United States of America

Nuclear Regulatory Commission

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Atomic Safety and Licensing Board Initial Prehearing Conference

Bellefonte Nuclear Power Plant Units 3 and 4

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Wednesday,

July 30, 2008

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Scottsboro, Alabama

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The hearing commenced at the Scottsboro Goosepond Civic Center, Scottsboro, Alabama, at 9:00am.

BEFORE:

G. Paul Bollwerk, III, Chief Administrative Judge

Dr. Anthony J. Baratta, Judge

Dr. William W. Sager, Judge

APPEARANCES:

On Behalf of the Petitioners:

Louis Zeller

Blue Ridge Environmental Defense League (BREDL)

Bellefonte Efficiency and Sustainability Team (BEST)

Sara Barczak

Southern Alliance for Clean Energy

On Behalf of the Applicant:

Tennessee Valley Authority

Edward Vigluicci, Esq.

Scott Vance, Esq.

Steven P. Frantz, Esq.

Stephen J. Burdick, Esq.

Morgan, Lewis & Bockius LLP

On Behalf of the Nuclear Regulatory Commission:

Ann P. Hodgdon, Esq.

Patrick A. Moulding, Esq.

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

>>CHAIRMAN BOLLWERK: Good morning, everyone. Today we are here to conduct an initial prehearing conference on a Combined Operating License for COL proceeding under Part 52 of the Code of Federal Regulations, also referred to as the CFR.

This prehearing conference has convened as a result of the responses of several groups, including a Blue Ridge Environmental Defense League and Bellefonte Efficiency and Sustainability Team and BEST chapter, also referred to as be BREDL, and the Southern Alliance for Clean Energy to a notice of opportunity for hearing published in Federal Register on February 2008.

Following an April 7, 2008 Commission order extending the time for filing hearing petitions by a joint submission dated June 6, 2008, these petitioners

requested an adjudicatory hearing on the October 30, 2007 application on the Tennessee Valley Authority, or TVA, for a COL by which TVA seeks to obtain authorization to construct and operate two new AP1000 advanced pressurized water reactors on the existing site of its never completed Bellefonte Efficiency and Sustainability Team nuclear facility located some 6 miles Northeast of Scottsboro, Alabama, the City where we are conducting today's prehearing conference.

In a June 12, 2008 memorandum, the secretary of the Nuclear Regular Commission, acting on behalf of the Commission, referred joint petitioners hearing request to the Atomic Safety Licensing Board panel for the appointment of a licensing board.

On June 18, 2008, the Licensing Board

Panel's Chief Administrative Judge issued a notice designating this three-member licensing board to conduct the proceeding.

By way of background regarding the NRC licensing processes as it applies to Combined Operating License applications, under Part 52 of the Agency's regulations, if issued, a COL provides authorization from the NRC both to construct and with conditions operate a nuclear power plant at a specific site in accordance with agency regulations. This can be contrasted with the process used for the licensing of the 100 plus commercial nuclear power plants currently operate in the United States, which under Part 50 of the Agency's regulations, will require to apply for and obtain separate construction and operating authorizations.

As was the case under the previous two step licensing regime, however, prior to the Agency issuing a Combined Operating License, the NRC staff, which is one of the participants before us today, has the important responsibility of completing safety and environmental reviews of a Combined Operating License Application in accordance, with among others, the Atomic Energy Act, NRC regulations and the National Environmental Policy Act or NEPA.

At the same time, the Atomic Energy Act and agency regulations provide an opportunity for interested stakeholders, including individual members of the public, public interest groups and other organizations and governmental entities, including state and local governmental bodies and Native American tribes, to seek a hearing regarding a COL

application in which they can litigate health and safety, environmental or common defense and security concerns regarding the COL application.

And with respect to the conduct of this adjudicatory process, independent administrative judges appointed by the Commission as members of the Atomic Safety and Licensing Board Panel are designated to serve on a three member licensing board such as this one to preside over any proceedings regarding the contested matters raised in the hearing petition.

The Panel's administrative judges do not work for or with the NRC staff relative to the staff's license application review; rather, we are charged with deciding whether the issues proffered by those requesting a hearing such as the joint petitioners are

admissible, and for those issues that we find to be litigable making a determination regarding their substantive validity in terms of the grand conditioning or denial of the requesting Combined Operating License.

Our decisions on hearing matters generally are subject to review, first by the Commission, as the Agency's Supreme Court and then by federal courts, including in appropriate circumstances the United States Supreme Court.

Relative to the specific matters before us today in this initial prehearing conference, of the three groups that jointly submitted the June 8th hearing petition challenging the TVA Combined Operating License application for Bellefonte Units 3 and 4, there has only been a contest as to whether BEST has standing or the requisite legal

interest in this proceeding to be admitted to -- as a party, excuse me.

Today we will hear participant oral arguments on that matter as well as whether joint petitioners' hearing request submitted via the agency's electronic web-based e-filing system was timely.

Then on balance -- during the balance of today's prehearing conference, the petitionments will have the opportunity to make oral presentations on the separate question of whether the proposed issue statements or contentions posited by the joint petitioners as contesting the validity of certain aspects of the applicant's license application, or NEPA-related environmental report are legally sufficient to be admitted as litigable issues in this proceeding.

Before we begin hearing the

participants' presentations on these matters, I'd like to introduce the Board Members.

To my right is Associate Chief Administrative Judge Technical Anthony Baratta. Dr. Baratta is a nuclear engineer and a full-time member of the Atomic Safety and Licensing Board Panel.

To my left is Dr. William Sager. Judge Sager, a geoscientist is a part-time member of the Panel.

My name is Paul Bollwerk. I'm an attorney and the Chairman of this licensing board.

At this point I'd like to have counsel or the representatives for the various participants identify themselves for the record.

Why don't we start with the joint petitioners, then move to the applicant and finally to the NRC staff.

>>MR. ZELLER: Good morning, Chairman Bollwerk, Dr. Baratta, and Dr. Sager. Welcome to Alabama.

My name is Louis A. Zeller and I'm the legal representative here for joint petitioners and specifically the Blue Ridge Environmental Defense League.

Next to me is Sarah Barczak who's representing one of the joint petitioners, Southern Alliance for Clean Energy.

Thank you, sir.

>>CHAIRMAN BOLLWERK: All right. Applicants, please.

>>MR. FRANTZ: My name is Steve Frantz. I'm an attorney with the firm of Morgan, Lewis and Bockius in Washington. We are co-counsel for TVA. To my right is my associate Stephen Burdick and to my left is Ed Vigluicci who is counsel for TVA.

>>CHAIRMAN BOLLWERK: Thank you. And the NRC staff.

>>MS. HODFDON: I am Ann Hodfdon for the NRC staff.

To my left is Patrick Moulding, my associate, also for the NRC staff. And to my -- no, that's to my left. Did I say that right? To my right is Joseph Gilman, who is a paralegal who works for OGC.

>>CHAIRMAN BOLLWERK: All right. Thank you very much.

I would note as we stated in our June 21st, 2008 issuance regarding scheduling and procedures for this free hearing conference that presentations to the Board during this prehearing conference will be limited to the participant counsel or representatives who have just identified themselves.

As my previous comments indicated,

during today's conference we will only be entertaining presidents -- presentations, excuse me, from these participants regarding the standing period petition time limits and contention admission issues that I outlined previously.

At some point in the future, however, if contentions are admitted in accordance with Section 2.315A of Title 10 of the Code of Federal Regulations the Board will issue a hearing notice that, among other things, may indicate to the members of the public will be afforded an opportunity to provide as appropriate oral limited appearance statements setting forth their views concerning the proposed Combined Operating License Application for the two Bellefonte plants.

In that issuance or subsequent notice, the Board will outline the times,

places and conditions of participation relative to any opportunity for oral limited appearance statements.

In the interim, as the Board noted in its July 9th, 2008 issuance in this case, any member of the public can submit a written limited appearance statement providing his or her views regarding the issues in this proceeding.

Those written statements can be sent at any time by regular mail to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. The ZIP code 20555-001. They should be sent to the attention of the rule makings and adjudication staff or they can be sent by e-mail to hearingdocket (that's all one word) hearingdocket@NRC.gov. That's by e-mail.

A copy of the statement also should be provided to me as the Chairman of this

Atomic Safety and Licensing Board by sending it by regular mail to my attention at the Atomic Safety and Licensing Board Panel, Mail Stop T-3F23, U.S. Nuclear Regulatory Commission, Washington, did. 20555-001 or by e-mail to Paul Bollwerk, last name B-O-L-L-W-E-R-K, it's Paul.Bollwerk@nrc.gov.

And again, this written submission information is provided in the Board's July 9th issuance if you need the dates or the addresses of the e-mail addresses again.

With these limited appearance statements -- with these limited written appearance statements are an opportunity for those who do not seek party status in this proceeding to provide their views regarding the substantive issues before the Board.

However, the Board will also be interested in hearing from anyone who might be watching this proceeding via web casting about their experience with accessing and viewing the Web cast.

As we noted in our July 21st, memorandum and order, this pre-prehearing session is being made available over the Internet as part of a pilot program to assess whether permitting public viewing of licensing board adjudicatory hearings via the Internet is a cost effective tool for increasing public access to our proceedings.

To the extent anyone viewing this proceeding via the Internet has comments regarding the technical aspects of this web cast or its efficacy as a tool for providing broader public access to the adjudicatory hearing process, those comments can be directed by e-mail to the

following address. This is a little bit long so I will say it a couple of times.

Its webstream master (that's all one word) websstreammaster.resource@NRC.gov.

Again, webstreammaster -- all one word -- dot resource at NRC dot GOV. We'll also have that up as we take breaks on our slide from time to time.

I would note that although today's proceeding is available via the Web for live viewing only, a verbatim transcript of this conference will be available for viewing and download within seven days on the NRC website in the reactors materials and other hearings portion of the Agency's electronic hearing docket, which can be found under the Electronic Reading Room tab on the Agency's home page, which is www.NRC.gov.

Finally, as an informational matter, I would note that under the current

provisions of the Atomic Energy Act, regardless of the admissibility of any of the joint petitioner's contentions, the Agency must conduct a separate mandatory hearing concerning the TVA Combined Operating License Application for Bellefonte.

That hearing, to which only TVA and the NRC staff will be parties, would deal with matters other than those admitted to litigation before this Board and would provide the basis for required health safety, environmental and common defense and security findings associated with the application and the NRC staff's safety and NEPA reviews of the application.

Under current agency policy the mandatory hearing for the Bellefonte Units 3 and 4 COL application will be conducted by the Commission itself.

Returning then to the matters before

the Board today, with respect to the order of presentation by the participants in this prehearing conference, in our July 21st order, we outlined the schedule that affords an opportunity for the participants to address the various contested matters now before the Board.

We would intend to follow that schedule as closely as possible in terms of the issues and allocated times for argument.

In that regard, we requested before starting on an issue for which the joint petitioners have been afforded an opportunity for initial argument and rebuttal, their representative should indicate how much of the joint petitioner's total time allocation for that issue he or she wishes to reserve for rebuttal.

Toward the end of the allocated

argument time, the Board will be providing the participant counsel and representative with notice of the need to finish his or her presentation.

Also, as we noted in our July 21st issuance, in making their arguments the petitioners -- I'm sorry; the participants should be aware or bear in mind that we have read their pleadings and as such they should focus their presentations on the critical points and controversy as those who have merged as a result of the various participant filings over the last eight weeks.

Finally, at some juncture we'd like to have a brief discussion regarding some of the administrative details involved in this proceeding, and relative to administrative matters I would note this is my cell phone, which I have turned off. I'm sticking it in my pocket and I

won't turn it on again until we have a recess.

I would request that anyone else do the same thing with his or her cell phones or at least put it on vibrate. But if you put your phone on vibrate and it goes off while we're in session, we would ask that if you wish to answer it, you leave the room before making -- before having your conversation.

We would appreciate that everyone abide by this protocol at any time during this pre prehearing conference is in session. Basic message, please turn your cell phones off or put them on vibrate. No cell phone conversations in this room while we're in session. We'd appreciate that. Thank you.

Unless the participants have anything at this point they need to bring to the Board's attention, let's begin with the

joint petitioner's presentation regarding the issues of the standing of BEST and the timeliness of their hearing petition.

>>MR. ZELLER: Judge Bollwerk, if I might? I have a request to make with regards to limited appearance statements, if I might?

>>CHAIRMAN BOLLWERK: Yes, sir.

>>MR. ZELLER: Several members of the public have approached me asking to make limited appearance statements if possible today. Several have brought written statements according to your instructions, but some others are also interested in making an oral statement if time permits. So, I would put in that request on their behalf.

>>CHAIRMAN BOLLWERK: We can take that under advisement. I suspect, given what we've said, that will not occur, but we're more than willing to take their

written appearance statements and put them in the record.

I'll talk with the Board Members at the next recess. If they do have something in writing and if they need to, we'd be glad to provide it. If they need some paper and pencils that they want to write something down we'll put it into the record and put it in the hearing docket when we get back to the Rockville area.

Again, I'll talk with the Board Members, but again, this presentation as we set it forth is to listen to the parties on the admission of contentions and the questions of BEST standing as well as the timeliness of the petitions. But I appreciate you bringing it to my attention and we'll talk about it at the next recess.

All right. Would you like to talk

then about the standing of BEST in this proceeding as well as the timeliness of the hearing petition?

>>MR. ZELLER: Yes.

>>CHAIRMAN BOLLWERK: How much time are you saving for rebuttal?

>>MR. ZELLER: With regards to timeliness, I would like to reserve half the time, please.

>>CHAIRMAN BOLLWERK: All right. So, five minutes for your first presentation and five minutes for rebuttal?

>>MR. ZELLER: About timeliness and standing?

>>CHAIRMAN BOLLWERK: Yes.

>>MR. ZELLER: Okay. Yes, sir. Blue Ridge Environmental Defense League as you've read in our brief and on our petition is a unitary organization. The Bellefonte Efficiency and Sustainability

Team is part and parcel of our organization.

As we have explained, similar to, you might say, a franchise agreement. Basically they show the same legal incorporation and the same financial and structure. So, Bellefonte Efficiency and Sustainability Team as our local actor in this case has the most interest of anyone within our organization. And I understand why there would be a question perhaps with regards to why that would be in addition to Blue Ridge Environmental Defense League.

Firstly, we prefer it this way. Second, we don't see any problems with it in terms of the proceedings. And third, as I mentioned, they are the people who are in the Tennessee, Alabama and Georgia area, with the most directly affected interest here.

Many of their members have submitted declarations for standing as part of the procedure. The standing questions are also outlined in our submissions, which I think are fairly clear. I don't know if there are any outstanding questions other than would have been raised so far.

So, with all due respect, we would submit that alongside of Blue Ridge Environmental Defense League and the Southern Alliance for Clean Energy that the Bellefonte Efficiency and Sustainability Team have a standing by the same -- all the same standards.

>>CHAIRMAN BOLLWERK: The members of the organization used a sort of a form affidavit, which is nothing wrong with that. It's certainly probably a good idea and very efficient in term of getting the information to everyone. That affidavit only mentions the league.

It doesn't say anything about BEST. It doesn't say that BEST has their authority to represent them. None of the affidavits you provided us mention BEST at all.

>>MR. ZELLER: That's quite correct.

>>CHAIRMAN BOLLWERK: That's an issue that has been raised.

>>MR. ZELLER: That's quite correct. And the fact that the Blue Ridge Environmental Defense League is unitary I think is reflected in those declarations. We could have put the name of Bellefonte Efficiency and Sustainability Team, or BEST throughout, and perhaps we would do that in the future for clarity sake.

>>CHAIRMAN BOLLWERK: Any other questions from the Board Members?

>>JUDGE BARATTA: You made a

statement that BREDL and BEST are the same legal entity. I'm not sure I quoted you exactly.

Could you just explain that? Specifically, BREDL has an Article of Incorporation, I assume, somewhere. Does BEST have a separate Article of Incorporation anywhere?

>>MR. ZELLER: No.

>>JUDGE BARATTA: So, there's no -- nothing legally identifying them as a separate organization?

>>MR. ZELLER: The only thing would be within Blue Ridge Environmental Defense League's records is the chapter's acceptance by the Board of Directors of Blue Ridge Environmental Defense League as a bonafied chapter.

>>CHAIRMAN BOLLWERK: All right then. If you'd like to move to the issue of the timeliness of your petition.

>>MR. ZELLER: Thank you. Yes. Regarding timeliness, we have -- there has been much back and forth about this, and the first thing I would like to say is that we certainly do appreciate the staff of the Office of Adjudications and Rule Making in their diligence with regards to this. We know it was a difficult process.

I think what it boils down to was the size of our submission on the order of 50 megabytes with the associated petitions -- petitions declarations, I should say, with over 40 scanned declarations. It turned out to be quite a large document, in addition to the 109 pages of the petition itself.

Simply stated, when we hit the button to submit that by the electronic information exchange, it seems like we were wading through molasses. And it

ultimately did go through, but actually it took on the order of a week of back and forth to get the documents concatenated and attached in a method which conforms with the electronic information system's capacity.

>>CHAIRMAN BOLLWERK: How do you connect to the internet, your organization? Cable modem? Is it DSL?

>>MR. ZELLER: We have a broadband connection through our local internet service provider. It's high speed, 400 megabyte, whatever.

>>CHAIRMAN BOLLWERK: In your pleadings you've indicated that you hit the button before midnight.

>>MR. ZELLER: Correct.

>>CHAIRMAN BOLLWERK: The rule basically says that the pleading has to be finished -- submitted -- you have you to perform the last act to get the

pleading submitted in its entirety before the time deadline, which is 11:59 p.m.

>>MR. ZELLER: Precisely.

>>CHAIRMAN BOLLWERK: That's what you're essentially saying that you did? It just didn't arrive on time?

>>MR. ZELLER: Our last act was hitting that button and after that, like I said, there was mostly -- that was our last act. Again, as I've said in our written submission it was tantamount to the postmark date handing off in the old days when we would submit these things at the local post office.

Once the postmaster would stamp that date, if it took a day, a week or if it got lost somewhere, basically that date stood to be the determination of timeliness. So, it's an analogous situation here.

>>CHAIRMAN BOLLWERK: All right.

Any questions from any of the Board Members? Anything further you want to add?

>>MR. ZELLER: That's all I have today.

>>CHAIRMAN BOLLWERK: All right. Let's turn then to the applicant, if we could.

>>MR. FRANTZ: Mr. Burdick will be making our presentation for us.

>>MR. BURDICK: Good morning, Your Honors. I'll be addressing the first two issues of the standing of BEST and then the timeliness of the petition to intervene.

The BEST organization has not demonstrated standing in this proceeding and therefore they should not be able to participate as an independent party.

In their reply, the petitioners -- and also today -- their primary argument

is that BEST and BREDL are the same organization. We believe this argument actually supports TVA's position. If the two organizations are the same, then there's no reason for them to participate as separate parties in this proceeding with the rights of several parties in this proceeding.

That's all I have on the standing. If there are any questions.

>>CHAIRMAN BOLLWERK: Given Judge Baratta's information that he gleaned from the petitioners, basically they're a chapter. Why can't we just consider them part the league?

>>MR. BURDICK: We have no problem if they participate as part of BREDL. Our concern is that if they participate as separate parties in this proceeding with the rights of separate parties, at this point they seem to be

acting in a unified method, but in the future there could be disparities.

If they are separate parties in this proceeding, they could potentially move in separate directions in the future.

For example, if BREDL were to determine if there was a contention admitted -- if BREDL were determined not to move forward in this proceeding, then BEST with the rights of a separate party could potentially continue on. And since they haven't demonstrated standing, we think that would not be correct at this proceeding.

There could be other issues with discovery rights, filing separate pleadings, anything associated with them acting as an individual party, we feel would not be appropriate since they have not demonstrated standing.

>>CHAIRMAN BOLLWERK: Any

questions of the Board Members? All right. Nothing.

>>MR. BURDICK: Turning to the second issue of timelinesses, the joint petitioners have not filed a timely petition in this proceeding. The electronic information exchange notices make it clear that the documents did not arrive until June 7th, after the filing deadline.

Petitioners in their pleadings on this issue and today, they argued that they performed a last act, and they find support for that in second 2.302 Paragraph B of the regulations. However, this argument must fail.

Petitioners have not provided any proof that they actually did perform this last act prior to the filing deadline, and they provided no explanation for any delay in that filing.

Additionally, the same regulation, Section 2.302, both in Paragraphs D and E, clearly states that the entire filing must be performed in order for it to be considered timely.

The petitioners filed their joint petition in two parts and the second part clearly did not arrive and was not transmitted prior to filing the deadline; therefore, the entire pleading was not timely and should be rejected on those grounds.

Additionally, the joint petitioner has discussed some technical difficulties, but they never explained the technical difficulties that actually occurred when they tried to file the initial -- the original joint petition.

Instead, their discussion of these large documents that had to be broken down into separate parts before they

could be successfully filed, deal with issues that occurred many days after the initial filing and have no relevance to the timeliness of their initial pleading.

Instead, those issues address the formatting of the pleading and their correction of that over the weeks following the initial submission.

>>CHAIRMAN BOLLWERK: Would the applicant able to read pleading the next morning in the accompanying declarations?

>>MR. BURDICK: That is correct. We were able to obtain them.

>>CHAIRMAN BOLLWERK: I take it there wasn't anybody sitting there at 12 midnight waiting for it to come in?

>>MR. BURDICK: Actually, I was there waiting for that. But we were able to obtain it after it arrived through the electronic information exchange system.

>>CHAIRMAN BOLLWERK: So, the two

e-mails that came in, when you saw them the next morning, had what you needed, just that the time they were marked with is time past the deadline?

>>MR. BURDICK: That's correct.

>>JUDGE BARATTA: Given that statement, what harm occurred as a result of, let's say it was late?

>>MR. BURDICK: The regulations are clear in the notice of hearing.

>>JUDGE BARATTA: I didn't ask that. I said what harm occurred?

>>MR. BURDICK: As the applicant has argued and the staff agrees with, there are no admissible contentions in the petition. If the Board agrees with that, then there is absolutely no harm and the issue of timeliness is moot.

But if the contention is admitted in this proceeding, then the harm would be that the difference between that and the

petition being admitted and/or rejected and the associating proceeding with them.

>>JUDGE BARATTA: That harm would exist even if it were on time. What harm is added because, assuming that you're correct, that it was late?

>>MR. BURDICK: We were able to obtain the petition. Another concern is this is one of a series of examples of the petitioner's failure to comply with the procedural requirements and the Board's order in this proceeding. We think this should not go unchecked.

For example, we've seen -- the Board issued a few orders requesting a notice of appearance from the petitioner's; have not seen that. Apparently, the petition was not filed in proper format. Petitioners did not appear to comply with the Board's order regarding their supplemental petition.

And also, we feel the application was submitted in October 2007, was publicly available in November of 2007. So, the petitioners had approximately eight months to prepare this petition, including a 60-day extension. And for them to try to file it literally at the last minute, we believe is past the filing deadline and we feel it should not be allowed in this proceeding.

>>JUDGE BARATTA: You never answered my question, but let's move on.

>>CHAIRMAN BOLLWERK: Let me just make one other question with you. In the Federal Register Notice for the final rule it dealt with question of e-filing. Volume 72 of the Federal Register Page 49, 143. This would have been August 28th, 2007.

It makes the point that making completeness of filing dependent upon

receipt of the transmission would subject participants to the vagaries of electronic transmission, which may include such problems as the filer's internet connection being slower on the day of the filing, the filer's internet service disconnection -- I'm sorry; the filer's internet service disconnecting during transmission or the filer's connection to the e-filing system failing to connect because of the allotted time for the connection to file.

