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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

+ + + + +

Scottsboro, Alabama

+ + + + +

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

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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
- 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.

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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 the Blue Ridge Environmental Defense League and Bellefonte Efficiency and Sustainability Team and BEST Chapter, also referred to as 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

1 and Sustainability Team nuclear facility located some
2 6 miles Northeast of Scottsboro, Alabama, the City where we
3 are conducting today's prehearing conference.

4 In a June 12, 2008 memorandum, the secretary of the
5 Nuclear Regulatory Commission, acting on behalf of the
6 Commission, referred joint petitioners hearing request to
7 the Atomic Safety Licensing Board Panel for the appointment
8 of a licensing board.

9 On June 18th, 2008, the Licensing Board Panel's Chief
10 Administrative Judge issued a notice designating this
11 three-member licensing board to conduct the proceeding.

12 By way of background regarding the NRC licensing
13 processes as it applies to Combined Operating License
14 applications, under Part 52 of the Agency's regulations, if
15 issued, a COL provides authorization from the NRC both to
16 construct and with conditions operate a nuclear power plant
17 at a specific site in accordance with agency regulations.

18 This can be contrasted with the process used for the
19 licensing of the 100 plus commercial nuclear power plants
20 currently operating in the United States, which under Part
21 50 of the Agency's regulations, will require to apply for
22 and obtain separate construction and operating

1 authorizations.

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

11 At the same time, the Atomic Energy Act and agency
12 regulations provide an opportunity for interested
13 stakeholders, including individual members of the public,
14 public interest groups and other organizations and
15 governmental entities, including state and local
16 governmental bodies and Native American tribes, to seek a
17 hearing regarding a COL application in which they can
18 litigate health and safety, environmental or common defense
19 and security concerns regarding the COL application.

20 And with respect to the conduct of this adjudicatory
21 process, independent administrative judges appointed by the
22 Commission as members of the Atomic Safety and Licensing

1 Board Panel are designated to serve on a three member
2 licensing board such as this one to preside over any
3 proceedings regarding the contested matters raised in the
4 hearing petition.

5 The Panel's administrative judges do not work for or
6 with the NRC staff relative to the staff's license
7 application review. Rather, we are charged with deciding
8 whether the issues proffered by those requesting a hearing,
9 such as the joint petitioners, are admissible, and for those
10 issues that we find to be litigable making a determination
11 regarding their substantive validity in terms of the grant
12 conditioning or denial of the requesting Combined Operating
13 License.

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

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

1 to whether BEST has standing or the requisite legal interest
2 in this proceeding to be admitted to -- as a party, excuse
3 me.

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

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

17 Before we begin hearing the participants' presentations
18 on these matters, I'd like to introduce the Board Members.

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

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

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

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

8 Why don't we start with the joint petitioners, then
9 move to the Applicant and finally to the NRC staff. If you
10 would, sir.

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

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

16 Next to me is Sara Barczak who's representing one of
17 the joint petitioners, Southern Alliance for Clean Energy.
18 Thank you, sir.

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

21 >>MR. FRANTZ: My name is Steve Frantz. I'm an
22 attorney with the firm of Morgan, Lewis and Bockius in

1 Washington. We are co-counsel for TVA. To my right is my
2 associate Stephen Burdick and to my left is Ed Vigluicci who
3 is counsel for TVA.

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

6 >>MS. HODGDON: I am Ann Hodgdon for the NRC
7 staff.

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

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

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

20 As my previous comments indicated, during today's
21 conference we will only be entertaining presidents --
22 presentations, excuse me, from these participants regarding

1 the standing period petition time limits and contention
2 admission issues that I outlined previously.

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

11 In that issuance or subsequent notice, the Board will
12 outline the times, places and conditions of participation
13 relative to any opportunity for oral limited appearance
14 statements.

15 In the interim, as the Board noted in its July 9th,
16 2008 issuance in this case, any member of the public can
17 submit a written limited appearance statement providing his
18 or her views regarding the issues in this proceeding.

19 Those written statements can be sent at any time by
20 regular mail to the Office of the Secretary, U.S. Nuclear
21 Regulatory Commission, Washington, D.C. The ZIP code
22 20555-001. They should be sent to the attention of the

1 rulemakings and adjudication staff or they can be sent by
2 e-mail to hearing docket (that's all one word)
3 hearingdocket@NRC.gov. That's by e-mail.

4 A copy of the statement also should be provided to me
5 as the Chairman of this Atomic Safety and Licensing Board by
6 sending it by regular mail to my attention at the Atomic
7 Safety and Licensing Board Panel, Mail Stop T-3F23, U.S.
8 Nuclear Regulatory Commission, Washington, D.C. 20555-001 or
9 by e-mail to Paul Bollwerk, last name B-O-L-L-W-E-R-K, it's
10 Paul.Bollwerk@nrc.gov.

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

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

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

1 the webcast.

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

8 To the extent anyone viewing this proceeding via the
9 Internet has comments regarding the technical aspects of
10 this webcast or its efficacy as a tool for providing broader
11 public access to the adjudicatory hearing process, those
12 comments can be directed by e-mail to the following address.
13 This is a little bit long, so I will say it a couple of
14 times.

15 Its webstreammaster (that's all one word)
16 websstreammaster.resource@NRC.gov.

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

20 I would note that although today's proceeding is
21 available via the Web for live viewing only, a verbatim
22 transcript of this conference will be available for viewing

1 and download within seven days on the NRC website in the
2 reactors materials and other hearings portion of the
3 Agency's electronic hearing docket, which can be found under
4 the Electronic Reading Room tab on the Agency's home page,
5 which is www.NRC.gov.

6 Finally, as an informational matter, I would note that
7 under the current provisions of the Atomic Energy Act,
8 regardless of the admissibility of any of the joint
9 Petitioner's contentions, the Agency must conduct a separate
10 mandatory hearing concerning the TVA Combined Operating
11 License application for Bellefonte.

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

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

22 Returning then to the matters before the Board today,

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

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

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

15 Toward the end of the allocated argument time, the
16 Board will be providing the participant counsel and
17 representative with notice of the need to finish his or her
18 presentation.

19 Also, as we noted in our July 21st issuance, in making
20 their arguments the petitioners -- I'm sorry; the
21 participants should be aware or bear in mind that we have
22 read their pleadings and as such they should focus their

1 presentations on the critical points and controversy as
2 those have emerged as a result of the various participant
3 filings over the last eight weeks.

4 Finally, at some juncture we'd like to have a brief
5 discussion regarding some of the administrative details
6 involved in this proceeding.

7 And relative to administrative matters I would note
8 that this is my cell phone, which I have turned off. I'm
9 sticking it in my pocket and I won't turn it on again until
10 we have a recess.

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

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

1 Unless the participants have anything at this point
2 they need to bring to the Board's attention, let's begin
3 with the joint Petitioner's presentation regarding the
4 issues of the standing of BEST and the timeliness of their
5 hearing petition.

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

9 >>CHAIRMAN BOLLWERK: Yes, sir.

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

16 >>CHAIRMAN BOLLWERK: We can take that under
17 advisement. I suspect, given what we've said, that will not
18 occur, but we're more than willing to take their written
19 appearance statements and put them in the record.

20 I'll talk with the Board Members at the next recess.
21 If they do have something in writing and if they need to,
22 we'd be glad to provide it. If they need some paper and

1 pencils that they want to write something down, we'll put it
2 into the record and put it in the hearing docket when we get
3 back to the Rockville area.

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

10 All right. Would you like to talk then about the
11 standing of BEST in this proceeding as well as the
12 timeliness of the hearing petition?

13 >>MR. ZELLER: Yes.

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

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

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

20 >>MR. ZELLER: About timeliness and standing?

21 >>CHAIRMAN BOLLWERK: Yes.

22 >>MR. ZELLER: Okay. Yes, sir. Blue Ridge

1 Environmental Defense League as you've read in our brief and
2 on our petition is a unitary organization. The Bellefonte
3 Efficiency and Sustainability Team is part and parcel of our
4 organization.

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

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

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

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

6 >>CHAIRMAN BOLLWERK: The members of the
7 organization used a sort of a form affidavit, which is
8 nothing wrong with that. It's certainly probably a good
9 idea and very efficient in terms of getting the information
10 to everyone.

11 That affidavit only mentions the League. It doesn't
12 say anything about BEST. It doesn't say that BEST has their
13 authority to represent them. None of the affidavits you
14 provided us mention BEST at all.

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

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

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

1 future for clarity sake.

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

4 >>JUDGE BARATTA: You made a statement that BREDL
5 and BEST are the same legal entity. I'm not sure I quoted
6 you exactly.

7 Could you just explain that? Specifically, BREDL has
8 an Article of Incorporation, I assume, somewhere.

9 >>MR. ZELLER: Correct.

10 >>JUDGE BARATTA: Does BEST have a separate
11 Article of Incorporation anywhere?

12 >>MR. ZELLER: No.

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

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

19 >>CHAIRMAN BOLLWERK: Thank you, Mr. Sager. All
20 right then. If you'd like to move to the issue of the
21 timeliness of your petition.

22 >>MR. ZELLER: Thank you. Yes. Regarding

1 timeliness, we have -- there has been much back and forth
2 about this, and the first thing I would like to say is that
3 we certainly do appreciate the staff of the Office of
4 Adjudications and Rulemaking in their diligence with regards
5 to this. We know it was a difficult process.

6 I think what it boils down to was the size of our
7 submission on the order of 50 megabytes with the associated
8 petitions -- petitions declarations, I should say, with over
9 40 scanned declarations. It turned out to be quite a large
10 document in addition to the 109 pages of the petition
11 itself.

12 Simply stated, when we hit the button to submit that by
13 the Electronic Information Exchange, it seems like we were
14 wading through molasses. And it ultimately did go through,
15 but actually it took on the order of a week of back and
16 forth to get the documents concatenated and attached in a
17 method which conforms with the Electronic Information
18 System's capacity.

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

21 >>MR. ZELLER: We have a broadband connection
22 through our local internet service provider. It's high

1 speed, 400 megabyte, whatever.

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

4 >>MR. ZELLER: Correct.

5 >>CHAIRMAN BOLLWERK: The rule basically says that
6 the pleading has to be finished -- submitted -- you have you
7 to perform the last act to get the pleading submitted in its
8 entirety before the time deadline, which is 11:59 p.m.

9 >>MR. ZELLER: Precisely.

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

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

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

1 >>CHAIRMAN BOLLWERK: All right. Any questions
2 from any of the Board Members? Anything further you want to
3 add on that?

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

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

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

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

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

15 In their reply, the petitioners -- and also today --
16 their primary argument is that BEST and BREDL are the same
17 organization. We believe this argument actually supports
18 TVA's position.

19 If the two organizations are the same, then there's no
20 reason for them to participate as separate parties in this
21 proceeding with the rights of separate parties in this
22 proceeding.

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

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

7 >>MR. BURDICK: We have no problem if they
8 participate as part of BREDL. Our concern is that if they
9 participate as separate parties in this proceeding with the
10 rights of separate parties, at this point they seem to be
11 acting in a unified method, but in the future there could be
12 disparities.

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

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

21 There could be other issues with discovery rights,
22 filing separate pleadings, and anything associated with them

1 acting as an individual party, we feel would not be
2 appropriate since they have not demonstrated standing.

3 >>CHAIRMAN BOLLWERK: Any questions from the Board
4 Members? All right. Nothing.

5 >>MR. BURDICK: Turning to the second issue of
6 timeliness, the joint petitioners have not filed a timely
7 petition in this proceeding. The Electronic Information
8 Exchange notices make it clear that the documents did not
9 arrive until June 7th, after the filing deadline.

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

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

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

21 The petitioners filed their joint petition in two parts
22 and the second part clearly did not arrive and was not

1 transmitted prior to filing the deadline; therefore, the
2 entire pleading was not timely and should be rejected on
3 those grounds.

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

8 Instead, their discussion of these large documents that
9 had to be broken down into separate parts before they could
10 be successfully filed, deal with issues that occurred many
11 days after the initial filing and have no relevance to the
12 timeliness of their initial pleading.

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

16 >>CHAIRMAN BOLLWERK: Would the Applicant able to
17 read the pleading the next morning in the petition -- in the
18 accompanying declarations?

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

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

1 in?

2 >>MR. BURDICK: Actually, I was there waiting for
3 that. But we were able to obtain it after it arrived
4 through the Electronic Information Exchange system.

5 >>CHAIRMAN BOLLWERK: So, the two e-mails that
6 came in, when you saw them the next morning, had what you
7 needed, just that the time they were marked with is time
8 past the deadline?

9 >>MR. BURDICK: That's correct.

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

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

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

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

20 But if the contention is admitted in this proceeding,
21 then the harm would be that the difference between that and
22 the petition being admitted and/or rejected and the

1 associating proceeding with them.

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

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

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

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

1 >>JUDGE BARATTA: Again, you never answered my
2 question, but let's move on.

3 >>CHAIRMAN BOLLWERK: Let me just make one other
4 question with you. In the Federal Register Notice for the
5 final rule it dealt with the question of e-filing. Volume
6 72 of the Federal Register Page 49, 143. This would have
7 been August 28th, 2007.

8 It makes the point that "making completeness of filing
9 dependent upon receipt of the transmission would subject
10 participants to the vagaries of electronic transmission,
11 which may include such problems as the filer's Internet
12 connection being slower on the day of the filing, the
13 filer's Internet service disconnection -- I'm sorry; the
14 filer's Internet service disconnecting during transmission
15 or the filer's connection to the e-filing system failing to
16 connect because of the allotted time for the connection to
17 file."

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

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

21 >>MR. BURDICK: We really have not seen any proof
22 that they actually filed before the deadline, but regardless

1 of whether they clicked the submit button with the first
2 part of the petition, the second part could not have been
3 filed until the first part arrived through their computer
4 system.

5 And so, the second part would not have been submitted
6 prior to the deadline.

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

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

13 >>MR. BURDICK: That's correct. And Section 2.302
14 both D and E consider the filing complete when the entire
15 filing has been submitted. And in fact, Paragraph E
16 specifically states notwithstanding Paragraph D, which
17 Petitioner is relying on. But that is the case.

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

20 Let's turn then to the staff. One of the things I'd
21 like to hear about is the point you made in your footnote
22 about the difference between the language in the notice of

1 hearing versus the rule itself.

2 >>MS. HODGDON: Could I ask a question? Exactly
3 which point?

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

9 >>MS. HODGDON: Well, actually, yes, we did make
10 that point and I don't entirely understand the question
11 regarding it.

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

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

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

21 So, I don't believe that the Commission meant to give
22 the petitioners an extra hour, having already given them an

1 extra 59 days.

2 I think that it was meant to be Eastern Time, which
3 when this petition filed was Eastern Daylight Time not
4 Eastern Standard Time, and therefore we probably should have
5 corrected that, but I don't -- I think that's harmless
6 error.

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

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

17 You use terms like, well, I think that the Commission
18 wanted this or that. The fact of the matter is notice of
19 Eastern Standard Time, which means that it would be the same
20 as 12 midnight here; in other words a one hour time
21 difference. So, anything filed up until 1:00 a.m. Eastern
22 Daylight Time would meet that criteria. Is that not true?

1 >>MS. HODGDON: The petition was not filed here.
2 It was filed in North Carolina, which was also on Eastern
3 Time.

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

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

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

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

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

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

22 Here is the specific notice that says it has to be

1 filed by this time. Wouldn't that govern over the more
2 general rule, which simply says Eastern Time? I guess
3 that's the point.

4 >>MS. HODGDON: I'm still not sure which notice
5 we're talking about. The correction was not made over
6 the -- in the second notice, which corrected the first
7 notice by adding things that were not in the first notice.

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

11 I would also argue that petitioners had no notion of
12 any of this and they believe that they needed to file by
13 11:59 Eastern Time. That would have been Eastern Daylight
14 Time at the time it was filed and not Eastern Standard Time.

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

17 >>JUDGE BARATTA: So?

18 >>MS. HODGDON: Excuse me?

19 >>JUDGE BARATTA: So?

20 >>MS. HODGDON: So, my argument is that the staff
21 may have corrected it yet once again with yet another notice
22 and did not. That's my point. It was filed by the

1 Commission and was not filed by the staff.

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

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

12 >>MS. HODGDON: We did the best that we could do
13 with that under the circumstances.

14 Also, we made the points that have just been made by
15 the Applicant about the non-timeliness of it citing 2.302
16 and to 2.306.

17 But to answer the question asked by Judge Baratta about
18 the harm that was done, there's no need to show harm here
19 because 2.309 sees the non-timely filings will not be
20 entertained absent a determination by the Commission on the
21 good cause factors. So, one does not need to show harm
22 here.

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

6 >>CHAIRMAN BOLLWERK: They need to be distributed
7 to the parties involved.

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

15 And then skip down a bracket and go to the third one,
16 1, 2, 3 -- that is the point I should say at which
17 Mr. Zeller accessed the system. In other words, he entered
18 his private key and he was on the system then, and when --
19 it acknowledged his presence he was on the system.

20 He did that at 23:58:22. Then you skip down one. This
21 is the earliest date that he could have hit -- the earliest
22 time, I should say, that he could have hit the submit

1 button: Friday, June 6th, 23:59:35; 35 seconds late, and
2 that would not seem to be a lot, but the rule says it's a
3 non-timely filing.

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

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

14 So, what happened there --

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

19 >>MS. HODGDON: I didn't have it. I'm sorry. I
20 wasn't allowed to answer anything in the reply. I was
21 merely -- the staff was told to answer with regard to
22 timeliness. So, I used what -- everything that the

1 Applicant had said of regarding it's not meeting 2.302(d)
2 and not having been submitted in one piece. And everything
3 in 2.306, about it having to be filed by 11:59, et cetera.

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

6 >>MS. HODGDON: Tom Ryan gave it to me.

7 >>CHAIRMAN BOLLWERK: And Tom Ryan is an NRC
8 contractor that deals with e-filing?

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

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

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

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

21 >>MS. HODGDON: I'm aware of that. I want to
22 address the BEST matter. As you know, we agree with what's

1 been said regarding BEST not having standing.

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

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

13 Then you go to the last one. All these things match
14 up; these two filings. The first, yes, the -- I have them
15 marked on a copy that I have, but I don't think you'll have
16 any trouble finding them.

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

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

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

4 12:07:41 seconds; that's when the e-mail was sent, et
5 cetera. This is the recording of the e-mail.

6 >>JUDGE BARATTA: All right. Let me stop you
7 there. I have a very specific question. You say you got
8 this information from Tom Ryan. Did this come off of the
9 NRC web server?

