Entergy, with regard to Contentions  
8 B and C.

9 MS. SUTTON: We have nothing further, your  
10 Honor.

11 CHAIRMAN McDADE: Okay, one of the issues  
12 raised by Connecticut also was the possibility of a  
13 waiver pursuant to 2.335 due to the unique and special  
14 circumstances here. Is there anything further that  
15 you would like say with regard to the request for  
16 waiver by Connecticut and the scope of that waiver?

17 MR. SNOOK: With respect to the waiver or  
18 the 2.315 issue, if I could just make the following  
19 comment; we looked at this as something like a  
20 waterfall. We wanted to be interveners under 2.309.

21 SR. SPEC. AGENT MULLEN: I'm sorry, I  
22 didn't hear you.

23 MR. SNOOK: We looked at this as something  
24 of a waterfall. The first issue is whether we --  
25 2.309 getting our contentions in. Admittedly we took

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1 the contentions that were difficult and we felt that  
2 we could credible issues that were specific to  
3 Connecticut so that we wouldn't keep repeating the  
4 same things as everyone else.

5 To the extent that those are permitted,  
6 that's fine. If, in fact, we are -- there's some  
7 difficulty with that, I understand from the rules that  
8 we have a period of time to proceed under 2.315(c) if  
9 we are not given a rider in 2.309. And then  
10 furthermore with respect to a waiver petition, one if  
11 it was necessary we reserve the right to file such if,  
12 in fact, the Board felt a separate waiver of this was  
13 necessary.

14 CHAIRMAN McDADE: Okay, well, just so at  
15 least I'm clear as to what you're doing, there's a few  
16 different issues involved here. First of all, as far  
17 as your role in the proceeding, the role in the  
18 proceeding could be either under 2.309 as a party or  
19 under 2.315 as an interested government entity.  
20 Either way, the scope of the proceeding would be  
21 exactly the same.

22 It would be set out by the contentions  
23 that were admitted. You would, under 2.315 have the  
24 opportunity to present evidence, to cross examine, to  
25 offer proposed findings of fact, et cetera, with

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1 regard to contentions offered by any party. With  
2 regard to the waiver under 2-335, that would be a  
3 waiver in order to expand the scope of the proceeding,  
4 to say that the scope of the proceedings, given unique  
5 circumstances here, as currently configured under the  
6 regulations, would be -- would not appropriate carry  
7 out the intent of those regulations and that,  
8 therefore, the scope of the proceedings should be  
9 expanded.

10 Now, as I understood it, Connecticut  
11 indicated that it was considering the filing of a  
12 2.335 waiver and in an order that we issued back on  
13 November 21<sup>st</sup>, of 2007 in connection with the petition  
14 for a waiver by another litigant in this proceeding.  
15 We laid out specifically what the steps were, what a  
16 waiver petition would need to include. And it is  
17 Connecticut's position that, one, first of all, you  
18 want to see what the scope of the proceeding is based  
19 on admitted contentions and at that point in time, you  
20 would view it appropriate and timely to file a  
21 petition under 2.335 --

22 MR. SNOOK: Yes.

23 CHAIRMAN McDADE: -- if appropriate to  
24 expand the scope of the proceeding.

25 MR. SNOOK: Yes, your Honor.

1                   CHAIRMAN McDADE:  Okay, what is the  
2                   staff's position as far as the timing of any petitions  
3                   under 2.335?  By when must they be filed in order to  
4                   be timely?

5                   MR. TURK:  I don't have an answer for you  
6                   at the moment, your Honor.

7                   CHAIRMAN McDADE:  Okay, does Entergy?

8                   MR. BESSETTE:  Your Honor, because they  
9                   had said that they weren't seeking a 2.335 petition at  
10                  this time or waiver, we weren't prepared to address  
11                  it.  We could look at the regulations and get right  
12                  back to your Honor.

13                  CHAIRMAN McDADE:  Well, I guess what we'll  
14                  do is leave it this way, at this point in time there  
15                  won't be any further discussion with regard to that.  
16                  If and when Connecticut determines it would be  
17                  appropriate to file a petition for a waiver under  
18                  2.335, at that point in time, both the NRC staff and  
19                  Entergy would have an opportunity to comment both on  
20                  the substance of the request for the waiver and also  
21                  on the timeliness of it.  And at this point in time,  
22                  there's no indication one way or the other as to what  
23                  the view of the Board would be with regard to that and  
24                  again, we don't know when -- when or if it would be  
25                  filed.  Do you have any other questions with regard to

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1 Contention B or C?

2 JUDGE WARDWELL: No.

3 CHAIRMAN McDADE: Okay, does the staff  
4 have any other comments with regard to any of the  
5 matters taken up with regard to Connecticut?

6 MS. MIZUNO: No, your Honor.

7 CHAIRMAN McDADE: Does Entergy?

8 MR. BESSETTE: No, your Honor.

9 CHAIRMAN McDADE: Okay, do you have  
10 anything further?

11 MR. SNOOK: No, your Honor, thank you.

12 CHAIRMAN McDADE: Okay, again, thank you  
13 very much. First of all, I want to apologize for  
14 keeping you here. I know based on our schedule, you  
15 anticipated that you would be out of there  
16 considerably before now and we do appreciate your  
17 patience as we got through the lengthy discussions we  
18 had and the many questions with New York and we do  
19 appreciate your patience in being here and the  
20 professionalism of the presentation that you made.  
21 Thank you very much.

22 Okay, at this point in time, it is a  
23 quarter of 5:00. We are not going to get very far  
24 with regard to Riverkeeper this evening and we  
25 apologize to Riverkeeper as well, as certainly they

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1 anticipated getting further. Ms. Curen, do you want  
2 to start or would you just as soon wait until 9:00  
3 o'clock in the morning to start?

4 MS. CUREN: We'd prefer to start in the  
5 morning, Judge.

6 CHAIRMAN McDADE: You'd prefer to start in  
7 the morning.

8 MS. CUREN: Yes.

9 CHAIRMAN McDADE: Okay, and just to  
10 maintain continuity, rather than just simply getting  
11 started, you know, and then getting run out of here  
12 relatively quickly, I think that's appropriate.  
13 Really the earliest we can start in the morning  
14 unfortunately, is about 9:00 o'clock. So we propose  
15 to stand in recess then until 9:00 o'clock tomorrow,  
16 and again, I apologize for not being able to get to  
17 you sooner as we did anticipate that we would be  
18 starting with you today.

19 Before we break, are there any  
20 housekeeping matters that the NRC staff would like to  
21 bring to our attention or to resolve since, my golly,  
22 we're getting done early here today? We actually have  
23 to kill some time.

24 MR. TURK: No, we don't, your Honor.

25 CHAIRMAN McDADE: From the standpoint of

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1 Entergy?

2 MR. BESSETTE: No, your Honor.

3 CHAIRMAN McDADE: That being the case, we

4 --

5 JUDGE WARDWELL: For security, will the  
6 building be open at 8:00 tomorrow also to clear the  
7 downstairs?

8 CHAIRMAN McDADE: 8:30.

9 JUDGE WARDWELL: No, the building open to  
10 clear the security -- the screening downstairs.

11 CHAIRMAN McDADE: It starts at 8:00.

12 JUDGE WARDWELL: Starts at 8:00. So they  
13 can be ready to go into this door at 8:30. Thank you.

14 CHAIRMAN McDADE: Okay, thank you. We're  
15 in recess till 9:00 o'clock tomorrow morning.

16 (Whereupon, at 4:49 a.m. the hearing in  
17 the above-entitled matter recessed to reconvene at  
18 9:00 a.m. on March 12, 2008.)

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