Basically, problems with the transmission, which was why the Last Act Standard was put in place.

Don't we really have that situation here in some way?

>>MR. BURDICK: We really have not seen any proof that they actually filed before the deadline, but regardless of whether they clicked the submit button

with the first part of the petition, the second part could not have been filed until the first part arrived through their computer system. And so, the second part would not have been submitted prior to the deadline.

So we notice -- we noticed that it was late filed, and therefore we raised this issue in our answer.

>>CHAIRMAN BOLLWERK: So, basically you're saying in its entirety, the last act was not performed before the entirety of the petition, including the declarations before the midnight deadline?

>>MR. BURDICK: That's correct. And Section 2.3002 both D and E consider the filing complete when the entire filing has been submitted. And in fact, Paragraph E specifically states notwithstanding Paragraph D, which

petitioner is relying on. But that is the case.

>>CHAIRMAN BOLLWERK: All right. Anything else from the Board?

Let's turn then to the staff. One of the things I'd like to hear about is the point you made in your footnote about the difference between the language and notice of hearing versus the rule itself.

>>MS. HODFDON: Could I ask a question? Exactly which point?

>>CHAIRMAN BOLLWERK: In the pleading that you filed on this you had made the point that the original notice of hearing mentioned that it should be filed by midnight Eastern Standard Time and when this actually came in it was Daylight Time.

>>MS. HODFDON: Well, actually, yes, we did make that point and I don't entirely understand the question

regarding it.

However, what we said was that it's Eastern Time, which is what the rule says.

>>CHAIRMAN BOLLWERK: That's true, but isn't the notice more specific? Doesn't specific govern the general?

>>MS. HODFDON: I'm not clear at this moment because I wasn't planning to address that. So, on what the notice said standard time, and it was actually daylight time, and that had not been changed when we went to daylight time.

So, I don't believe that the Commission meant to give the petitioner's an extra hour, having already given them an extra 59 days.

I think it was meant to be Eastern Time, which when this petition filed was Eastern Daylight Time not Eastern Standard Time, and therefore we probably

should have corrected that, but I don't -- I think that's harmless error.

It's clear that we were on Eastern Time on June -- whatever day in June this petition may have been filed. So June 6th, 7th.

>>JUDGE BARATTA: I'm not a lawyer, so I don't understand a lot of this in terms of notice and such, but I thought there is this concept that one has to have a proper notice, and if -- and as a result that that notice would supersede anything else or it would be defective, in which case we wouldn't a have a time period which should be specified.

You use terms like, well, I think that the Commission wanted this or that. The fact of the matter is notice of Eastern Standard Time, which means that it would be the same as 12 midnight here,

in other words a one hour time difference. So, anything filed up until 1:00 a.m. Eastern Daylight Time would meet that criteria. Is that not true?

>>MS. HODFDON: The petition was not filed here. It was filed in North Carolina, which was also in Eastern Time.

>>JUDGE BARATTA: Well, it doesn't matter. Eastern Standard Time would mean 1:00 a.m. Eastern Daylight Time if you accept the notice as a proper notice.

>>MS. HODFDON: The time that's relevant to these petitions is Eastern time, no matter where they're filed.

>>JUDGE BARATTA: That's not what the notice said, though. If that's the case, then the notice is not proper. I mean, isn't this concept -- there's a legal concept in the notice; is there not?

>>MS. HODFDON: There's a legal concept of notice.

>>JUDGE BARATTA: Could you explain that legal concept in short order?

>>CHAIRMAN BOLLWERK: And let me give you a specific example. If the general provision in the rule says that motions are to be responded to in ten days. If this Board issues an order that says it should be responded in seven days, our order being more specific than the general rule would governs.

Here is the specific notice that say it has to be filed by this time. Wouldn't that govern over the more general rule, which simply says Eastern time? I guess that's the point.

>>MS. HODFDON: I'm still not sure which notice we're talking about. The correction was not made over the --

in the second notice, which corrected the first notice by adding things that were not in the first notice.

In the second notice, the -- that notice was put out by the Commission and not been the staff. And they did not make that correction.

I would also argue that petitioners had no notion of any of this and they believe they needed to file by 11:59 Eastern time. That would have been Eastern Daylight Time at the time it was filed and not Eastern Standard Time.

So, the staff had no control over that notice. It was filed by the Commission.

>>JUDGE BARATTA: So?

>>MS. HODFDON: Excuse me?

>>JUDGE BARATTA: So?

>>MS. HODFDON: So, my argument is that the staff may have corrected it

yet once again with yet another notice and did not. That's my point. It was filed by the Commission and was not filed by the staff.

The Federal Notice -- the Federal Register Notice is the Commission's notice, not the staff's notice. And I don't know to what extent the Board is bound by the Commission's notices. I would leave that to Board.

>>CHAIRMAN BOLLWERK: We're bound by the Agency's actions. So, that's why. I guess we'll have to sort that. I do appreciate, however, you bringing that to our attention. I think it was a point that needed to be mentioned and you did put that in your brief and we appreciate it.

>>MS. HODFDON: We did the best that we could do with that under the circumstances.

Also, we made the points that have just been made by the applicant about the non-timeliness of it as citing 2.2302 and to 2.2306.

But to answer the question asked by Judge Baratta about the harm that was done, there's no need to show harm here because 2309 sees the non-timely filings will not be entertained absent a determination by the Commission on the good cause factors. So, one does not need to show harm here.

I would like to have you look at something that I have here which I'm going to address. It does not need to be admitted, but I think it really solves the whole problem or maybe it just adds -- would you distribute them to everybody.

>>CHAIRMAN BOLLWERK: They need to be distributed to the parties

involved.

>>MS. HODFDON: I'm not entering them. I'm just giving them to you so you can follow me because what this is is the transaction data and meta data and the e-mail filing, if you read all those pages and it will show that Mr. -- if you look at the first bracket there where it say Friday, June 6, 23:58:22, access Louis A. Zeller, administrator and so forth and the rest of that entry.

And then skip down a bracket and go to the third one, 1,2,3 -- that is the point I should say at which Mr. Zeller accessed the system. In other words, he entered his private key and he was on the system then, and when it acknowledged his presence he was on the system.

He did that at 23:58:22. Then you skip down one. This is the earliest date that he could have -- the earliest time,

I should say, that he could have hit the submit button. Friday, June 6th, 23:59:35. 35 seconds late, and that would not seem to be a lot, but the rule says it's a non-timely filing.

>>CHAIRMAN BOLLWERK: That's the point at which something was received for this log file, but he could have hit -- if the transmission were delayed or interrupted, he could have hit it 30 seconds earlier, right?

>>MS. HODFDON: No, I think not. I think that's the first time that he could have because that's a transaction and that transaction was submit. His first transaction was let me on the system. The one right ahead of that is Stephen Burdick trying to get this thing, and he signs onto the system, but he doesn't file anything.

So, what happened there --

>>CHAIRMAN BOLLWERK: One problem I'm having with this document is I'm getting it right now. This would have been great if you would have filed it with your response, but I'm not sure --

>>MS. HODFDON: I didn't have it. I'm sorry. I wasn't allowed to answer anything in the reply. I was merely -- the staff was told to answer with regard to timeliness. So, I used what -- everything that the applicant had said of regarding it's not meeting 2302 D and not having been submitted in one piece. And everything in 2306, about it having to be filed by 11:59, et cetera.

>>CHAIRMAN BOLLWERK: Where was this information generated from? Where did you get it?

>>MS. HODFDON: Tom Ryan gave it to me.

>>CHAIRMAN BOLLWERK: And Tom

Ryan is an NRC contractor that deals with e-filing?

>>MS. HODFDON: He is an NRC contractor regarding this and I believe he was one of the persons who designed the system. Beyond that, he is one of the persons who put in that -- there's an e-mail from Tom Ryan in the reply of petitioners, and I will point to it if anybody has a copy of that.

No, it's not in the reply. It's in the timeliness submission. I misspoke.

It says -- if you'll bear with me a moment, I have to find it.

>>CHAIRMAN BOLLWERK: You're way past your time. So, you need to kind of --

>>MS. HODFDON: I'm aware of that. I want to address the BEST matter. As you know, we agree with what's being said with BEST not having standing.

On Page 5 of Mr. Zeller's filing on timeliness, which is dated July the 18th, there's an e-mail from Tom Ryan, and it says, "two EIE submissions came in early Saturday, the 7th of June, directed to the Bellefonte hearing. Both are incorrectly marked as non-publicly available, et cetera.

I don't want to read the rest of that because I've used up my time, and I want to make one more point. And that is if you look at this piece that was distributed, you will look at the meta data, which is in Greenwich Mean Time, so it's four hours off but all you have to do is subtract the four hours.

Then you go to the last one, all these things match up. These two filings. The first, yes the -- I have them marked on a copy that I have, but I don't think you'll have any trouble

finding them.

They are on the second page of the meta data. These pages are not paginated. About three-quarters of the way down it says 2008, 6:07, 3:59, that's Greenwich Mean Time. A gap and then further down 6:07, 4:07 post.

And then finally you get the e-mail logs. All these times match up with the times that I've just given.

E-mail logs is on the last page. 6/7/2008, 12:07, that's when the submission was concluded, and 12:07:41, the sending e-mail, okay.

12:07:41 seconds; that's when the e-mail was sent, et cetera. This is the recording of the e-mail.

>>JUDGE BARATTA: All right. Let me stop you there. I have a very specific question. You say you got this information from Tom Ryan. Did this come

off of the NRC web server?

>>MS. HODFDON: It came off and it's public information.

>>JUDGE BARATTA: I didn't ask that. I said did it come off the NRC web server?

>>MS. HODFDON: Yes, it did.

>>JUDGE BARATTA: Okay. So, you did not access SkyBEST.com, which is their ISP?

>>MS. HODFDON: No, I did not.

>>JUDGE BARATTA: So, how do you know that between SkyBEST's portal and this that was on delay?

>>MS. HODFDON: There was no delay.

>>JUDGE BARATTA: How many times have you sent an e-mail message and it shows up three hours later?

>>CHAIRMAN BOLLWERK: One of the things that you will recognize is with

the internet, stuff happens. Stuff happens.

>>JUDGE BARATTA: I can't -- without actually seeing the -- when he connected to his server, right, he doesn't connect directly to the NRC server. He goes into his ISP's server.

>>MS. HODFDON: Yes.

>>JUDGE BARATTA: And then that ISP server goes to some other node on the internet, which may in turn go to another node which eventually connects into here. Right? Well, without seeing where those messages were received, as we go through that daisy chain, this is meaningless. Is it not?

Can you tell me at what time SkyBEST's server received this e-mail?

>>MS. HODFDON: SkyBEST's server --

>>JUDGE BARATTA: That's their

server.

>>MS. HODFDON: It received it exactly the same time that everybody else received it.

>>JUDGE BARATTA: Are you certain of that?

>>MS. HODFDON: Yes, I'm absolutely certain because I received it.

>>JUDGE BARATTA: You would be willing to bring testimony in court to say that?

>>MS. HODFDON: Well, I'm not a witness. If I were, I would --

>>JUDGE BARATTA: Well, you're acting like one.

>>MS. HODFDON: I would we willing to say that SkyBEST was served at the same time I was because that is way the server works. It services everybody at the same time.

>>JUDGE BARATTA: That's fine. I

don't want to argue with you, but that is not the way the internet works.

>>CHAIRMAN BOLLWERK: Anything further?

>>MS. HODFDON:: I want to make one further point and that is this system will be upgraded in September, as some of you might know and it will time stamp the time of submission, the time that the button is hit, as well as it does now, the time that the submission is finished. And that will make it much, much more -- make it dispositive, I should thing. That's certainly the intention.

Here the -- there could be -- I don't see how there could actually be any argument. In fact, these things are all matched up, you can easily see. And it's instantaneous is what it is.

>>CHAIRMAN BOLLWERK: But that's -- I don't mean to interrupt.

That's Dr. Baratta's point. It's instantaneous if everything connects up, but sometimes things don't connect up and that's his point, I think.

>>JUDGE BARATTA: Yes, that's my whole point. Unless you actually go back to the server that his message is going to first and get the comparable information, you cannot -- you could assume, but it may not be a valid assumption that that time and the time that you record are the same. There could be delays for any number of reasons, couldn't there?

>>MS. HODFDON: That is true and several other things are also true regarding that.

In one proceeding, I think Indian Point, even though in Indian point there was an argument about whether meta data is admissible, but the meta data from the

petitioner's server was in fact requested.

Here, of course, Mr. Zeller's computer may not have the right time. The EIE is set to Greenwich Mean Time. It's very common to have a computer that's not on the same --

>>JUDGE BARATTA: I'm not talking about his computer. I'm talking about his ISP's computer, which I don't know, but I would assume it is also set to either GMT or Central Standard Time.

>>MS. HODFDON: It's set to Eastern time, whatever that might be.

>>JUDGE BARATTA: I'm talking about his server.

>>MS. HODFDON: His server is set -- he's in North Carolina, which is--

>>JUDGE BARATTA: Well, we don't know where his ISP server is.

>>CHAIRMAN BOLLWERK: Anything

further on this from the staff at this point?

>>MS. HODFDON: The staff has nothing further.

>>CHAIRMAN BOLLWERK: Okay. Thank you. I appreciate you giving us your views.

All right, Mr. Zeller.

>>MR. ZELLER: Yes, thank you. I think that one technical point - somebody that knows more about this than I - has told me that the time stamp itself is a relative sequence, and we're getting into an area here which I'm a little uncertain about, but has to do with actual machine clock versus the actual time, Greenwich Mean Time and whatever.

With regards to what the document which I've just been handed, I think this shows that we, in fact, are timely. It begins on Friday, June 6th, 23:58, which

would be timely. I have a question.

This first page begins with Regulatory Commission, which I assume is Nuclear Regulatory Commission. There may be an earlier page in here that may not--

>>CHAIRMAN BOLLWERK: I think there's a lot of earlier pages. I think this is just a running log of what comes into the server.

>>MR. ZELLER: Right. And then finally, the last page talks about the subject, EIE document available. That is the time that the notice was sent out from the Commission to EIE. This shows that we were timely.

>>CHAIRMAN BOLLWERK: What about the applicant's point that the petition appears to have been submitted in two pieces, one before midnight and one after. Anything you want to say about that?

>>MR. ZELLER: The large document it took -- taking a long time. We can go through quickly and, so, I don't know. I don't have any explanation for that. We did submit a further -- those were declarations. Because they were so large, and it just -- having had trouble with it.

This should have taken a matter of seconds to go. When I have used the electron information exchange before. It's a matter of seconds between sending the document and getting a reply notice through the e-mail or an indication from the EIE itself that your document has been submitted even before you get the e-mail notice that goes out.

This was a very large document with many scanned declarations. So, we did submit that in two separate parts. The second part was in fact additional

declarations of standing. Some of the declarations of standing were attached to the first part, but that's the way we did it.

>>JUDGE BARATTA: Let me just -- just to make sure I read those records right. Is SkyBEST your ISP?

>>MR. ZELLER: That's correct.

>>JUDGE BARATTA: Thank you. Where are they located? Do you know?

>>MR. ZELLER: In Jefferson, North Carolina.

>>JUDGE BARATTA: Thank you.

>>CHAIRMAN BOLLWERK: Let me just clarify one thing. It sounded like your intent was to submit two separate parts, the petition and the declarations. You hit the button and nothing happened for some time, and then you just -- you went back in, took the -- went back into the site, got the declaration, loaded them

and then hit the button again?

>>MR. ZELLER: Correct.

>>CHAIRMAN BOLLWERK: But there wasn't a period of time between because you didn't receive a response from the first one? You weren't sure what was happening?

>>MR. ZELLER: Correct. Exactly.

>>CHAIRMAN BOLLWERK: Anything further? Anyone? Okay. Thank you very much for your comments and your observations on those issues.

Let's go ahead then and move on to what has been labeled and we had some relabeling of contentions, but we'll give both designations so it's clear to everyone. FSAR-B, which was formally contention 3, this title -- the title of this contention was plant site -- plant site geology is not suitable for nuclear reactor. Geologic issues are not

adequately addressed.

How much of your time of your ten minutes would you like to save for rebuttal?

>>MR. ZELLER: If I might, I have just a brief note to make before we get into that specific issue, if I might?

Many of the contentions that we have raised have to do with the rules of the Commission. We understand the distinction there between the adjudicatory process and rule making. So, two brief notes regarding the waste confidence rule.

We plan to submit a petition for rule making in that matter under 10.CFR 2.802 and according to the NRC Chairman Klein that a rule making will be underway within a short period of time.

Note number two is regarding Table S3, which is referenced in our in our

petition, we are working on rule making there and we will submission -- petition, I should say, rule making petitions, which we will submit as soon as possible.

>>CHAIRMAN BOLLWERK: Just so I understand, you are planning on submitting a petition dealing with waste confidence or you're awaiting the NRC taking some action on waste confidence? Because you're right, at least the Trade Press has indicated that the NRC may well be initiating a waste confidence rule making at some point in the near future.

>>MR. ZELLER: We're still weighing our options there. It may be a moving train. So, in which case our participation -- we anticipate participating in that.

>>CHAIRMAN BOLLWERK: As opposed to filing a separate petition then?

>>MR. ZELLER: Yes, we're still

considering that one as well.

>>CHAIRMAN BOLLWERK: All right.

>>MR. ZELLER: I didn't mean to muddy it up. I'm sure I did, but I just want to make clear between the two of us what we were talking about.

>>MR. ZELLER: And then with regards to S3 we are all working on that, too.

>>CHAIRMAN BOLLWERK: With respect then to this particular contention, how do you want to allocate your time?

>>MR. ZELLER: We'd like to reserve half the time for -- in rebuttal.

>>CHAIRMAN BOLLWERK: Is that what you're going to do in all the contentions? I can stop asking you that question? Basically 50/50?

>>MR. ZELLER: Yes.

>>CHAIRMAN BOLLWERK: Okay.

Thank you.

>>MR. ZELLER: With regards to our contention 3.

>>CHAIRMAN BOLLWERK: Can I stop you one second? Could you move the mic a little closer to you. I should mention with the mics, as you found out, you need to move the mic in front of you. These are fairly directional. So, if the person in the middle with the mic in front is not speaking, then you need to move the mic around. That would help us out a lot.

>>MR. ZELLER: Yes, sir. I might had that I had a little difficulty hearing Ms. Hodfdon too. So, I think--

>>CHAIRMAN BOLLWERK: If anybody is having any problems hearing, raise your hand or let us know and we'll have mics moved around. We want everybody to hear what is being said. We certainly

want the court reporter to hear what is being said.

>>CHAIRMAN BOLLWERK: We will go ahead. Please hold your thought. We're going to take a ten minute recess. We were going to take one when we finish this argument. We'll come back early and let Judge Sager ask his point.

We'll take a ten minute recess. We'll convene at 10:30. Thank you very much.

(Recess taken)

>>CHAIRMAN BOLLWERK: We've taken a short break to deal with a minor technical difficulty with the sound. We would ask again that the judges -- we will try as well as the parties to make sure you're speaking directly into the microphone so we don't have any problems with everyone hearing, especially the

court reporter.

And obviously, again, if anyone in the audience is having trouble hearing, just raise your hand and we'll try to make an adjustment.

Let me also address another matter. There was a question raised about limited appearances for today. We've talked that over and I think right now we're actually running a little behind the time we wanted to be.

I think, again, that's something we had planned on doing at a future point in terms of oral limited appearance statements, but I would indicate that, again, as we did if someone has something in writing they want to give us now or send to us they should certainly do that. I gave the information at the beginning.

If you want to drop something off today, this table over here, we have our

law clerk, Erica LaPlante and also Sherverne Cloyd who is our administrative person with us today. Either one of them is there. You can certainly give it to them and we will have it put on the record and the judges, I assure you, will read each one as we receive them at some point in the near future.

So, again, we will take limited written appearance statements today, but we won't be having any oral statements.

All right. We were having a discussion about -- Judge Sager had a question about geology. Let's move from there.

>>JUDGE SAGER: Okay, let me try that again. My question was essentially directed towards what is being sought. There are two parts to this convention: one about seismology and one about the instability because of karst features.

So, on the one hand it seems like the remedy sought is an update of what's called a probabilist seismic hazard model as to ground accelerations.

On the other hand, it seems as if the remedy is -- well, is there a remedy? It sounds as if you're saying the site is just unsuitable because of the karst feature. Is that a fair characterization?

>>MR. ZELLER: Yes, that is. Two things. The ability to detect any changes and as I pointed out, human activity and, of course, droughts impact on the stability of these soils.

We have the same rocks under there, but we don't have the same hydrology that we had 20 years ago.

>>CHAIRMAN BOLLWERK: Any follow-up?

>>JUDGE BARATTA: So, is there --

for the karst -- is there a remedy? Is there any way that the applicant can -- is it just providing more information, better data, or is that going to be suitable?

>>MR. ZELLER: The most serious implication would be modifications in the underpinnings of the facility; additional concrete, stronger rebar. That's hard to determine at this point, but it could absolutely affect the construction of the facility.

>>JUDGE BARATTA: Okay. Thank you.

>>MR. FRANTZ: Judge Bollwerk, may I add one sentence just so the record is complete?

>>CHAIRMAN BOLLWERK: You can certainly add a sentence, but I will always turn to Mr. Zeller. He gets the last word.

>>MR. FRANTZ: That's fine. I just refer the Board to FSAR Section 2.5.4.1.4, which discusses the potential for human activities to impact the site beneath the power block, including some sites. I just wanted to make sure that that was on the record.

>>JUDGE SAGER: I sorry, could you repeat that?

>>MR. FRANTZ: The section number?

>>JUDGE SAGER: Yes.

>>MR. FRANTZ: It's 2.5.4.1.4, discusses human activities and its impact on the karst.

>>JUDGE SAGER: Thank you.

>>CHAIRMAN BOLLWERK: Mr. Zeller, anything you want to add?

>>MR. ZELLER: Nothing to add, Your Honor.

>>CHAIRMAN BOLLWERK: Anything

from the Board members on this point? All right.

Then we'll move to the next contention, which is labeled Miscellaneous D. It was formally Contention 5. The contention was entitled "The Assumption and Assertion that Uranium Fuel as a Reliable Source of Energy is not supported in the Combined Operating License Application submitted by TVA, the applicant, to the U.S. Nuclear Regulatory Commission".

Mr. Zeller, your initial 5 minutes.

>>MR. ZELLER: Thank you, Your Honor. In this contention we did point to federal regulations under 10CFR 50.33, Paragraph F requiring an assessment of related fuel cycle costs.

And our petition lines out -- not only in Contention 5, but in some of the other contentions, which we'll get to

later on. Some of the uncertainties with regards to fuel cycle costs, which impact the bottom line, the provision of power and many other factors; the availability of the fuel itself and some of those uncertainties.

So, if this is to be an enterprise involving the expenditure of tens of billions of dollars, it only makes sense, of course, to determine that there is a reliable source of fuel for it, and that the fuel is available at a price which would not be prohibitive in terms of the costs of the providing power to the ratepayers of the Tennessee Valley Authority.

Contention 5 has, I will admit, perhaps information which I think is accurate, but it may not be the most concisely drawn contention within our list of 19. But taken together with some

of the other contentions, which we will get to toward the end. For example, 18 talks about the uranium fuel cycle, our Contention 18, I should say.

Considered together, I believe this contention should be admitted.

>>CHAIRMAN BOLLWERK: Any questions from the Board at this point?

You look like you're thinking, Judge Baratta?

Okay. We'll move on at this point and you can come back to the point. Let's here from the applicant then.

>>MR. FRANTZ: This contention argues that the application does not consider or discuss the reliability of the uranium supply.