10 >>MS. HODGDON: It came off and it's public
11 information.

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

14 >>MS. HODGDON: Yes, it did.

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

17 >>MS. HODGDON: No, I did not.

18 >>JUDGE BARATTA: So, how do you know that between
19 SkyBest's portal and this there was non-delay?

20 >>MS. HODGDON: There was no delay.

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

1 >>CHAIRMAN BOLLWERK: One of the things that you
2 will recognize is that with the internet, stuff happens.
3 Stuff happens.

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

8 >>MS. HODGDON: Yes.

9 >>JUDGE BARATTA: And then that ISP server goes to
10 some other node on the Internet, which may in turn go to
11 another node which eventually connects into here. Right?

12 Well, without seeing where those messages were
13 received, as we go through that daisy chain, this is
14 meaningless. Is it not?

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

17 >>MS. HODGDON: SkyBest's server --

18 >>JUDGE BARATTA: That's their server.

19 >>MS. HODGDON: It received it exactly the same
20 time that everybody else received it.

21 >>JUDGE BARATTA: Are you certain of that?

22 >>MS. HODGDON: Yes, I'm absolutely certain

1 because I received it.

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

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

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

7 >>MS. HODGDON: -- I would we willing to say that
8 SkyBest was served at the same time I was because that is
9 way the server works. It services everybody at the same
10 time.

11 >>JUDGE BARATTA: That's fine. I don't want to
12 argue with you, but that is not the way the Internet works.

13 >>CHAIRMAN BOLLWERK: Anything further?

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

21 Here the -- there could be -- I don't see how there can
22 actually be any argument. In fact, these things are all

1 matched up, you can easily see. And it's instantaneous is
2 what it is.

3 >>CHAIRMAN BOLLWERK: But that's -- I don't mean
4 to interrupt. That's Dr. Baratta's point. It's
5 instantaneous if everything connects up, but sometimes
6 things don't connect up and that's his point, I think.

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

13 >>MS. HODGDON: That is true and several other
14 things are also true regarding that.

15 In one proceeding, I think Indian Point, even though in
16 Indian Point there was an argument about whether meta data
17 is admissible, but the meta data from the Petitioner's
18 server was in fact requested.

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

22 >>JUDGE BARATTA: I'm not talking about his

1 computer. I'm talking about his ISP's computer, which I
2 don't know, but I would assume it is also set to either GMT
3 or Central Standard Time.

4 >>MS. HODGDON: It's set to Eastern Time, whatever
5 that might be.

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

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

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

11 >>CHAIRMAN BOLLWERK: Anything further on this
12 from the staff at this point?

13 >>MS. HODGDON: The staff has nothing further.

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

16 All right, Mr. Zeller.

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

1 whatever.

2 With regards to what the document which we have just
3 been handed, I think this shows that we, in fact, are
4 timely. It begins on Friday, June 6th, 23:58, which would
5 be timely. I have a question.

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

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

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

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

20 >>MR. ZELLER: The large document it took --
21 taking a long time. It wouldn't go through quickly and, so,
22 I don't know. I don't have any explanation for that. We

1 did submit a further -- those were declarations. Because
2 they were so large, and it just -- happen to have trouble
3 with it.

4 This should have taken a matter of seconds to go. When
5 I have used the Electronic Information Exchange before, it's
6 a matter of seconds between sending the document and getting
7 a reply notice through the e-mail or an indication from the
8 EIE itself that your document has been submitted even before
9 you get the e-mail notice that goes out.

10 This was a very large document with many scanned
11 declarations. So, we did submit that in two separate parts.
12 The second part was, in fact, additional declarations of
13 standing. Some of the declarations of standing were
14 attached to the first part, but that's the way we did it.

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

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

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

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

21 >>JUDGE BARATTA: Thank you.

22 >>CHAIRMAN BOLLWERK: Let me just clarify one

1 thing. It sounded like your intent was to submit two
2 separate parts, the petition and the declarations. You hit
3 the button and nothing happened for some time, and then you
4 just -- you went back in, took the -- went back into the
5 site, got the declaration, loaded them and then hit the
6 button again?

7 >>MR. ZELLER: Correct.

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

11 >>MR. ZELLER: Correct. Exactly.

12 >>CHAIRMAN BOLLWERK: Okay. All right. Anything
13 further? Anyone? Okay.

14 Thank you very much for your comments and your
15 observations on those issues.

16 Let's go ahead then and move on to what has been
17 labeled and we had some relabeling of contentions, but we'll
18 give both designations so it's clear to everyone.

19 FSAR(b), which was formerly Contention 3, this -- the
20 title of this contention was plant site -- excuse me; "Plant
21 site geology is not suitable for nuclear reactors. Geologic
22 issues are not adequately addressed".

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

3 >>MR. ZELLER: If I might, I have just a brief
4 note to make before we begin to address that specific issue,
5 if I might?

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

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

15 Note number two is regarding Table S3, which is
16 referenced in our in our petition, we are working on
17 rulemaking there and we will submission -- petition, I
18 should say, rulemaking petitions, which we will submit as
19 soon as possible.

20 >>CHAIRMAN BOLLWERK: Just so I understand, you
21 are planning on submitting a petition dealing with waste
22 confidence or you're awaiting the NRC taking some action on

1 waste confidence?

2 >>MR. ZELLER: Well --

3 >>CHAIRMAN BOLLWERK: Because you're right, there
4 has been - at least the Trade Press has indicated - that the
5 NRC may well be initiating a waste confidence rulemaking at
6 some point in the near future.

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

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

12 >>MR. ZELLER: Yes, we're still considering that
13 one as well.

14 >>CHAIRMAN BOLLWERK: All right.

15 >>MR. ZELLER: I didn't mean to muddy it up.

16 >>CHAIRMAN BOLLWERK: I'm sure I did, but I just
17 want to make clear between the two of us what we were
18 talking about.

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

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

1 time?

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

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

7 >>MR. ZELLER: Yes.

8 >>CHAIRMAN BOLLWERK: Okay. Thank you.

9 >>MR. ZELLER: With regards to our Contention 3.

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

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

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

1 reporter to hear what is being said.

2 >>MR. ZELLER: Some of that may be my fault. You
3 may have noticed I'm wearing hearing aids in both ears.

4 With regard to this contention in which they said plant
5 site geology is not suitable for nuclear reactors and
6 geologic issues are not adequately addressed. Of course,
7 this is regarding the geologic and the seismic criteria
8 found in 10 CFR 100.23 which details these requirements.

9 The regulation unequivocally states that the
10 responsibilities for the license Applicant for a combined
11 operating license that each Applicant shall evaluate all
12 citing factors and potential causes of failure, such as
13 physical properties or materials underlying the site, ground
14 disruption, and the effects of vibratory ground motion that
15 may affect the design and operation of the power plant.

16 The site criteria include these earthquake ground
17 motions, surface tectonic, non-tectonic defamiation,
18 seismically induced wave soil and rock stability.

19 In addition to that Regulatory Guide 1.208 states that
20 "any new information related to seismic sources that impacts
21 the hazard calculations must be evaluated and incorporated
22 into the seismic hazard analysis."

1 With regards to the -- that's the end of Regulatory
2 Guide 1.208.

3 With regards to the Combined Operating License
4 application, we submit that the Applicant has not updated
5 the eastern Tennessee seismic zone source models from the
6 Electric Power Research Institute. And that the
7 characterization of the potential for large earthquakes and
8 new information was not included.

9 So, the bottom line is that the application is still
10 incomplete. And some of this, of course, was outlined in
11 our supplemental motion of April 2, 2008, the Burgman letter
12 and the Design Control Document which affects seismological
13 hydrological analysis.

14 So, the application, we believe, is still incomplete
15 with regards to this. And so, based on both the federal
16 regulations under 100.23 the required analysis or the
17 guidance from Regulatory Guide 1.208, and the fact that the
18 application is still incomplete, that we would like to have
19 this contention admitted.

20 Finally, we are here in receipt of a request for
21 additional information dated July the 11th, from the Nuclear
22 Regulatory Commission to Tennessee Valley Authority.

1 One of these requests for information regards this very
2 subject regarding the statements described in the Board's
3 joints, bedding plains and description of the model, that is
4 the equivalent of porous media versus karst, which we made
5 note of in our contention that we're talking about here.

6 So, there are outstanding questions here with regards
7 to the stability of the site. Therefore, we believe this
8 contention should be admitted for further discussion.

9 >>CHAIRMAN BOLLWERK: Judge Sager, you're our
10 geoscientist. I can see the wheels are spinning.

11 >>JUDGE SAGER: Well, I'm just trying to get a
12 handle on -- for the seismic, is it -- do you know -- are
13 going to make the argument that there is new information
14 that -- let's see. I'm trying to put this in the right way
15 here.

16 Do you have an expert opinion that says that the new
17 information shows that the information that was relied on
18 the COL is inadequate?

19 >>MR. ZELLER: Yes, sir.

20 >>JUDGE SAGER: And likewise for the karst, I
21 realize that your contention states that there is karst in
22 the area, but the COL -- the environmental report also

1 mentions it as well.

2 So, do you have information that shows that there is or
3 says that there is karst on the site?

4 >>MR. ZELLER: That's correct. As we have
5 submitted in our petition, with some detail, there are -- we
6 have identified potential areas, problem areas, if not
7 underneath the actual cooling towers, at least very close
8 by, and which indicate that the area is unstable. Yes, sir.

9 >>CHAIRMAN BOLLWERK: Judge Baratta, anything?

10 >>JUDGE BARATTA: Are you referring to the map
11 that appeared in your submittal with the little X's on it?

12 >>MR. ZELLER: Yes, Judge Baratta. That's
13 precisely that.

14 >>JUDGE BARATTA: You say "nearby". It says, as I
15 recall, there's a statement the about within two miles of
16 the site? Is that what you mean by nearby?

17 If I look at your document, under Dr. Moss, these
18 features are plainly within -- I'm sorry; one or two miles
19 of the proposed Bellefonte reactor. I just want to clarify
20 what you mean by "nearby".

21 >>MR. ZELLER: I'm looking through here. I
22 believe that the --

1 >>JUDGE BARATTA: This is Page 25; I guess it is
2 of your --

3 >>MR. ZELLER: The reference within the text talks
4 about plainly within one to two miles. And I apologize
5 there's no scale on this map, but -- so, I can't say exactly
6 how far they are. And I don't recall.

7 I believe, though, it's much, much closer than one to
8 two miles. Perhaps I could find out exactly how far it is.

9 >>JUDGE BARATTA: The proposed plant site was not
10 on here, so I had trouble figuring out where that was.
11 Maybe I'll ask the Applicant if they can provide that
12 information.

13 >>CHAIRMAN BOLLWERK: Anything further from the
14 Board for the joint petitioners? No?

15 All right, we move then to the Applicant.

16 >>MR. FRANTZ: The petitioners have
17 mischaracterized both Reg Guide 1.208 and our application.

18 First of all, with respect to Reg Guide 1.208 it does
19 not require an update of the EPRI SOG model every time
20 there's new information. Instead, it says that if the new
21 information is consistent with the EPRI SOG model there's no
22 requirement to update the model.

1 So, they again -- there's no absolute requirement as
2 the petitioners seem to be implying.

3 Second of all, they have mischaracterized our
4 application. We in fact have analyzed the new data. We've
5 analyzed both new earthquake data and we've looked at new
6 seismic studies and those are discussed in our SR.

7 We referenced those sections in our answer and they
8 fully account for the new earthquake data and for the new
9 seismic studies referenced by the -- or implied by the
10 petitioners.

11 As a result of this mischaracterization there is simply
12 no basis for the contention. The petitioners also have
13 provided no expert opinion or other sources to support their
14 allegation that there's a factual need to update the model.

15 In response to Dr. Sager's question, Mr. Zeller said he
16 has expert opinion, but there is nothing in the
17 application -- nothing in the petition itself to support
18 that.

19 There's no references to any affidavits, no references
20 to other source material. He has nothing at all in the
21 contention in the reply that would provide any expert
22 opinion on this matter.

1 The most he does in his petition is reference vague
2 concerns by the NRC staff with no references. We do note
3 that there was an RAI on this issue, but RAI's by themselves
4 are not an appropriate basis for the contention. He needs
5 something more than just the fact the staff has asked
6 questions.

7 The staff's RAI does not say that there's a need to
8 update the EPRI SOG model. Instead, the RAI simply asks for
9 more information from the Applicant on whether there should
10 be an update.

11 In fact, in May of this year, we provided through NEI a
12 fairly extensive report from EPRI, which in fact goes
13 through a very detailed sensitivity study and shows that the
14 results of the new studies, the results of the new
15 earthquake data are not significantly different than the
16 results of the EPRI model.

17 And in fact, they are within the same era bands of
18 EPRI model, and that therefore there's no need to update the
19 EPRI SOG model.

20 We adopted that as part of our response to the RAI on
21 May 30th. It's all part of the record. The petitioners
22 have not attempted to address any of that information in

1 their petition to intervene, and they have an obligation to
2 do so -- ironclad obligation to do so, to look at all
3 information on the record -- on the docket.

4 They have referenced a sinkhole near the site. In
5 fact, our application discusses the fact that there's a
6 sinkhole on a property nearby the site. So, that's not a
7 material difference of opinion or a difference of fact. We
8 acknowledge that.

9 Further, the FSAR shows that there are no sinkholes
10 underneath the site of the proposed Units 3 and 4. There
11 are no integral caves beneath the site of Units 3 and 4.
12 And petitioners have provided nothing to dispute that
13 information in the FSAR.

14 So, in conclusion, we believe that the interveners have
15 provided absolutely no expert support and they have not
16 raised a general issue of material fact. Instead, they have
17 simply mischaracterized both the regulatory guidance and our
18 FSAR.

19 >>CHAIRMAN BOLLWERK: Thank you, sir. Any
20 questions? Go ahead.

21 >>JUDGE BARATTA: You said the FSAR shows that
22 there are no -- and I kind of looked through that section.

1 I assume you're referring to roughly Section 2.5.4 or
2 thereabouts, under site characteristics? That's the one
3 that deals with the sinkholes, geologic history, et cetera.

4 >>MR. FRANTZ: That's correct.

5 >>JUDGE BARATTA: I didn't quite see where it
6 showed that because it really didn't describe what
7 techniques -- I may have missed that in looking at those. I
8 was looking to see what techniques were used to evaluate
9 what features there were.

10 >>MR. FRANTZ: I don't have a full catalog of all
11 the features, tests that we did, but I know, for example, we
12 used borings underneath the footprint of the power block,
13 and those borings showed very small cavities. But again, no
14 major caves or enterable caves.

15 >>JUDGE BARATTA: I saw that section.

16 >>MR. FRANTZ: We also did refractory studies or
17 surveys underneath the footprint. Again, I don't think we
18 found any large cavities as a result of that.

19 And I believe we did other tests, too. Again, I don't
20 have the full listing with me right now.

21 >>JUDGE BARATTA: Just out of curiosity are you
22 able to show where the plant is on that figure?

1 >>MR. FRANTZ: There is a list of -- or a --

2 >>JUDGE BARATTA: I was --

3 >>MR. FRANTZ: I think there's something called
4 Bellefonte on that one figure. So, it appears to lead to
5 the right of those X's. The site itself is located between
6 the Tennessee River, which is on the right, extreme right
7 lower hand corner, and the Town Creek, which is in the
8 middle.

9 >>JUDGE BARATTA: Oh, I see that. Okay. It's in
10 that stretch of land there where it looks like there's a
11 road of some sort going in there.

12 >>CHAIRMAN BOLLWERK: This is on what page of the
13 petition?

14 >>JUDGE BARATTA: I'm sorry. This is on page -- I
15 believe, it's 25. Yes, 25 of the petition and it's the
16 figure that's referred to as the above map on that page,
17 just for the record.

18 >>MR. FRANTZ: Based upon this map that they
19 provided, the sinkholes they point out are probably a mile
20 or two, I would guess, from the site itself for Unit 3 and
21 4.

22 >>JUDGE BARATTA: Thank you.

1 >>CHAIRMAN BOLLWERK: Anything further from the
2 Board?

3 All right. At this point, let's turn it to the staff,
4 then.

5 >>MS. HODGDON: The staff would note that
6 Mr. Zeller's reference to Reg Guide --

7 >>CHAIRMAN BOLLWERK: Can I have you move the
8 microphone closer to you? I think we're having trouble both
9 over here and in the audience. So, get it as close as you
10 can.

11 >>MS. HODGDON: Am I okay? I'll start over.

12 His reference to Reg Guide 1.208 is -- that's
13 mentioned. In fact, most of this -- a good partner of this
14 contention comes verbatim from a staff letter to the
15 licensee dated January 18th, 2008, and that is the
16 acceptance letter which had two attachments to it.

17 One about -- which are about schedule. The first one
18 is about hydrology, and the second one is about seismic.

19 This first paragraph was actually the last paragraph of
20 the staff's scheduled concern, as expressed in that letter.
21 And so, I believe there was an RAI that repeated quite a lot
22 of this, and I would say with regard to that the same

1 argument -- similar argument to that made by the licensee --
2 the Applicant, is that the RAI's cannot -- RAI's on this
3 document also is like an RAI in that it was a predecessor of
4 an RAI.

5 The Petitioner's for intervention cannot write
6 contentions, admissible contentions based on staff concerns
7 -- based solely on staff concerns, which this is here.

8 If you're looking at the petition to intervene from
9 where it says seismicity on Page 25, over to Page 27, where
10 it goes into the eastern Tennessee seismic zone, all of
11 those things are from the staff's letter, and therefore it
12 does not show -- and it's because it's actually about
13 schedule.

14 It's not really an -- and everything that the -- the
15 description as given by the Applicant's counsel just now is
16 true. That was a letter concerning the staff's concern
17 about schedule.

18 As regards whether or not it needs to be updated, new
19 information and so forth, the Reg Guide says you need to
20 look at your PSHA. It's a probabilistic seismic
21 hazardous -- assessment. You need to look at your PSHA to
22 see whether or not it's current and you might have to update

1 it, but that's based on -- it doesn't say for sure that it
2 needs to be updated.

3 I won't go into anymore about that, except to say that
4 there was an RAI on that. It was much earlier than the June
5 17th, and it has been answered in part.

6 >>CHAIRMAN BOLLWERK: Anything further?

7 >>MS. HODGDON: I have nothing further.

8 >>CHAIRMAN BOLLWERK: All right. Anything from
9 the Board Member? Judge Baratta? Judge Sager?

10 Let me turn back, then, to the joint petitioners and
11 see what response they have or reply they have to the points
12 made by staff and the Applicant.

13 >>MR. ZELLER: Thank you, Judge Bollwerk.

14 With regards to experts, Dr. Thomas Moss was director
15 of the Alabama Cave Survey from 1994 to 2003. He helped to
16 develop much of this contention.

17 The information upon which we rely comes from many
18 sources, of course. One of those was the U.S. Geological
19 Survey. TVA's application reports no natural --

20 >>CHAIRMAN BOLLWERK: Can you pull that microphone
21 a little more forward?

22 >>MR. ZELLER: The Applicant's application reports

1 no natural sinkholes, but admits induced sinkholes. This
2 was pointed out by Dr. Moss.

3 And then, of course, in our petition it details
4 activities, cumulative activities in the area, including the
5 construction of the site, both previous and projected.

6 So, all this goes to potential instability within the
7 site.

8 With regards to Regulatory Guide 1.208, the word "must"
9 is in there with regard to considering new information. As
10 I pointed out already with regards to the basis, the Design
11 Control Document affects seismological and hydrological
12 analysis.

13 The design control document, as we pointed out before
14 and will continue to point out, is still under -- the DC,
15 the Design Control Document Revision 16 is still
16 work-in-process.

17 So, it would to me seem appropriate to admit this
18 contention partly because the Design Control Document is a
19 moving target. It is not settled yet.

20 This information that petitioners -- joint petitioners
21 are submitting I believe will help to resolve and bring to
22 the Commission's attention important issues. For example,

1 the information provided by Dr. Moss and also the U.S.
2 Geological Survey and others.

3 And finally, the Electric Power Research Institute
4 document, of course, is dated 1986. It's over 20 years old.
5 Surely, there is much more current and recent information
6 given 20 years development of technology.

7 The geology may not change, but the technology and the
8 ability to determine what is underground has far advanced
9 since the last two decades of the 20th Century.

10 >>CHAIRMAN BOLLWERK: Anything from the Board
11 Members? Go ahead, Dr. Sager.

12 >>JUDGE SAGER: I have a quick question. This is
13 my ignorance showing, but this contention seems to -- there
14 are two attacks in here: one seismology and one the karst
15 instability, but they seem to have very different paths in
16 terms of remedies.

17 Something's wrong with this mic? Okay.

18 (Technical difficulties)

19 >>CHAIRMAN BOLLWERK: We will go ahead.
20 Everybody, hold that thought. We're going to take a ten
21 minute recess. We were actually going to take one after we
22 finished this argument in any event. So, we'll just take it

1 a little early. We'll come back and let Judge Sager ask his
2 question. Because I think it's important that everybody is
3 obviously able to hear what we're doing.

4 So, we'll take a ten minute recess. We'll come back at
5 10:30. Thank you very much.

6 (Whereupon, a recess was taken.)

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

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

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

20 I think, again, that's something we had planned on
21 doing at a future point in terms of oral limited appearance
22 statements, but I would indicate that, again, as we did that

1 if someone has something in writing they want to give us now
2 or send to us they should certainly do that. I gave the
3 information at the beginning.

4 If you want to drop something off today, this table
5 over here, we have our law clerk, Erica LaPlante and also
6 Sherverne Cloyd who is our administrative person with us
7 today. Either one of them is there. You can certainly give
8 it to them and they take it and will have it put on the
9 record. And the judges, I assure you, will read each one as
10 we receive them at some point in the near future.

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

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

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

21 So, on the one hand it seems like the remedy sought is
22 an update of what's called a probabilistic seismic hazard

1 model as to ground accelerations.

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

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

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

12 >>CHAIRMAN BOLLWERK: Any follow-up?

13 >>JUDGE BARATTA: So, is there -- for the karst --
14 is there a remedy? Is there any way that the Applicant can
15 -- is it just providing more information, better data, or is
16 that going to be suitable?

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

22 >>JUDGE BARATTA: Okay. Thank you.

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

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

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

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

12 >>MR. FRANTZ: The section number?

13 >>JUDGE SAGER: Yes.

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

16 >>JUDGE SAGER: Thank you.

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

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

20 >>CHAIRMAN BOLLWERK: Anything from the Board
21 members on this point? All right.

22 Then we'll move to the next contention, which is

1 labeled Miscellaneous D. It was formerly Contention 5. The
2 contention was entitled "The Assumption and Assertion that
3 Uranium Fuel as a Reliable Source of Energy is not supported
4 in the Combined Operating License Application submitted by
5 TVA, the Applicant, to the U.S. Nuclear Regulatory
6 Commission".

7 Mr. Zeller, your initial 5 minutes.

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

12 And our petition lines out - not only in Contention 5,
13 but in some of the other contentions, which we'll get to
14 later on - some of the uncertainties with regards to fuel
15 cycle costs, which impact the bottom line, the provision of
16 power and many other factors; the availability of the fuel
17 itself and some of those uncertainties.

18 So, if this is to be an enterprise involving the
19 expenditure of tens of billions of dollars, it only makes
20 sense, of course, to determine that there is a reliable
21 source of fuel for it, and that the fuel is available at a
22 price which would not be prohibitive in terms of the costs

1 of providing power to the ratepayers of the Tennessee Valley
2 Authority.

3 Contention 5 has, I will admit, perhaps information
4 which I think is accurate, but it may not be the most
5 concisely drawn contention within our list of 19. But taken
6 together with some of the other contentions, which we will
7 get to toward the end, for example, 18 talks about the
8 uranium fuel cycle, our Contention 18, I should say.

9 Considered together, I believe this contention should
10 be admitted.

11 >>CHAIRMAN BOLLWERK: Any questions from the Board
12 at this point? You look like you're thinking, Judge
13 Baratta.

14 Okay. We'll move on at this point and you can come
15 back to the point. Let's hear from the Applicant then.

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

19 Again, the petitioners have simply mischaracterized our
20 application. They have either ignored or overlooked
21 environmental report Section 10.2.2.4, which has a fairly
22 complete discussion of the supplied uranium.

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

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

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

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

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

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

4 And as a result, we don't believe that there is a
5 material dispute of fact here. The application in fact does
6 describe the supplies including the cost of those supplies,
7 and the petitioners simply have mischaracterized our
8 application.

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

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

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

21 >>CHAIRMAN BOLLWERK: At this point, if you want
22 to say something about it, particularly with respect to the

1 motion to accept a reply, this would be as good a time as
2 any.

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

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

12 Even if it's treated as a separate motion,
13 independently of our motion to strike, it's still untimely.
14 The rules require that any motion be submitted within ten
15 days of the occurrence of the event that gives rise to the
16 motion, which in this case again was our motion to strike,
17 and therefore they're four days late with their motion if
18 it's treated as a motion rather than a response.

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

1 believe it is serious.

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

7 >>CHAIRMAN BOLLWERK: Any questions from the Board
8 Members at this point? All right. Let's turn to the staff.

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

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

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

21 This motion was four days late and it is -- it doesn't
22 have much going for it. The petitioners say that they

1 apologize because some of their affidavits from expert
2 witnesses were filed late.

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

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

9 Then the last and finally - I think the Applicant
10 addressed most of these things - is last and finally they
11 rely on a prehearing conference rule, which is not
12 applicable here.

13 And the whole last part of the motion addresses the
14 prehearing conference rule that's not applicable here, which
15 is 10 CFR 2.329, which regards the prehearing conference in
16 anticipation of the hearing rather than the initial
17 prehearing conference, which we don't have that rule
18 anymore. It's not in Part 2.

19 So, that's all the staff wants to say about that as
20 with regards -- I did neglect to say that we supported the
21 staff with application to this contention. We might address
22 this further when we get to specific expert witnesses that

1 are offered now instead of with the initial filing.

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

5 Is this contention really one that says that there's
6 not enough production as opposed to enough availability, if
7 I'm using the terms properly?

8 In other words, the uranium is out there, its just not
9 being produced because the market isn't there at this point
10 in terms of the market price? Maybe it is or it could be at
11 some point?

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

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

1 And again, if you look at both the studies that we cite
2 in our environmental report and the studies they cite,
3 there's sufficient supply for Bellefonte and they don't
4 provide any information to dispute that.

5 >>JUDGE SAGER: All right. anything the staff
6 wants to say on that point?

7 >>MS. HODGDON: Yes. This contention was
8 submitted in the North Anna proceeding and apparently in
9 response to the staff's and the Applicant's comments on the
10 contention, these petitioners added the thought about
11 50.33(f), which does not seem to be related to the
12 contention, at least not in any important way.

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

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

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

21 All right, Mr. Zeller.

22 >>MR. ZELLER: Thank you. Uranium production is

1 the basis for this contention. As we pointed out, only 60%
2 of consumption is currently supplied by annual production.
3 This fact was raised in this contention.

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

8 So, taken together, 5 and 16, TVA underestimated
9 capital costs, fuel costs as well as operation and
10 maintenance cost and 16 goes into some detail about that.

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

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

1 that.

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

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

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

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

16 >>MR. ZELLER: You may have hit the nail on the
17 head. It may be is the glass half empty, is the glass half
18 full kind of argument? Projections of this nature, of
19 course, are subject to change and subject to interpretation.

20 And two people can look at the same data and see two
21 different things. This -- taking for example what I said
22 with Dr. Marcojoni's(ph) expert opinion about these matters

1 in addition to what is actually in Contention 5.

2 I can provide some basis for a problem -- the
3 discussion of a problem, which we seek to resolve through
4 this adjudicatory problem solving process to get to the
5 bottom of that matter.

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

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

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

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

1 saying, "Yeah, there's some uncertainty." You're both
2 saying the same thing, so--

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

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

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

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

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

21 >>JUDGE BARATTA: So, yours is not a contention of
22 omission, but rather one that you feel that in Section

1 10.2.2.4, which is the one that the Applicant referenced,
2 that the discussion is inadequate? Is that what you're
3 saying?

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

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

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

9 >>JUDGE BARATTA: Thank you.

10 >>CHAIRMAN BOLLWERK: Anything further on this
11 contention? All right, then.

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

16 >>MR. ZELLER: Yes, Your Honor. The Commission's
17 guidance on water availability, of course, forms the basis
18 for this contention. The guidance states that we are
19 required by law demonstration of a request for certification
20 of the rights to withdraw or consume water, and an
21 indication that the request is consistent with appropriate
22 state and regional programs and policies to be provided as a

1 part of the application for a construction permit or an
2 operating license. This comes from Regulatory Guide 4.7.

3 >>CHAIRMAN BOLLWERK: Could you move your
4 microphone a little closer? I don't want you to swallow it,
5 but we do want everybody to hear. Sorry.

6 >>MR. ZELLER: Yes, I'm sorry. Regulatory Guide
7 4.7, which is General Site Suitability Criteria for Nuclear
8 Power.

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

13 The Applicant projects water use for the year 2030 in
14 the Tennessee River Watershed on its Page 2.3-109. The
15 table lists the increased percentage, the largest increase,
16 56% as a result of increased public water supply withdrawal.

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

19 The dedication of water supply to Bellefonte 3 and 4 if
20 constructed, we believe would be contrary to the principal
21 purposes for which the Tennessee Valley Authority was
22 created. That is, dams and river control.

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

8 Some of our people who have provided declarations for
9 standing are concerned about this because they live in this
10 area and there are farmers in this area who rely on the
11 water for their own use, which go back, as I said, to the
12 agricultural usages for which TVA is responsible.

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

19 >>CHAIRMAN BOLLWERK: Any Board questions at this
20 point. All right. Then we'll turn to the Applicant.

21 >>MR. FRANTZ: The Petitioner's argue that water
22 use by Bellefonte will be excessive. As a basis, they

1 basically point to information that's contained in Chapter 2
2 of our environmental report.

3 They don't really dispute any information that we have
4 in Chapter 2. Instead, based upon these undisputed facts
5 they argue that water use will be excessive.

6 However, they provide absolutely no expert opinion or
7 other reference material or source material to support their
8 argument.

9 Therefore, the contention is inadmissible under
10 2.309(f)(15) of the regulations.

11 Additionally, I might note that the impacts of water
12 use are discussed in our environmental report in Section
13 5.2. The petitioners do not point to that section at all.
14 They don't discuss it at all. And that's a separate defect
15 in the contention.

16 That section goes on to note that the plant will use
17 0.28% of the monthly average river flow near Bellefonte.
18 Based upon that very small percent the environmental report
19 goes on and shows that the impacts will be small and that
20 those impacts don't warrant mitigation.

21 Again, petitioners don't cite to any of that
22 information, don't dispute any of that information, in

1 Section 5.2 of the environmental report.

2 So, this is again inconsistent with 2.309(f)(16) of the
3 regulations.

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

9 But even if you were to consider the act, it's very
10 clear on its face that the Act does authorize TVA to
11 generate electricity. I'd refer the Board to 16 USC Section
12 831(d)(1) of the Act.

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

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

21 >>CHAIRMAN BOLLWERK: All right, sir. Anything
22 from the Board? All right. Then we'll turn to the staff.

1 Thank you.

2 >>MR. MOULDING: Thank you, Your Honor. As has
3 already been mentioned, Contention NEPA-A argues that
4 excessive water use would be contrary to TVA's purpose.

5 As the Applicant has already mentioned the petitioners
6 did not explain how any of their statements concerning water
7 use contradict the discussion in the application of water
8 use.

9 For example, in Chapters 2 or 5 of the environmental
10 report and the petitioners thus did not show a genuine
11 dispute of the application on that issue.

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

18 Finally, the petitioners did not explain why the NRC
19 would have any jurisdiction over TVA's general compliance
20 with the TVA Act, independent of the NRC's review of this
21 application, and in any event did not explain how the
22 application for a COL would be inconsistent with the TVA Act

1 for the reasons that the Applicant just mentioned.

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

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

8 >>MR. ZELLER: Thank you, Your Honor. A couple of
9 things.

10 I did make reference to the NRC's weekly information
11 report of February 22 of this year when I was quoting it
12 saying that TVA was unable to provide verification for
13 supporting input data for its analysis, and the review
14 mentioned in that report assumed that inspection would find
15 no major problems.

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

20 Additional information has been requested in RAI and
21 this is from July the 11th, to provide -- the Commission is
22 asking for TVA to provide consistent and complete data on

1 water use diversion and water return.

2 It points to some of the same issues that we have
3 raised in this contention, and I know that the RAI process
4 is an ongoing iteration for a back and forth, but it does, I
5 think, point to the fact that there are some outstanding
6 questions here, which we have also raised in our contention.

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

12 >>CHAIRMAN BOLLWERK: All right. Again, with
13 RAI's obviously the staff sends out a number and as the
14 Commission has made clear, simply the fact that they send
15 them out is not enough. There has to be something further
16 that frankly, I guess a Petitioner would need to take that
17 RAI and put in some evidence of their own that suggests this
18 RAI raises the question and by the way, our expert or our --
19 we have some other basis for doing it.

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

22 >>MR. ZELLER: Right, and when I saw this and

1 discussed it with my colleagues, it did seem -- it raised an
2 issue which comes up again and again.

3 Our contentions were raised, of course, in the
4 beginning of June and then -- and are available to anyone
5 who wants to read them, but the RAI's in some case strike
6 some of our people as if someone has been reading the
7 petition and that the Nuclear Regulatory Commission's staff
8 people are trying to put Band-Aids on some of the questions
9 or answering in attempting to try to answer some of the same
10 issues that we raised in our initial petition, which does
11 seem a little bit like double-teaming.

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

20 In this case, I believe they are working to answer some
21 of the very same questions that we raised on June the 6th of
22 2008.

1 >>CHAIRMAN BOLLWERK: How does the fact they asked
2 the same questions indicate they're not independent? I
3 guess I'm not making the connection. Maybe you could help
4 me.

5 >>MR. ZELLER: Well, because the answering of the
6 questions through this RAI process may be done, but it's
7 outside of -- we don't have a role in that.

8 Interveners, petitioners do not have a role as such to
9 provide expert opinion and what not.

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

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

15 Let's move then to Contention NEPA-B, which was
16 formerly Contention 8, "Impacts on Aquatic Resources,
17 Including Fish, Invertebrates and General Aquatic Community
18 Structure of the Project Area, the Guntersville Reservoir
19 and the Tennessee River Basin".

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

22 >>CHAIRMAN BOLLWERK: Let's make sure we have the

1 mic. We want to make sure we hear what you have to say, so
2 our court reporter can get it.

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

4 >>CHAIRMAN BOLLWERK: Very good.

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

12 In regards -- I would like to start out this discussion
13 by stating that I am prepared to communicate the elements of
14 our impacts on aquatic resources contention, referred to as
15 NEPA-B or as Contention 8 previously.

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

22 Given the short notice of the hearing there was no way

1 his schedule could be altered. And I'd like to say my
2 potential inability to answer any technical questions here
3 today should not undermine the detailed work Dr. Young has
4 put into this case over the last months highlighting the
5 serious impacts the proposed Bellefonte proposal could have
6 on the Tennessee River and surrounding environment.

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

10 >>CHAIRMAN BOLLWERK: All right.

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

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

21 He also has extensive research experience with 30
22 publications on many aspects of fishery science. Dr. Young

1 has conducted detailed work not only in this case, but in
2 previous ASLBP proceedings that have led to accepted
3 contentions relating to water impacts, such as plant
4 Vogtle's early site permit.

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

12 Hence, why we submitted it with our July 8th reply
13 testimony to the NRC staff and TVA reply of seven -- of July
14 1st.

15 As Dr. Young has an address change since the April June
16 work was done, we updated his address and CV accordingly and
17 changed the date on the affidavit, and that was all that was
18 changed since April.

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

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

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

13 Further, in terms of the merits of the contentions
14 themselves, the responses by both TVA and NRC do not include
15 any additional data or discovery to refute our contentions.

16 We understood the contents. We did not misconstrue any
17 statements, and much of the NRC and TVA is based on
18 semantics to mask the fact that the contentions hold merit.

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

1 The issue is of major concern as the Tennessee River as
2 we stated in our reply and original brief is the most
3 biologically diverse fresh water ecosystem in the United
4 States.

5 In response to Subparts 1 and 6, and this is response
6 to NRC staff. And since TVA Applicant response was very
7 similar, we're responding to them together.

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

15 We gave an example of one found in ER Section 5.3.2.2,
16 that talked about the plume size and how that would
17 interfere with the migration of breeding areas of fish in
18 the reservoir, but there was no study saying, "Why is that
19 the case?" And we felt that we could not take such
20 statements as fact when no scientific study supports such
21 statements.