Again, the petitioners have simply mischaracterized our application. They have either ignored or overlooked environmental report Section 10.2.2.4,

which has a fairly complete discussion of the supplied uranium.

That section includes many of the factors that the petitioners have listed in their contention such as the fact that current production does not meet current -- I'm sorry; current production does not meet current demands, and the difference is being made up through a diversion of secondary sources, such as uranium supplies from weapons materials.

The application also discusses the fact that there's been very little exploration for uranium over the last 20 years because we've had these additional secondary supplies.

Our application goes on and discusses the fact that there have been numerous studies which discuss the supply of uranium and show that it's adequate for existing and future plants.

For example, the environmental report discusses a DOE study that shows that at $30.00 per pound, there's enough uranium supply to supply the current reactors and the planned reactors for the next 10 years.

Additionally, we cite a rule, Nuclear Association Study that says that the current stock market prices, the supply is sufficient for the next 70 years at the current rates of consumption.

The petitioners don't dispute any of that. In fact, the web pages that they site are fully consistent with the information we provide in our environmental report.

And as a result, we don't believe that there is a material dispute of fact here. The application in fact does describe the supplies including the cost of those supplies, and the petitioners

simply have mischaracterized our application.

Now, we do point out that their reply does have a new citation to a new web page. We believe that that should not be considered by the Board and that reference should be struck.

That new reference was not in any way at all mentioned in the initial contention in the petition to intervene and it's not appropriate at this point for them to introduce new information in their reply.

I don't know whether the Board wants a separate discussion on our motion to strike at this point or the counter vailing motion to admit the reply. I'd be happy to do that or wait to a later point in this presentation.

>>CHAIRMAN BOLLWERK: At this point, if you want to say something about

it, particularly with respect to the motion to accept a reply, this would be as good a time as any.

>>MR. FRANTZ: We submitted our motion to strike on July 10. Responses were due on July 21. The NRC staff filed a timely response in support of our motion. The petitioners never filed a response. Currently, our motion to strike is unopposed.

Last Friday, on July 25 they did submit their motion to admit the full reply. This really has the appearance of a response to our motion, and if it's treated as a response, it's untimely by four days.

Even if it's treated a separate motion, independently of our motion to strike, it's still untimely. The rules require that any motion be submitted within ten days of the occurrence of the

event that gives rise to the motion, which in this case again was our motion to strike, and therefore they're four days late with their motion if it's treated as a motion rather than a response.

Finally, they admit that their motion to admit their reply is late -- I'm sorry. They admit in their motion that the reply contains new information. They attempt to say that that's excusable and not serious; however, we do believe it is serious.

It obviously deprives the other parties, such as ourselves and the NRC staff, an opportunity to address this new information. Therefore, we believe the Board should either not consider the new information in the reply or should strike it from the record. Thank you.

>>CHAIRMAN BOLLWERK: Any

questions from the Board Members at this point?

All right. Let's turn to the staff.

>>MS. HODFDON: With regard to the contention, the staff would rest on what it said in its answer.

With regard to the motion to strike, as Mr. Frantz said, the staff did support the motion and agrees that the motion to admit all portions of petitioner's reply which arrived on the 25th, is inexcusably late, because they should have responded to the motion and the same -- it should be given the same treatment as the response to the motion.

It should -- motions of something in the nature of a motion should not relate to something that happened more than ten days before. That's my point.

This motion was four days late and it is -- it doesn't have much going for it.

The petitioners say that they apologize because some of their affidavits from expert witnesses were filed late.

Well, even though they were filed with the reply, and such affidavits cannot be filed with the reply. They should be filed in the first place, which they were not.

And they still have yet to address lateness in any of their filings; their lateness with regard to this and so forth.

Then the last and finally, I think the applicant addressed most of these things is last and finally they rely on a prehearing conference rule, which is not applicable here, and the whole last part of the motion addresses the prehearing conference rule that's not applicable here, which is 10.CFR 2329, which regards the prehearing conference in anticipation

of the hearing rather than the initial prehearing conference, which we don't have that rule anymore. It's not in Part 2.

So, that's all the staff wants to say about that as with regards -- I did neglect to say that we supported the staff with application to this contention. We might address this further when we get to specific expert witnesses that are offered now instead of with the initial filing.

>>JUDGE SAGER: All right. Let me ask you, maybe direct the question to both if either of you want to answer it and then we'll move back to Mr. Zeller.

Is this contention really one that says that there's not enough production as opposed to enough availability? If I'm using the terms properly.

In other words, the uranium is out

there, but its just not being produced because the market isn't there at this point in terms of the market price? Maybe it is or it could be at some point?

>>MR. FRANTZ: I guess I interpret the contention as initially submitted as a contention of admission. They're claiming that our application does not discuss uranium supply. And as I pointed out, that's probably incorrect. Environmental report Section 10.2.2.4 does discuss it.

To the extent you look at the merits of what they're claiming, they do seem to change their argument somewhat in their reply. The reply seems to indicate that they believe there won't be enough supply of uranium at a low cost, or at some point the cost of uranium supply will be prohibitive.

And again if you look at both the

studies that we cite in our environmental report and the studies they cite, there's sufficient supply for Bellefonte and they don't provide any information to dispute that.

>>JUDGE SAGER: Anything the staff wants to say on that point?

>>MS. HODFDON: Yes. This contention was submitted in the North Anna proceeding and apparently in response to the staff's and the applicant's comments on the contention, these petitioners added the thought about 50.33 F, which does not seem to be related to the contention, at least not in any important way.

So, it's hard to connect those two things up. We did address both those things in our filings. So, I needn't add to that here. It was just a comment on the fact that the two are really not

closely related things.

And also, they addressed use of MOX, which we addressed also before, and I won't repeat that, Your Honor.

>>CHAIRMAN BOLLWERK: All right. Anything from the Board members, then? Let's turn to Mr. Zeller then.

All right, Mr. Zeller.

>>MR. ZELLER: Thank you. Uranium production is the basis for this contention. As we pointed out, only 60% of consumption is currently supplied by annual production. This fact was raised in this contention.

I pointed to -- I made reference a minute ago to Contention 18. I was incorrect. It was actually 16 in our petition, which talks about the environmental reports inadequate cost estimates and cost comparisons. So, taken together, 5 and 16, TVA

underestimated capital costs, fuel costs as well as operation and maintenance cost and 16 goes into some detail about that.

I think it provides some of the information which makes this a viable, not only a viable contention, but an issue that should be explored before we move forward with granting a construction and operation license for this Bellefonte facility.

>>JUDGE BARATTA: What I had a problem with and I was trying to figure out how to phrase it before, is that it seems like the applicant in this Section 10.2.4 doesn't say that there is a limited supply, but current demand and such is adequate for 70 years, which goes out beyond what might be reasonably projected life for this plant of 40 years, getting built within the next 10 or 20 years, something like that.

They cite the same study that you do, which says it's a production problem and not an availability problem, and they seem to allude to that in here, too.

So, I'm having trouble understanding -- it seems like you're both saying the same thing, maybe using different words, and therefore is there really an issue?

It looks like they've acknowledged, yeah, there needs to be more exploration, but there hasn't been any for 20 years. That's what that study says, and -- but everybody at the time says, we really think there's more out there, but we've got enough even without that for the next 50, 60, 70 years.

So, I'm kind of lost as to what to do with this one, I guess, is what I'm saying. Any help?

>>MR. ZELLER: You may have hit

the nail on the head. It may be is the glass half empty, is the glass half full kind of argument. Projections of this nature, of course, are subject to change and subject to interpretation.

And two people can look at the same data and see two different things. This -- taking for example, as I said, with Dr. Marcojoni's(ph) expert opinion about these matters in addition to what is actually in Contention 5. I can provide some basis for a problem -- the discussion of a problem, which we seek to resolve through this adjudicatory problem solving process to get to the bottom of that matter.

Obviously, we need further expert opinion on this, and in order to elucidate some of these question that you raised in your question to me and which we brought up in actually two of our

contentions.

I can't answer everything today about uranium fuel supply for the next -- for the duration of operation of the facility, which is four decades, and it's not even constructed yet.

>>JUDGE BARATTA: The problem is, though, that we have to deal with issues related to what the applicant says, and it sounded to me like you said -- and I just reread what he said, or they said, and it sounds like you're both saying the same thing.

So, I'm struggling. Is the application deficient? Because that's really what we have to address, okay. Not try to solve the larger global problem. It's sounds like they're saying, "Yeah, there's some uncertainty. You're saying, "Yeah, there's some uncertainty." You're both saying the

same thing, so--

>>CHAIRMAN BOLLWERK: They're sort of in violent agreement.

>>JUDGE BARATTA: Yeah, where's the beef as that commercial says. Sorry. I'm kind of at a loss as to what we would wind up adjudicating here. That's what I'm really searching for, if you understand what I mean.

>>MR. ZELLER: Yes. TVA has to show that uranium is a cost-effective or a fuel supply. Based on these data, if we cannot determine that that is the case then further explanation is certainly needed.

If there are uncertainties, again, before we move forward, either the Commission moves forward with the actual construction and operation license, there needs to be a better delineation by the applicant.

So, I would say in answer to your question, no, there is not sufficient information provided by the applicant to determine that there is enough uranium supply at a cost -- at reasonable cost.

>>JUDGE BARATTA: So, yours is not a contention of omission, but rather one that you feel that in Section 10.2.2.4, which is the one that the applicant referenced, that the discussion is inadequate? Is that what you're saying?

>>MR. ZELLER: Correct. Yes, sir.

>>JUDGE BARATTA: Because it fails to take into account the uncertainties and the projections?

>>MR. ZELLER: That's exactly what I'm saying, yes, sir.

>>CHAIRMAN BOLLWERK: Thank you. Anything further on this contention?

All right, then. Let's go ahead then and move to Contention NEPA-A, which was formerly Contention 7 and the title of this contention was "Excessive Water Use Contrary to TVA's purpose". Mr. Zeller?

>>MR. ZELLER: Yes, Your Honor. The Commission's guidance on water availability, of course, forms the basis for this contention. The guidance states that we are required by law demonstration of a request for certification of the rights to withdraw or consume water, and an indication that the request is consistent with appropriate state and regional programs and policies to be provided as a part of the application for a construction permit or an operating license. This comes from Regulatory Guide 4.7.

>>CHAIRMAN BOLLWERK: Could you move your microphone a little closer. I

don't want you to swallow it, but we do want everybody to here. Sorry.

>>MR. ZELLER: Yes, I'm sorry. Regulatory Guide 4.7, which is General Site Suitability Criteria for Nuclear Power.

Bellefonte, if constructed, would dwarf by an order of magnitude all of the waters in the Guntersville Water Shed save one that is the Widows Creek Fossil Fuel Plant which is also operated by TVA.

The applicant projects water use for the year 2030 in the Tennessee River Watershed on its Page 2.3-109. The table lists the increased percentage, the largest increase, 56% as a result of increased public water supply withdrawal.

However, the current water withdrawal for public supply is just 5% of all basin-wide water use.

The dedication of water supply to

Bellefonte 3 and 4 if constructed, we believe would be contrary to the principal purposes for which the Tennessee Valley Authority was created. That is, dams and river control.

I know this probably sounds like apostasy or flies in the face of experience over the last several decades, whereby TVA appears to have converted into an electric power supplier over a flood control entity, but nevertheless, within its own founding documents flood control and agricultural and industrial development in that order, in this derivative applicability are its founding purposes.

Some of our people who have provided declarations for standing are concerned about this because they live in this area and there are farmers in this area who rely on the water for their own use,

which go back, as I said, to the agricultural usages for which TVA is responsible.

Is the Nuclear Regulatory Commission responsible for enforcing TVA rules and regulations? That I cannot tell you. That is up for this Board to decide, but we do know that TVA was unable to provide verification and validation of records for the computer programs and the supporting input data sets with regards to quality assurance.

>>CHAIRMAN BOLLWERK: Any Board questions at this point.

All right. Then will turn to the applicant.

>>MR. FRANTZ: The petitioner's argue that water use by Bellefonte will be excessive. As a basis, they basically point to information that's contained in Chapter 2 of our environmental report.

They don't really dispute any information that we have in Chapter 2. Instead, based upon these undisputed fact they argue that water use will be excessive. However, they provide absolutely no expert opinion or other reference material or source material to support their argument.

Therefore, the contention is inadmissible under 2.309 F15 of the regulations.

Additionally, I might note that the impacts of water use are discussed in our environmental report in Section 5.2. The petitioners do not point to that section at al. They don't discuss it at all. And that's a separate defect in the contention.

That section goes on to note that the plant will use 0.28% of the monthly average river flow near Bellefonte.

Based upon that very small percent the environmental report goes on and shows that the impacts will be small and that there was an excellent warrant litigation.

Again, petitioners don't cite to any of that information, don't dispute any of that information, in Section 5 .2 of the environmental report.

So, this is again inconsistent with 2.309 F16 of the regulations.

Now, I might add that they also seem to be making a claim that the water use will be inconsistent with the TVA Act. Obviously, the NRC has no authority or jurisdiction to enforce the TVA Act and it's outside the jurisdiction of the Agency.

Even if you were to consider the act, it's very clear on its face that the act does authorize TVA to generate

electricity. I refer the Board to 16 USC Section 831-D-1 of the Act.

Additionally, obviously the NRC already has issued operating licenses for a number of nuclear power plants for TVA including Watts Barr, Sequoia and Browns Ferry.

Additionally, there are court cases which uphold the right of TVA to construct and operate nuclear power plants. All this indicates that the petitioner's legal arguments are clearly defective and don't warrant admission of this contention.

>>CHAIRMAN BOLLWERK: All right, sir. Anything from the Board?

All right. Then we'll turn to the staff. Thank you.

>>MR. MOULDING: Thank you, Your Honor. As has already been mentioned, Contention NEPA-A argues that excessive

water use would be contrary to TVA's purpose.

As the applicant has already mentioned petitioners did not explain how any of their statements concerning water use contradict the discussion in the application of water use.

For example, in Chapters 2 or 5 of the environmental report and the petitioner's did not show a genuine dispute of the application on that issue.

The petitioners also provided no references or factual support for their statements concerning reduced rainfall or lake water levels, nor did the petitioners explain how -- what they referenced about partial shutdowns of Browns Ferry plant relate to any concerns about TVA water use at the proposed Bellefonte facility.

Finally, the petitioners did not

explain why the NRC would have any jurisdiction over TVA's general compliance with the TVA Act, independent of the NRC's review of this application, and in any event did not explain how the application for a COL would be inconsistent with the TVA Act for the reasons that the applicant just mentioned.

Finally, as petitioners did not present any new information on this contention, they replied that the staff has no further comment on this contention at this time.

>>CHAIRMAN BOLLWERK: All right. Anything from the Board Members? All right. Let's go back to Mr. Zeller then.

>>MR. ZELLER: Thank you, Your Honor.

A couple of things. I did make reference to the NRC's weekly information

report of February 22 of this year when I was quoting it saying that TVA was unable to provide verification for the -- supporting input data for its analysis, and the review mentioned in that report assumed that inspection would find no major problems.

And so, I think that the weekly information report of February 22 was referencing not only a technical issue, but also a procedural issue, which has delayed the proceedings in some way.

Additional information has been requested in RAI and this is from July the 11th, to provide -- the Commission is asking for TVA to provide consistent and complete data on water use diversion and water return.

It points to some of the same issues that we have raised in this contention, and I know that the RAI process is an

ongoing iteration for a back and forth, but it does, I think, point to the fact that there are some outstanding questions here, which we have also raised in our contention.

So, in terms of expert opinion, in answer to the earlier question from, I believe, from Mr. Frantz, that no expert opinion, we are here relying on the Commission's own communications and other documents cited within our contention. And our reading of them.

>>CHAIRMAN BOLLWERK: All right. Again, with RAI's obviously the staff sends out a number and as the Commission has made clear, simply the fact that they send them out is not enough. There has to be something further that frankly, I guess a petitioner would need to take that RAI and put in some evidence of their own that suggests this RAI raises

the question and by the way, our expert or our -- we have some other basis for doing it.

At least that's one way to look at what the Commission has indicated.

>>MR. ZELLER: Right, and when I saw this and discussed it with my colleagues, it did seem -- it raised an issue which comes up again and again. Our contentions were raised, of course, in the beginning of June and then -- and are available to anyone who wants to read them, but the RAI's in some case strike some of our people as if someone has been reading the petition and that the Nuclear Regulatory Commission's staff people are trying to put Band-Aids on some of the questions or answering in attempting to try to answer some of the same issues that we raised in our initial petition, which does seem a little bit like

double-teaming.

We expect to be in opposition to the applicant and we respect that. The Commission's staff does seem to be an adjunct to the applicant in many matters and this is one particular example that comes up again and again in our view that instead of being an intermediary or perhaps sometimes coming down on the side of the petitioner as well as on the side of the applicant that the Commission staff does not present an independent view.

In this case, I believe, they are working to answer some of the very same questions that we raised on June the 6th of 2008.

>>CHAIRMAN BOLLWERK: How does the fact they asked the same questions indicate they're not independent? I guess I'm not making the connection.

Maybe you could help me.

>>MR. ZELLER: Well, because the answering of the questions through this RAI process may be done, but it's outside of -- we don't have a role in that. Interveners, petitioners do not have a role as such to provide expert opinion and what not.

It's a way to cure a problem with outside -- outside of the process, which the Atomic Safety Licensing Board has oversight.

>>CHAIRMAN BOLLWERK: All right, sir. Anything the Board Members have on this point? All right.

Let's move then to Contention NEPA-B, which was formerly Contention 8. "Impacts on Aquatic Resources, Including Fish, Invertebrate and General Aquatic Community Structure of the Project Area, Guntersville Reservoir and the

Tennessee River Basin".

>>MR. ZELLER: Yes, Judge. Sara Barczak will be speaking for us on this.

>>CHAIRMAN BOLLWERK: Let's make sure we have the mic. We want to make sure we hear what you have to say so our court reporter can get it.

>>MS. BARCZAK: Okay. Can you hear me?

>>CHAIRMAN BOLLWERK: Very good.

>>MS. BARCZAK: Thank you. Good morning and thank you for this opportunity. As Lou Zeller said, my name is Sara Barczak and I'm with Southern Alliance for Clean Energy, a non-profit in the region that promotes responsible energy to solve global warming problems and ensure clean, safe and healthy communities throughout the southeast.

In regards -- I would like to start out this discussion by stating that I am

prepared to communicate the ordinance of our impacts on aquatic resources contention, referred to as NEPA-B or as Contention 8 previously.

But our technical expert, Dr. Sean Young, who conducted the research of TVA's COL application for our June 6th petition had wrote the affidavit attached in our July 8th reply filing and provided responses for our July 8th reply testimony is out of the country and was unable to testify here today.

Given the short notice of the hearing there was no way his schedule could be altered. And I'd like to say my potential inability to answer any technical questions here today should not undermine the detailed work Dr. Young has put into this case over the last months highlighting the serious impacts the proposed Bellefonte proposal could have

on the Tennessee River and surrounding environment.

Given that this is my first time before the Board in this capacity, I ask for your patience for time I may need to consult with Lou Zeller as I answer your questions.

>>CHAIRMAN BOLLWERK: All right.

>>MS. BARCZAK: Thank you. We believe that Dr. Young's arguments should be admitted as a contention or contentions and this is addressing the motion to strike by TVA.

It should be admitted because he is a qualified expert in the field of fishery science. As his CV describes, Dr. Young has extensive academic experience with a Master's and a Ph.D. in fishery science from Clemson University of South Carolina and teaching experience at both Purdue University and Clemson.

He also has extensive research experience with 30 publications on many aspects of fishery science. Dr. Young has conducted detailed work not only in this case, but in previous ASLBP proceedings that have led to accepted contentions relating to water impacts, such as plant Vogtle's early site permit.

Dr. Young -- this should also be admitted because Dr. Young was involved in this case from very beginning of this process. We had a completed affidavit from Dr. Young ready in April of 2008 for our initial filing before we received an extension to June, but we believe that the proper time to include his affidavit was during the reply process.

Hence, why we submitted it with our July 8th reply testimony to the NRC staff and TVA reply of seven -- of July 1st.

As Dr. Young has an address change

since the April June work was done we updated his address and CV accordingly and changed the date on the affidavit, and that was all that was changed since April.

As one can see in our June 6th, 2008 filing, the text is a summary and in many places nearly identical to what is in Dr. Sean Young's affidavit of July 8th, 2008. Dr. Young wrote the reply testimony for Contention 8.

That is because he was our expert all along. The arguments to reject his affidavit and this contention, or these sub-contentions as they've been outlined, are predominantly based on procedural grounds and do not in any way diminish the significance of Dr. Young's arguments about the substantial negative impacts that he believes the proposed Bellefonte project could have on the health of the

Tennessee River.

And we apologize if including his affidavit in the original petition was necessary and implore the Board to allow Dr. Young's testimony, affidavit, CV and supply summary to be considered.

Further, in terms of the merits of the contentions themselves, the responses by both TVA and NRC do not include any additional data or discovery to refute our contentions. We understood the contents. We did not misconstrue any statements, and much of the NRC and TVA is based on semantics to mask the fact that the contentions hold merit.

The issue at hand remains that Guntersville Reservoir and the whole Tennessee River Basin are in very poor ecological health and future Bellefonte operations will cause further decline.

The issue is of major concern as the

Tennessee River as we stated in our reply and original brief is the most biologically diverse fresh water ecosystem in the United States.

In response to Subparts one and six, and this is response to NRC staff. And since TVA applicant response was very similar, we're responding to them together.

We did not mistaken -- we were not mistaken in the mention of new intake and discharge. The term "new" referred to a future increase amount of water intake and thermal discharge, and essentially -- what was difficult about this whole process is that there were statements made in the ER that did not have reference to any study supporting the statements made.

We gave an example of one found in ER Section 5.3.2.2, that talked about the

plume size and how that would interfere with the migration of breeding areas of fish in the reservoir, but there's no study saying, why is that the case. And we felt that we could not take such statements as fact when no scientific study supports such statements.

In regard to Subpart two, the statements made in the ER correctly address the river continuum, but fail to discuss specific impacts on upstream and downstream resources that will be effected by an operation.

And we argue that instead of rejecting the contention, elaboration investigation is warranted. And in the request for additional information from July 11th, No. 2.3.1-1 asks for clarification of significant impact the three reservoirs can have on BLN -- the Bellefonte Facility and vice versa what

impact would the Bellefonte facility could have on those three reservoirs.

That language was used in Dr. Young's affidavit specifically. He raised the significant impact statement that was brought up, and then when you read that RAI it's almost a verbatim question of what he had in his affidavit.

In regards to Subpart 3, there was an argument that the NRC was saying that there's a 32% decline in fish species, not a 44% decline, and the basic matter is there were -- the different ways to calculate that based on different sentences in different sections of the ER.

And regardless of whether it's 44% or a 32% decline, these rates of decline in the fish species are very alarming. And there was another RAI and I know that you had said earlier that's a separate

process, but I think it's important to raise that RAI Number Table 2.4-7, asks to explain the decline and mentions that fish were not ID'd in the recent samples taken and list fish that Dr. Young cited as being in the area, but that weren't sampled for.

In terms of Subpart 4 and 5, this was bringing up some of the fact that NRC and TVA were wanting to dismiss some of our contentions because they were rejected during the Vogtle early site permit proceeding, but the fact of the matter is that several of those similar contentions were accepted in the Vogtle early site proceeding that Dr. Young worked on.

So, it was sort of a statement that wasn't completely accurate, and it was somewhat misleading.

Then there was also a request -- this is falling under that same section where

there was questioning about the sampling of -- at different river miles and of the ictheo(ph) plankton that was available and went into detail on that.