22 In regard to Subpart 2, the statements made in the ER

1 correctly address the river continuum, but fail to discuss
2 specific impacts on upstream and downstream resources that
3 will be affected by a BLN operation.

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

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

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

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

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

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

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

14 Then there was also a request -- this is falling under
15 that same section where there was questioning about the
16 sampling of -- at different river miles and of the ichthyo
17 plankton that was available and went into detail on that.

18 And I don't want to bore everyone with that here, but
19 again there was an RAI request. This was No. 5.3.1.2-1 and
20 5.3.1.2-2 that asked about the sampling of ichthyo plankton,
21 why weren't recent samplings done. If they weren't needed,
22 prove why, and then talked about all this entrainment.

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

6 And that through all this back and forth arguments it's
7 showing that the petitioners are again correct that no
8 recent data from Bellefonte has been collected to assess
9 these impacts, specifically monitoring at Guntersville
10 Reservoir as stated as going on and around BLN, but not at
11 Bellefonte.

12 Again, I could reference more RAI's, but I know we've
13 done that probably too much already. But his arguments are
14 very solid with extensive research.

15 And I apologize that I was not as familiar with this
16 process to know that we need his affidavit in the June 6th
17 petition because it was ready to go, and we held onto it
18 because at the last hour you granted an extension of 60
19 days, which we appreciated, and then all we did was change
20 the date on it and his address because he had moved.

21 I'm very sorry that he's not here today because I think
22 he would have very much enjoyed this discussion. Thank you.

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

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

12 And that there has clearly been shown a decline
13 significant, whether it's 32% or 44% in the reservoir that
14 has not been explained and that we strongly believe, and
15 Dr. Young -- his affidavit said that a Bellefonte
16 application -- expansion in his mind will further
17 deteriorate this area.

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

21 >>CHAIRMAN BOLLWERK: You mentioned this is a --
22 this shouldn't be a procedural matter, but to some degree it

1 is and as a lawyer I have to just ask you one question.

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

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

6 >>MS. BARCZAK: Can I have a moment to discuss
7 with Mr. Zeller?

8 >>CHAIRMAN BOLLWERK: I'm sorry?

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

11 >>CHAIRMAN BOLLWERK: Sure.

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

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

22 But we felt then that with the replies we received from

1 TVA and the NRC that that was the time to provide that
2 information in the July 8th reply that we filed.

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

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

14 >>CHAIRMAN BOLLWERK: All right. Thank you.

15 Let's turn then to the Applicant.

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

17 >>CHAIRMAN BOLLWERK: Any other Board questions?

18 I'm sorry. I apologize.

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

1 resources.

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

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

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

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

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

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

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

19 >>MS. BARCZAK: Again, from my potential inability
20 to answer any technical questions here today should not
21 undermine Dr. Young's work, but as I understand it, that it
22 is not that it's insufficient, the latter part of your

1 statement, but rather that it is incorrect to assume that
2 there's a static or standard sampling regime throughout the
3 entire reservoir.

4 And so, therefore, more detail needed to be provided on
5 the features in question.

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

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

18 That the ER fails to look at how the Bellefonte
19 operation will affect the upstream river continuum and the
20 lower river continuum, and in fact, again not to get into
21 RAI's, but I didn't mention this one before is 2.3.1-1, asks
22 to describe the significant impact on Nicajack, Guntersville

1 and Wheeler Reservoirs; the impact that can have on BLN and
2 vice versa.

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

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

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

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

16 That's it.

17 >>JUDGE SAGER: Okay. Thank you.

18 >>CHAIRMAN BOLLWERK: Judge Baratta, anything?

19 >>JUDGE BARATTA: No.

20 >>CHAIRMAN BOLLWERK: All right. Let me turn then
21 to the Applicant.

22 >>MR. FRANTZ: Thank you. The Petitioner has

1 appeared to have engaged in a deliberate tactic to withhold
2 information from the Board and the parties.

3 They made a choice not to submit their affidavit from
4 Dr. Young as part of their petition to intervene; instead
5 they withhold it to the reply.

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

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

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

19 We also refer to another plant on the Gunter'sville
20 Reservoir, the Widow's Creek plant, which also has a
21 somewhat similar intake, and we have demonstrated at the
22 Widow Creek plant that the impacts of the intake are small.

1 And therefore we also rely upon that as a basis for our
2 over all determination that the Bellefonte impacts will be
3 small.

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

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

10 Well, the impacts are evaluated in a different section;
11 Section 5.2, which we just discussed on Contention 7. And
12 we've showed there that the withdrawal rates are 0.28% of
13 the volume of the Tennessee River, the flow of the Tennessee
14 River on an average basis.

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

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

22 First of all, the plant is located on the Gunter'sville

1 Reservoir. The reservoir is around 76 miles long. Our
2 plant is located approximately halfway, a little bit more
3 than halfway up the reservoir.

4 For the construction permit and operating license for
5 Bellefonte's Unit 1 and 2 we did perform sampling of the
6 aquatic biota at the intake and discharge locations. We're
7 using those same structures, by the way, for 3 and 4.

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

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

18 All together we believe that provides an adequate
19 baseline for characterizing the aquatic biota.

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

1 of aquatic biota.

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

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

10 Once again, if you look at the petition to intervene,
11 there's nothing in that that would provide any expert
12 support for the argument that we need a site-specific study
13 here beyond what we already have.

14 Very quickly, too, they have made other
15 mischaracterizations of our environmental report. For
16 example, contrary to their allegations, the report does
17 discuss issues, such as impacts on ichthyo plankton,
18 migrating fish and mussels. Their allegations to the
19 contrary just are incorrect.

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

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

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

6 >>JUDGE BARATTA: You acknowledge then that your
7 data that you use for the site specific data is from 1970
8 and 1980 timeframe?

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

11 >>JUDGE BARATTA: And that was taken?

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

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

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

20 >>JUDGE BARATTA: Your answer questioned the
21 source of their statement; is that correct?

22 >>MR. FRANTZ: We questioned, one, that they don't

1 have any expert opinion in the petition to intervene itself.
2 And two, that they had mischaracterized what we have in the
3 application.

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

9 >>MR. FRANTZ: That's correct.

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

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

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

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

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

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

6 >>JUDGE BARATTA: Well, in saying where the source
7 was, aren't they addressing it narrowly?

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

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

16 I'm trying to make a distinction here. It may be
17 appropriate that certain sections of the reply be stricken
18 -- stricken, excuse me -- but at the same point, we heard a
19 minute ago that the statements that are in the affidavit are
20 identical.

21 Now, maybe not all of them are identical, but at least
22 a number of them, which you called into question by your

1 answer -- yes, your answer.

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

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

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

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

15 >>JUDGE BARATTA: Doesn't 2.309 say "facts or
16 expert opinion"? The fact that you did not do a complete
17 survey in 2007, that is a fact, is it not?

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

21 We had the studies at the site for Unit 1 and 2 in the
22 '70s and '80s. We had the 2007 study for mussels. We have

1 the current ongoing studies up and downstream of the site,
2 and the collection of all that provides an adequate
3 baseline.

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

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

8 >>JUDGE BARATTA: Well, I think that's the issue,
9 is it not?

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

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

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

1 remember, decline in fish species.

2 Doesn't that in itself say that that earlier study is
3 inadequate?

4 >>MR. FRANTZ: It doesn't say it's inadequate when
5 you look at the cumulative set of information. Again, we're
6 not relying solely upon those studies from the '70s and
7 '80s. We also have the current ongoing studies and they've
8 been going for, I guess, ten years or more upstream and
9 downstream of the reservoir.

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

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

16 >>JUDGE SAGER: I'm done.

17 >>JUDGE BARATTA: Doesn't a 50% difference in the
18 number 33 versus 44 -- I guess maybe it's not 50%, maybe
19 it's a 33% difference -- say something is not right?

20 >>MR. FRANTZ: Dr. Baratta, I don't really care
21 what number you want to use. We have the actual numbers of
22 fish that were -- species that were identified in the

1 sampling periods. So, you can do your own math, whatever it
2 may be.

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

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

11 >>MR. FRANTZ: No. The fact of the matter is,
12 there's no dispute as to what each of these samplings found.
13 And we aren't disputing what was found in the earlier study.
14 They aren't disputing it either. We aren't disputing what
15 was found in the most recent study.

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

22 In fact, they rely upon those numbers to draw their

1 conclusion on the percentages. That's how they determine
2 their percent by using our numbers.

3 >>JUDGE BARATTA: I don't know. I'm a fisherman
4 in Maryland. They sure do care about how many -- what the
5 percent decline in striped bass are in Chesapeake Bay. That
6 seems to be an important number.

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

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

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

17 >>MS. HODGDON: The staff has a couple of points
18 to make. One, there was new information introduced today
19 that was not in the nature of a reply to what was said by
20 the Applicant and the staff, and naturally that should be
21 disregarded.

22 Also, with regard to this, I'm afraid this may be the

1 staff's fault in a way. They got into a dispute about
2 mathematics and what percentage and so forth. But the one
3 sampling period was from 1945 to -- I wrote it down -- 1994,
4 a period of about 50 years.

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

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

11 There's not enough information to tell whether it's
12 decline or not. In fact, the table itself, which I
13 believe -- I have it here someplace to it look up, is 2.4.7.
14 That table shows those figures as compared with one another.

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

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

21 One can learn a great deal just by looking at those
22 three pages of table -- those three pages of table, but you

1 still can't tell anything about decline because there's just
2 not enough information to tell that. That's not what it's
3 about.

4 And then as the -- and therefore, as I said before, we
5 said "percentage difference", we did not say "decline". We
6 were just talking about the math and not about how many
7 species were there at one time or another.

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

10 >>JUDGE BARATTA: No.

11 >>CHAIRMAN BOLLWERK: Mr. Sager?

12 >>JUDGE SAGER: No.

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

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

19 Our petition was written based on Dr. Young's
20 affidavit, and it was mentioned by the Panel that 2.309,
21 plain reading statement says, "provide a concise statement
22 of the alleged facts or expert opinions which support the

1 requestors or petitioners position on the issue and on which
2 the Petitioner intends to rely at the hearing."

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

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

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

16 Going back to some of the comments made. The 1970 to
17 1980s time frame for the fish sampling is very old. And,
18 yes, there were some newer studies done, and again the
19 5.3.1.2-1 RAI asked for current characterizations of ichthyo
20 plankton and/or a basis why the data from the '70s and '80s
21 is still valid.

22 Fundamentally, we did not provide any new data or

1 arguments in the reply. The arguments in our original
2 petition are the same arguments that we had in our reply,
3 but part of the reply is we had to respond to the criticism
4 from TVA and NRC.

5 And Dr. Young wrote that reply statement for Section
6 8 -- excuse me -- Contention 8 with that in mind and was
7 very strong in saying that we did not misunderstand.

8 Predominantly that's him, that he did not misunderstand
9 the statements and he correctly understood the importance of
10 those statements, and he read all the sections and
11 referenced them and questioned -- when you read our reply,
12 why certain sections were talking about the health in one
13 section, but it seemed to make sense to have it in a
14 different section and that the application itself was
15 confusing.

16 In terms of the recent fish studies, as mentioned from
17 2002 to 2006, they did not ID -- identify a number of fish
18 species. And again, that's a new RAI request on Table 2.4-7
19 and it's something that Dr. Young raised, which is, you
20 know, there are old studies and then even with the new
21 studies there are fish species that have been overlooked or
22 not sampled or are missing.

1 Again, I'd like to actually agree with the TVA staff
2 that we aren't arguing about the 44% or the 32% decline.
3 That the difference in those number, and we specifically
4 even say how we calculated that decline.

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

10 Whereas, the NRC used, "more recent surveys, 1985 to
11 1994, which produced 56 fish species" to arrive at a 32%
12 decline. The NRC staff is correct. They did not do that
13 calculation and say "decline." We did.

14 We did the calculation and our point is it doesn't
15 matter whether it's 44 or 32. Both statements are in the
16 ER, but it's quite a decline and it's very alarming,
17 especially to a fishery science expert.

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

22 And again, this information was stated in the ER and

1 was used correctly by the petitioners because it determined
2 that that's enormous importance to the current state of
3 aquatic health and the exhibition of TVA's biased
4 assessments by internal staff, not peer review.

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

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

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

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

18 >>JUDGE BARATTA: No.

19 >>JUDGE SAGER: No.

20 >>CHAIRMAN BOLLWERK: All right. Let me just say
21 one thing. And again, I appreciate your candor in telling
22 us basically what happened. I think that speaks well of

1 your participation in the process, and we understand.

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

8 >>MS. BARCZAK: Thank you.

9 >>CHAIRMAN BOLLWERK: All right. At this point,
10 we're at -- we have series of contentions; about four of
11 them that we sort of joined together dealing with
12 alternatives and need for power and sort of, at least we
13 thought, had relationship to one another.

14 It's also about a little before noontime. So, it's
15 probably a good point, I think, to take a break.

16 Because of the situation in the area here, we have --
17 because of where we're at, we are going to have to go a
18 little ways off-site to get to someplace to eat. So, I
19 think the Board's plan would be to go ahead and take about
20 an hour and a half for a break. So, at this point why don't
21 we plan on coming back at 1:30.

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

1 break.

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

9 The second thing is we may have some folks that decide
10 not to join us after lunch on our web stream. If that's the
11 case and you have comments about the web stream or technical
12 aspects of it; any problems you had accessing it or what the
13 quality of it was, let me give you the e-mail one more time.

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

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

22 Anything further from the judges at this point?

1 All right. At this point, then, we'll stand adjourned
2 until 1:30 Central Time. We'll come back then and talk
3 about some of the NEPA alternative contentions that have
4 been have put before us. Thank you.

5 (Luncheon recess taken.)

6

7 AFTERNOON SESSION

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

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

13 All right. Again, my reminder. This is a cell phone.
14 It's off. It goes in your pocket or wherever. If you're
15 going to have it on vibrate, please take any cell phone
16 conversations outside the room. We'd appreciate it, so we
17 can conduct our business without the interruption of any
18 cell phone conversations.

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

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

8 The contentions are NEPA C, which was formerly
9 Contention 9: "Alternatives to the Proposed Action
10 lacking".

11 NEPA D, formerly Contention 10, which was TVA's "Power
12 and Energy Requirements Forecast Fails to Evaluate
13 Alternatives".

14 NEPA E which was formerly Contention 11: TVA's COLA,
15 C-O-L-A. It's a Combined Operating License Application:
16 "Power Demand Forecast Fails to Justify Need for New Nuclear
17 Reactors".

18 And then NEPA N, formerly Contention 16, "Environmental
19 Reports and Inadequate Cost Estimates and Cost Comparisons".

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

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

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

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

7 >>CHAIRMAN BOLLWERK: That's fine.

8 So those are the four contentions. For these, you have
9 30 minutes total time allocated to you. How would you like
10 to divide it up between that? The presentation.

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

12 >>CHAIRMAN BOLLWERK: Fifteen/fifteen?

13 >>MR. ZELLER: Yes.

14 >>CHAIRMAN BOLLWERK: Okay, thank you. You have
15 the floor, sir, and if again, everyone would remember to
16 speak in the microphone, so the court reporter can hear you,
17 as well as the folks maybe watching us on the webcast.
18 Thank you.

19 >>MR. ZELLER: Thank you. This group of
20 contentions are plainly related because they have to do with
21 the need for the power plant and the justification for it by
22 the Tennessee Valley Authority and the requirements to

1 justify it under the National Environmental Policy Act.

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

9 And our contentions is that TVA does not even attempt
10 to project a reasonable demand side management forecast,
11 which would plainly be an alternative to providing more
12 power.

13 The next Contention, number 10, deals with some of the
14 same issues, and in fact is drawn by -- we rely on the same
15 expert for this, drawn by Dr. Ross McClooney, who has a
16 background in this area and contribute some of this
17 language; for example, TVA's power and energy requirements
18 forecast fails to evaluate the alternatives, Contention No.
19 10. And pulling from the Environmental Report submitted by
20 TVA which stood out in their report, says that the only
21 option, that is, no action alternative.

22 The first option doing nothing to satisfy demand

1 for power is not reasonable to Dr. McClooney and to myself
2 and to members of our organization.

3 This was a stunning statement from the Combined
4 Operating License Application on Part III of the ER, Page
5 9.1-1, because it was both flippant and also seemed to
6 negate the need within the National Environmental Policy Act
7 really to evaluate alternatives, including in this case the
8 no action alternative. So, those two are plainly related.

9 The contention -- our Contention number 11, and I don't
10 have the other designation there but --

11 >>CHAIRMAN BOLLWERK: It's NEPA E.

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

14 This is largely developed by Louise Gorenflo, a member
15 of the Bellefonte Efficiency Sustainability Team.

16 Ms. Gorenflo is very familiar with the Tennessee Valley
17 Authority. She lives in Tennessee and has spent, in fact,
18 perhaps -- well, I hesitate to guess how many years, but I
19 have known Louise for some years back when we were working
20 together on a nuclear waste dump site issue in East
21 Tennessee.

22 So, her research here talks about the failure of TVA to

1 include scenarios for certain -- actually, economic
2 conditions, growth rate, recessionary economic conditions,
3 economic impacts, and inflationary impacts, and that with
4 the bottom line being TVA's wholesale prices no longer
5 competitive.

6 TVA, we will admit, is kind of a strange duck. It's a
7 government agency. It's independent in that way, and does
8 not, according to its own charter and its own history, is
9 not really in competition with other utilities such as --
10 the Southern Company, for example, or Duke Energy, or
11 Dominion or Virginia Power, or many others that are publicly
12 owned and are corporations.

13 So, TVA -- I'm sorry -- Ms. Gorenflo points to the fact
14 that the primary benefit of a new nuclear plant is large
15 quantity of base load power it can provide.

16 Consequently, analysis of need should focus primarily
17 on energy rather than peak demand requirements.

18 This is emphasized by the NRC in its Standard Review
19 Plan. I attribute it to Ms. Gorenflo. I may have flubbed
20 that up little bit.

21 But what my point here is that TVA addressing its
22 decreasing system load factor by increasing its base load

1 capacity rather than reducing its peak demand.

2 The point here being that by addressing one issue,
3 which is base load, or peak demand, with a new power source
4 which is uniquely designed for a base load power that it can
5 provide, that would be the nuclear plant.

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

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

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

15 These are genuine disputes that we have with what TVA
16 has presented in their Combined Operating License
17 application with regards to the need or the failure to
18 demonstrate need and also the cost analysis, which
19 unfortunately, in the application there is a lot of blank
20 pages for some reason.

21 And I'm sure that the blank pages are there because
22 of -- at a request by TVA, but we are puzzled why

1 information from a company which is not actually in
2 competition with other power producers.

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

8 >>CHAIRMAN BOLLWERK: Anything further?

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

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

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

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

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

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

1 You do acknowledge that they did look at long-term
2 forecasts, reflect a range of economic growth standards
3 varying from 3.6 down to 2.7 growth in GRP.

4 Why did you specifically call out -- this is in
5 Contention 11, I guess -- why did you specifically call out
6 that range?

7 >>MR. ZELLER: The growth in ranges from 0.1% to
8 2.7%?

9 >>JUDGE BARATTA: Right.

10 >>MR. ZELLER: Just a minute, please. The lower
11 growth range has to do with an economic recession. And
12 TVA's long-term forecast reflects a range of economic growth
13 between 3.6% down to 2.7%.

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

17 >>JUDGE BARATTA: Okay, and presumably, their
18 long-term forecast -- and maybe I should ask this of the
19 Applicant. And if you can't answer it, I will ask it of the
20 Applicant -- refers to growth over many years, not one, two
21 or three, but more like 10, 20 or more years.

22 I was curious as to how you would justify a 0.1% growth

1 rate for more than a couple of years.

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

8 So, why should we -- in evaluating these alternatives,
9 you have this reasonableness test. In other words, what's
10 reasonable to look at? It just kind of struck me that
11 that's not exactly reasonable for long-term growth, I guess.

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

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

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

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

1 >>JUDGE BARATTA: It was actually negative for a
2 period of time, though.

3 >>MR. ZELLER: -- for a sustained period, which
4 was for some people bad news, for the rest of us it was good
5 news because we were doing as much, or more, with the same
6 amount of power.

7 Not that we want to revisit the stagflation of the
8 1970's, but a flatter growth rate or a lower growth rate
9 than the high end of this range, we think should be included
10 in these analysis.

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

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

18 I assume that's the ER actually in the application. Is
19 that where that comes from?

20 >>MR. ZELLER: Yes. I'm looking at it right here,
21 Judge. Yes, it's a long quote.

22 >>JUDGE BARATTA: That is from the TVA application

1 itself?

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

4 >>CHAIRMAN BOLLWERK: Anything, Judge Sager?

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

9 Where is what he says that you're using? You're using
10 some information from him about -- I suppose he's saying
11 that we've underestimated the costs -- I'm sorry, TVA has
12 underestimated the cost of construction and operation, but I
13 don't see that in the affidavit.

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

17 >>CHAIRMAN BOLLWERK: And I take it you've
18 attributed that to Dr. Marcojoni in the Petition?

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

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

22 >>CHAIRMAN BOLLWERK: All right. Any other

1 questions from the Board at this point?

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

4 >>MR. FRANTZ: Thank you. I think it's important,
5 first of all, to set the legal standards applicable to need
6 for power analysis.

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

12 I believe you alluded to that Dr. Baratta. Similarly
13 in the Potabo case, which we cite in our answer, the Appeal
14 Board held that an Applicant's forecasts are not suspect
15 merely because they are considerably high, which addresses a
16 point raised by Mr. Zeller.

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

20 In light of these standards, TVA's forecast should be
21 judged on whether they are reasonable or not. The mere fact
22 that it's possible to postulate different assumptions or

1 postulate different issues or factors that should be
2 considered is not sufficient basis for this contention.

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

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

9 Dr. Baratta pointed out one of those, but the -- that
10 essentially have no basis, at least no expert support, no
11 references, no other source material. But the contention is
12 just rife with these kinds of statements. And you pointed
13 out only one of many.

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

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

21 Furthermore, they must provide some basis for believing
22 that our analysis is unreasonable and that they have

1 something to show that our analysis is wrong.

2 They need to provide, for example, their own analysis
3 of need for power. They need to cite some other reference
4 that evaluates the need for power, that shows that our
5 analysis is unreasonably high, and they simply have not done
6 that.

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

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

19 For example, they argue that we should consider issues
20 such as the high cost of oil, possible carbon tariffs that
21 might be enacted by Congress, distribution of income and
22 income inequalities throughout the TVA service area and

1 aging population.

2 But even if you assume we considered all of those
3 factors, there's nothing to indicate that they would in fact
4 change the results of our need for power analysis.

5 In fact, it's equally plausible to postulate that they
6 would actually show that our analysis is reasonable and
7 perhaps low.

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

10 Petitioners point out in their petition itself that
11 our -- they say that our analysis of forecasts were not
12 achieved in 2007, in the first quarter of 2008. They say
13 our actual power sales were less than our forecasts.

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

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

1 percentages were less than we forecasted.

2 In any case, again, if you simply assume they are
3 correct, it doesn't provide an adequate basis for a
4 contention.

5 The Appeal Board held in *Duke Power*, again that we cite
6 in our answer, that a short-term blip in forecast and needs
7 and actual demand does not justify a holding that the
8 long-term forecasts are unreasonable.

9 Dr. Baratta, I think you pointed this out, that the
10 simple fact we have a recession, or could have a recession,
11 put it that way, over a period of a year or two, does not
12 indicate or invalidate long-term forecasts that's over a
13 decade, period of ten years or more.

14 In fact, in our case, we're looking at a projection of
15 need for power in the 2016 to 2020 time frame, which again
16 is 8 to 12 years, and they have not made any attempt to
17 demonstrate that we could have a recession lasting for that
18 length of period of time.

19 Additionally, Petitioners have simply mischaracterized
20 our application. Mr. Zeller alleges that both, in his oral
21 presentation today and in his petition, that our need for
22 power analysis is based upon peak load forecasts rather than

1 energy or base load forecasts. That is simply incorrect.

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

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

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

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

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

22 With respect to their contention on the demand side

1 management, which is NEPA Contention C, they contend that we
2 have not forecast any load reduction from the demand side
3 management. Again, I think that just simply
4 mischaracterizes our application.

5 Our application shows in Section 8.2.2 of the
6 Environmental Report that we have already achieved demand
7 side management in the last ten years of approximately
8 500 megawatts reduction in demand. So, we do take that into
9 account.

10 Turning to their contention in NEPA N, on the cost
11 comparison issues, their allegations here are simply not
12 material to our environmental report, although we do provide
13 information on costs of alternatives.

14 In the Environmental Report, we do not base the results
15 of our analysis on a cost comparison. Instead, for example,
16 we reject the alternatives of wind and solar because they
17 cannot supply base load power.

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

22 Therefore, even if Petitioners are entirely correct on

1 the cost issue, it simply is not material to our analysis.
2 It won't affect the results or the outcome of our analysis
3 of the alternatives of wind, solar and other combinations.

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

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

13 Again, this contention simply is a mischaracterization
14 of the Environmental Report. The Section 9.1 of the
15 Environmental Report clearly states that if the No Action
16 Alternative is selected and Bellefonte is not built and
17 operated, the negative environmental impact of Bellefonte
18 would not occur.

19 Then, obviously, we have a full discussion of those
20 environmental impacts in Chapter 4 on construction impacts
21 and Chapter 5 on operational impacts.

22 So, our Environmental Report does have a full catalog

1 of the environmental impacts of Bellefonte. We have not
2 neglected to provide negative information.

3 They also appear in this contention to criticize our
4 alternatives, our evaluation of alternative generating
5 sources, such as wind and solar, but in this contention
6 itself, there are essentially no facts, no allegations that
7 would support any contention that our consideration was
8 improper.

9 There's nothing more than a very conclusionary
10 statement that we haven't done a proper job of evaluating
11 alternatives, without saying how our analysis is defective.

12 We have a full analysis of alternatives in Chapter 9.2
13 of the Environmental Report and they've not criticized any
14 aspect of that in this Contention NEPA D, and therefore we
15 believe this contention should be rejected also for lack of
16 an adequate basis.

17 Thank you.

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

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

1 >>MR. FRANTZ: 8.4-2.

2 >>JUDGE BARATTA: 8.4-2, okay. I guess the thing
3 that kind of made me wonder was this -- making projections
4 is more than science, let's face it. You're right, you have
5 to look at what is a reasonable way to do things, and I was
6 curious. I kind of got the impression that you looked at a
7 medium growth, high growth, but not a low growth.

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

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

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

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

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

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

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

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

5 For the high, we have ranges of around 4.1% to 4.3%.
6 For the medium, we have 3.1% to 3.2%. For the low, 1% to
7 1.5%.

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

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

15 These enhanced efforts are expected to produce some of
16 the demand of the forecast, et cetera. In other words,
17 you're waffling; not unjustifiably.

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

20 >>MR. FRANTZ: At the time the environmental
21 report was prepared - this was last fall - TVA had not yet
22 identified what enhancements it would be making on the

1 demand side management program.

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

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

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

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

14 >>MR. FRANTZ: There are other cases which have
15 held we don't need to consider reports that may be issued in
16 the future, and such future forecasts that haven't been
17 developed yet.

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

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

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

6 >>CHAIRMAN BOLLWERK: Well, if I can interject, in
7 the Vogtle case, if I remember correctly, had to do with the
8 fact there was a public utility commission involved and I
9 don't know of any public utility commissions that's involved
10 with TVA.

11 >>MR. FRANTZ: That's correct. However, the
12 situation is somewhat analogous in that we at that point in
13 time when we developed the Environmental Report, we didn't
14 have a plan.

15 We didn't know exactly what we were going to be doing
16 in terms of demand side management enhancements, and
17 therefore it would be entirely speculative for us to try to
18 forecast the effect of that.

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

21 >>MR. FRANTZ: After the report came out, the
22 environmental report came out and was filed with NRC, of

1 course TVA has continued to work on this plan, and in May it
2 did release a plan that showed, I believe, a reduction in
3 peak capacity -- or peak demands of around 1,400 megawatts.

4 Again, this was after we submitted our Environmental
5 Report.

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

13 >>JUDGE BARATTA: I mean you do say in the same
14 area that could have some effect on the demand for base
15 load?

16 >>MR. FRANTZ: Yes.

17 >>JUDGE BARATTA: Which would be taken into
18 account for future planning. But this whole demand for
19 power is speculative. I can't -- and really what we get
20 into is how -- the approach that you use, is that
21 reasonable?

22 >>MR. FRANTZ: Yes.

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

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

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

11 >>CHAIRMAN BOLLWERK: I believe there have been
12 other cases or arguments made that demand management doesn't
13 have to be taken into account.

14 For instance, there's a merchant power company which
15 really has no control over demand at all. But you're not
16 taking that approach here, I take it? You're not taking
17 that position?

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

1 Then, there is the other issue of using the existing
2 plans, using the existing demand side management program
3 that's in effect. What is the demand for power? And that's
4 discussed in Chapter 8.

5 I think the cases you're referring to are the cases
6 that pertain to alternatives, all but even more demand side
7 management in Chapter 9.2 rather than the need for power
8 analysis in Chapter 8, based upon existing programs.

9 >>JUDGE BARATTA: I didn't quite -- you say that
10 there's more in another chapter?

11 >>MR. FRANTZ: Yes. In Chapter 9.2, we do discuss
12 the alternatives of using demand side management.

13 >>JUDGE BARATTA: Right. That's what we're
14 looking at here.

15 >>MR. FRANTZ: In fact, I believe we say there
16 that demand side management cannot produce the power, the
17 base load power that we're projecting from Bellefonte, as an
18 alternative.

19 >>JUDGE BARATTA: A moment ago you said that you
20 looked at, amongst alternatives, solar, wind and fossil
21 together, and you discarded that because of the negative
22 environmental impact.

1 I think one of the issues that was raised by the
2 Intervener dealt with solar, wind and biogas. Did you
3 consider that?

4 >>MR. FRANTZ: We did not, and I guess I have two
5 points on that.

6 First of all, they raised the biogas issue for the
7 first time in their reply. It's not in their petition, and
8 therefore we move to strike that reference to the biogas.

9 I think you're going to find that the environmental
10 impacts of biogas are not horribly different than from, say,
11 the impacts of natural gas.

12 And, therefore, I think the analysis that we have on
13 environmental impacts on combinations of wind, solar and
14 fossil fuels is roughly similar to what we would have if we
15 had actually gone through and evaluated biogas.

16 >>CHAIRMAN BOLLWERK: All right. Anything further
17 at this point?

18 >>JUDGE BARATTA: No. Thank you.

19 >>CHAIRMAN BOLLWERK: Judge Sager? Thank you,
20 sir. Let's move to the staff then.

21 >>MR. MOULDING: Thank you, Your Honor.

22 The Staff has relatively little to add to what has

1 already been said here, but I would like to briefly go
2 through each of the contentions in this section to briefly
3 reiterate a couple of points.

4 >>CHAIRMAN BOLLWERK: I think we're having some
5 hearing problems. You may need to first check it to make
6 sure it's on and maybe move it a little closer.

7 We're going to check over here and make sure our volume
8 control is okay.

9 >>MR. MOULDING: Can you hear me?

10 >>CHAIRMAN BOLLWERK: Definitely. Much better.

11 Again, we don't want you to swallow it, but make sure
12 you get close enough to it.

13 >>MR. MOULDING: Understood. Thank you.

14 The Staff has relatively little to add to what has
15 already been said here, but I would like to briefly go
16 through each of the contentions and reiterate a couple of
17 points.

18 First of all, for Contention NEPA C, formerly
19 Contention 9, the contention alleges that alternatives to
20 the proposed action are lacking. As the Staff mentioned in
21 its Answer, the petition did not dispute the recommendations
22 or the alternatives discussed in the application and ignored

1 several sections of the Environmental Report that did relate
2 to the issues specified in this contention, wind and solar
3 generation, as well as demand side management, as has been
4 mentioned.

5 There is a discussion of wind generation in Section
6 9.2.2.1, solar generation in 9.2.2.2, and of demand side
7 management in Section 9.2.1.3.

8 As the Petitioners' reply presented no new information
9 on Contention NEPA C, the Staff has no further comments on
10 that contention at this time.

11 With respect to Contention NEPA D, formerly Contention
12 10, this contention alleges that TVA's power and energy
13 requirements forecast fail to evaluate alternatives.

14 As has previously been mentioned, the petition
15 misunderstood -- or misunderstands the No Action Alternative
16 and ignored other portions of the Environmental Report that
17 did in fact discuss the No Action Alternative and the energy
18 alternatives that this contention identified.

19 The petition did not identify any dispute with the one
20 paragraph from the Environmental Report that it did cite and
21 as mentioned did not include the remainder of the
22 environmental reports discussion of the no action

1 alternative.

2 Petitioner's reply on this contention made a number of
3 new arguments and presented some new factual material. This
4 material included new factual sources concerning wind and
5 solar energy generation, which we perceive as being for the
6 sole purpose of curing the absence of factual support in the
7 initial contention, an absence which the staff noted in its
8 answer.

9 The Petitioners characterize this new to material as
10 rebuttal, but do not explain why it could not have been
11 presented in the initial petition, and as has been discussed
12 already in the context of other contentions, because
13 Petitioner made no attempt to demonstrate that they have met
14 the standards for late file contentions, the Board should
15 not consider the new material in making its determination on
16 the admissibility of this contention.

17 However, in any event, the new material in the reply
18 fails to explain in what way the additional information
19 specifically contradicts the analysis of wind and solar
20 generation that is in the application.

21 With respect to Contention NEPA E, formerly Contention
22 11, this contention raises a number of challenges to the

1 Applicant's need for power analysis.

2 However, as the Staff explained in its Answer, the
3 Petitioner provided almost no factual support for its
4 assertions in the contention, and more specifically did not
5 explain how its assertions contradicted the analysis in the
6 application.

7 As mentioned in the Staff's answer, the contention also
8 in numerous places cited language from NRC guidance
9 documents but without any specific additional discussion of
10 why such an analysis was required and much less how the
11 application in fact failed to address those issues.

12 The Petitioners' reply concedes that statements in SRP,
13 Standard Review Plan Guidance, are not regulations, but
14 argues that the concerns are important within the Staff, the
15 NRC review process, and the staff agrees with that
16 assertion.

17 The SRP provides one approach that the Staff considers
18 acceptable for meeting the relative regulations.

19 However, simply quoting guidance in the contention
20 without some explanation of how the application is therefore
21 inadequate does not satisfy the standards for admissibility
22 of a contention and does not demonstrate a genuine dispute

1 with the application on that issue.

2 The petitioners' reply also argues that the NRC must
3 provide some regulatory oversight of TVA or appoint another
4 agency to conduct an independent review.

5 However, as explained in the Staff's response to
6 Contention NEPA F, formerly Contention 12, as we will be
7 discussing later this afternoon, generalized policy
8 arguments about TVA's organization and the appropriate level
9 of state or federal regulation of TVA are not issues that
10 are subject to resolution in this proceeding.

11 However, like other applicants, TVA must include
12 certain information in its application, including the need
13 for power and discussion. And as part of its NEPA
14 responsibilities, the Staff does review TVA's need for power
15 analysis to determine if it's reasonable and meets high
16 quality standards, as is mentioned in the Environmental
17 Standard Review Plan.

18 But Petitioners' arguments for broader NRC control over
19 TVA's internal decision-making or rate-making activities are
20 beyond the scope of this proceeding.

21 The Petitioners' reply also presents new factual
22 material in connection with the contention. This material

1 includes an additional citation to challenge the economic
2 growth rates used by TVA, and a list of energy efficiency
3 programs that are used by -- allegedly used by other
4 utilities and states.

5 However, Petitioner's characterized this new material
6 again as rebuttal and does not explain why it could not be
7 presented in the initial contention; and, again, as
8 mentioned before because they had made no attempt to
9 demonstrate that this material meets the late filed
10 contention standards, the Board should not consider it in
11 making its determination on the admissibility of this
12 contention.

13 However, in any event, the Petitioners did not explain
14 how the new cited growth rates or energy efficiency programs
15 are relevant or are comparable to TVA's forecast, much less
16 how they specifically contradict any portion of TVA's
17 analysis.

18 Finally, with respect to Contention NEPA N, formerly
19 Contention 16, the contention here argued that the cost
20 estimates in the application for nuclear generation were a
21 misleading basis for comparison with the cost of -- with
22 comparison for alternative energy sources.

1 However, as the Staff noted in its answer, the
2 contention ultimately does not explain how its challenges to
3 the Application's cost estimates create a dispute with the
4 Environmental Reports' conclusions on the viability of
5 alternatives.