And I don't want to bore everyone with that here, but again there was an RAI request. This was Number 5.3.1.2-1 and 5.3.1.2-2 that asked about the sampling of the ictheo(ph) plankton, why weren't recent samplings done. If they weren't needed, prove why, and then talked about all the entrainment.

It's almost verbatim from what Dr. Young's information was, and basically we're saying that how can these impacts not be properly assessed -- or how can they be properly assessed when we don't even know what is present to be affected?

And that through all this back and forth arguments it's showing that the

petitioners are again correct that no recent data from Bellefonte has been collected to assess these impacts, specifically monitoring at Guntersville Reservoir as stated as going on and around BLN, but not at Bellefonte.

Again, I could reference more RAI's, but I know we've done that probably too much already. But his arguments are very solid with extensive research and I apologize that I was not as familiar with this process to know that we need his affidavit in the June 6th petition because it was ready to go, and we held onto it because at the last hour you granted an extension of 60 days, which we appreciated, and then all we did was change the date on it and his address because he had moved.

I'm very sorry that he's not here today because I think he would have very

much enjoyed this discussion. Thank you.

>>JUDGE BARATTA: So, you're contention basically is that they don't have current data, which is all inclusive of the species of fish found in the adjoining -- whatever waterways and bodies of water would be effected? Is that basically what you're saying?

>>MS. BARCZAK: That is one main item. I know the whole contention got divided up in the NRC's staff reply into these subsections, but one of the overarching items is, yes, what you said, that current studies of full sampling of the various species and ictheo(ph) plankton, et cetera, at the site has not been conducted.

And that there has clearly been shown a decline significant, whether it's 32% or 44% in the reservoir that has not been explained and that we strongly believe,

and Dr. Young -- his affidavit said that a Bellefonte application -- expansion in his mind will further deteriorate this area.

>>JUDGE BARATTA: Just wanted to get clarification. I should make sure I understand what you were saying. That's fine. Thank you.

>>CHAIRMAN BOLLWERK: You mentioned this is a -- this shouldn't be a procedural matter, but to some degree it is and as a lawyer I have to just ask you one question.

It sounds like with Dr. Young in his affidavit, it was all prepared, it was ready to go, and was a strategic decision made not to submit it as part of the petition?

Am I understanding that's what you're saying?

>>MS. BARCZAK: Can I have a

moment to discuss Mr. Zeller?

>>CHAIRMAN BOLLWERK: I'm sorry?

>>MS. BARCZAK: Could I have a moment to discuss with Mr. Zeller?

>>CHAIRMAN BOLLWERK: Sure.

>>MS. BARCZAK: As the process went forward, we just felt that -- essentially what I did in the original petition from June is I had his affidavit and was tasked with summarizing it into sort of key points of what his affidavit had.

And we felt that we would be submitting that affidavit at the appropriate time, and that appropriate time was, in our opinion, and I certainly don't want to step on the procedural issue, because it's obviously very, important.

But we felt then that with the replies we received from TVA and the NRC

that that was the time to provide that information in the July 8th reply that we filed.

I actually feel that -- you know, there was a statement, I think by both TVA and the NRC staff that the literature that was cited in our June 6th petition didn't have the full literature citation page at the end of it, and I agree with that, because -- and that was an oversight on my part.

I should have included that because we had it. And I know saying that this is the first time I'm involved is not a good excuse per se in ignoring procedural issues, but I do apologize for the literature citation being overlooked in that original petition.

>>CHAIRMAN BOLLWERK: All right. Thank you. Let's turn then to the applicant.

>>MR. FRANTZ: I guess we're somewhat surprised --

>>CHAIRMAN BOLLWERK: Any other Board questions? I'm sorry. I apologize.

>>JUDGE BARATTA: I had a couple of quick questions. The staff called this Subpart 6, the environmental report does not adequately address the cumulative impacts of the new intake structure on aquatic resources.

It seems to be that you're making a dispute of the fact that the ER relies on performance standards for cool water intakes.

Is there something about this environment that makes it that generic standards would not be suitable?

>>MS. BARCZAK: I'm sorry. I'm going to have to ask you to repeat the question.

>>JUDGE SAGER: I'm not sure I can.

>>CHAIRMAN BOLLWERK: I know that I could, but I'll leave that up to you.

>>JUDGE SAGER: The contention says that in the ER, the ER relied on basically generic performance standards for the cooling water intakes and your contention says that that's inadequate.

Is there a particular reason for that being inadequate that has to do with this site or is it just they are in general inadequate?

>>MS. BARCZAK: Again, from my potential inability to answer any technical question here today should not undermine Dr. Young's work, but as I understand it, that it is not that it's insufficient, the latter part of your statement, but rather that it is incorrect to assume that there's a static

or standard sampling regime throughout the entire reservoir.

And so, therefore, more detail needed to be provide on the features in question.

>>JUDGE SAGER: Okay. Another question was -- and I'm a little unclear about -- let's back up to Subpart 2 saying something to the effect that the operation of the plant downstream affects the upstream -- affects the impoundments upstream. Have I got that correct? They don't have a spigot that drains those reservoirs? What's the effect?

>>MS. BARCZAK: Well, I mean that is one of the points that we have, is that -- and Dr. Young actually spent quite a bit of time looking into. Because the Tennessee River has so many impoundments and so many -- it's a very controlled river and TVA has to monitor

that.

That the ER fails to look at how the Bellefonte operation will affect the upstream river continuum and the lower river continuum, and in fact, again not to get into RAI's, but I didn't mention this one before is 2.3.1-1, asks to describe the significant impact on Nicajack, Guntersville and Wheeler Reservoirs; the impact that can have on BLN and vice versa.

And then goes into specific questions on elaborate -- the applicant needs to elaborate on what is significant.

Some of the items that came up in our research and talking with Dr. Young were you could -- I think one of the things that is sort of logical is that Browns Ferry, being a down user, could be impacted because it's sort of at the end of line.

But then with that there are obviously organisms living throughout that whole continuum that also are going to be impacted if we have droughts that need to be mitigated downstream.

There's really no analysis of this, sort of the back and forth nature of this water body that we have.

That's it.

>>JUDGE SAGER: Okay. Thank you.

>>CHAIRMAN BOLLWERK: Judge Baratta, anything?

>>JUDGE BARATTA: No.

>>CHAIRMAN BOLLWERK: All right. Let me turn then to the applicant.

>>MR. FRANTZ: Thank you. The petitioner has appeared to have engaged in a deliberate tactic to withhold information from the Board and the parties.

They made a choice not to submit

their affidavit from Dr. Young as part of their petition to intervene, instead they withhold it to the reply.

That is not only inconsistent with previous NRC and Commission precedence, which say that they're not allowed to produce new information in the reply, but it's also fundamentally unfair to the NRC staff and to TVA who have no chance to respond to the reply.

And therefore the Board, as we mentioned in our motion to strike, should either not consider that affidavit or should strike the affidavit from the record.

I'd like to briefly address two issues raised by Dr. Sager. First of all, on the EPA standards, we do mention that as one the basis for determination that the impacts are small, but we don't rely upon the EPA standards alone.

We also refer to another plant on the Guntersville Reservoir, the Widow's Creek plant, which also has a somewhat similar intake, and we have demonstrated at the Widow Creek plant that the impacts of the intake are small, and therefore we also rely upon that as a basis for our over all determination that the Bellefonte impacts will be small.

With respect to the issue of the upstream and downstream impoundments, again, I believe the petitioners have simply mischaracterized our application.

They point to Section 2.3 of the environmental report, which discusses some of these impoundments and then say we don't evaluate the impact.

Well, the impacts are evaluated in a different section; Section 5.2, which we just discussed on Contention 7. And we've showed there that the withdrawal

rates are 0.28% of the volume of the Tennessee River, the flow of the Tennessee River on an average basis.

And because that withdrawal and consumption is so small, there simply is no significant impact.

The heart of the petitioner's contention seems to be the argument that we need to have a site specific study of the aquatic biota at Bellefonte. Again, I believe that their contention is mischaracterizing what we have in the application.

First of all, the plant is located on the Guntersville Reservoir. The reservoir is around 76 miles long. Our plant is located approximately halfway, a little bit more than halfway up the reservoir.

For the construction permit and operating license for Bellefonte's Unit 1

and 2 we did perform sampling of the aquatic biota at the intake and discharge locations. We're using those same structures, by the way, for 3 and 4.

So, we do have that data. It's from the 1970, 1980 time frame, but it's from those precise locations.

Additionally, we did further sampling at the intake location in 2007 for mussels, and then in addition to all that, we had performed regular sampling at locations upstream and downstream of the plant on the Guntersville Reservoir and we show that there's no unique habitat for aquatic biota at Bellefonte, and therefore those other sampling stations upstream and downstream should be represented at the Local C at the Bellefonte itself.

All together we believe that provides an adequate baseline for characterizing

the aquatic biota.

In this regard, we do note that the petitioners provided a very similar contention in Vogtle where they advocated that there was a need for a site-specific survey of aquatic biota.

The Board in that case rejected the contention. First of all, it found that EPA does not require necessarily a site-specific baseline study. Instead, there may be other ways of providing an adequate baseline.

Additionally, they found in that case that the interveners had not provided any expert opinion or support for their argument that there was a need for a site-specific study.

Once again, if you look at the petition to intervene, there's nothing in that that would provide any expert support for the argument that we need a

site-specific study here beyond what we already have.

Very quickly, too, they have made other mischaracterizations of our environmental report. For example, contrary to their allegations, the report does discuss issues, such as impacts on ictheo(ph) plankton, migrating fish and mussels. There are allegations to the contrary are just incorrect.

So, in summary we believe that their contention, one, is not adequately supported by the petition to intervene with any expert support.

And two, that they have simply mischaracterized what's in our application and that we have an adequate baseline for aquatic biota.

>>CHAIRMAN BOLLWERK: All right. Any questions from the Board Members?

>>JUDGE BARATTA: You acknowledge

then that your data that you use for the site specific date is from 1970 and 1980 timeframe?

>>MR. FRANTZ: For fish species and then for mussels we also have the 2007 study.

>>JUDGE BARATTA: And that was taken?

>>MR. FRANTZ: At the intake and discharge locations for the fish and I believe for the intake location for the mussels.

>>JUDGE BARATTA: There are or are not other species which were included in the original study which were not in the included in the 2007 study?

>>MR. FRANTZ: That's correct. I don't believe there was any sampling for fish in the 2007 study.

>>JUDGE BARATTA: Your answer questioned the source of their statement

is that correct?

>>MR. FRANTZ: We questioned one that they don't have any expert opinion in the petition to intervene itself. And two, that they had mischaracterized what we have in the application.

>>JUDGE BARATTA: I think it said unsupported statements, not -- I agree with you also. It did say that they don't have expert opinion, but I believe your exact terminology in several places was unsupported statements; is that correct?

>>MR. FRANTZ: That's correct.

>>JUDGE BARATTA: In a -- again, not being a lawyer, I don't know what's proper, but it would seem that if you questioned -- made a statement as unsupported and they then provided the document that provided the support. Isn't that an answer or reply to your

question?

>>MR. FRANTZ: In fact, they put that in the reply, but as we out in our motion to strike, that's not appropriate. They should have provided that support.

>>JUDGE BARATTA: But you opened the door when you made that statement, did you not?

>>MR. FRANTZ: No. I don't believe we did open the door to have them produce new affidavits, new reference material and other source material.

We were simply responding to what they had in the petition to intervene. They're not allowed at this point to introduce new material like this in the reply.

Their obligation is to address our arguments narrowly, not to provide new information.

>>JUDGE BARATTA: Well, I'm

saying where the source was, aren't they addressing it narrowly?

>>MR. FRANTZ: If you go back and look at the precedence and there are a number of cases that we cite in our motion to strike, where the petitioners could do basically the same thing. They provided new reference material, new affidavits.

>>JUDGE BARATTA: Wait, wait, wait. You're saying new reference material as opposed to the source of the existing material that was in their original petition.

I'm trying to make a distinction here. It may be appropriate that sections of the reply be struck -- stricken, but at the same point, we heard a minute ago that the statements that are in the affidavit are identical.

Now, maybe not all of them are

identical, but at least a number of them, which you called into question by your answer -- yes, your answer.

So, what I'm trying to make, is there more to this than your simple approach that everything should be taken out as opposed to, okay, you questioned the source, here's the source.

>>MR. FRANTZ: One, the affidavit goes into more detail than what the petition to intervene does.

>>JUDGE BARATTA: Well, then don't we have to get specific as to what in that affidavit is new material?

>>MR. FRANTZ: No. I think they under the obligation affirmatively in the petition to intervene to supply the affidavit, even if it did nothing more than simply repeat what did they have in the petition to intervene itself.

>>JUDGE BARATTA: Doesn't 2.309

say "facts or expert opinion"? The fact that you did not do a complete survey in 2007, that is a fact, is it not?

>>MR. FRANTZ: That's a fact. And if that's the case, then there's no dispute of the material fact. The Board knows what we did.

We had the studies at the site for Unit 1 and 2 in the '70s and '80s. We had the 2007 study for mussels. We have current ongoing studies up and downstream of the site, and the collection of all that provides an adequate baseline.

>>JUDGE BARATTA: Well, in your opinion it does.

>>MR. FRANTZ: In our opinion. If you strike that last sentence of mine, everything else is uncontested, it's a statement of fact, and there's no dispute.

>>JUDGE BARATTA: Well, I think

that's the issue, is it not?

>>MR. FRANTZ: They had nothing in their petition to intervene that would justify an attack upon our conclusion. It was only in the reply with the affidavit from Sean Young that they even come close to that. And we just don't believe that's an appropriate tactic for this proceeding.

>>CHAIRMAN BOLLWERK: All right. Judge Sager, you had some questions.

>>JUDGE SAGER: That's right. I was going to ask --let's see. So, we've established that the study of the fish species was 25 or 30 years old, 1970's and 1980s, and I've heard two different percentages. I think applicants -- the petitioner said 44%. You guys came back with 33%, if I remember, decline in fish species.

Doesn't that in itself say that that

earlier study is inadequate?

>>MR. FRANTZ: It doesn't say it's inadequate when you look at the human set of information. Again, we're not relying solely upon those studies from the '70s and '80s. We also have the current ongoing studies and they've been going for, I guess, ten years more upstream and downstream of the reservoir.

We show that those upstream and downstream locations should yield similar results to sampling right at Bellefonte itself.

And based largely upon this more current data that we have upstream and downstream that we find that we have an adequate baseline.

>>JUDGE SAGER: I'm done.

>>JUDGE BARATTA: Doesn't a 50% difference in the number 33 versus 44 -- I guess maybe it's not 50%, maybe it's a

33% difference -- say something is not right?

>>MR. FRANTZ: Dr. Baratta, I don't really care what number you want to use. We have the have actual numbers of fish that were -- species that were identified in the sampling periods. So, you can do your own math, whatever it may be.

The point is here that the first set of data came from a lengthy period of decades using a particular sampling methods. The more recent sampling period was a four-year period using different sampling methods, and you have to draw the conclusions based upon differences with some degree of care.

>>JUDGE BARATTA: Well, that's why we have hearings for; to determine those.

>>MR. FRANTZ: No. The fact of

the matter is, there's no dispute as to what each of these samplings found. And we aren't disputing what was found in the earlier study. They aren't disputing it either. We aren't disputing what was found in the most recent study.

The only dispute, and I wouldn't even characterize it as a dispute is what the numbers translate into in terms of percent. And frankly, we don't care what the percents are, what we care about are the actual numbers. And those actual numbers, the underlying numbers are in the application and they don't dispute those numbers.

In fact, they rely upon those numbers to draw their conclusion on the percentages. That's how they determine their percent by using our numbers.

>>JUDGE BARATTA: I'm a fisherman in Maryland. They sure do care about how

many -- what the percent decline in striped bass are in Chesapeake Bay. That seems to be an important number.

What you're saying -- I don't quite under what you're saying because if there are two different statistical approaches, one leading to one number and one leading to another number, there's clearly a dispute over which number -- which is the correct methodology to be employed.

>>MR. FRANTZ: We don't actually have a percent in our application. What we have are the raw data. And the petitioners don't dispute our raw data.

>>CHAIRMAN BOLLWERK: Anything further? All right, let's turn to staff then. Thank you.

>>MS. HODFDON: The staff has a couple of points to make. One, there was new information introduced today that was not in the nature of a reply to what was

said by the applicant and the staff, and naturally that should be disregarded.

Also, with regard to this, I'm afraid this may be the staff's fault in a way. They got into a dispute about mathematics and what percentage and so forth. But the one sampling period was from 1945 to -- I wrote it down -- 1994, a period of about 50 years.

Another was from 2002 to 2006, and we don't know the conditions exactly of either, but the important point to make here is the staff did not say "decline", although the staff is quoted as saying there was decline.

We said that there was a percentage difference of 32%, not 44% as represented by petitioners.

There's not enough information to tell whether it's decline or not. In fact, the table itself, which I

believe -- I have it here someplace to it look up, is 2.4.7. That table shows those figures as compared with one another.

Also, they said "fish" and they should have said "species". I think we all knew that.

So, the thing is that some of the species were identified in one sampling period and then they disappeared in the next and they came back in the third. There are three periods that are represented there.

One can learn a great deal just by looking at those three pages of table -- those three pages of table, but you still can't tell anything about decline because there's just not enough information to tell that. That's not what it's about.

And then as the -- and therefore, as I said before, we set "percentage

difference", we did not say "decline". We were just talking about the math and not about how many species were there at one time or another.

>>CHAIRMAN BOLLWERK: All right. Mr. Baratta, anything?

>>JUDGE BARATTA: No.

>>CHAIRMAN BOLLWERK: Mr. Sager?

>>JUDGE SAGER: No.

>>CHAIRMAN BOLLWERK: Thank you very much. Let's go back to the joint petitioner then.

>>MS. BARCZAK: Thank you. I'd like to just quickly address the fact that we did not strategically withhold this information as TVA said at the beginning of their statement.

Our petition was written based on Dr. Young's affidavit, and it was mentioned by the Panel that 2.309, plain reading statement says, "provide a

concise statement of the alleged facts or expert opinions which support the requestors or petitioners position on the issue and on which the petitioner intends to rely at the hearing."

And that, we had the affidavit and I wish that I had known to just say let's include it, but I was under the knowledge that we could provide the summary, the information, and go forward with that.

Again, it doesn't take away from the argument that is raised, and I just want to make sure that you realized that we did not strategically withhold that and try to keep information from the NRC staff or TVA in any way, shape or form.

We were relying on expert opinion, and as I said earlier, when you read that contention in our petition much of that language is verbatim from his affidavit; just put in a summarized, more readable

format.

Going back to some of the comments made. The 1970 to 1980s time frame for the fish sampling is very old, and, yes, there were some newer studies done, and again the 5.3.1.2-1 RAI asked for current characterizations of ictheo(ph) plankton and/or a basis why the data from the '70s and '80s is still valid.

Fundamentally, we did not provide any new data or arguments in the reply. The arguments in our original petition are the same arguments that we had in our reply, but part of the reply is we had to respond to the criticism from TVA and NRC.

And Dr. Young wrote that reply statement for Section 8 -- excuse me -- Contention 8 with that in mind and was very strong in saying that we did not misunderstand. Predominantly that's him,

that did he not misunderstand the statements and he correctly understood the importance of those statements, and that he read all the sections and referenced them and questioned -- when you read our reply, why certain sections were talking about the health in one section, but it seemed to make sense to have it in a different section. And that the application itself was confusing.

In terms of the recent fish studies, as mentioned from 2002 to 2006, they did not ID -- identify a number of fish species. And again, that's a new RAI request on Table 2.4-7 and it's something that Dr. Young raised, which is there are old studies and then even with the new studies there are fish species that have been overlooked or not sampled or are missing.

Again, I'd like to actually agree

with the TVA staff that we aren't arguing about the 44% or the 32% decline. That the difference in those number, and we specifically even say how we calculated that decline.

We used a sentence that said the TVA collected 82 different species of fish from Guntersville Reservoir between 1949 and 1994 and "in conjunction with surveys conducted between 2002 and 2006 identify 46 species in Guntersville Reservoir to arrive at 44% decline."

Whereas, the NRC used, "more recent surveys, 1985 to 1994, which produced 58 fish species" to arrive at a 32% decline. The NRC staff is correct. They did not do that calculation and then say "decline." We did.

We did the calculation and our point is it doesn't matter whether it's 44 or 32. Both statements are in the ER, but

it's quite a decline and it's very alarming, especially to a fishery science expert.

And he said this is an example of the use of semantics to mask the importance of this information in exhibiting the poor state of aquatic health which contradicts TVA's assessment.

And again, this information was stated in the ER and was used correctly by the petitioners because it determined that that's enormous importance to the current state of aquatic health and the exhibition of TVA's biased assessments by internal staff, not peer review.

And that this further supports the petitioners assertion that expansion of nuclear facilities or other water withdrawals will accelerate decline of aquatic resources and to a greater extent than proposed in the ER.

I would leave it that and offer that we would be supportive of case management to allow TVA to respond to Dr. Young if that's where this needs to go.

But we did not include new information and we didn't bring up new arguments. And again, I apologize Dr. Young couldn't be here because I think it would have been an excellent discussion.

>>CHAIRMAN BOLLWERK: All right. Any questions from the Board Members?

>>JUDGE BARATTA: No.

>>JUDGE SAGER: No.

>>CHAIRMAN BOLLWERK: All right. Let me just say one thing. And again, I appreciate your candor in telling us basically what happened. I think that speaks well of your participation in the process, and we understand.

I think what I heard is if you had

this to do over again you might not do it the same way, and that's -- again, I appreciate your candor in telling us that. To what degree that has an impact on this at this point, I can't say, but we will talk about that. Again, I appreciate you being candid with us.

>>MS. BARCZAK: Thank you.

>>CHAIRMAN BOLLWERK: All right. At this point, we're at -- we have series of contentions; about four of them that we sort of joined together dealing with alternatives and need for power and sort of, at least we thought, had relationship to one another. It's also about a little before noontime. So, it's probably a good point, I think, to take a break.

Because of the situation in the area here, we have -- because of where we're at, we are going to have to go a little ways off-site to get to someplace to eat.

So, I think the Board's plan would be to go ahead and take about an hour and a half for a break. So, at this point why don't we plan on coming back at 1:30?

Let me say, though, two things before we do take that break.

One, is that again, if have you a limited appearance statement that you wanted to have us -- a written limited appearance statement that you wanted us to consider, to take back to Rockville and put into our docket as opposed to mailing it to us or sending us an e-mail, either the folks over here at this table will be glad to accept it. Please give it to them. We'll see it gets into the docket.

The second thing is we may have some folks who decide not to join us after lunch on our web stream. If that's the case and you have comments about the web

screen or technical aspects of it; any problem you had accessing it or what the quality of it was, let me give you the e-mail one more time.

It's webstreammaster (all one word) dot resource at NRC dot gov. Again, when we take a break we'll be putting up a slide that will have that e-mail address on it as well.

And we do really appreciate any comments negative or positive in terms of the folks who are watching this on the Web stream and their impression on what we're doing and whether they feel it's useful or not useful in terms of the hearing process.

Anything further from the judges at this point?

All right. At this point, then, we'll stand adjourned until 1:30 Central Time. We'll come back then and talk

about some of the NEPA alternative contentions that have been have put before us. Thank you.

(Luncheon recess taken.)

AFTERNOON SESSION

>>CHAIRMAN BOLLWERK: Everybody take their seats. We're ready to get started.

All right, we're back in session. I do need everyone to have a seat in the back, please. If you're having a conversation, you need to stop and sit down.

Thank you.

All right. Again, my reminder, this is a cell phone. It's off. It goes in your pocket or wherever. If you're going to have it on vibrate, please take any cell phone conversations outside the room. We'd appreciate it, so we can

conduct our business without the interruption of any cell phone conversations.