6 The Applicant's analysis and conclusions with respect
7 to wind and solar generation alternatives in the
8 Environmental Report clearly did not depend solely on cost
9 estimates but on the asserted need for base load capacity
10 from the new proposed Bellefonte facility.

11 Consequently, the contentions challenges to the cost
12 estimates in the Environmental Report do not demonstrate a
13 genuine dispute with ER's conclusions with respect to the
14 evaluation of alternatives.

15 As correctly noted in the Petitioners' reply, the
16 Petitioners presented the declaration of Argen Marcojoni as
17 support for both the factual content and expert opinion of
18 this contention.

19 However, as noted in the Staff's Answer, for several of
20 the assertions in the contention neither the contention nor
21 the supporting declaration identify the sources of documents
22 on which the Petitioners' expert opinion is based or would

1 rely as required by 2.309(f)(1)(iv).

2 These include assertions regarding the costs likely to
3 be imposed in the future for carbon dioxide admissions,
4 about the significance or magnitude of various financial
5 risk factors or the basis for comparing cost at a Florida
6 Power & Light project in Florida to the cost of the
7 Bellefonte facility.

8 However, as previously mentioned, the contention
9 ultimately does not explain how its challenges to the
10 Application's cost estimates contradict the ER's, the
11 Environmental Report's conclusions with respect to those
12 alternatives as alternatives to new base load capacity.

13 In Petitioners reply, the Petitioners' reply raises new
14 arguments that challenge TVA selection of nuclear for the
15 purposes of base load power. They argue for consideration
16 of hybrid power plants, and advocate efficiency measures to
17 reduce electricity demand and peak load.

18 However, the Petitioners do not show why these
19 arguments could not have been raised in the Petition and,
20 similar to what we have mentioned for previous contentions,
21 the Board should not consider those new arguments on its
22 determination on the admissibility of former Contention 16.

1 In any event, the reply still does not identify any
2 dispute with the analysis that is in the application,
3 including with respect to the Environmental Report's
4 discussion of energy efficiency measures.

5 The Staff has no other comments on these contentions at
6 this time.

7 >>CHAIRMAN BOLLWERK: All right. Questions from
8 the Board?

9 Dr. Baratta? Absolutely.

10 JUDGE BARATTA: Can I ask my Florida Power & Light
11 question now?

12 >>CHAIRMAN BOLLWERK: I suppose.

13 >>JUDGE BARATTA: All right. You said that the
14 FP&L costs aren't relevant to the Environmental Report
15 analysis that needs to be done. Is that what I heard you
16 say?

17 >>MR. MOULDING: No. We actually characterized it
18 as -- our statement was that the contention did not explain
19 what the relevance -- why those costs would be comparable to
20 the Florida Power & Light.

21 >>JUDGE BARATTA: Well, it seems like a factor of
22 two difference in cost estimates would be kind of obviously

1 irrelevant and I was curious as to what your take was on
2 that.

3 >>MR. MOULDING: As I believe the Applicant has
4 mentioned, there may be some differences in the cost for
5 being in a different area of the country, the infrastructure
6 that may already exist with respect to the Bellefonte
7 facility. The Applicant has pointed to some of those as
8 reasons why the cost might not be comparable.

9 Our statement was simply that the contention did not
10 explain, other than simply citing these estimates as being
11 for two nuclear projects using these -- the same design, why
12 those created material disputes with the cost estimates
13 presented by the Application.

14 >>JUDGE BARATTA: That's an awful lot to be eaten
15 up in regional differences, having built ships in different
16 parts of the country. A factor of two, we probably never
17 would have gone to that area, but it seems rather strange
18 and it would seem as though that would have a direct impact
19 on one does the alternatives comparison, and therefore it
20 does seem relevant.

21 >>MR. MOULDING: The Staff's view was that it was
22 the burden of the contention to explain what the relevance

1 of that comparison would be, to explain why it disputes
2 those cost estimates.

3 As the staff also emphasized, ultimately the discussion
4 of the cost estimates for nuclear generation do not create a
5 dispute with the conclusions that the Environmental Report
6 reached with respect to some of the other alternatives, such
7 as wind and solar power, on which cost was not -- apparently
8 was not the determining factor in dismissing those as viable
9 alternatives to new base load generation.

10 >>CHAIRMAN BOLLWERK: Does the Applicant want to
11 say anything about that?

12 >>MR. FRANTZ: Just to emphasize the point that
13 was raised by Mr. Moulding, we do plan for Units 3 and 4 to
14 take advantage of the existing transmission lines. For
15 Units 1 and 2, the existing intake and discharge structures,
16 the existing cooling towers.

17 So, that obviously has an impact on the differences
18 between the FPL estimates and our own estimates.

19 Additionally, I believe the FPL itself, it says, it
20 took our estimates for Bellefonte and used that as a
21 starting point for its own analysis. Therefore, it
22 obviously did not see anything that was deficient in our

1 analysis if it was using it as a basis for its own analysis.

2 >>JUDGE BARATTA: Except they doubled it.

3 >>MR. FRANTZ: They doubled it. And, frankly, I
4 have not gone through and tried to identify every reason why
5 --

6 >>JUDGE BARATTA: Nor have I. I'm really asking
7 this question out of ignorance. I'm trying to figure out
8 why the difference.

9 >>CHAIRMAN BOLLWERK: Did you all just get a great
10 deal?

11 >>JUDGE BARATTA: Did you get a fire sale or
12 something?

13 >>MR. FRANTZ: We've not tried to break down the
14 FPL estimate in detail, identify every reason why it's
15 different from the TVA estimate.

16 >>JUDGE BARATTA: I mean even allowing -- what's
17 the cooling tower cost now? A hundred, two hundred million?
18 Something in that range? Maybe comparable for new intake
19 structures?

20 I mean, I can come up with -- those factors you named
21 might be worth a billion or even two, but we're talking 12,
22 and I just --

1 >>MR. FRANTZ: I might also add that these cost
2 estimates really vary tremendously on whether you're talking
3 about overnight capital costs or costs that would include
4 the cost of money over a four-year, five-year period. And
5 again we have not looked at the FPL estimate to see why it
6 may be different from the estimate we used for TVA.

7 >>CHAIRMAN BOLLWERK: Anything further on that
8 question? Or anything else for the Staff?

9 >>JUDGE BARATTA: No.

10 >>CHAIRMAN BOLLWERK: Mr. Sager?

11 I just have -- what is the Staff's general on demand
12 side management and the need to address it in an
13 environmental impact statement?

14 >>MR. MOULDING: It's a matter that's discussed in
15 the Environmental Standard Review Plan as something that the
16 staff may look at.

17 >>JUDGE BARATTA: Could you speak up?

18 >>MR. MOULDING: I'm sorry, sir.

19 Demand side management is a matter that is identified

20 --

21 >>CHAIRMAN BOLLWERK: Try it one more time.

22 >>MR. MOULDING: The Staff does consider demand

1 side management to be one of the issues that is discussed in
2 the Standard Review Plan, as something that may be relevant
3 to the need for power analysis.

4 However, as the Applicant has explained, there's a
5 discussion of demand side management in the Environmental
6 Report that the Petitioners do not clearly dispute, and the
7 ER also identifies -- ruled it out as a viable alternative
8 to base load capacity.

9 So, that discussion is in the Environmental Report and
10 it was not clear that the contention clearly disputed any
11 aspect of that analysis in the application.

12 >>CHAIRMAN BOLLWERK: All right. Anything further
13 for the Staff? Thank you very much.

14 We'll turn back the joint petitioners at this point.

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

16 >>CHAIRMAN BOLLWERK: You may want to move your
17 mic up as well.

18 >>MR. ZELLER: Indeed. TVA's arguments and I
19 believe Staff's arguments revolve around claims that
20 comparative costs of nuclear and alternative energy supplies
21 are not material to the outcome of this proceeding because
22 nuclear power is somehow better than wind or solar power for

1 the provision of base load energy.

2 But our contention centers on the fact that TVA has not
3 demonstrated that electricity or the need for power
4 translates into base load power requirements rather than
5 peak load sources for which there are -- peak load demands,
6 I should say.

7 Our information shows that a combination of renewable
8 energy, wind and solar, can provide power with the same
9 level of reliability, particularly when you look forward
10 over a period of time that we're looking at.

11 Last year in the United States, something on the order
12 of 5,200 megawatts of new power was provided. That would be
13 tantamount to four AP1000s. With nothing like the time
14 frame for development of those resources.

15 These are -- efficiency measures also can reduce
16 electricity demand and peak load much better, with far less
17 pollution over.

18 Some of the internal contradictions which have been
19 referred to -- if I can find them here. I believe you
20 alluded to that earlier.

21 For example, regarding the costs; the difference
22 between Chapter 10 of the environmental report and Chapter 9

1 of the environmental report, which we included in our June 6
2 petition.

3 Some of these questions are reflected also in the June
4 11th request for additional information regarding the cost
5 of construction estimates.

6 I'm looking at RAI No. 10.4.2-1, which asks the
7 Applicant to update the cost of construction estimates,
8 provide references to support the revised cost estimates,
9 confirm the costs, rework of existing structures.

10 The allusion to Florida Power & Light don't hold up
11 because -- we believe do not hold up because Florida Power &
12 Light is an existing site and operating station, which could
13 not be much more different from the Bellefonte site. \$4.6
14 billion was spent here with no power produced as of yet.

15 Demand side management can change NG production
16 forecasts.

17 So, for all these reasons, and the others outlined both
18 in our original petition and in our reply, we believe this
19 could be admissible because it's supported by a concise
20 statement of expert opinions and facts, and are -- the bar
21 here for us is that a contention must make a minimal showing
22 of material facts that are in dispute, and demonstrated

1 inquiry and depth is appropriate with the internal
2 contradictions and what we feel is the omitted information
3 or discounting out of hand of cleaner and in our view
4 preferable sources of power to meet both peak demand base
5 load power that our petition, our contention meets those
6 requirements.

7 >>CHAIRMAN BOLLWERK: All right. Let me see if
8 there's any Board questions. Judge Baratta?

9 >>JUDGE BARATTA: I wanted to make a comment on
10 some of the issues you've raised in terms of, well, if a
11 major consumer industry were to collapse or something like
12 that, I mean I'm a little troubled.

13 As the Applicant has pointed out, those are discreet
14 events, and, yes, it probably would have a very dramatic
15 impact on growth rate and things like that, but it would be
16 over a short period of time. It's all very speculative.

17 You could have one go away, but then if land prices go
18 down and such and somebody else comes in.

19 I mean to be reasonable, you can't -- individual
20 isolated events like that are, I think, maybe unreasonable
21 to take into account as opposed to coming up with a
22 reasonable strategy to define a low, medium and high growth

1 rate on which to base your forecast.

2 That's why I asked you about that 0.1%. What was the
3 basis for that? Is there a dispute between what they had,
4 which is on the order of 1% versus what you're saying, and,
5 yeah, those events could occur but one could equally conjure
6 other events which would have the opposite effect. You
7 can't play this game forever, you know what I mean.

8 So, I was wondering, do you have anything to add to
9 that that would answer my concern there about whether or not
10 what you're proposing is really a reasonable way to approach
11 that type analysis?

12 >>MR. ZELLER: Yes. I appreciate that question.
13 And, forecasts, I agree, are subject to assumptions, but I
14 think the only thing I could add at this point, in addition
15 to what I've already said, is that nuclear generating units
16 do seem to suffer from a unique vulnerability, and that is
17 we are seeing now power plants being developed outside the
18 United States as well as inside the United States.

19 Many older units, whether in Europe or elsewhere around
20 the world, are reaching the end of their normal lifespan of
21 40 years time. The vulnerability of that, I've identified,
22 could change the economics of all of these assumptions, and

1 in a matter of hours. And we've already seen one of those
2 shocks go through the system, the economic system, as well
3 as the electrical system. In 1979, with the Three Mile
4 Island accident there and years later at Chernobyl.

5 Now, this is not off the subject of your question.
6 This is right on the point. The economics of nuclear power
7 could be altered if an accident happens 100 miles away or
8 10,000 miles away.

9 These types of changes, these types of catastrophes you
10 do not see with other forms of alternative energy, the ones
11 which we're talking about here, which are solar and wind
12 energy. Even a coal plant, which I'm not advocating.

13 There's nothing in history which would show the kind of
14 catastrophic meltdown impacts of a fossil fuel plant.

15 So, the economics of nuclear power are subject to
16 unique vulnerabilities. So, thereof, the analysis does need
17 to take into account a broad range, and that's why to narrow
18 the range of assumptions to a part of this spectrum we feel
19 is unjustified.

20 >>JUDGE BARATTA: When did you first raise the
21 issue of wind, solar and biogas?

22 We've heard it said that it was in your reply. Is

1 that -- I don't recall, to be honest with you, when you did.
2 So, I'm asking that out of ignorance or failing memory.

3 >>MR. ZELLER: Just a moment.

4 >>JUDGE BARATTA: If you want, we can come back to
5 that.

6 >>MR. ZELLER: Of course.

7 >>JUDGE BARATTA: Going back to this statement
8 relative to the demand side management, is your concern
9 about the analysis that was done one of adequacy or --
10 concern over adequacy or concern that it was not addressed?

11 In other words, that it was omitted?

12 >>MR. ZELLER: There are words about demand side
13 management which have been mentioned. We feel that the
14 analyses were inadequate and discounted out of hand, or
15 mixing apples and oranges by addressing base load or peak
16 demand with -- inappropriately.

17 >>JUDGE BARATTA: Do you have an answer to that
18 other one?

19 >>MR. ZELLER: Yes. The answer regarding Page 48,
20 at the bottom of our original petition, for energy supply,
21 negative --

22 >>JUDGE BARATTA: Bottom of Page 48.

1 >>MR. ZELLER: -- negative alternatives include
2 efficiencies, demand side management which will allow TVA to
3 abandon nuclear option at Bellefonte. Positive alternatives
4 to nuclear power include solar, wind, et cetera.

5 >>CHAIRMAN BOLLWERK: Dr. Sager, any questions?

6 >>JUDGE SAGER: No, thanks.

7 >>CHAIRMAN BOLLWERK: I just have one, maybe a
8 clarification to the record.

9 I know you had mentioned, I guess particularly with
10 respect to Contention NEPA N, which is now -- or used to be
11 Contention 16, that there is cost information that was not
12 available to you. Or you felt there were blank pages that
13 perhaps contained that sort of information?

14 >>MR. ZELLER: Yes.

15 >>CHAIRMAN BOLLWERK: My assumption is you're
16 talking about some kind of proprietary information that was
17 not provided, and you suggested you had a problem with that.

18 I just want to make sure for the record, however, the
19 Board did issue an order that said that if you wanted access
20 to proprietary information you could talk with the Staff and
21 the Applicant and seek a protective order to get it.

22 >>MR. ZELLER: I acknowledge that, Your Honor. We

1 did -- the proprietary information or security -- as
2 differentiated from the SUNSI rule? Isn't that what we're
3 talking about?

4 >>CHAIRMAN BOLLWERK: Well, SUNSI and proprietary
5 tend to fall in the same category in terms of the
6 requirements. Security information like safeguards or
7 classified is in a different category. The safeguards and
8 classified obviously at a much higher standard, where you
9 need to get access to the information.

10 >>MR. ZELLER: Right. Well, yes, I understand,
11 and we do have a fundamental problem with -- we understand
12 the need for safeguards information for security concerns,
13 national security and otherwise. SUNSI we feel is kind of a
14 grab bag and is -- and this is not unique to this
15 application.

16 We feel it is an arrogation of power by the -- by, I
17 guess. the Commission to keep information away from the
18 public without justification.

19 I could go into some detail about that. We have
20 outlined this in some of our writings elsewhere, but
21 basically we feel that to subject Petitioners or members of
22 the public to fingerprinting and credit checks and what-not

1 in order to get information --

2 >>CHAIRMAN BOLLWERK: Although I don't think
3 that's required to get access to proprietary information. I
4 believe all you need is a protective order and signing an
5 affidavit of nondisclosure.

6 I'll have the Staff correct me if I'm wrong, but I
7 think you're referring to the types of information
8 safeguards and security, or am I incorrect in that regard?

9 >>MR. MOULDING: You're correct, Your Honor.
10 There's no background check or credit check required for
11 access to proprietary informational. That's a requirement,
12 however, for safeguards information.

13 >>CHAIRMAN BOLLWERK: Which would be generally
14 information dealing with the security plant or nuclear power
15 plant or that sort of information.

16 I think you may be under a misapprehension here. I
17 don't want you to continue to operate under that, but
18 proprietary information, at least in all the cases I've done
19 over the years, if you talk with the Staff and the
20 Applicant, you can reach agreement on a protective order and
21 then get to simply sign an affidavit of nondisclosure, you
22 can have access to that information.

1 Obviously, you cannot disclose it without authority
2 from the Board.

3 One of the things that has been done in the past is you
4 can come to the Board and say we think this should or should
5 not be made proprietary.

6 It doesn't require a credit check. It doesn't require
7 fingerprints. All it requires is your willingness to abide
8 by the order that's put in place.

9 >>MR. ZELLER: Thank you. I appreciate that. I
10 should -- I wasn't prepared to talk about this today, but it
11 seemed like the --

12 >>CHAIRMAN BOLLWERK: You may have a philosophical
13 objection to SUNSI and --

14 >>MR. ZELLER: I do.

15 >>CHAIRMAN BOLLWERK: -- proprietary too, and I
16 understand that. I'm just saying it's not --

17 >>MR. ZELLER: I do, too.

18 >>CHAIRMAN BOLLWERK: -- something you cannot get
19 access to and cannot try to object to as part of these legal
20 proceedings. I just wanted to may that clear.

21 >>MR. ZELLER: Thank you. I appreciate that. And
22 we did look had at acquiring SUNSI information,

1 specifically, and the constraints that you have mentioned,
2 which apply to SUNSI, we feel are unjustified, and
3 unjustifiable, and particularly in this case with TVA, which
4 is not in competition with any other utility, so far as we
5 can tell.

6 So, if we should be more straightforward and explicit
7 in our objections in this matter, then perhaps we should
8 have done that, but you are correct, we do have a
9 philosophical problem with keeping this information apart
10 from the freely available information, which is in the rest
11 of the Combined Operating License Application.

12 >>CHAIRMAN BOLLWERK: All right. Thank you.
13 Anything further?

14 All right, it's a quarter till. Why don't we go ahead
15 and take a break at this point. We've been at it a little
16 over an hour.

17 We'll take a break up until -- why don't we say, let's
18 see, 2:55, approximately. 2:55.

19 I would mention again if we have some folks that have
20 been part of our webcast and are leaving, there is an e-mail
21 address, webstreammaster, one word, dot resource@nrc.gov.
22 If you have any comments, we appreciate hearing from you.

1 Then we'll take a 10-minute break until five minutes to
2 3 o'clock, and then we'll reconvene. Thank you.

3 (Whereupon, a recess was taken.)

4 >>CHAIRMAN BOLLWERK: All right, let's go back on
5 the record.

6 We're back from a brief break, and we're going to begin
7 now with Contention NEPA F, which was formerly Contention
8 12: "The NRC Failed to Justify the Need for New Units."
9 And I'll turn to Mr. Zeller and let's hear what you have to
10 say, sir.

11 >>MR. ZELLER: Thank you, Your Honor. In this
12 contention, the Petitioners are asking the Nuclear
13 Regulatory Commission to review Tennessee Valley Authority's
14 claims that the proposed Bellefonte units are needed.

15 This is based on our look-back over the last several
16 decades when Tennessee Valley Authority protected large
17 increases in demand, which did not materialize, and
18 resulting in the cancellation of many of the units at that
19 time, projected to be on the order of 17 new units.

20 So, I guess this is maybe a wish and a prayer that
21 somebody will take a look at what TVA has done, and our
22 analysis here is mostly the broad brush strokes and just

1 guessing, by gosh, showing that TVA has made some big
2 mistakes in the past.

3 And so we're kind of appealing to the Commission or to
4 this Board to either have the Nuclear Regulatory
5 Commission's staff take a harder look at this, or if needs
6 be, an outside agency. I don't know, for example, since TVA
7 is a federal body, could the General Accounting Office of
8 Congress look at these claims to justify these new units?

9 I'm aware of the example of a proposal by TVA which
10 undermines their own claims that a new unit at Bellefonte
11 Court II are justified.

12 Their energy efficiency plan, which is supposed to be
13 met by 2012, calls for a 1,400 megawatt reduction in power
14 demand in their service area, met by energy efficiencies and
15 demand side management; reasonable approach to reducing the
16 impacts on the environment, saving their own ratepayers
17 money.

18 1,400 megawatts, as you well know, is tantamount to
19 just one of these AP1000 reactors, and that's by 2012.

20 So, basically that's the contention in a nutshell.

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

1 All right, let's turn then to the Applicant.

2 >>MR. BURDOCK: Thank you, Your Honor. The
3 petitioners have not provided an admissible contention here.
4 In the title to their contention, they claim that the NRC
5 failed to justify need for the new units.

6 If the petitioners are claiming that the NRC already
7 should have done something, it provides no legal basis.
8 From the Petitioner's description today, it sounds like
9 they're disputing the future reviews by the NRC staff.

10 In the Petitioner's Contention, they conclude that it
11 clearly becomes a responsibility of the NRC to review the
12 adequacy of TVA's claims that the proposed Bellefonte units
13 are needed.

14 TVA submitted its application to the NRC in October
15 2007. Chapter 8 of the Environmental Report includes a need
16 for power analysis. TVA submitted that to the NRC for the
17 NRC's review.

18 So, in essence, the Petitioners are claiming that the
19 NRC staff is required to do something that they are required
20 to do by the regulations and this cannot support an
21 admissible contention.

22 Additionally, if the petitioners are challenging the

1 future analyses of the NRC staff, this, too, must fail.

2 Section 2.309(f)(2) of the NRC regulations makes it
3 clear that at this stage of the proceeding, Petitioners must
4 challenge the documents that have already been prepared,
5 such as the Environmental Report and Petitioners challenge
6 no part of the environmental report in this Contention.

7 Additionally, this Contention discusses a lot of facts
8 about TVA and their decision-making process. It appears to
9 claim that the NRC should provide oversight to those
10 decision-making processes related to TVA's rates and their
11 decisions to apply for a COL.

12 They provide absolutely no statutory or regulatory
13 authority for that. Therefore, that challenge is outside
14 the scope of this proceeding.

15 Nothing further.

16 >>CHAIRMAN BOLLWERK: All right. Any Board
17 questions for TVA?

18 All right. We'll turn to the staff and I guess one of
19 things I think we'd like to get a sense of from the staff is
20 what is your relationship with TVA on the regulatory side
21 given they are a federal entity that might be different from
22 what you do relative -- or how you interact relative to

1 other utilities or other applicants for nuclear power
2 plants, to the degree you can help us out with that?

3 MR. MOULDING: I can try. Like any other
4 Applicant, TVA is required to submit an environmental report
5 that includes the need for power analysis. As we do with
6 other applicants, the staff reviews that need for power
7 analysis to ensure that it is reasonable and that it meets
8 high quality standards as discussed in the Environmental
9 Standard Review Plan.

10 Previous Commission cases do indicate that the NRC and
11 TVA both have NEPA related responsibilities and it is
12 pursuant to our NEPA responsibilities that the NRC staff
13 conducts the review of the need for power and presents that
14 in the NRC staff's Environmental Impact Statement.

15 >>CHAIRMAN BOLLWERK: Given there's no public
16 utility commission involved, how does that change the
17 staff's relationship with TVA or the sorts of reviews they
18 might otherwise look to the PUC to do?

19 >>MR. MOULDING: As I mentioned, the Environmental
20 Standard Review Plan has certain criteria that the NRC staff
21 looks for in determining whether any Applicant's need for
22 power analysis is reasonable.

1 Those criteria are spelled out in Chapter 8 of the
2 Environmental Standard Review Plan, and those are the same
3 criteria that the staff would be looking for in TVA's
4 environmental report.

5 But in any event, as the Applicant has correctly
6 pointed out here, most of what the Petitioner is asking for
7 here concerns more general oversight of TVA's
8 decision-making process, the extent that the stakeholder
9 involvement and TVA's decision-making and those issues are
10 outside the scope of this proceeding and are not really
11 related to the more narrow question of how the NRC reviews
12 the need for power analysis.

13 >>CHAIRMAN BOLLWERK: I think you haven't
14 specifically answered my question, though, in terms of --
15 for instance, staff will defer to a public utility
16 commission's findings about need for power.

17 And I take it what you're saying, and maybe I'm not
18 listening carefully enough, that you're basically saying you
19 would stand in the stead of the public utility commission in
20 that regard?

21 >>MR. MOULDING: The staff's guidance in the
22 Environmental Standard Review Plan suggest that the staff

1 can rely on the need for power analysis provided by an
2 Applicant or by a public utility or other regulatory entity
3 if it meets the criteria for being reasonable and meeting
4 high quality standards.

5 The staff's guidance is directed at that analysis of an
6 Applicant's environmental report. And in that sense, it is
7 the same -- same review that the NRC staff performs of TVA's
8 or would of other applicants, if it meets those criteria for
9 being reasonable and of high quality standards.

10 >>CHAIRMAN BOLLWERK: If I understand what you're
11 saying, the only difference is, for instance, an Applicant,
12 in a regulated state can look to their public utility
13 commission, perhaps, to supply the NRC with some information
14 that might be used for making a need for power
15 determination.

16 Whereas, here, the TVA does not have that opportunity
17 because essentially, they are not regulated by a public
18 utility commission; they have to supply the information
19 themselves?

20 >>MR. MOULDING: That is correct, but that doesn't
21 mean that the staff does not perform the same review of
22 whether it meets the criteria for being reasonable and the

1 criteria being systematic, comprehensive, et cetera.

2 >>CHAIRMAN BOLLWERK: You would just be looking to
3 the public utility commission's analysis or the way that
4 they did the process rather than somebody looking at the
5 Applicant's information?

6 >>MR. MOULDING: That is correct, but the staff
7 cannot simply rely on information in an Applicant's
8 environmental report, whether or not it comes from a third
9 party regulatory review, unless it meets the standards that
10 the staff looks for in its guidance.

11 >>CHAIRMAN BOLLWERK: All right.

12 >>JUDGE BARATTA: Just for further clarification,
13 when a PUC does their -- Public Utility Commission, does
14 their review, it's more akin to the due diligence review.

15 In this case where there is no PUC, are you going to do
16 that type of review, because that's quite an undertaking?

17 What are your criteria for determining reasonableness,
18 I guess is what I'm saying?

19 >>MR. MOULDING: Those criteria are the ones that
20 are identified in the Environmental Standard Review Plan,
21 which include things like the analysis being systematic and
22 comprehensive.

1 I'm not sure if that's similar to what you're referring
2 to in terms of due diligence. I'm not sure --

3 >>JUDGE BARATTA: Well, my understanding is when a
4 PUC -- they actually go in and look at the very detailed
5 level numbers and such, at historical data, population data.
6 It's a much more comprehensive review than frankly I would
7 expect you to undertake.

8 I'm just trying to get an understanding of what you
9 think you will be doing in this case, this particular
10 application.

11 >>MR. MOULDING: In the Environmental Standard
12 Review Plan, the guidance indicates that -- perhaps the way
13 you were discussing our first look in conducting the review
14 of the need for power analysis is to determine whether the
15 analysis is systematic, comprehensive, et cetera.

16 The staff's guidance continues that if those criteria
17 are not -- do not appear to be met, then the staff has more
18 detailed criteria that we would then look at and we would
19 request more detailed information about some aspects of that
20 analysis.

21 So, the Environmental Standard Review Plan kind of
22 discusses both those levels of scrutiny of a need for power

1 analysis. But the first step is trying to determine if the
2 need for power analysis can be relied on because it is
3 reasonable and meets the high quality standards.

4 >>JUDGE BARATTA: And you get in as part of that,
5 into the reasonableness of their assumptions? Or are you
6 just looking at whether or not you have a systematic
7 approach to determining the need for power?

8 >>MR. MOULDING: I believe it's more the latter,
9 but I would have to consult the language of the
10 Environmental Standard Review Plan to be confident about
11 that.

12 >>CHAIRMAN BOLLWERK: With respect to TVA, will
13 you be doing the latter or the former? I guess we're back
14 to that.

15 Is it systematic, what you're looking for with respect
16 to TVA or are you actually taking the next step since there
17 is no public utility commission there?

18 >>MR. MOULDING: As the Applicant mentions, at
19 this time, the staff is currently reviewing the need for
20 power analysis. So, as part of that analysis, we would
21 determine what level of information we would be looking for
22 under the NRC staff guidance. But that is what the staff is

1 currently reviewing.

2 >>JUDGE BARATTA: I guess this is a unique beast
3 in a way because you're dealing with a situation where most
4 utilities are regulated or emergent, which means
5 unregulated, and the need for power is meaningless in that
6 case, because that's strictly a business case and not a PUC
7 type of case, which this is more akin to.

8 I'm just curious as to how -- does the Standard Review
9 Plan really cover this case? That's the bottom line.

10 >>MR. MOULDING: As I mentioned, the Standard
11 Review Plan talks about situations when the staff may rely
12 on Applicant's need for power analysis or on a third
13 party's -- a public utility commission's review submitted by
14 an Applicant after having consulted that utility commission.

15 So, the guidance is intended to address both of those
16 circumstances. I guess I would also just emphasize that in
17 this case, the contention doesn't make specific claims about
18 what should or should not -- part of that analysis for
19 making more general assertions about what proper oversight
20 of TVA, NRC should or should not have. And our position is
21 that those issues are outside the scope of this proceeding.

22 >>CHAIRMAN BOLLWERK: Right, although you did make

1 reference in your prior argument on the NEPA contentions
2 that we put together to this sort of idea, to some degree,
3 which is one of the reasons also we were interested in this
4 issue.

5 All right. Anybody from the Board have any other
6 questions for the staff?

7 Let me turn then back to Mr. Zeller. Anything further
8 to say on this contention?

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

10 The responses that I've just heard, both from the
11 Applicant and from the staff I believe indicate that the NRC
12 may or may not have -- the staff, I should say, may or may
13 not have expertise akin to the public staff of a public
14 utilities commission or a public services commission.

15 I pointed to this request for additional information
16 which asks TVA to provide or update its IRP, its Integrated
17 Resource Plan, in which it reviews a forecast for power.

18 So, I believe that the Commission's staff does seem to
19 be seeking some of this information. So, I don't know if
20 we're at the point yet where we would accept that they have
21 done the due diligence or they have done the -- provided the
22 checks and balances that an independent review would

1 provide.

2 I mentioned the GAO; that was just kind of a shot in
3 the dark. Some agency, if it's not within the Nuclear
4 Regulatory Commission's staff that has the expertise that a
5 public staff of a utility's commission would have, to check
6 things out and to do an independent analysis, which, as we
7 said in our contention, is lacking in this case.

8 So, we're kind of -- we're looking for an answer here
9 ourselves and I don't know what the solution is, but I know
10 that what I'm seeing is not it.

11 >>CHAIRMAN BOLLWERK: Let me ask this question.
12 Putting aside the GAO for a second, Mr. Moulding indicated
13 their staff is undergoing its review now on this aspect of
14 the application and they haven't finished it yet.

15 Do you think what you're asking for here may be a
16 little premature? Do you need to see what they actually do?

17 >>MR. ZELLER: Maybe so, and if this contention
18 was admitted, then we would certainly have the benefit of
19 that analysis in order to talk more about it.

20 >>CHAIRMAN BOLLWERK: Although normally, at least
21 looking at the rules at this stage, what we're looking for
22 are contentions that relate to the Applicant's application

1 in the Environmental Plan, not to what the staff's review is
2 doing on the NEPA side.

3 >>MR. ZELLER: There's the rub.

4 >>CHAIRMAN BOLLWERK: All right. Any other
5 questions from the Board or Mr. Zeller?

6 >>MR. ZELLER: I'm done.

7 >>CHAIRMAN BOLLWERK: You're done? All right.

8 Let's then move to Contention Miscellaneous F, which
9 was formerly Contention 13, the so-called low-level -- the
10 title is "So-Called Low-Level Radioactive Waste".

11 I guess you mentioned before, Mr. Zeller, your concern
12 about I guess the Commission's waste confidence ruling,
13 which has to do with high-level waste. And as I read this,
14 I got the impression what you're looking for is waste
15 confidence relating to low-level waste?

16 >>MR. ZELLER: Yes, Your Honor, that's correct.

17 This Contention No. 13 or Miscellaneous F, this
18 so-called low-level radioactive waste -- pardon the term
19 there, because that means that much of what is categorized
20 as low-level waste, as you well know, is not -- does not
21 mean low danger. It includes some of the same radionuclides
22 that's included in high-level nuclear waste.

1 And then when you get in the upper range there, Class
2 B, C or even greater than class C radioactive waste, you're
3 talking about some very dangerous -- some very hazardous
4 radionuclides.

5 This Contention, as outlined in our original petition
6 of June 6th, states it -- I think plainly that there is no
7 place for this waste to go and therefore that TVA at
8 Bellefonte would have to find some other way to deal with
9 some of these wastes.

10 I agree it's an intractable problem, but there are --
11 or there have been in the past, legislative or institutional
12 remedies for such, and at this point in time and perhaps for
13 a considerable period into the future, such options are
14 foreclosed.

15 So how, in our view, how -- we aren't aware of no
16 exceptions granted by the Commission from the relevant
17 regulations under -- for low-level radioactive waste
18 disposition over a long period of time.

19 Low-level waste are handled on-site for a limited
20 period of time, but I think if the past is any guide, the
21 Low-level Waste Policy Act was passed decades ago and the
22 compact system that it was supposed to put in place almost

1 came together. It fell apart before it became functional.

2 So, we're in a situation now -- we're kind of in a
3 limbo with low-level radioactive waste on a national scale.

4 So, it's left to the utilities, now, TVA and others to
5 figure out how to deal with low-level waste. That's why we
6 come to the regulations under 10 CFR 61, because that seems
7 to be the one place where long-term management or
8 disposition of low-level radioactive waste is discussed.

9 >>CHAIRMAN BOLLWERK: All right. Anything from
10 either of the Board Members at this point?

11 No? All right. Let's turn then to the Applicant.

12 >>MR. FRANTZ: The heart of the Contention is that
13 we must obtain a license under Part 61 to dispose of
14 low-level waste. This contention is both legally and
15 factually incorrect.

16 First of all, Part 61 applies to disposal of waste, not
17 to temporary on-site storage. As we clearly state in
18 Section 3.5.3 of our Environmental Report, we don't plan to
19 dispose of waste on-site.

20 Instead, we plan to store it temporarily and then ship
21 it offsite for disposal. And therefore clearly, Part 61 is
22 not applicable to our plans.

1 Furthermore, I might add that as a legal matter, Part
2 61 only applies to waste received from others for disposal.
3 So, therefore, even if we were planning to dispose of waste
4 on-site, which we're not, but even if we were, Part 61 would
5 not be applicable in this case.

6 Furthermore, I think the Contention is based upon a
7 faulty premise that there will never be an available
8 disposal site for Class B and Class C wastes.

9 However, we don't plan to begin operation at Bellefonte
10 until the 2017/2018 timeframe. That gives us about ten
11 years hopefully to develop a disposal site that would take
12 waste from the State of Alabama and perhaps from other
13 states.

14 Additionally, Bellefonte is designed to store two
15 years' worth of Class A, B, and C waste. Most of that is
16 Class A waste, and therefore if we were only going to be
17 using it for Class B and C storage, we'd have more than two
18 years worth of capacity.

19 And then, finally, there are provisions that are in the
20 NRC guidance documents for expanding storage capacity. So,
21 for example, if we get into the 2020 time frame or later,
22 and we find out that we need more storage capacity, the

1 guidance documents provide for us to construct more
2 capacity.

3 For example, the generic letter 81-38 and Regulatory
4 Issue Summary 20 -- I'm sorry; 2008-12 both provide guidance
5 for expanding storage capacity on-site. And again if we
6 need to, we would use those provisions.

7 Finally, I might add in this regard that their
8 suggestion that we obtain a Part 61 license and dispose of
9 waste on-site is contrary to the NRC's policy.

10 For example, in generic letter 81-38, the NRC has said
11 that licensees should not dispose of waste on-site because
12 that would discourage states from developing their own
13 disposal facilities.

14 What Mr. Zeller is suggesting would be contrary to the
15 NRC's policy in this area. Petitioner's reply takes a
16 somewhat different tact. They argue there that we would
17 consider the environmental impacts of on-site disposal, but
18 that represents a direct challenge to Table S3 and 10 CFR
19 51.51.