To start this afternoon, we're going to hear about a group of contentions which the Board put together because they seemed to have some common themes, and let me give the designations for each one.

And, Mr. Zeller, while I'm doing that, maybe I'll give you something just to think about. If you could give us a brief description of how these are each the same or different to the degree that you can do that, a little synposis, and maybe draw some distinctions between them, so that will be clear to us. That was one of the things we wanted to do with these.

The contentions are NEPA C, which was formerly Contention 9, alternatives to

the proposed action lacking.

NEPA D, formerly Contention 10, which was TVA's power and energy requirements forecast fails to evaluate alternatives.

NEPA E which was formerly Contention 11, TVA's COLA, C-O-L-A. It's a combined operating license application, power demand forecast, fails to justify need for new nuclear reactors.

And then NEPA N, formerly Contention 16, Environmental Reports and inadequate cost estimates and cost comparisons.

Just a procedural question. You sort of dropped -- you jumped from like E to N. Was there a reason that there was a big gap between -- in the numbering?

I think there was a substantial gap between like -- it was an E or F was the last one and all of sudden it jumped to N or M.

I was just wondering if there was a reason you did that?

>>MR. ZELLER: I can't explain that, Your Honor.

>>CHAIRMAN BOLLWERK: That's fine.

So those are the four contentions. For these you have 30 minutes total time allocated to you. How would you like to divide it up between that? The presentation.

>>MR. ZELLER: As before, about half.

>>CHAIRMAN BOLLWERK: Fifteen/ fifteen?

>>MR. ZELLER: Yes.

>>CHAIRMAN BOLLWERK: Okay, thank you.

You have the floor, sir, and if again, everyone would remember to speak in the microphone, so the court reporter

can hear you, as well as the folks maybe watching us on the webcast. Thank you.

Mr. Zeller: Thank you. This group of contentions are plainly related because they have to do with the need for the power plant and the justification for it by the Tennessee Valley Authority and the requirements to justify it under the National Environmental Policy Act.

Hence, some of the names reflect requirements in the Act; alternatives to the proposed action are lacking. For example, just one of the highlights from that contention, TVA says what can be and actually achieved by enhanced efforts remains to be determined. This comes from the combined operating license application 9.2.1.3, on demand side management.

And our contentions is that TVA does not even attempt to project a reasonable

demand side management forecast, which would plainly be an alternative to providing more power.

The next contention, number 10, deals with some of the same issues, and in fact is drawn by -- we rely on the same expert for this, drawn by Dr. Ross McCloney, who has a background in this area and contributed some of this language; for example, TVA's power and energy requirments forecast fails to evaluate the alternatives, Contention No. 10, and quoting from the Environmental Report submitted by TVA which stood out in their report, says that the only option, that is, no action alternative.

The first option doing nothing to satisfy demand for power is not reasonable to Dr. McCloney and to myself and to members of our organization.

This was a stunning statement from

the Combined Operating License Application on Part III of the ER, Page 9.1-1, because it was both flippant and also seemed to negate the need within the National Environmental Policy Act really to evaluate alternatives, including in this case the no action alternative. So those two are plainly related.

The contention -- our contention number 11, and I don't have the other designation there.

>>CHAIRMAN BOLLWERK: It's NEPA E.

>>MR. ZELLER: TVA's power COLA demand forecast fails to justify need for new nuclear reactors.

This is largely developed by Louise Gornflow, a member of the Bellefonte Sufficiency Sustainability Team.

Ms. Gornflow is very familiar with the Tennessee Valley Authority. She lives in Tennessee and has spent, in

fact, perhaps -- well, I hesitate to guess how many years but I have known Louise for some years back when we were working together on a nuclear waste dump site issue in Tennessee. So her research here talks about the failure of TVA to include scenarios for certain -- actually, economic conditions, growth rate, recessionary economic conditions, economic impacts, and inflationary impacts, and that with the bottom line being TVA's wholesale prices no longer competitive.

TVA, we will admit, is kind of a strange duck. It's a government agency, it's independent in that way, and does not, according to its own charter and its own history, is not really in competition with other utilities, such as -- the Southern Company, for example, or Duke Energy, or Dominion or Virginia Power, or

many others that are publicly owned and are corporations.

So TVA -- I'm sorry. Ms. Gornflow points to the fact that the primary benefit of a new nuclear plant is large quantity of baseload power. It can provide. Consequently, analysis of need should focus primarily on energy rather than peak demand requirements.

This is emphasized by the NRC in its Standard Review Plan. I attribute it to Ms. Gronflow. I may flubbed that up little bit.

But my point here is that TVA addressing its decreasing system load factor by increasing its baseload capacity rather than reducing its peak demand.

The point here being that by addressing one issue, which is baseload, or peak demand, with a new power source

which is uniquely designed for a baseload power that it can provide, that would be the nuclear plant.

I hope that's clear. If it's not, please stop me.

The final contention in this series that we're talking about in this section is environmental reports, inadequate cost estimates and cost comparisons, we have Dr. Argen Macajohnny (Phn) here as our expert, who states that the TVA estimated -- underestimated capital costs, fuel costs and operation and maintenance costs, and of course within our contention it details some of those things.

You have read that so I won't repeat any of that.

These are genuine disputes that we have with what TVA has presented in their Combined Operating License application

with regards to the need or the failure to demonstrate need and also the cost analyses, which, unfortunately, in the application there is a lot of blank pages for some reason, and I'm sure that the blank pages are there because of -- at a request by TVA, but we are puzzled why information from a company which is not actually in competition with other power producers.

Some of the ones I just mentioned have operations all over the country, but TVA is not. It is an entity unto itself. It is not in competition. So it's failure to provide cost data, service area information, just doesn't -- just flies in the face of reality.

>>CHAIRMAN BOLLWERK: Anything further?

>>MR. ZELLER: Thank you. That's all for now.

>> CHAIRMAN BOLLWERK: Any questions from the Board Members at this point?

>>JUDGE BARATTA: Yes. I wanted to get clarification on at least one point.

You have a range of growth that you said was not considered -- I think this is on Page 49 of your petition, where you say that: "However, TVA does not include standard rates for following economic growth, growth in the range of 0.1 percent to 2.7 percent."

I was wondering why is that a significant range? I mean one could in principle name any range you like and say they didn't do it.

But I don't understand why that range was considered.

You do acknowledge that they did look at long-term forecasts, reflected range of economic growth standards varying from

3.6 down to 2.7 growth in GRP.

Why did you specifically call out -- this is in Contention 11, I guess. Why did you specifically call out that range?

>>MR. ZELLER: The growth in ranges from 0.1 percent to 2.7 percent?

JUDGE BARRETA: Right.

>>MR. ZELLER: Just a minute, please.

(Pause.)

>>MR. ZELLER: The lower growth range has to do with an economic recession. And TVA's long-term forecast reflects a range of economic growth between 3.6 percent down to 2.7 percent.

So what we are talking about here is basically an economy in recession, and how that has an impact on, negatively or positive, on the need for power.

>>JUDGE BARATTA: Okay, and presumably, their long-term forecast -- and maybe I should ask this of the

applicant. And if you can't answer it, I will ask it of the applicant -- refers to growth over many years, not one, two or three, but more like 10, 20 or more years.

I was curious as to how you would justify a 0.1 percent growth rate for more than a couple of years.

If you look historically at data from, say, the 1970's, where in fact electric demand actually declined from -- I think it was '76 to '78, if I recall correctly, but that was unsustained. It didn't go back to the 8 percent that it was experiencing in the early '70s. It went back to essentially a couple percents as such.

So why should we -- in evaluating these alternatives, you have this reasonableness test. In other words, what's reasonable to look at. It just

kind of struck me that that's not exactly reasonable for long-term growth, I guess.

I'm looking for a way, what's the basis for it that you consider it to be reasonable?

>>MR. ZELLER: Well, I take your point, and -- but TVA throughout has picked a high range of the growth rate here, 2.7 to 3.6 percent, which is, in our view, unjustified.

You're correct in saying that in fact back in the '70s things were relatively flat, in fact during which electric growth did not expand.

In fact, during that period, if I remember correctly, and I'm doing this from memory, electricity growth nationwide or energy use was relatively flat --

>>JUDGE BARRATA: It was actually negative for a period of time, though.

>>MR. ZELLER: -- for a sustained period, which was -- for some people bad news, for the rest of us it was good news because we were doing as much, or more, with the same amount of power. Not that we want to revisit the stagflation of the 1970's, but a flater growth rate or a lower growth rate than the high end of this range, we think should be included in these analyses.

>>JUDGE BARATTA: Going to Contention 9, I guess it is, you have a statement on Page 47. I believe it's intended to be a quote, which begins -- it's under Demand Side Management. It says "TVA states" and there's about a paragraph that you quote.

Is that a quote from Section 9.2.13 of the application? Is that what you're referring to?

I assume that's the ER actually in

the application. Is that where that comes from?

>>MR. ZELLER: Yes. I'm looking at it right here, Judge.

Yes, it's a long quote.

>>JUDGE BARRATA: That is from the TVA application itself?

>>MR. ZELLER: I believe that it is. This was provided by Dr. McCloney. That's correct..

>>CHAIRMAN BOLLWERK: Anything, Judge Sager?

>>JUDGE SAGER: Yes. My question is you refer to Dr. Macajohnny in a couple of these, and I'm looking at his affidavit from June 6th, and his affidavit really just gives his qualifications. So I'm missing something here.

Where is what he says that you're using? You're using some information

from him about -- I suppose he's saying that we've underestimated the costs -- I'm sorry. TVA has underestimated the cost of construction and operation, but I don't see that in the affidavit.

>> MR. ZELLER: Oh, it's not in the affidavit. It is within the text of the contention, environmental reports, inadequate cost estimates, and cost comparisons.

>>CHAIRMAN BULLWERK: And I take it you've attributed that to Dr. MacaJohnny in the Petition?

>>MR. ZELLER: Yes, that's exactly right. Yes.

If that's not clear, I apologize, but that's in fact the contribution from Dr. MacaJohnny himself.

>>CHAIRMAN BOLLWERK: All right. Any other questions from the Board at this point?

All right. Then let's move along. Let's move on to the applicant then, please.

>>MR. FRANTZ: Thank you.

I think it's important, first of all, to set the legal standards applicable to need for power analysis.

As the Board held in Niagra Mohawk, which we cite in our answer, future forecasts of power demands are subject to substantial uncertainty. In the Applicant's projections need for power should be accepted if they are reasonable.

I believe you alluded to that Dr. Baratta, in the Potabo case, which we cite in our answer. The Appeal Board held that an applicant's forecasts are not suspect merely because they are considerable high. Which addresses a point raised by Mr. Zeller.

In that regard, the Appeal Board said if demand should outstrip supply, or capacity, the consequences could be serious.

In light of these standards, TVA's forecast should be judged on whether they are reasonable or not. The mere fact that it's possible to postulate different assumptions or postulate different issues or factors that should be considered is not sufficient basis for this contention.

The Petitioners must provide some basis for believing that our analysis or need for power is unreasonable, and they have not done that.

Essentially, if you look at the contention, it is nothing more than a laundry list of the statements that we should consider this factor or consider that factor.

Dr. Barreta pointed out one of those

but the -- that essentially have no basis, at least no expert supporter, no references, no other source material. But the contention is just rife with these kinds of statements, and you pointed out only one of many.

Petitioners have to provide some expert opinion or some source material to support their allegation that we need to consider these factors or issues.

Furthermore, they need to provide some basis for believing if we do consider these issues, it's going to make a material difference in the outcome of our need for power analysis, and the simply have not done that here.

Furthermore, they must provide some basis for believing that our analysis is unreasonable and that they have something to show that our analysis is wrong. They need to provide, for example, their own

analysis of need for power. They need to cite some other reference that evaluates the need for power, that shows that our analysis is unreasonably high, and they simply have not done that.

If we turn to some of the specific issues raised by the Petitioners here, they, first of all, require us to speculate. They say we should postulate various future events, such as high inflation, recessions, loss of customers, changes in legislation, but they provide absolutely no basis for believing that any of these future events will occur.

The contention also raises issues that they believe we should consider, and yet they've made no attempt to demonstrate that even if we were to consider those issues, that there be any material change in the results of our evaluation.

For example, they argue we should consider issues such as the high cost of oil, possible carbon taroffs that might be enacted by Congress, distribution of income and income inequalities throughout the TVA service area and aging population.

But even if you assume we considered all of those factors, there's nothing to indicate that they would in fact change the results of our need for power analysis. In fact, it's equally plausible to postulate that they would actually show that our analysis is reasonable and perhaps low.

Therefore, because these allegations don't raise any material issue, they are not acceptable under 2.390(f)14.

Petitioners point out in their position itself that our -- they say that our analysis of forecasts were not

achieved in 2007, in the first quarter of 2008. They say our actual power sales were less than our forecasts.

First of all, Petitioners provide absolutely no reference to support that allegation, but even you assume it's true, I'm not sure it has any impact.

They appear to be relying in part upon the TVA's own annual report in 2007, which does in fact say that our power sales were less in 2007 than they were in 2006. But we also explain in that same report that that was due to an accounting change, and we changed our accounting practices, and there is simply no basis for saying that the actual percentages were less than we forecasted.

Again, if you simply asasume that their correct, it doesn't provide an adequate basis for a contention.

The Appeal Board held in Duke Power,

again that we cite in our answer, that a short-term blip in forecast and needs and actual demand does not justify a holding that the long-term forecasts are unreasonable.

Dr. Baratta, I think you pointed this out, that the simple fact we have a recession, or could have a recession, put it that way, over a period of a year or two, does not indicate or invalidate long-term forecasts that's over a decade, period of ten years or more. In fact, in our case we're looking at a projection of need for power in the 2016 to 2020 time frame, which again is 8 to 12 years, and they have not made any attempt to demonstrate that we could have a recession lasting for that length of period of time.

Additionally, Petitioners have simply mischaracterized our application.

Mr. Zeller alleges that both, in his oral presentation today and in his petition, that our need for power analysis is based upon peak load forecasts rather than energy or baseload forecasts. That is isimply incorrect.

If you look at Page 8.4-2 of our application, we clearly state that our analysis of the need for new baseload plants is based upon energy needs and not peak load needs.

They also allege that we haven't considered various factors, such as recent increases in electricity prices, the effect of price on demand, weather conditions, and the use of heat pumps.

And, again, I think if you look at our answer, we clearly show that in fact the application considers all of those factors and Petitioners once again are simply mischaracterizing our application.

I might also add they do try to introduce new material in their reply. They have, for example, on Contention 11 a new attachment on one of the other contentions. They have new information from Ross McKlinney.

Again, as we've discussed previously in our motion to strike that information should have been included in the original petition. It was not, and therefore it should not be considered as part of the contention.

With respect to their contention on the demand side management, which is NEPA Contention C, they contend that we have not forecast any load reduction from the demand side management. Again, I think that's just simply mischaracterizes our application.

Our application shows in Section 8.2.2 of the Environmental Report that we

have already achieved demand side management in the last ten years of approximately 500 megawatts reduction in demand. So we do take that into account.

Turning to their contention in NEPA N, on the cost comparison issues, their allegations here are simply not material to our environmental report, although we do provide information on costs of alternatives. In the Environmental Report we do not base the results of our analysis on a cost comparison. Instead, for example, we reject the alternatives of wind and solar because they cannot supply baseload power.

We also look at combinations of wind and solar and fossil fuel plants, which can supply baseload power, but we rejected those on the grounds that they are not environmentally preferable to the Bellefonte plant.

Therefore even if Petitioners are entirely correct on the cost issue, it simply is not material to our analysis. It won't affect the results or the outcome of our analysis of the alternatives of wind, solar and other combinations.

Therefore, the contention simply is not admissible under 2.309(f)14.

Finally, turning to their contention on the no action alternative, which is Contention NEPA D, this is largely unintelligible to us. It appears to be saying that the no action alternative that we discussed in Section 9.1 of the Environmental Report is defective because it does not discuss, allegedly does not discuss, the negative impacts of Bellefonte.

Again, this contention simply is a mischaracterization of the Environmental

Report. The Section 9.1 of the Environmental Report clearly states that if the no action alternative is selected and Bellefonte is not built and operated, the negative environmental impact of Bellefonte would not occur.

Then, obviously, we have a full discussion of those environmental impacts in Chapter 4 on construction impacts and Chapter 5 on operational impacts. So our Environmental Report does have a full catalogue of the environmental impacts of Bellefonte. We have not neglected to provide negative information.

They also appear in this contention to criticize our alternatives, our evaluation of alternative generating sources, such as wind and solar, but in this contention itself there are essentially no facts, no allegations that would support any contention that our

consideration was improper.

There's nothing more than a very conclusiary statement that we haven't done a proper job of evaluating alternatives, without saying how our analysis is defective. We have a full analysis of alternatives in Chapter 9.2 of the Environmental Report and they've not criticized any aspect of that in this Contention NEPA D, and therefore we believe this contention should be rejected also for lack of an adequate bases.

Thank you.

>>CHAIRMAN BOLLWERK: All right. Any more questions at this point?

>>JUDGE BARATTA: You made reference to specific page -- a citation relative to the fact you used baseload capacity to evaluate. What page reference was that?

>>MR. FRANTZ: 8.4-2.

>>JUDGE BARATTA: I guess the thing that kind of made me wonder was this -- making projections is more than science, let's face it. You're right, you have to look at what is a reasonable way to do things, and I was curious. I kind of got the impression that you looked at a medium growth, high growth, but not a low growth.

>>MR. FRANTZ: I think we looked at all three competitors of growth. I think we actually looked at five different scenarios of growth, including a medium low and a medium high for the economy.

Then I think we looked for -- in terms of demand for power we looked at three scenarios: high, medium and low.

>>JUDGE BARATTA: What was the low one based on then?

>>MR. FRANTZ: Let me pull that out.

>>JUDGE BARATTA: Because 2.6 or so seemed like it would be closer to a medium than a low?

>>MR. FRANTZ: Are you asking for the growth in the economy, or the growth in demand?

>>JUDGE BARATTA: I would say that was reference to growth in the economy, I believe.

>>MR. FRANTZ: For the annual growth rate in the regional product we have a high -- actually, it varies from period. We have periods from 2007 to 2012, 2012 to 2017, and 2017 to 22.

For the high we have ranges of around 4.1 percent to 4.3 percent. For the medium we have 3.1 percent to 3.2 percent. For the low 1 percent to 1.5 percent.

>>JUDGE BARATTA: I just wanted a clarification on that because I was confused by what was going on there.

Then there does seem to be, and this could very well be very well justified, although I'm not sure it's explained well, those statements that I cited earlier that are in the ER at Page 9.2-6, where it says that these -- you have -- I'm going to say caveats or some forecast demands.

These enhanced efforts are expected to produce some of the demand of the forecast, et cetera. In other words, you're waffleling. Not unjustifiably.

How did you take those into account? How did you take that uncertainty on what demand side management can do?

>>MR. FRANTZ: At the time the environmental report was prepared ,this was last fall, TVA had not yet identified

what enhancements it would be making on the demand side management program.

Therefore, we had no basis for calculating any reduction at that point because it would have been pure speculation without identifying what enhancements we were planning to use.

So until we have a good definition of enhancements, it really wouldn't be appropriate to try to forecast what the effectiveness of those enhancements would be.

>>JUDGE BARATTA: Well, I agree with you from a forecasting standpoint, but from an ER standpoint, that might be considered to be a hole in the ER.

>>CHAIRMAN BOLLWERK: You may need to to move your microphone up a little bit.

>>MR. FRANTZ: There are other cases which have held we don't need to

consider reports that may be issued in the future, and such future forecasts that haven't been developed yet.

The Vogtle decision, for example, on the early supplement says that there is no reason, no basis for an adequate contention to argue that the applicant in that case did not consider a regional demand forecast that was to be produced in a year or two.

It simply is not reasonable to speculate what may occur in the future.

NEPA is entirely devoted to a rule of reason, and there's numerous case law that says we aren't required to speculate as to these kinds of events.

>>CHAIRMAN BOLLWERK: Well, if I can interject, in the Vogtle case, if I remember correctly, had to do with the fact there was a public utility commission involved and I don't know of

any public utility commission that's involved with TVA.

>>MR. FRANTZ: That's correct. However, the situation is somewhat analogous in that we at that point in time when we developed the Environmental Report we didn't have a plan. We didn't know exactly what we were going to be doing in terms of demand side management enhancements, and therefore it would be entirely speculative for us to try to forecast the effect of that.

>>CHAIRMAN BOLLWERK: Are you saying you don't need to do it or you haven't done it?

>>MR. FRANTZ: After the report came out, the environmental report came out and was filed with NRC, of course TVA has continued to work on this plan, and in May it did release a plan that showed, I believe, a reduction in peak

capacity -- or peak demands of around 1,400 megawatts.

Again, this was after we submitted our Environmental Report.

But the important point here is, I and think we discussed this in the Environmental Report, these kinds of demand side management programs typically impact most significantly the demand for peak power, and they have relatively little impact on the overall energy demands based on power. There is some but it's small compared to the impact on the peak load.

>>JUDGE BARATTA: I mean you do say in the same area that could have some effect on the demand for baseload?

>>MR. FRANTZ: Yes.

>>JUDGE BARATTA: Which would be taken into account for future planning. But this whole demand for power is

speculative. I can't -- and really what we get into is how -- the approach that you use, is tthat reasonable.

>>MR. FRANTZ: Yes.

>>JUDGE BARATTA: What I'm a little troubled with is that this is something of a hole that exists in the ER at the present time.

>>MR. FRANTZ: I guess it's not a hole. Situations do change over time, and this is one case where the situation has changed somewhat over time.

We still don't even have, as far as I know, a forecast of the effect on the need for baseload of power. All the studies I've seen indicate, that were released in May, impact upon the peak load and not the baseload.

>>CHAIRMAN BOLLWERK: I believe there have been other cases or arguments made that demand management doesn't have

to be taken into account. For instance, there's a merchant power company which really has no control over demand at all. But you're not taking that approach here, I take it? You're not taking that here?

>>MR. FRANTZ: I think we need to distinguish two different issues: One is could we produce additional reductions form implementing even further from demand side management activity. This would be basically the alternatives analysis that would be in Chapter 9.2?

Then there is the other issue of using the existing plans, using the existing demand side management program that's in effect. What is the demand for power? And that's discussed in Chapter 8.

I think the cases you're referring to are the cases that pertain to alternatives, involving even more demand

side management in Chapter 9.2 rather than the need for power analysis in Chapter 8. Based upon existing programs.

JUDGE BARATTA: I didn't quite -- you say that there's more in another chapter? >>MR. FRANTZ: Yes. In Chapter 9.2 we do discuss the alternatives of using demand side management.

JUDGE BARATTA: Right. That's what we're looking at here.

>>MR. FRANTZ: In fact, I believe we say there that demand side management cannot produce the power, the baseload power that we're projecting from Bellefonte, as an alternative.

>>JUDGE BARATTA: A moment ago you said that you looked at, amongst alternatives, solar, wind and fossil together, and you discarded that because of the negative environmental impact.

I think one of the issues that was raised by the Intervenor dealt with solar, wind and biogas.

Did you consider that?

>>MR. FRANTZ: We did not, and I guess I have two points on that.

First of all, they raised the biogas issue for the first time in their reply. It's not in their petition, and therefore we move to strike that reference to the biogas.

I think you're going to find that the environmental impacts of biogas are not horribly different than from, say, the impacts of natural gas. And, therefore, I think the analysis we have on environmental impacts on combinations of wind, solar and fossil fuels is roughly similar to what we would have if we had actually gone through and evaluated biogas.

>>CHAIRMAN BOLLWERK: All right. Anything further at this point?

>>JUDGE BARATTA: No. Thank you.

>>CHAIRMAN BOLLWERK: Judge Sager?

Thank you, sir. Let's move to the Staff then.

>>MR. MOULDING: Thank you, Your Honor.

The Staff has relatively little to add to what has already been said here but I would like to briefly go through each of the contentions in this section to briefly reiterate a couple of points.

>>CHAIRMAN BOLLWERK: I think we're having some hearing problems. You may need to first check it to make sure it's on and maybe move it a little closer.

We're going to check over here and make sure our volume control is okay.

>>MR. MOULDING: Can you hear me?

>>CHAIRMAN BOLLWERK: Definitely. Much better.

Again, we don't want you to swallow it but make sure you get close enough to it.

>>MR. MOULDING: Understood. Thank you.

The Staff has relatively little to add to what has already been said here but I would like to briefly go through each of the contentions and reiterate a couple of points.

First of all, for Contention NEPA C, formerly Contention 9, the contention alleges that alternatives to the proposed action are lacking. As the Staff mentioned in its answer, the petition did not dispute the recommendations or the alternatives discussion in the application and ignored several sections

of the Environmental Report that did relate to the issues specified in this contention, wind and solar generation, as well as demand side management, as has been mentioned. There is a discussion of wind generation in Section 9.2.2.1, solar generation in 9.2.2.2, and of demand side management in Section 9.2.1.3.

As the Petitioners' reply presented no new information on Contention NEPA C, the Staff has no further comments on that contention at this time.

With respect to Contention NEPA D, formerly Contention 10, this contention alleges TVA's power and energy requirements forecast fail to evaluate alternatives. As has previously been mentioned, the petition misunderstood -- or misunderstands the no action alternative and ignored other portions of the Environmental Report that did in fact

discuss the no action alternative and the energy alternatives that this contention identified.

The petition did not identify any dispute with the one paragraph from the Environmental Report that it did cite and as mentioned did not include the remainder of the environmental reports discussion of the no action alternative.

Petitioner's reply on this contention made a number of new arguments and presented some new factual material. This material included new factual sources concerning wind and solar energy generation, which we perceive as being for the sole purpose of curing the absence of factual support in the initial contention, an absence which the Staff noted in its answer.

The Petitioners characterize this new to material as rebuttal but do not

explain why it could not have been presented in the initial petition, and as has been discussed already in the context of other contentions, because Petitioner made no attempt to demonstrate that they have met the standards for late file contentions, the Board should not consider the new material in making its determination on the admissibility of this contention.

However, in any event, the new material in the reply fails to explain in what way the additional information specifically contradicts the analysis of wind and solar generation that is in the application.

With respect to contention NEPA E. formerly Contention 11, this contention raises a number of challenges to the Applicant's need for power analysis. However, as the Staff explained in its

answer, the Petitioner provided almost no factual support for its assertions in the contention, and more specifically did not explain how its asserstions contradicted the analysis in the application.

As mentioned in the Staff's answer the contention also in numerous places cited language from NRC guidance documents but without any specific additional discussion of why such an analysis was required and much less how the application in fact failed to address those issues.

The Petitioners' reply concedes that statements in SRP, Standard Review Plan Guidance, are not regulations but argues that the concerns are important within the Staff, the NRC review process, and th staff agrees with that assertion.

The SRP provides one approach that the Staff considers acceptable for

meeting the relative regulations. However, simply quoting guidance in the contention without some explanation of how the application is therefore inadequate does not satisfy the standards for admissibility of a contention and does not demonstrate a genuine dispute with the application on that issue.

The petitioners' reply also argues the NRC must provide some regulatory oversight of TVA or appoint another agency to conduct an independent review. However, as explained in the Staff's response to Contention NEPA F, formerly Contention 12, which we'll be discussing later this afternoon, generalized policy arguments about TVA's organization and the appropriate level of state or federal regulation of TVA are not issues that are subject to resolution in this proceeding.

However, like other applicants, TVA

must include certain information in its application, including the need for power and discussion, and as part of its NEPA responsibilities the Staff does review TVA's need for power analysis to determine if it's reasonable and meets high quality standards, as is mentioned in the Environmental Standard Review Plan, but Petitioners' arguments for broader NRC control over TVA's internal decision-making or rate-making activities are beyond the scope of this proceeding.

The Petitioners' reply also presents new factual material in connection with the contention. This material includes an additional citation to challenge the economic growth rates used by TVA, and a list of energy efficiency programs that are used by -- allegedly used by other utilities and states. However, Petitioner's characterized this new

material again as rebuttal and does not explain why it could not be presented in the initial contention; and, again, as mentioned before because they had made no attempt to demonstrate that this material meets the late filed contention standards, the Board should not consider it in making its determination on the admissibility of this contention.

However, in any event, the Petitioners did not explain how the new cited growth rates or energy efficiency programs are relevant or are comparable to TVA's forecast, much less how they specifically contradict any portion of TVA's analysis.

Finally, with respect to Contention NEPA N, formerly Contention 16, the contention here argued that the cost estimates in the application for nuclear generation were a misleading basis for

comparison with the cost of -- with comparison for alternative energy sources.

However, as the Staff noted in its answer, the contention ultimately does not explain how its challenges to the Application's cost estimates create a dispute with the Environmental Reports' conclusions on the viability of alternatives.

The Applicant's analysis and conclusions with respect to wind and solar generation alternatives in the Environmental Report clearly did not depend solely on cost estimates but on the asserted need for baseload capacity from the new proposed Bellefonte facility.

Consequently, the contentions challenges to the cost estimates in the Environmental Report do not demonstrate a

genuine dispute with ER's conclusions with respect to the evaluation of alternatives.

As correctly noted in the Petitioners' reply, the Petitioners presented the declaration of Argen MacaJohnny as support for both the factual content and expert opinion of this contention. However, as noted in the Staff's answer for several of the assertions in the contention neither the contention nor the supporting declaration identify the sources of documents on which the Petitioners' expert opinion is based or would rely as required by 2309(f)1, iv.

These include assertions regarding the costs likely to be imposed in the future for carbon dioxide admissions, about the significance or magnitude of various financial risk factors or the

basis for comparing cost at a Florida Power & Light project in Florida to the cost of the Bellefonte facility.

However, as previously mentioned, the contention ultimately does not explain how its challenges to the Application's cost estimates contradict the ER's, the Environmental Report's conclusions with respect to those alternatives as alternatives to new baseload capacity.

In Petitioners reply the Petitioners' reply raises new arguments that challenge TVA selection of nuclear for the purposes of baseload power. They argue for consideration of hybrid power plants, and advocate efficiency measures to reduce electricity demand and peak load.

However, the Petitioners do not show why these arguments could not have been raised in the Petition and, similar to what we have mentioned for previous

contentions, the Board should not consider those new arguments on its determination on the admissibility of former Contention 16.

In any event, the reply still does not identify any dispute with the analysis that is in the application, including with respect to the Environmental Report's discussion of energy efficiency measures.

The Staff has no other comments on these contentions at this time.

>>CHAIRMAN BOLLWERK: All right. Questions from the Board?

Dr. Barrata? Absolutely.

JUDGE BARATTA: Can I ask my Florida Power & Light question now?

>>CHAIRMAN BOLLWERK: I suppose.

JUDGE BARATTA: All right.

You said that the FP&L costs aren't relevant to the Environmental Report

analysis that needs to be done. Is that what I heard you say?

>>MR. MOULDING: No. We actually characterized it as -- our statement was that the contention did not explain what the relevance -- why those costs would be comparable to the Florida Power & Light.

>>JUDGE BARATTA: Well, it seems like a factor of two different cost estimates would be kind of obviously irrelevant and I was curious as to what your take was on that.

>>MR. MOULDING: As I beleive the Applicant has mentioned, there may be some differences in the cost for being in a different area of the country, the infrastructure that may already exist with respect to the Bellefonte facility. The applicant has pointed to some of those as reasons why the cost might not be comparable.

Our statement was simply that the contention did not explain, other than simply citing these estimates as being for two nuclear projects using these the same design, why those created material disputes with the cost estimates presented by the Application.

JUDGE BARATTA: That's an awful lot to be eaten up in regional differences, having built ships in different parts of the country. A factor of two, we probably never have gone to that area but it seems rather strange and it would seem as though that would have a direct impact on one does the alternatives comparison, and therefore it does seem relevant.

>>MR. MOULDING: The Staff's view was that the burden of the contention to explain what the relevance of that comparison would be, to explain why it

disputes those cost estimates.

As the staff also emphasized, ultimately the discussion of the cost estimates for nuclear generation do not create a dispute with the conclusions that the Environmental Report reached with respect to some of the other alternatives, such as wind and solar power, on which cost was not -- apparently was not the determining factor in dismissing those as viable alternatives to new baseload generation.

>>CHAIRMAN BOLLWERK: Does the Applicant want to say anything about that?

>>MR. FRANTZ: Just to emphasize the point that was raised by Mr. Moulding, we do plan for Units 3 and 4 to take advantage of the existing transmission lines. For Units 1 and 2 the existing intake and discharge

structures, the existing cooling towers.

So that obviously has an impact on the differences between the FPL estimates and our own estimates.

Additionally, I believe the FPL itself, it says it took our estimates for Bellefonte and used that as a starting point for its own analysis. Therefore, it obviously did not see anything that was deficient in our analysis if it was using it as a basis for its own analysis.

>>JUDGE BARATTA: Except they doubled it.

>>MR. FRANTZ: They doubled it. And, frankly, I have not gone through and tried to identify every reason why --

>>JUDGE BARATTA: Nor have I. I'm really asking this question out of ignorance. I'm trying to figure out why the difference.

>>CHAIRMAN BOLLWERK: Did you-all

just get a great deal?

>>JUDGE BARATTA: Did you get a fire sale or something?

>>MR. FRANTZ: We've not tried to break down the FPL estimate in detail, identify every reason why it's different from the TVA estimate.

>>JUDGE BARATTA: I mean even allowing -- what's the cooling tower cost now? A hundred, two hundred million? Something in that range? Maybe comparable for new intake structures?

I mean I can come up with -- those factors you named might be worth a billion or even two but we're talking 12, and I just --

>>MR. FRANTZ: I might also add that these cost estimates really vary tremendously on whether you're talking about overnight capital costs or costs that would include the cost of money over

a four-year, five-year period, and again we have not looked a the FPL estimate to see why it may be different from the estimate we used for TVA.

>>CHAIRMAN BOLLWERK: Anything further on that question? Or anything else for the Staff?

>>JUDGE BARATTA: No.

>>CHAIRMAN BOLLWERK: Mr. Sager?

I just have -- what is the Staff's general on demand side management and the need to addressed it in an environmental impact statement?

>>MR. MOULDING: It's a matter that's discussed in the Environmental Standard Review Plan as something that the staff may look at.

>>MR. BARATTA: Could you speak up?

>>MR. MOULDING: I'm sorry, sir.

Demand side management is a matter that is identified --

>>CHAIRMAN BOLLWERK: Try it one more time.

>>MR. MOULDING: The Staff does considered demand side management to be one of the issues that is discussed in the Standard Review Plan, as something that may be relevant to the need for power analysis. However, as the Applicant has explained, there's a discussion of demand side management in the Environmental Report that the Petitioners do not clearly dispute, and the ER also identifies -- ruled it out as a viable alternative to baseload capacity.

So that discussion is in the Environmental Report and it was not clear that the contentin clearly disputed any aspect of that analysis in the Application.

>>CHAIRMAN BOLLWERK: All right.

Anything further for the Staff?

Thank you very much.

We'll turn back the joint petitioners at this point.

>>MR. ZELLER: Thank you, Your Honor.

>>CHAIRMAN BOLLWERK: You may want to move your mike up as well.

>>MR. ZELLER: Indeed.

TVA's arguments and I believe Staff's arguments revolve around claims that comparative costs of nuclear and alternative energy supplies are not material to the outcome of this proceeding because nuclear power is somehow better than wind or solar power for the provision of baseload energy, but our contention centers on the fact that TVA has not demonstrated that electricity or the need for power translates into baseload power requirements rather than peak load sources for which there are --

peak load demands, I should say.

Our information shows that a combination of renewable energy, wind and solar, can provide power with the same level of reliability, particularly when you look forward over a period of time that we're looking at. Last year in the United States something on the order of 5,200 megawatts of new power was provided. That would be tantamount to four AP 1,000ths. With nothing like the time frame for development of those resources.

These are -- efficiency measures also can reduce electricity demand and peak load much better, with far less pollution over.

Some of the internal contradictions which have been referred to -- if I can find them here. I believe you alluded to that earlier.

For example, regarding the costs. The difference between Chapter 10 of the environmental report and Chapter 9 of the environmental report, which we included in our June 6 petition.

Some of these questions are reflected also in the June 11th request for additional information regarding the cost of construction estimates.

I'm looking at RAI No. 10.4.2-1, which asks the Applicant to update the cost of construction estimates, provide references to support the revised cost estimates, confirm the costs, rework of existing structures.

The allusion to Florida Power & Light don't hold up because -- we believe do not hold up because Florida Power & Light is an existing site and operating station, which could not be much more different from the Bellefonte site. $4.6

billion was spent here with no power produced as of yet.

Demand side management can change NG production forecasts.

So for all these reasons, and the others outlined both in our original petition and in our reply, we believe this could be admissible because it's supported by a concise statement of expert opinions and facts, and are -- the bar here for us is that a contention must make a minimal showing of material facts that are in dispute, and demonstrated inquiry and depth is appropriate with the internal contradictions and what we feel is the omitted information or discounting out of hand of cleaner and in our view preferable sources of power to meet both peak demand baseload power that our petition, our contention meets those requirements.

>>CHAIRMAN BOLLWERK: All right. Let me see if there's any Board questions.

Judge Baratta?

>>JUDGE BARATTA: I wanted to make a comment on some of the issues you've raised in terms of, well, if a major consumer industry were to collapse or something like that, I mean I'm a little troubled.

As the applicant has pointed out, those are discreet events, and, yes, it probably would have a very dramatic impact on growth rate and things like that but it would be over a short period of time. It's all very speculative. You could have one go away but then if land prices go down and such and somebody else comes in.

I mean to be reasonable, you can't -- individual isolated events like that are

I think maybe unreasonable to take into account as opposed to coming up with a reasonable strategy to define a low, medium and high growth rate on which to base your forecast.

That's why I asked you about that .1 percent, what was basis for that? Is there a dispute between what they had, which is on the order of one percent versus what you're saying, and, yeah, those events could occur but one could equally conjure other events which would have the opposite effect. You can't play this game forever, you know what I mean.

So I wondering do you have anything to add to that that would answer my concern there about whether or not what you're proposing is really a reasonable way to approach that type analysis?

>>MR. ZELLER: Yes. I appreciate that question.

And, forecasts, I agree, are subject to assumptions, but I think the only thing I could add at this point, in additon to what I've already said, is that nuclear generating units do seem to suffer from unique vulnerability, and that is we are seeing now power plants being developed outside the United States as well as inside the United States. Many older units, whether in Europe or elsewhere around the world, are reaching the end of their normal lifespan of 40 years time. The vulnerability of that, I've identified, could change the economics of all of these assumptions, and in a matter of hours, and we've already seen one of those shocks go through the system, the economic system, as well as the electrical system. In 1979, with the Three Mile Island accident there and years later at Chernoble.

Now, this is not off the subject of your question. This is right on the point. The economics of nuclear power could be altered if an accident happens 100 miles away or 10,000 miles away.

These types of changes, these types of catastrophies you do not see with other forms of alternative energy, the ones which we're talking about here, which are solar and wind energy. Even a coal plant, which I'm not advocating, there's nothing in history which would show the kind of catastrophic meltdown impacts of a fossil fuel plant.

So the economics of nuclear power are subject to unique vulnerabilities. So, thereof, the analysis does need to take into account a broad range, and that's why to narrow the range of assumptions to a part of the spectrum we feel is unjustified.

>>JUDGE BARATTA: When did you first raise the issue of wind, solar and biogas?

We've heard it said that it was in your reply. Is that -- I don't recall, to be honest with you, when you did. So I'm asking that out of ignorance or failing memory.

>>MR. ZELLER: Just a moment.

>>JUDGE BARATTA: If you want, we can come back to that.

>>MR. ZELLER: Of course.

>>JUDGE BARATTA: Going back to this statement relative to the demand side management, is your concern about the analysis that was done one of adequacy or -- concern over adequacy or concern that it was not addressed?

In other words, that it was omitted?

>>MR. ZELLER: There are words about demand side management which have been

mentioned. We feel that the analyses were inadequate and discounted out of hand, or mixing apples and oranges by addressing baseload or peak demand with -- inappropriately.

>>JUDGE BARATTA: Do you have an answer to that other one?

>>MR. ZELLER: Yes. The answer regarding Page 48, at the bottom of our original petition, for energy supply, negative --

>>JUDGE BARATTA: Bottome of Page 48.

>>MR. ZELLER: -- negative alternatives include efficiencies, demand side management which will allow TVA to abandon nuclear option at Bellefonte. Positive alternatives to nuclear power include solar, wind, et cetera.

>>CHAIRMAN BOLLWERK: Dr. Sager, any questions?

>>JUDGE SAGER: No thanks.

>>CHAIRMAN BOLLWERK: I just have one, maybe a clarification to the record.

I know you had mentioned, I guess particularly with respect to Contention NEPA N, which is now -- or used to be Contention 16, that there is cost information that was not available to you. Or you felt there were blank pages that perhaps contained that sort of information?

>>MR. ZELLER: Yes.

>>CHAIRMAN BOLLWERK: My assumption is you're talking about some kind of proprietary information that was not provided, and you suggested you had a problem with that.

I just want to make sure for the record, however, the Board did issue is an order that said if you wanted access to proprietary information you could talk with the Staff and the Applicant and seek

a protective order to get it.

>>MR. ZELLER: I acknowledge that, Your Honor. We did -- the proprietary information or security -- as differentiated from the Sun C (phn) rule? Isn't that what we're talking about?

>>CHAIRMAN BOLLWERK: Well, Sun C and proprietary tend to fall in the same category in terms of the requirements. Security information like safeguards or and classified is in a different category. The safeguards and classified are at a much higher standard, where you need to get access to the information.

>>MR. ZELLER: Right.

Well, yes, I understand, and we do have a fundamental problem with -- we understand the need for safeguards information for security concerns, national security and otherwise. Sun C we feel is kind of talking about a grab

bag and is -- and this is not unique to this application. We feel it is an arrogation of power by the -- by I guess the Commission to keep information away from the public without justification.

I could go into some detail about that. We have outlined this is in some of our writings elsewhere but basically we feel that to subject Petitioners or members of the public to fingerprinting and credit checks and what-not in order to get information --

>>CHAIRMAN BOLLWERK: Although I don't think that's required to get access to proprietary information. I believe all you need is a protective order and -signing an affidavit of nondisclosure. I'll have the Staff correct me if I'm wrong, but I think you're referring to the types of information safeguards and security, or am I incorrect in that

regard?

>>MR. MOULDING: You're correct, Your Honor. There's no background check or credit check required for access to proprietary informational. That's a requirement. However, for safeguards information.

>>CHAIRMAN BOLLWERK: Which would be generally information dealing with the security plant or nuclear power plant or that sort of information.

I think you may be under a misapprehension here. I don't want you to continue to operate under that, but proprietary information, at least in all the cases I've done over the years, if you talk with the Staff and the Applicant, you can reach agreement on a protective order and then get to simply sign an affidavit of nondisclosure, you can have access to that information.

Obviously, you cannot disclose it without authority from the Board.

One of the things that has been done in the past is you can come to the Board and say we think this should or should not be made proprietary.

It doesn't require a credit check, it doesn't require fingerprints. All it requires is your willingness to abide by the order that's put in place.

>>MR. ZELLER: Thank you. I appreciate that. I should -- I wasn't prepared to talk about this today but it seemed like the --

>>CHAIRMAN BOLLWERK: You may have a philosophical objection to Sun C and --

>>MR. ZELLER: I do.

>>CHAIRMAN BOLLWERK: -- proprietary too, and I understand that. I'm just saying it's not --

>>MR. ZELLER: I do, too.

>>CHAIRMAN BOLLWERK: -- something you cannot get access to and cannot try to object to as part of these legal proceedings. I just wanted to may that clear.

>>MR. ZELLER: Thank you. I appreciate that.

And we did look had at acquiring Sun C information, specifically, and the constraints that you have mentioned, which apply to Sun C we feel are unjustified, and unjustifiable, and particularly in this case with TVA, which is not in competition with any other utility, so far as we can tell.

So if we should be more straightforward and explicit in our objections in this matter, then perhaps we should have done that, but you are correct, we do have philosophical problem

with keeping this information apart from the freely available information, which is in the rest of the Combined Operating License Application.

>>CHAIRMAN BOLLWERK: All right. Thank you.

Anything further?

All right, it's a quarter till. Why don't we go ahead take a break at this point. We've been at it a little over an hour.

We'll take a break up until -- why don't we say, let's see, 2:55, approximately. 2:55.

I would mention again if we have folks that have been part of our webcast and are leaving, there is an e-mail address, webstreammaster, one word, .resource@nrc.gov. If you have any comments, we appreciate hearing from you.

Then we'll take a 10-minute break

until five minutes to 3 o'clock, and then we'll reconvene.

(Whereupon, a recess was taken.

(Short Break Taken)

>>CHAIRMAN BOLLWERK: All right, let's go back on the record.

We're back from a brief break, and we're going to begin now with Contention NEPA F, which was formerly Contention 12. The NRC failed to justify the need for new units, and I'll turn to Mr. Zeller and see what you have to say, sir.

>>MR. ZELLER: Thank you, Your Honor.

In this contention, the petitioners are asking the Nuclear Regulatory Commission to review Tennessee Valley Authority's claims that the proposed Bellefonte units are needed.

This is based on our look-back over the last several decades when Tennessee

Valley Authority protected large increases in demand, which did not materialize, and resulting in the cancellation of many of the units at that time, projected to be on the order of seventeen new units.

So I guess this is maybe a wish and a prayer that somebody will take a look at what TVA has done, and our analysis here is mostly the broad brush strokes and just guessing, my gosh, showing that TVA has made some big mistakes in the past, and so we're kind of appealing to the Commission or to this Board to either have the Nuclear Regulatory Commission staff take a harder look, or if needs be, an outside agency. I don't know, for example, since TVA's a federal body, could the General Accounting Office of Congress look at these claims to justify these new units?

I'm aware of the example of a proposal by TVA which undermines their own claims that a new unit at Bellefonte Court II are justified. Their energy efficiency plan, which is supposed to be met by 2012, calls for a 1,400 megawatt reduction in power demand in their service area, met by energy efficiencies and downside management; reasonable approach to reducing the impacts on the environment, saving the ratepayers money. 1,400 megawatts, as you well know, is tantamount to just one of these AP 1000 reactors, and that's by 2012.

So basically that's the contention in a nutshell.

>>CHAIRMAN BOLLWERK: All right. Any questions from the Board on this point?

All right, let's turn then to the applicant.

>>MR. BURDOCK: Thank you, Your Honor. The petitioners have not provided an admissible contention here. In the title to their contention,n, they claim that the NRC failed to justify need for the new units. If the petitioners are claiming that the NRC already should have done something, it provides no legal basis from the petitioner's description today, it sounds like they're dispute the future reviews by the NRC staff.

In the petitioner's contention, they conclude it clearly becomes the responsibility of the NRC to view the adequacy of the TVA claims that the proposed Bellefonte units are needed.

TVA submitted its application to NRC in 2007. Chapter 8 of the environmental report includes a need for the NRC's review. So, in essence, the petitioner is claiming the NCR staff is required to

do something that they are required to do by the regulations and this cannot support an additional contention.

Additionally, if the petitioners are challenging the future analysis of the NCR staff, this, too, must fail.

Section 2.309F2 of the NCR regulations makes it clear in this stage of the proceeding petitioners must challenge the document have been prepared, such as the environmental report and the petitioners challenge no part of the environmental report in this contention.

Additionally, this contention discusses a lot of facts about TVA and the decision-making process. It appears to claim that the NRC should provide oversight to those decision-making processes related to TVA's rates and their decisions to apply for.

They provide absolutely no statutory or regulatory authority for that. Therefore, challenge is outside the scope of this proceeding.

Nothing further.

>>CHAIRMAN BOLLWERK: All right. Any Board questions for TVA?

All right.

Turning to the Tennessee Valley Authority, I guess one of things I think we like to get a sense of from the Tennessee Valley Authority is what is your relationship with TVA on the regulatory side given they are a federal entity, that might be different from what you do relative -- or how you interact relative to other utilities or other applicants for nuclear power plants to the degree you can help us out a little bit?

MR. MOULDING: I can try. Like

any other applicant, TVA is required to submit an environmental report that includes the need for power analysis. As we do with odd applicants, the staff reviews that need for power analysis to make sure it is reasonable, it meets high quality standards as discussed in the environmental review plan.

Previous commission cases do indicate the NRC and TVA both have NEPA related responsibilities and is personal to our each responsibilities that the NRC staff conducts the review for the need for power and presents that in the NRC's Environmental Impact Statement.

>>CHAIRMAN BOLLWERK: Given there's no public utility commission involved, how does that change the staff's relation with TVA or the sorts of reviews they might otherwise look to the PUC?

>>MR. MOULDING: As I mentioned, the Environmental Review Plan has certain criteria the NRC staff looks for whether any applicant's need for power analysis is reasonable. Those criteria are spelled you in Chapter 8 of the Environmental Standard Review Plan, and those are the same criteria that the staff would being or in TVA's environmental report.

In any event, as the applicant has correctly pointed out here, most of what the petitioner is asking for here concerns more general oversight of TVA's decision-making process, the extent that the stakeholder involved in the TVA decision-making and those issues are outside the scope of this proceeding and are not really related to the more narrow question of how the NRC reviews the need for power analysis.

>>CHAIRMAN BOLLWERK: I think you haven't specifically answered my question, though, in terms of -- for instance, staff will defer to a public utility commission's findings about need for power, and I take it what you're saying, and maybe I'm not listening carefully enough, that you're basically saying you would stand in the stead of the public utility commission in that regard?

>>MR. MOULDING: The staff's guidance in the Environmental Review Plan suggest the staff can be right on the need for power analysis as provided by an applicant or a public utility or other regulatory entity meets the criteria for being reasonable and meeting high quality standards.

The statute guidance is directed at analysis of applicants' environmental

report, and in that sense it is the same, same review that the NRC staff performs of a TVA's or other applicants, if it meets those criteria for being reasonable and of high quality standards.

>>CHAIRMAN BOLLWERK: If I understand what you're saying. The only reference is, for instance, an applicant, in a regulated state could look to their public utility commission, perhaps, to supply the NRC with some information that might be used for making a need for power determination whereas, here the TVA does not have that opportunity because essentially, they are not regulated by a public utility commission; they have to supply information themselves?

>>MR. MOULDING: That is correct, but that does not meet, the staff does not perform the same review of whether it meets the criteria for being reasonable

and various criteria in a systematic, comprehensive, RA.

CHAIRMAN BULLWERK: You would just look to the public utility's analysis or the way they did the process rather than the applicant's information?

>>MR. MOULDING: That's correct but the staff cannot rely on an applicant's environmental report, whether or not it comes from a third party regulatory review, unless it meets the standards that the staff looks for in its guidance.

>>CHAIRMAN BOLLWERK: All right.

>>JUDGE BARATTA: Just for further clarification, when the PUC does their Public Utility Commission, does their review, it's more akin to the due diligence review.

Are you -- in this case where there is no PUC, are you going to do that type

of review, because that's quite an undertaking.

What are your criteria for determining reasonableness, I guess is what I'm saying?

>>MR. MOULDING: Those criteria are the ones that are identified in Environmental Standard Review Plan, which would be things like the analysis being systematic and comprehensive. I'm not sure if that's similar to what you're referring to in terms of due diligence.

>>JUDGE BARATTA: My understanding is when a PUC, they actually go in and look at the very detailed level numbers and such that -- historical data, population data. It's much more comprehensive review than frankly I wouldn't expect you to undertake.

I'm just trying to get an

understanding of what you think you will be doing in this case, this particular application.

>>MR. MOULDING: In the Environmental Standard Review Plan, the guidance indicates that -- perhaps the way you discussing our first look in conducting the review of the need for power analyses is to determine whether the analysis is systematic, comprehensive, et cetera. The staff's guidance continues if those criteria are not, do not appear to be met, then we would request more detailed information about some aspects of that analysis.

So the Environmental Standard Review Plan kind of discusses both those levels of scrutiny of the need for analysis. The first step is trying to determine if the need for power also can be relied on because it is reasonable, meets the high

quality standards.

>>JUDGE BARATTA: You get in, as part of that, into the reasonableness of their assumptions? Or are you just looking at whether or not you have a systematic approach to determining?

>>MR. MOULDING: I believe it's more the latter but I would have to consult the language of the Environmental Standard Review Plan to be confident of that.

>>CHAIRMAN BOLLWERK: With respect to TVA, will you be doing the latter or the former? I guess we're back to that.

Is it systematic, what you 're looking for with respect to TVA or are you actually taking the next step since there is no public utility commission there?

>>MR. MOULDING: As the applicant

mentions, Tennessee Valley Authority is currently reviewing for power analysis. So as part of that analysis, would determine what level of information would be -- we would be looking for under the NRC staff guidance. But that is what the staff is currently reviewing.

>>JUDGE BARATTA: I guess -- this is a unique beast in a way because you're dealing with the situation where most utilities are regulated or emergent, which means unregulated, which means it's meaningless in that case, because that's strictly a business case, not a PUC type of case, which this is more akin to.

I'm just curious as to how -- does the standard review plan really cover this case? That's the bottom line.

>>MR. MOULDING: As I mentioned, the standard review plan talks about situations where they may rely on

applicant's need for power analysis or on a third party's -- a public utility commission's review submitted by an applicant after having consulted that utility commission.

So the guidance is intended to address both of those issues. I guess I would also emphasize that in this the contention doesn't make specific claims about one should or should not pardon that analysis and make more general were assertions of what proper oversight of TVA or NRC should or should not have. And our position is those are outside the scope of this proceeding.

>>CHAIRMAN BOLLWERK: Right, but you did make analysis on the NEPA contention. I think this idea, to some degree, is one of the reasons we were also interested in this issue.

All right. Anybody from the Board

have any other questions for the staff?

Let me turn then back to Mr. Zeller.

Anything further, anything else to say on this contention?

>>MR. ZELLER: Thank you, Your Honor. Yes.

The responses I've just heard, both from the applicant and from the staff I believe indicate that the NRC may or may have -- the staff, I should say, may or may not have expertise akin to the public staff of a public utilities commission or a public services commission.

I pointed to this request for additional information which asks TVA to provide or update its IRP, its Integrated Resource Plan, in which it reviews a forecast for power.

So I believe that the Commission's staff does seem to be seeking some of this information. So I don't know if

we're at the point yet where we would accept that they have done the due diligence or they have done the -- provided the checks and balances that an independent review would provide.

I mentioned the GAO; that was just kind of a shot in the dark. Some agency, if it's not within the Nuclear Regulatory Commission staff that has expertise that a public staff of a utility commission would have, to check things out, to do an independent analysis, which, as we said in our contention, is lacking in this case. So we're kind of -- we're looking for an answer here ourselves and I don't know -- know what the solution is, but I know what I'm seeing is not it.

>>CHAIRMAN BOLLWERK: Let me ask this question. Putting aside the GAO for a second, Mr. Moulding indicates their staff is undergoing this review now

on this aspect of the application and haven't finished it yet. Do you think what you're asking for is maybe premature, you need to actually see what they're going to do?

>>MR. ZELLER: Maybe so. If this contention is admitted, we would have the benefit of analysis in order to talk more about it.

>>CHAIRMAN BOLLWERK: Although normally, looking at the rules at this stage, what we're looking for are contentions that relate to the applicant's application and the environmental plan, not to what the staff's review is doing on the NEPA side. Any other questions from the Board or Mr. Zeller?

>>MR. ZELLER: I'm done.

>>CHAIRMAN BOLLWERK: All right. Let's then go to Contention

miscellaneous f which was formerly contention 13, the so-called low level radio -- titled the so-called low level radioactive waste.

I guess you mentioned before, Mr. Zeller, your concern I guess about the Commission's waste confidence ruling, has to do with high level waste, and as I read this, I got the impression what you're looking for was waste confidence related to low level waste?

>>MR. ZELLER: Yes, Your Honor, that's correct.

This contention No. 13 or miscellaneous F, this so-called low level radioactive waste, pardon the term there, because that means that much of what is categorized as low level waste, as you well know, is not -- does not mean danger. It includes some of the same radio nucleides that's included in high

nuclear waste, and then when you get in the upper range there, Class B,C or even greater radioactive waste, talking about some very dangerous, some very hazardous radio nucleides.

This contention, as outlined in our original petition of June 6th, states it I think plainly that there is no place for this waste to go and therefore that TVA at Bellefonte would have to find some other way to deal with some of these wastes.

I agree it's an intractable problem, but there are -- or there have been in the past, legislative or institutional remedies for such, and at this point in time and perhaps for a considerable period into the future, such options are foreclosed.

So how, in our view, how -- we aren't aware of any exceptions granted by the

Commission from the relevant regulations under -- for low level radioactive waste disposition over a long period of time.

Low level wastes are handled on-site for a limited period of time but I think if the past is any guide, the Low Level Waste Policy Act was passed decades ago and the compact system that it was supposed to put in place almost came together, fell apart before it became functional.

So we're in a situation now, we're kind of in a limbo with low level radioactive waste on a national scale.

So it's left to the utilities, now, TVA and others to figure out how to deal with low level waste. That's why the regulations under 10 CFR 61, because that seems to be the one place where long-term management, or disposition of low level radioactive waste is discussed.

>>CHAIRMAN BOLLWERK: All right. Anything from either of the Board Members at this point?

No? All right, let's turn then to the applicant.

Mr. FRANTZ: The horror of the contention is we must contain a license part 61 to dispose of low level waste. This contention is both legally and factually incorrect.

First of all, part 61 applies to disposal of waste, not to temporary on-site storage. As we clearly state in Section 3.5.3 of our environmental report, we don't plan to dispose of waste on-site. Instead we plan to store it temporarily and then ship it offsite, This part 61 is not applicable to our plans.

Furthermore, I might add as a legal matter, 61 only applies to waste received

from others for disposal. So, therefore, even if we were planning to dispose waste on-site, which we're not, but even if we were, Part 61 would not be applicable in this case.

Furthermore, I think the contention is based upon a faulty premise that there will never be an available disposal site for Class B, Class C waste. However, we don't plan to begin operation at Bellefonte until the 2017, 2018 timeframe, and gives us about ten years hopefully to develop a disposal site that would take waste from the State of Alabama and perhaps from other states.

Additionally, Bellefonte is designed to store two years worth of Class A, B, and C waste. Most of that is Class A waste, and therefore if we were only going to be using it, Class B and C storage, we have more than two years

worth of capacity.

Then, finally, are proofs in our guidance documents for expanding storage capacity, so if we get to the 2020 time frame or later, and we find out we need are storage capacity, the guidance documents provide for us to construct or capacity.

For example, the generic letter 81-38 and Regulatory Issue Summary 20 -- I'm sorry. 2008-12 both provide guidance for expanding storage capacity on-site, and again if we need to, would 82 those provisions.

Finally, I might add in this regard that their suggestion that we obtain Part 61 license and disposal of waste on-site is contrary to the NRC's policy. For example, engineering letter 81-38, the NRC has said that licensee who in the disposal of waste on-site because that

would discourage states from developing their own disposal systems.

What Mr. Zeller is suggesting would be contrary to this area. Somewhat different tact. He argues there, we would consider the environmental impacts of on-site disposal, but represents a direct challenge to Table S3, sentence 72 of our 51.51. In fact, in Footnote 13 of their reply, Petitioners acknowledge that fact because they have not sought a waiver from the regulation. This issue is not cognizable by the Board.

They do state they plan to submit a position for rule making to amend Table S3. In other words, they have not submitted that petition yet, in any case, not provide a basis for contention in proceeding.

The NRC is allowed to resolve issues generically rather than through

individual licensing proceedings and petitioners have simply miscited the case of amass versus NRC. That does not provide authorization for the NRC to admit contentions on a standby basis or to allow a placeholder basis. It similar says a petition for rule must make request success sinks P of the relevant portion of the license proceeding if it's a party to that program. It provides no basis for a contention in that rowing.

Finally, I mate add that he claim in their petition to intervene our description of the process control program, commonly known as a PCP, perfunctory. However, he had see to overlook the fact that oh if railroad incorporates in reference in he 007, one which provides a fairly lengthy description of the PCP. We think again they have mischaracterized our

application in this area.

That concludes my discussion. Thank you.

>>CHAIRMAN BOLLWERK: The Board. Judge Baratta.

>>JUDGE BARATTA: Yes. I would be wrong in saying what you just said the environmental report. In other words, I acknowledge Barnwell is not available and you could have options available, which you just outlined.

Mr. Frantz: First of all, we -- is our environmental report, that Barnwell was available.

JUDGE BARATTA: Yeah, but they already said they were going to close June.

Mr Frantz: I understand your point, and obviously there could have been an enhancement in this area but we don't have any fundamental problem with the

environmental report. There really isn't any material issue of disputed fact here and we don't alter any outcomes of our analysis in the environmental report to include this kind of information.

>>JUDGE BARATTA: I don't know about that.

Just for the audience, what is Table S3 specifically say relevant use low waste? Mr. Frantz assumes it to be disposed of off-site in shallow burial. So.

>>CHAIRMAN BOLLWERK: Judge Sager, anything?

>>JUDGE SAGER: Just to help me with education here, the contention says there's almost no mention in the ER about this subject, but you reference the sections. What sections I look this you in, your of the handling the waste.

MR. FRANTZ: The handling of the

waste with respect to the CP's, NFR Section 11. 416. I believe there are also various discussions of how we intend to store waste and dispose of it off-site in Environmental Report Section 3.5.3.

>>JUDGE SAGER: Thank you.

>>CHAIRMAN BOLLWERK: First of all, I spoke to Mr. Zeller, referred to this as sort of the low level waste analog to a any level waste confidence provisions, the Commission's policy or are -- rule making. Why is not oh an analogy here?

I suppose that one of the questions is what confidence does the Commission have with this problem with low level waste generally is going be solved, going on in this past 20 years, as has in the procedures.

MR. FRANTZ: The waste confidence low relevant was looking at safety of the

storage spent on-site after determination of operation of the plant, and in this case there really isn't any dispute that we can safely store material on-site we do have provisions right now for two years worth of storage. The Tennessee Valley Authority reviewing or has reviewed those. They are part actually of the DCD for the AP one, and if we need to develop additional storage facilities, the staff has guidance documents that provide criteria for storage. So there really isn't any question at this point we can safely store the low level waste on-site. Oh again and, with high level waste, that question is for how long? Isn't that a question here?

If this never -- if the states don't deal with this problem in the near term, how long is this going to go on? That what the is looking at in height level

waste case?

MR. FRANTZ: You have to postulate it's would go on for 50 years. Ten years to go through cess and construction cess and 40 yours of oh license lifetime, and he could actually renew it for another 20 years. Postulate we won't have any disposal facilities available for that lengthy period of time I believe is unreasonable.

>>CHAIRMAN BOLLWERK: Hasn't this been going on for nearly 20 years already? There were alternatives up to point but those alternatives, the window is narrowing.

I would also point out with maybe another analogy with the -- there were problems originally with the uranium enrichment that had to be solved with Congress passing a statute and that became basis in the LES for finding there

about confidence relative to waste.

Mr. Frantz, our position is we can safely store it. I think the NRC has found with the DCD they have safe storage provision already in the CD.

>>CHAIRMAN BOLLWERK: Thank you. Start with the staff.

>>MR. MOULDING: The staff has very little to add with respect to the petition. As already said, the Bellefonte application does not propose on-site disposal of radioactive waste and accordingly there is no Commission requirement to license it under 10 CFR Part 61 as already mentioned. Table S3 of 10 CFR 415151 already makes a conclusion with respect to the amount of low level waste identified, not resulting in significant effort to the environment.

And as the petitioner seem to recognize their reply, they acknowledge

this is essentially prohibition of challenging the regulation and indicates their intent to file a rule making petition.

But for the reasons already explained in the staff's answer with respect to the two contexts, their intention to file a rule making contention does not make an admission here.

Finally, the petitioners attempted in their reply to cure the factual or expert opinion for their contention by providing a new expert declaration as previously mentioned in my brief is not the -- not permitted to deficiency in the original contention.

As noted, reply also raises some new claims, arguments, including with respect to environmental it's and economic consequences, because the petitioner made no attempt to demonstrate they met those

standards when they filed contentions with respect to those arguments.

The Board should not consider those in ruling on the admissibility of the contention.

The staff has nothing further.

>>CHAIRMAN BOLLWERK: All right. Judge Baratta, anything?

>>JUDGE BARATTA: Just one question. Wasn't the closure of Barnwell sort of a material change here? It was obviously something significant. Something's changed here. Something's not the same as it was before in a fairly significant way

>>MR. MOULDING: Well, as has been that have been already mentioned EEOC the rule already deals with, deals with the circumstances availability of disposal, and/or the reasons that the applicant mentioned, the timeliness of

that, of that ultimate disposal issue not something that needs to be determine at this time, or the petitioner has pointed to no requirement to resolve at this time.

>>CHAIRMAN BOLLWERK: Anything further from the Board? You're looking pensive.

>>JUDGE BARATTA: Well, the last statement that leads to no requirement to resolve that at this time, I guess I'd like to understand that a little further.

At some point it's going to have to be resolved whether it becomes relevant.

>>MR. MOULDING: As the applicant pool discussed, if there proves to be a ratio issue down the line, the staff has guidance for addressing that issue at time.

But the contention to no -- contention discussed on the need for a

Part 61 licensing requirement for the disposal -- potential disposal of low level radioactive waste on the site, and Part 61 is simply not applicable to that.

>>JUDGE BARATTA: I'm referring to Part 61. I'm referring to the issue that Judge Bollwerk referred to here, which is the closure and what to do with the waste that might be -- might accumulate.

When does that dealing with that relative to their license or procedure post license? I didn't say when does it become.

>>MR. MOULDING: As the applicant mentioned, the contention was issued in generic guidance about dealing with the issue of low-level waste for storage and has indicated that those measures can be considered in the future at an appropriate time.

>>JUDGE BARATTA: Seems to be a vague question about when the appropriate time is. We'll let that go by.

>>CHAIRMAN BOLLWERK: All right. Anything further? Judge Sager?

>>JUDGE SAGER: No.

>>CHAIRMAN BOLLWERK: All right. Let's turn back to Joint Petitioners then.

>>MR. ZELLER: Thank you, Your Honor. Our original petition does address Section 11.4.5, and we characterize that as a perfunctory discussion, regarding the process control program, which I'm assuming you all read, so I won't bother with that, but it does end up saying that the purpose its purpose is to provide necessary controls, et cetera, et cetera, et cetera, for a burial at a low level waste disposal site that is licensed in accordance with 10

CFR 61.

So, I guess it kind of -- it begs the question because there is no explanation offered as to how the applicant will meet this plan.

For example, where is the analysis for greater than two years' storage on the site? At the Bellefonte site. So, I'm going to ask if somebody could point that out to me, but I don't see it on here.

I think at the bottom line our recommendation would be to request this contention be admitted and held in abeyance until some of these issues can be resolved.

>>CHAIRMAN BOLLWERK: Any Board questions for petitioners?

>>JUDGE BARATTA: We have this Table S3, and I think you're well aware that one of the things that a contention

cannot do is challenge regulation.

And Table S3 is, in essence, a regulation which says that the issue of low waste disposal is a generic issue and the Commission's opinion is that there is historic disposal.

So, what would you have us do? Because we have, on the one hand, the requirement that we cannot admit a contention, the challengers regular.

We have, on the other hand, Table S3, and we also have the issue of Barnwell's quotes.

>>MR. ZELLER: I understand and I appreciate that.

According to my understanding, the Nuclear Regulatory Commission may channel into generic rule making the Petitioners' concerns about information and that it can -- it should or it must provide at least one pathway which the challenging

party may establish a connection between the rule making and the licensing proceeding.

The purpose of which is to assure the result of rule making proceeding. Rule would be applied to the individual licensing case.

So, this is Commonwealth of Massachusetts, First Circuit.

So, this information we think would come under that, and so there has to be some path here which allows the issue to be not only dealt with generically, but it's raised in this context.

And that's what I believe the case law for the -- not the case law -- well, I guess it is case law, for the First Circuit would indicate there needs to be some kind of path provided here.

If it's not held in abeyance, then perhaps some other management decision by

the judges. I have no idea about that.

>>CHAIRMAN BOLLWERK: All right. I don't have anything further. Judge Sager?

>>JUDGE SAGER: No.

>>CHAIRMAN BOLLWERK: All right. Thank you very much for your comments on that contention.

We're now at what I would, I guess, refer to as sort of the residuum, which would be the balance of the contentions that you all had posited.

We've given you a general time argument. Any or all of those pending on how you want to proceed?

I guess my question, Mr. Zeller, do you have something you want to say about every one or deal with only specific ones? How is your --

>>MR. ZELLER: Thank you. I wondered why they kind of did so many

like a grab bag.

>>CHAIRMAN BOLLWERK: I think the Board's feeling was we understood what you were saying. It wasn't necessarily -- we wanted to give you an opportunity if you wanted to emphasize something to us about any of them in particular. That's why we sort of put them all together.

We can proceed through them one at a time or I can sort of set them all out and go through them in any order you like. Sort of a question of how you like to proceed within the time frame that --

>>MR. ZELLER: Which is 20 minutes, 10/10.

Can I have a moment to confer with my colleague, please?

>>CHAIRMAN BOLLWERK: Sure. Absolutely.

>>MR. ZELLER: Okay. Thank you.

I would just like to briefly touch on a few points, not on every single one of these contentions because I think we leave some of it to stand.

>>CHAIRMAN BOLLWERK: Would it be helpful if I sort of went down and you tell me if there's anything you can tell me about that on or if there is --

Of course the first one is what is called Miscellaneous A, a portion of the contention understanding whether Bellefonte will improve the general welfare and increased living or strengthen free competition in private enterprise.

>>MR. ZELLER: What I would say here is what has the Nuclear Regulatory Commission done to elevate the problem identified in its offer to how one reviews human error?

>>CHAIRMAN BOLLWERK: Your

essential concern there is about questions--

>>MR. ZELLER: Yes.

>>CHAIRMAN BOLLWERK: Anything under that one?

>>MR. ZELLER: I think the rest of it stands on some of the technical issues as stated. We'll just leave it.

>>CHAIRMAN BOLLWERK: All right. You may have already gone into this, but let me go through. There was FSRA which was a form of Contention 1, hardware failures.

>>MR. ZELLER: Right.

>>CHAIRMAN BOLLWERK: You're standing pat on that point?

>>MR. ZELLER: We'll stand by our petition, which was Contention 1, human factors. I think that's the one you just referred to.

>>MR. ZELLER: Yes.

>>CHAIRMAN BOLLWERK: If contention threats to NRC independent review -- I think that one sounds like you've already submitted what you said about that one.

>>MR. ZELLER: I don't know what more I can say. It might be a little unusal to bring up issues such as that, but we feel they are important.

We would just ask the judges to please consider that and look at it with a fresh eye, even if they have never been considered before because we do have some major questions about the appearances of this procedure and legislation which is mentioned in here, which is plainly outside of your control, but which has an impact on how nuclear licensing is done over the next -- over the short term and over the long-term. Things have changed which outside the

control of the Commission, which we believe undermines the body's independence or its appearance of independence. In many -- in many publicly appointed bodies and others, the appearance of improprieties of integrity within that institution, within that regulatory body, is as important as the letter of the law.

A half a billion dollars of penalties have to be considered in this decision at some point, and we feel that those -- that that is perhaps -- I don't know, I don't think unsavory is inappropriate here, and this does not impugn anyone within the Licensing Board because, as I stated, there's no -- the actions of the bill 2005 in Congress were totally outside the control of anybody directly affected by it, but nevertheless, it's like gravity. It's there.

So, I leave it at that.

>>CHAIRMAN BOLLWERK: I'm going to move through these as we talk -- if we have any questions, I'll stop. Let me know and I'll stop.

Miscellaneous A1, formally a part of Contention 1, procedural shell games.

>>MR. ZELLER: We believe that speaks for itself.

>>CHAIRMAN BOLLWERK: Miscellaneous B, the NRC fails to exercise due process constitutional due process and equal protection.

>>MR. ZELLER: This one relates to exposures to individuals and how many people we will expect to die every year during the operation of this plant.

And the difference between how regulatory limits for radio nucleides, the difference between how the health impacts of radio nucleides are set as

compared with other carcinogens and other deadly substances at the federal level.

Why is it different within the Nuclear Regulatory Commission for radionucleids than it is for dioxin and other harmful substances?

This seems a much different level, which seems to be acceptable, one in a million versus one in 10,000. I don't have the number off the top of my head, 5 in 10,000, milligrams of exposure.

So that, I guess, is the crux of it, and how that can be dealt by the Nuclear Regulatory Commission without -- I don't know, but it's off of ours. That's why we have it here.

If this is something that could be done within the Nuclear Regulatory Commission, and to better protect the public, that's what would we would be interested in.

In other words, if the minimum regulation is exceeded, and I know there is a low achievable, which sounds very, good but it also doesn't have the requirements that it be adhere to.

As low as reasonably achievable is difficult to pin down. It's a subjective standard, I guess is the word I'm looking for, rather than an objective standard.

And if as low as reasonably achievable is half of the objective standard, then why not make the objective standard half, or a tenth, if that's what the claim is.

Am I making myself clear?

>>CHAIRMAN BOLLWERK: All right, thank you. Next would be Miscellaneous C, which was formerly Contention 4, failure to address the impact of terrorist attacks.

>>MR. ZELLER: Yes, I know that

the Supreme Court passed on review of the Ninth Circuit decision, and I'll just have to say as an observer, I don't know how it can be justified, outside of legal terms with regards to venue and what-not, how the Commission could justify it's decision to abide by that decision only within the place where it was decided.

>>CHAIRMAN BOLLWERK: Can I interrupt you one second. Move the mic a little closer. I think the court reporter is having some difficulties.

>>MR. ZELLER: Yes, sorry.

I would repeat; it's hard to understand how the Commission can justify, outside of the constraints of the -- I guess for want of a better term -- the legal discussion, that even within that time -- even within that frame, how can it be justified that it would only be adhered to within the

Ninth -- within that district where the decision was made in the Ninth Circuit. We think that's unreasonable.

>>CHAIRMAN BOLLWERK: All right.

>>MR. ZELLER: And the fact, the Supreme Court has let it stand, seems to me it should apply nationally.

>>CHAIRMAN BOLLWERK: All right. Miscellaneous E, which was formerly Contention 6, whether Bellefonte will limit atmospheric emission of radioactive.

>>MR. ZELLER: I think that one speaks for itself. Thank you.

>>CHAIRMAN BOLLWERK: All right. Then NEPA L, formerly Contention 14 , waste confidence, high level nuclear waste from a radiate fuel.

I think you mentioned this previously in our argument.

>>MR. ZELLER: Right. We feel

environmental report fails to provide sufficient discussion with environmental impacts here, and I've already stated the same.

>>CHAIRMAN BOLLWERK: All right. Contention FSAR, which was formerly a portion of contention, global warming impact to TVA License Application P, severe weather and carbon footprint.

>>MR. ZELLER: Yes. The only thing I would add to this is that in addition to reliance upon the design and control document, which is devoid of any discussion of the acceleration and its severe weather impacts, which is in the contention, also see in the July 11 request for information, the staff asking TVA to discuss and provide references for impacts of climate change on water supply, and this is on Page 4 of the RAI.

That's question 5.2-2, two questions

later, and 5.2-4, describe the origin for the temperature data collected from 1974 to 1990, and provide that data.

This is in reference to Section 5.2.2.2.2 -- four 2's in there -- of thermal impact, given the ongoing drought in the Southeast.

So we are -- there's outstanding questions here, which this contention is based on.

>>CHAIRMAN BOLLWERK: Anything further on that one?

>>MR. ZELLER: Pardon?

>>CHAIRMAN BOLLWERK: Anything further on that one?

>>MR. ZELLER: No. That's all right, Your Honor.

>>CHAIRMAN BOLLWERK: Then Contention N, formerly a load portion of Contention 15, global warming impact omitted from the TVA license regulation

carbon footprint.

>>MR. ZELLER: Also, same thing we said about.

>>CHAIRMAN BOLLWERK: In my opinion O, formerly part of Contention 17 -- sorry, formerly Contention 17, the inadequacy of the environmental reports of human -- analysis of human elements impact of radioactive disposal.

>>MR. ZELLER: Yes. I would add this is just to point out TVA's conclusions are not reasonable or supported by credible evidence.

We believe the evidence shows that human health impacts disposal this methyl fume from their proposal Bellefonte plant would be large and detail these contentions.

>>CHAIRMAN BOLLWERK: All right. And then I believe the last one is contention NEPA T, which is formerly

Contention 19, are the environmental reports in proper characterization of health effect from the uranium cycle to compare them to health effects of alternative energy sources. I think you made reference to this one previously?

>>MR. ZELLER: Yes.

>>CHAIRMAN BOLLWERK: If you like to reiterate that, this would be the time to do that, obviously.

>>MR. ZELLER: I would. Thank you, Your Honor.

19, Contention 19, likely incidence of cancer mortality is significantly in excess from the mortality of exposure to natural sources of radiation.

We're relying on our technical expert here, again, Dr. Majanie, and he has said, here applying the risk factors, that the annual expected cancers based on average males and females are cancer

incidence over years of operation would be 102 cancers. Cancer deaths over 40 years of operation would be 51.

We submit that this is not a small impact over this period of analysis is a large impact. Therefore, we feel that the contention demonstrates a genuine and material dispute regarding the adequacy of environmental report to address these environmental and public health impacts from the Bellefonte nuclear power plant, and the -- and to adequately weigh the relative cost benefits of alternative sources of energy which would not have that level of morbidity and mortality.

Beyond that, I think the contention stands for itself.

>>CHAIRMAN BOLLWERK: All right. Let me then -- again I offer you the opportunity if anyone has any questions about any of these that we've gone over?

All right. Let me then turn to the applicant and see if they have any argument or discussion they like to have on any of these contentions, as we've been going through them.

>>MR. BURDOCK: Thank you, Your Honor. I'll try to be brief.

The one issue that unites these nine contentions is that they are all outside the scope of this proceeding.

The scope of this proceeding is defined in the notice of hearing for this proceeding, which states that the hearing will consist of the application dated October 30th, 2007, filed by Tennessee Valley Authority.

So, therefore, this proceeding must focus on the actual application. And it's not a forum to attack any NRC issue with which the Petitioners disagree.

Additionally, as we mentioned before

regarding these challenges to the regulations, the Petitioners have not provided waiver requests or the required affidavits.

Additionally, the Commission has provided other factors to consider in determining these challenges, one of which is whether there are unique issues that are specific to that plant, and clearly these nine contentions could have made for any plant, and there are no unique circumstances with Bellefonte.

I'll try to briefly address some of Mr. Zeller's point.

He began with Contention 1, Miscellaneous A and discussed the human error. This contention is outside the scope because he's challenging issues that are in the Design Control Document. These issues are considered resolved in this proceeding.

Additionally, with contention -- another part of this, AFIA, Mr. Zeller himself claims that this is plainly outside the control of this proceeding when he's discussing the Energy Policy Act of 2005, and we agree with that, and it cannot support an admissible contention here.

Turning to Miscellaneous B regarding due process, Contention 2, this is a direct attack on the Commission regulations in 10 CFR Part 20 and are outside the scope of this proceeding.

Contention Miscellaneous C regarding terrorist attacks, the Commission has made it clear that the environmental impact of terrorist attacks do not need to be considered in this proceeding.

Contention 14, which is NEPA L, is a direct attack on the waste confidence rule, in 10 CFR, Part 5123, and is

therefore outside the scope of this proceeding.

Contentions FSAR C regarding global warming is also outside the scope of this proceeding, as it's a challenge to the Design Control Document itself.

Petitioners raised an RAI for the first time today. As we discussed earlier, those RAI's cannot by themselves provide support for an admissible contention.

Contention 17, which is also NEPA O, regarding Yucca Mountain, is clearly outside the scope of this proceeding. The Petitioners challenge the EPA regulation and the NRC's implementing regulations regarding those standards at Yucca Mountain, and this is clearly outside the scope of this proceeding.

Finally, Contention NEPA Q, regarding the health effects of the uranium fuel

cycle, is outside the scope as it's a challenge to NRC policy.

That's all I have. Thank you.

>>CHAIRMAN BOLLWERK: Let me interrupt one second. I think I may have missed one when I was going through. I think I did.

Let me go back to Mr. Zeller. I apologize.

There was also a NEPA P, which was formerly Contention 18, the inadequacy of environmental reports, reliance on Table S3 regarding radioactive affluence from the uranium fuel cycle. I apologize.

>>MR. ZELLER: Yes, that's the one. We had discussed that.

>>CHAIRMAN BOLLWERK: You thought there was something missing and you couldn't quite put your finger on that.

>>MR. ZELLER: We had discussed that.

>>CHAIRMAN BOLLWERK: I Apologize for

that, sir.

>>MR. ZELLER: That's all right. Thank you.

>>CHAIRMAN BOLLWERK: We'll come back to you all. Thank you.

Go ahead, sir.

>>MR. ZELLER: We're just requesting that the contention be admitted and held in abeyance pending the outcome of the general proceeding.

>>CHAIRMAN BOLLWER: All right, anything else?

>>MR. ZELLER: I would just say briefly, with regards to the rule being subject to an attack in the adjudicatory proceeding under 10 CFR 2.3.35, that there is a sole exception there, which says special circumstances such that would not serve the purposes for which the rule was adopted.

In other words, if the rule is not --

the purpose of the rule is not -- the purpose of the rule, the spirit of the law is somehow undermined or negated; that the rule, the purpose of the rule should be somehow dealt with at some level.

Not only at the rule making level but at the petition level or at the licensing level because it does have an impact here. The rules are made in order to have an impact on the licensing procedure.

So, this is a juncture we've come to before, where for one reason or another it seems that it is not appropriate to bring up an issue at a licensing procedure, and at some other point in time the rule making procedure is also not the place to bring it up.

I don't know that's the case here, but sometimes it does seem like a little

bit like grass being at a cloud because there doesn't seem to be a pigeonhole place for concerns raised by the public or other interested parties to raise an issue.

It seems to me that sometimes we -- well, we appreciate your concerns. You really should go talk to somebody about this problem.

And so, therefore, there's no cop on the beat, in other words.

And I did -- I would just also point out and bring up that the -- the recent decision which I mentioned before in the circuit court, about NRC must consider new and significant information regarding environmental impacts before renewing the Nuclear Regulatory Commission's power hadn't's license.

To generic rule making it challenges parties concerns about each of you and

significant information on an individual licensing decision.

The NRC may not refuse to provide at least one path by which the challenging party may establish a connection between the rule making and the licensing proceeding.

This is just falling through the cracks. So, if there is a sincere reason to dealing with some of the concerns we have raised, if we have not been done as eloquently as they might, and I admit there are -- we are human, and so we also suffer from human error from time to time, and so there needs to be some way to deal with these concerns, if you agree they are legitimate in some way, shape or form and are not simply put aside. I depress that's my parent at this point.

Any of these issues are raised by citizens living in this area who have

genuine concerns, and if they don't fall into one category or another, the Commission we feel should at least make some attempt, sincere attempt, to deal with them a some level. Either at the Commission staff level. If not, during the Atomic Safety Licensing Board decision, and this is apart from our prospective request for rule making.

This is more along the lines of the kind of the bread and butter, or the many issues that we have raised here in this 109-page petition.

We do appreciate you hearing our concerns.

>>CHAIRMAN BOLLWERK: Thank you. Let's go back to the applicant and see if you had any comments on that particular contention.

>>MR. BURDOCK: Thank you, Your Honor.

Regarding Contention 18, I would say that contention is outside the scope and is acknowledged by that as outside the scope by the Petitioners in their petition to intervene.

Petitioners are correct that Section 2.335 does provide certain exceptions but Petitioners have not satisfied those exceptions for any of these contentions.

Section 2.335, Paragraph B, requires a request for a waiver, which must include an affidavit that states with particularity the special circumstances alleged to justify the waiver or exception requested.

Additionally, the Commission, in the Millstone decision, which we discuss in our briefings, states that there's other standards that must be satisfied, one of which I already mentioned, that there are circumstances that are unique to that

facility rather than to a large common class of facilities, and those standards simply have not been met in these proceedings for these contentions.

Turning back to Contention 18, the Petitioners rely upon --

>>CHAIRMAN BOLLWERK: Contention 19?

>>MR. BURDOCK: Contention 18.

>>CHAIRMAN BOLLWERK: All right. I thought we were still talking about Contention 18.

>>MR. BURDOCK: I think that was the one that --

>>CHAIRMAN BOLLWERK: Did I -- I think I'm confused.

>>MR. BURDOCK: I did make a comment on 18. I'm turning back to it.

>>CHAIRMAN BOLLWERK: All right..

>>MR. BURDOCK: The Petitioners discussed this First Circuit decision,

Massachusetts versus NRC, and Mr. Frantz has already discussed how that doesn't apply here.

It does not allow the Petitioners to hold any contentions in abeyance in this proceeding pending the rule making. For these contentions, the relief the Petitioners request is to submit a ruling-making petition but that does not support admissibility of these contentions.

Thank you.

>>CHAIRMAN BOLLWERK: All right. Thank you.

Let me turn to the staff. Any comments that you all have on any of these contentions that Mr. Zeller has talked about?

>>MS. HODGDON: No, we have comments. We briefed --

>>CHAIRMAN BOLLWERK: You may

need to move the mic a little closer.

>>MS. HODGDON: Okay. Thank you.

No, we have none. We briefed Massachusetts, the case cited in our -- several places, I think, in our response, and he said much of the same thing the applicant did regarding the fact it is for the applicant to hear, and that's all the staff has to say on all these contentions.

>>CHAIRMAN BOLLWERK: All right.

Anything that the Board Members want to say? No?

All right, sir. Anything further you want to say in terms of what the applicant or the staff relies on in these hearings.

>>MR. ZELLER: Thank you, Your Honor.

The only thing I would add is that I do understand this is a give-and-take

process, and I honor the contributions of the Applicant here in dealing with some of the contentions we have raised.

I do still have an outstanding question, which relates to the Nuclear Regulatory Commission's staff itself, and I appreciate they are also doing their best under difficult circumstances, with limited resources, but at some point in time I hope to hear something tantamount to "on the other hand" from representatives of the Nuclear Regulatory Commission staff.

Whether it's in regard to Contention A, well, we agree with the applicant in this case; on the other hand, we agree with the petitioners for this reason.

To be in lockstep with the applicant over the course of this proceeding from the petition to the reply I believe it's passing strange. And so with all due

respect, like I say, to people who are doing the best they can with limited resources, I do not fathom how that could be the case every single time.

Plainly, from time to time the Atomic Safety Licensing Board -- other boards, should say, have admitted contentions and we participated in some of those proceedings.

So, there must be some legitimate contentions out there, but I, again, I cannot understand why the NRC staff seems to agree that, yes, this is a contention that should be admitted.

That's all I have to say about that subject, and I appreciate very much the opportunity to be heard in Scottsboro with you here today.

We're pleased that the Panel has come to the community which has greatest interest in the decision which is before

you-all. So, I appreciate you for coming to the community, which is most effected.

Thank you very much.

>>CHAIRMAN BOLLWERK: Thank you, sir.

(Audience Clapping.)

>>CHAIRMAN BOLLWERK: I'll just make one observation. There are times that the Staff does agree the contention is admissible. I have seen it myself. It does happen. It didn't happen in this case but it does happen from time to time, so. Again, the Staff makes its own judgment about those things.

At this point we've concluded basically hearing from the participants about the admissibility of the contentions, as well as the question of standing of BEST and the question of the timeliness of the Petition.

Our job at this point now will be to

take all information we've received both in writing and orally and make a decision with respect to each one of these contentions as well those two issues.

Under the rules we have 45 days from the time the reply is filed within which to do that. Or alternatively if we are not going to make that schedule, we need to let the Commission know what the problem is and when we expect to do so, and we'll either make the 45 days or we'll tell the Commission.

That's basically the way we approached it in the past and that's what we'll do in this case.

There were a couple of administrative matters that I wanted to mention to the parties.

Again, several of these deal with sort of contingency if we were to admit a contention we need to think about a few

things. We're not ruling one way or the other on anything today but simply looking ahead at possibilities.

Before I mention that, there's one thing, Mr. Zeller. I still don't have a notice of appearance from you and we asked for one in the last order that we issued or one of the last orders we issued from you by the end of last week.

You had indicated previously you had submitted one and I think maybe on the 1st of April. I'm losing the bubble on that. We have searched the Agency's records and cannot find it.

So I guess I would ask simply that you either resubmit the one you submitted previously, if you would, or just submit a new one.

Again, there is a letter, I think, that was submitted by your co-representative that indicated you were

sending a notice of appearance but we haven't been able to find, and we've talked with the Office of the Secretary. We checked ourselves in the record to try to find it and it isn't available.

So, again, it's not -- it's simply a question of resubmitting what you already did, that would certainly be appropriate, or just put together a new one that conforms with the rules and simply submit it and then we'll have it on the record.

>>MR. ZELLER: I'll do that.

>>CHAIRMAN BOLLWERK: I appreciate that.

In terms of the scheduling and discovery matters, assuming a contention is admitting, in setting Section 2.322(d) schedule, the Board will assume that merits determination with respect to any admitted contentions would be based on an evidentiary hearing must await the

issuance of the staff's FEIS or FESR. That's fairly standard to Commission practice.

I know, for instance, in the Vogtle ESP proceeding we asked the Commission about the possibility of moving forward before the FEIS, the Final Environmental Impact Statement, was completed.

We were told fairly definitively that that was not the current practice, and so we would need to wait until the FEIS or the FESR were issued before we could go to evidentiary hearing.

Now I also say in the Vogtle case we also moved forward on summary disposition motions also after the DEIS in that case since there were environmental contentions that were issued.

So there is that possibility, and one of the things is we said if we were to set a schedule, we would be looking at

that sort of submission if the parties were interested in seeking summary disposition, and we did do that prior to the issuance of the FEIS after the DEIS came out.

After the Staff had indicated what its position was relative to -- and the DEIS relative to that particular issue in general, and the applicant did submit an additional -- or submitted a summary disposition motion. So that is a possibility.

Assuming contentions admitted, the parties should be aware that general discovery provisions under Section 2.3366, including the need for the NRC staff to provide a hearing file, will be activated regardless of whether there's any Board order or party discovery request. That's in the rules.

Also, relative to general discovery,

the parties may wish to discuss whether they want to prepare and produce privilege logs or waive the production and the preparation of such logs.

Again, I would point you to the Vogtle ESP proceeding if you want to look at an example where there was action agreement among all the parties to waive the production of a privilege log, which you may wish to consider.

I believe at this point, that brings us to a close in terms of things I need to talk about administratively.

On behalf of the Board, I do want to thank the participants today for your presentations to us. I think we all found them, we've talked about them at lunch time, in the breaks. We found them to be useful, to clarify things in our minds as to what your positions were.

We found them uniformly pretty much

across the board to be very useful and excellent, and we do appreciate very much what you've provided us with today.

So on behalf the Board I want to thank all of you for the presentations you made. It's been a long day. We started 9:00 and we're about to wrap up close to 4:15, but you've hung in there with us today and we very much appreciate that.

I would mention that this proceeding is being web streamed. I mentioned it before. As we come to a close, I would again ask anyone that's watching the web streaming, that's interested in providing us with comments, the e-mail address is web stream -- I'm hearing some beeping here.

Someone have something on?

I heard something go off. All right.

The e-mail address is

WebStreamingMaster -- I better get my -- hold on -- log here, make sure I don't mess this up.

WebStreamMaster, one word, .resource@nrc.gov.

WebStreamMaster.resource@nrc.gov.

Again, comments, negative, positive, whatever you have to say about the accessing and use, having the opportunity to watch this proceeding, be it web streaming, would be very useful to the Board and to the Commission.

Actually when the pilot is done we will be reporting to the Commission on how things went and they'll make a decision, in consultation with the Board, the Panel rather, the Licensing Board Panel, as to how we've move forward on it.

So your comments would be appreciated and will be utilized.

Some thank yous that we need to give are very important to us.

We thank very much the City of Scottsboro for making the Scottsboro Goosepond Civic Center available to us. It's been a good venue for our hearing.

We especially want to thank Staffers Debbie Woods and Larry Bowen, who have been really terrific. Mr. Bowen was here last night till probably 10 o'clock, I think, working with our web streaming contractor. So he really put in a lot of hours. And Debbie also helped us out a lot in putting this proceeding on.

Also, to our Panel IT specialist, Joe Doucher, who has been hanging in there in terms of the web streaming that we've been doing. We really appreciate his efforts, as well as to the folks from Onstream Media, who are the ones working with us on our pilot project.

To Erica LaPlant and SherVerne, our law clerk and administrative staff person, we thank you very much for everything you've done.

And also to Lorraine Carter and our realtime court reporter. As the web streaming has been going on, there's actually been captioning of a type going out over the web streaming that we've been doing. And they will also be producing transcript that I mentioned earlier, that will be available, publicly available, on the NRC www.nrc.gov in the electronic hearing docket.

Again, if you missed part of the web stream, you want to find out what happened, please feel free to go to the NRC web stream within the next seven days and the transcript will be available for anyone to review.

At this point, any Board Members have

any comments they want to make?

Judge Baratta?

>>JUDGE BARATTA: I want to second the appreciation we have for the support staff here. Larry did an excellent job and we appreciate that.

>>CHAIRMAN BOLLWERK: All right.

Judge Sager?

>>JUDGE SAGER: I also like to thank you, say thank to you the people of Scottsboro for their hospitality.

>>CHAIRMAN BOLLWERK: At this point, there's nothing else for the Board, again, we thank all of you, participants, the folks in the audience today, that took the time to come and see what this was all about. We hope you found it interesting.

Also the folks that took part in our web stream.

The case at this point stands

submitted for decision by the Board in terms of the contention admission standing and timeliness issues that we have before us, and the Board stands adjourned.

I thank you very much.

(Whereupon, the proceedings were concluded.)