20 In fact, in Footnote 13 of their reply, Petitioners
21 acknowledge that fact because they have not sought a waiver
22 from the regulation, this issue is not cognizable by the

1 Board.

2 They do state that they plan to submit a petition for
3 rulemaking to amend Table S3. In other words, they have not
4 submitted that petition yet. In any case, it would not
5 provide a basis for a contention in this proceeding.

6 The NRC is allowed to resolve issues generically rather
7 than through individual licensing proceedings and
8 petitioners have simply mis-cited the case of Massachusetts
9 versus NRC. That does not provide authorization for the NRC
10 to admit contentions on a standby basis or to allow a
11 placeholder basis.

12 Instead, it simply says that a petition for rulemaking
13 may request inspection of the relevant portions of the
14 licensing proceeding if it's a party to that proceeding. It
15 provides no basis for a contention in that proceeding.

16 Finally, I might add that they claim in their petition
17 to intervene our description of the Process Control Program,
18 commonly known as a PCP, is perfunctory.

19 However, they seem to overlook the fact that our FSAR
20 incorporates by reference NEI-0701 which provides a fairly
21 lengthy description of the PCP. Therefore, we think again
22 they have mischaracterized our application in this area.

1 That concludes my discussion. Thank you.

2 >>CHAIRMAN BOLLWERK: All right, questions from
3 the Board? Judge Baratta?

4 >>JUDGE BARATTA: I guess what would be wrong with
5 you just saying what you just said in your environmental
6 report? In other words, I acknowledge that Barnwell is not
7 available and you do have options available, which you just
8 outlined.

9 >>MR. FRANTZ: First of all, when we submitted our
10 environmental report last fall, at that point Barnwell was
11 available.

12 >>JUDGE BARATTA: Yeah, but they already said they
13 were going to close in June.

14 >>MR. FRANTZ: I understand your point, and
15 obviously there could have been an enhancement in this area,
16 but we don't see any fundamental problem with the
17 Environmental Report.

18 There really isn't any material issue or dispute of
19 fact here and won't alter any of the outcomes of our
20 analysis in the environmental report if you were to include
21 this kind of information.

22 >>JUDGE BARATTA: I don't know about that. Just

1 for the audience benefit, what does Table S3 specifically
2 say relevant to low-level waste?

3 >>MR. FRANTZ: It assumes that it will be disposed
4 of off-site in shallow burial.

5 >>CHAIRMAN BOLLWERK: Judge Sager, anything?

6 >>JUDGE SAGER: Just to help me with my education
7 here, the contention says there's almost no mention in the
8 ER about this subject, but you reference the sections. What
9 section would I look this up in? Your description of the
10 handling the waste.

11 MR. FRANTZ: The handling of the waste with
12 respect to the PCP is in FSAR Section 11.4.6. I believe
13 there are also various discussions of how we intend to store
14 waste and dispose of it off-site in Environmental Report
15 Section 3.5.3.

16 >>JUDGE SAGER: Thank you.

17 >>CHAIRMAN BOLLWERK: When I first spoke with
18 Mr. Zeller, it referred to this as sort of the low-level
19 waste analog to a high-level waste confidence provisions,
20 the Commission's policy or undertaking a rulemaking. Why is
21 that not an analogy here?

22 I suppose that one of the questions is what confidence

1 does the Commission have with this problem with low-level
2 waste generally is going to be solved, going on in this past
3 20 years, as is the case in the high-level proceedings.

4 MR. FRANTZ: The waste confidence rulemaking
5 proceeding was looking at the safety of the storage spent
6 fuel on-site after termination of operation of the plant,
7 and in this case there really isn't any dispute that we can
8 safely store material on-site.

9 We do have provisions right now for two years worth of
10 storage and the staff is reviewing those -- or has reviewed
11 those. They are part actually of the DCD for the AP1000.

12 And if we need to develop additional storage
13 facilities, the Agency staff has guidance documents that
14 provide criteria for safe storage. So, there really isn't
15 any question at this point we can safely store the low-level
16 waste on-site.

17 >>CHAIRMAN BOLLWERK: But again, with high-level
18 waste, that question is for how long? Isn't that a question
19 here?

20 If this never -- if the states don't deal with this
21 problem in the near term, how long is this going to go on?
22 Isn't that what the Commission is looking at in some of the

1 high-level waste cases?

2 >>MR. FRANTZ: You have to postulate that this
3 would go on for 50 years; 10 years to go through the
4 licensing process and the construction process and 40 years
5 over a license lifetime, and you could actually renew it for
6 another 20 years. To postulate, we won't have any disposal
7 facilities available for that lengthy period of time I don't
8 believe is unreasonable.

9 >>CHAIRMAN BOLLWERK: Hasn't this been going on
10 for nearly 20 years already? There were alternatives up to
11 this point, but those alternatives -- the window is
12 narrowing.

13 I would also point out with maybe another analogy with
14 the -- there were problems originally with the uranium
15 enrichment that had to be solved with basically Congress
16 coming and passing a statute that then became basis in the
17 LES case for a finding there about confidence relative to
18 waste.

19 >>MR. FRANTZ: Again, I think our position is we
20 can safely store this. The NRC has found with the DCD they
21 have safe storage provision already in the DCD.

22 >>CHAIRMAN BOLLWERK: All right, anything from the

1 members of the Board at this point for the Applicant? All
2 right. Thank you very much. Let's start with the staff.

3 >>MR. MOULDING: The staff has relatively little
4 to add with respect to the contention Miscellaneous F. As
5 already mentioned, the Bellefonte application does not
6 propose on-site disposal of radioactive waste and
7 accordingly there is no Commission requirement to license
8 this site under 10 CFR Part 61.

9 As already mentioned, Table S3 of 10 CFR 5151 already
10 makes a conclusion with respect to the amount of low-level
11 waste identified, not resulting in significant effluent to
12 the environment.

13 And as the Petitioner seems to recognize in their
14 reply, they acknowledge that this is essentially a
15 prohibition on challenging the regulation and they indicate
16 their intent to file a rulemaking petition.

17 But for the reasons already explained in the staff's
18 answer with respect to two other contentions, their
19 intention to file a rulemaking petition does not make for an
20 admission contention here.

21 Finally, the petitioners attempted in their reply to
22 cure the lack of factual support or expert opinion for their

1 contention by providing a new expert declaration. As
2 previously mentioned, a reply brief is not permitted to cure
3 that deficiency in the original contention.

4 As noted, the reply also raises some new claims and
5 arguments, including with respect to environmental justice
6 and economic consequences. But because the petitioners made
7 no attempt to demonstrate that they met those standards for
8 late-filed contentions with respect to those arguments, the
9 Board should not consider those in ruling on the
10 admissibility of the contention.

11 The staff has nothing further at this time.

12 >>CHAIRMAN BOLLWERK: All right. Judge Baratta,
13 anything for the staff? Just one question. Wasn't the
14 closure of Barnwell sort of a material change here? It was
15 obviously something significant. Something's changed here.
16 Something's not the same as it was before in a fairly
17 significant way?

18 >>MR. MOULDING: Well, for the reasons that have
19 been already mentioned here, the rule already deals with --
20 deals with the circumstances of the availability of
21 disposal, and for the reasons that the Applicant mentioned,
22 the timeliness of that ultimate disposal issue is not

1 something that needs to be determined at this time, or the
2 Petitioner has pointed to no requirement to resolve that at
3 this time.

4 >>CHAIRMAN BOLLWERK: Anything further from the
5 Board? You're looking pensive.

6 >>JUDGE BARATTA: Well, the last statement that
7 leads to no requirement to resolve that at this time, I
8 guess I'd like to understand that a little further.

9 At some point, it's going to have to be resolved. When
10 does it become right?

11 >>MR. MOULDING: As the Applicant previously
12 discussed, if there proves to be a storage issue down the
13 line, the staff has guidance for addressing that issue at
14 that time.

15 But the contention pointed to no -- the contention is
16 focused on the need for a Part 61 licensing requirement for
17 disposal -- actual disposal of low-level radioactive waste
18 on-site, and Part 61 is simply not applicable to that.

19 >>JUDGE BARATTA: I'm not referring to Part 61.
20 I'm referring to the issue that Judge Bollwerk referred to
21 here, which is the closure and what to do about the waste
22 that might accumulate.

1 When does that -- dealing with that relative to their
2 license or proposed license? I shouldn't say when does it
3 become right.

4 >>MR. MOULDING: As the Applicant mentioned, the
5 Commission has issued some generic guidance about dealing
6 with the issue of low-level waste storage and has indicated
7 that those measures can be considered in the future at an
8 appropriate time.

9 >>JUDGE BARATTA: Seems to be a vague question
10 about when the appropriate time is. We'll let that go by.

11 >>CHAIRMAN BOLLWERK: All right. Anything
12 further? Judge Sager?

13 >>JUDGE SAGER: No.

14 >>CHAIRMAN BOLLWERK: All right. Let's turn back
15 to the Joint Petitioners then.

16 >>MR. ZELLER: Thank you, Your Honor. Our
17 original petition does address Section 11.4.5, and we
18 characterize that as a perfunctory discussion, which is
19 regarding the process control program, which I'm assuming
20 you all read, so I won't bother with that.

21 But it does end up saying that its purpose is to
22 provide necessary controls, et cetera, et cetera, et cetera,

1 for a burial at a low-level waste disposal site that is
2 licensed in accordance with 10 CFR 61.

3 So, I guess it kind of -- it begs the question because
4 there is no explanation offered as to how the Applicant will
5 meet this plan.

6 For example, where is the analysis for greater than two
7 years' storage on site, at the Bellefonte site? Somebody
8 can point that out to me, but I don't see it in here.

9 I think at the bottom line our recommendation would be
10 to request this contention be admitted and held in abeyance
11 until some of these issues can be resolved.

12 >>CHAIRMAN BOLLWERK: Any Board questions for
13 joint petitioners? Judge Baratta?

14 >>JUDGE BARATTA: We have this Table S3, and I
15 think you're well aware that one of the things that a
16 contention cannot do is challenge regulation.

17 And Table S3 is in essence a regulation which says that
18 the issue of low-level waste disposal is a generic issue and
19 the Commission's opinion is that there is historic and
20 dispose of it.

21 So, what would you have us do? Because we have on the
22 one hand, the requirement that we cannot admit a contention,

1 the challengers regulation.

2 We have, on the other hand, Table S3, but until we also
3 have the issue that Barnwell is now closed.

4 >>MR. ZELLER: I understand and I appreciate that.

5 According to my understanding, the Nuclear Regulatory
6 Commission may channel into a generic rulemaking the
7 Petitioners' concerns about information and that it can --
8 it should or it must provide at least one path by which the
9 challenging party may establish a connection between the
10 rulemaking and the licensing proceeding.

11 The purpose of which is to assure the result of the
12 rulemaking proceeding will be applied to the individual
13 licensing case.

14 So, this is the Commonwealth of Massachusetts, First
15 Circuit 2008.

16 So, this information we think would come under that,
17 and so there has to be some path here which allows the issue
18 to be not only dealt with generically, but it's raised in
19 this context.

20 And that's what I believe the case law or the -- not
21 the case law -- well, I guess it is case law, that comes to
22 us from the First Circuit would indicate that there needs to

1 be some kind of path provided here.

2 If it's not held in abeyance, then perhaps some other
3 management decision by the judges. I have no idea about
4 that.

5 >>CHAIRMAN BOLLWERK: All right. I don't have
6 anything further. Judge Sager?

7 >>JUDGE SAGER: No.

8 >>CHAIRMAN BOLLWERK: All right. Thank you very
9 much for your comments on that contention.

10 We're now at what I would, I guess, refer to as sort of
11 the residuum, which would be the balance of the contentions
12 that you all had posited.

13 We've given you a general time to argue any, all or
14 none of those depending on how you want to proceed.

15 I guess my question, Mr. Zeller, is do you have
16 something you want to say about every one or do you want to
17 deal with only specific ones? How is your --?

18 >>MR. ZELLER: Thank you. I wondered why that
19 kind of did seem like a grab bag.

20 >>CHAIRMAN BOLLWERK: I think the Board's feeling
21 is we understood what you were saying. It wasn't
22 necessarily -- we wanted to give you an opportunity if you

1 wanted to emphasize something to us about any of them in
2 particular. That's why we sort of put them all together.

3 We can proceed through them one at a time or I can sort
4 of set them all out and we can go through them in any order
5 you'd like. Sort of a question of how you'd like to proceed
6 within the time frame that we have.

7 >>MR. ZELLER: Which is 20 minutes, 10 and 10.

8 Can I have a moment to confer with my colleague,
9 please?

10 >>CHAIRMAN BOLLWERK: Sure. Absolutely.

11 >>MR. ZELLER: Okay. Thank you, Your Honor. I
12 would just like to briefly touch on a few points, not on
13 every single one of these contentions because I think we
14 leave some of it to stand.

15 >>CHAIRMAN BOLLWERK: Would it be helpful if I
16 sort of went down and you can just tell me if there's
17 anything you want to say about that one and if there is you
18 can say. If there's not, we'll move on to the next one.

19 >>MR. ZELLER: Of course.

20 >>CHAIRMAN BOLLWERK: Will that work for you? The
21 first one is what was called Miscellaneous A, formerly it
22 was a portion of Contention 1, whether Bellefonte will

1 improve the general welfare and increase the standard of
2 living or strengthen free competition in private enterprise.

3 >>MR. ZELLER: What I would say here is what has
4 the Nuclear Regulatory Commission done to eliminate the
5 problem identified in its August 2001 review on human error?

6 >>CHAIRMAN BOLLWERK: Your essential concern there
7 is about questions of human error?

8 >>MR. ZELLER: Yes.

9 >>CHAIRMAN BOLLWERK: All right. Anything further
10 on that one?

11 >>MR. ZELLER: No, I think the rest of it stands
12 on some of the technical issues as stated. We'll just leave
13 it where they are.

14 >>CHAIRMAN BOLLWERK: All right. You may have
15 already gone into this, but let me just go through. There
16 was also FSAR-A, which was formerly also a portion of
17 Contention 1, hardware failures.

18 >>MR. ZELLER: Right.

19 >>CHAIRMAN BOLLWERK: You're standing pat on that
20 one, at least at this point?

21 >>MR. ZELLER: We'll stand by our petition.

22 >>CHAIRMAN BOLLWERK: All right. There was TS-A,

1 which was formerly a portion of Contention 1, human factors.

2 I think that's what you just referred to.

3 >>MR. ZELLER: That's the one I mentioned.

4 >>CHAIRMAN BOLLWERK: There was A/FI-A formerly a
5 portion of Contention 1, threats to NRC independent review.
6 I think that one sounds like you've already submitted what
7 you want to say about that one?

8 >>MR. ZELLER: I don't know what more I can say.
9 It might be a little bit unusual to bring up issues such as
10 that, but we feel that they are important.

11 We would just ask the judges to please consider that
12 and look at it with a fresh eye, even if they have never
13 been considered before because we do have some major
14 questions about the appearances of this procedure and
15 legislation which is mentioned in here, which is plainly
16 outside of your control, but which has an impact on how
17 nuclear licensing is done over the next -- over the
18 short-term and over the long-term.

19 Things have changed which -- outside the control of the
20 Commission, which we believe undermines the body's
21 independence or its appearance of independence.

22 In many -- in many publicly appointed bodies and

1 others, the appearances and the proprieties of integrity
2 within that institution, within that regulatory body, is as
3 important as the letter of the law.

4 A half a billion dollars of penalties have to be
5 considered in this decision at some point, and we feel that
6 those -- that that is perhaps -- I don't know, I don't think
7 "unsavory" is inappropriate here, and this does not impugn
8 anyone within the Atomic Safety Licensing Board because, as
9 I stated, there's no -- the actions of the Energy Bill of
10 2005 in Congress were totally outside the control of anybody
11 directly affected by it, but nevertheless, it's like
12 gravity. It's there.

13 So, I leave it at that.

14 >>CHAIRMAN BOLLWERK: I'm going to move through
15 these as we talk. If one of you all has a question, just
16 let me know and I'll stop.

17 Miscellaneous A1, formally a portion of Contention 1,
18 procedural shell gains.

19 >>MR. ZELLER: We believe that speaks for itself.

20 >>CHAIRMAN BOLLWERK: Miscellaneous B, which was
21 formerly Contention 2, the NRC fails to execute
22 constitutional due process and equal protection.

1 >>MR. ZELLER: This one relates to exposures to
2 individuals and how many people we will expect to die every
3 year during the operation of this plant.

4 And the difference between how the regulatory limits
5 for radionuclides -- the difference between how the health
6 impacts of radionuclides are set as compared with other
7 carcinogens and other deadly substances at the federal
8 level.

9 Why is it different within the Nuclear Regulatory
10 Commission for radionuclides than it is from dioxin and
11 other harmful substances?

12 This seems to be a much different level, which seems to
13 be acceptable; one in a million versus one in 10,000. I
14 don't have the number off the top of my head, 5 in 10,000,
15 100 milligrams of exposure.

16 So that, I guess, is the crux of it, and how that can
17 be dealt with by the Nuclear Regulatory Commission
18 without -- I don't know, but it's a concern of ours. That's
19 why we've raised it here.

20 If there's something that can be done within the
21 Nuclear Regulatory Commission and to better protect the
22 public, that's what we would be interested in.

1 In other words, if the minimum regulation is exceeded,
2 and I know there is a low as reasonably achievable, which
3 sounds very good, but it also doesn't have the requirements
4 that it be adhered to.

5 As low as reasonably achievable is difficult to pin
6 down. It's a subjective standard, I guess is the word I'm
7 looking for, rather than an objective standard.

8 And if as low as reasonably achievable is half of the
9 objective standard, then why not make the objective standard
10 half, or a tenth, if that's what the claim is?

11 Am I making myself clear?

12 >>CHAIRMAN BOLLWERK: All right, thank you. Next
13 would be Miscellaneous C, which was formerly Contention 4,
14 failure to address the impact of terrorist attacks.

15 >>MR. ZELLER: Yes, I know that the Supreme Court
16 passed on review of the Ninth Circuit decision, and I'll
17 just have to say as an observer, I don't know how it can be
18 justified outside of legal terms with regards to venue and
19 what-not; how the Commission could justify it's decision to
20 abide by that decision only within the place where it was
21 decided.

22 >>CHAIRMAN BOLLWERK: Can I interrupt you one

1 second? Can you move the mic a little closer? I think the
2 court reporter is having some difficulties.

3 >>MR. ZELLER: Yes, I'm sorry.

4 >>CHAIRMAN BOLLWERK: Thank you.

5 >>MR. ZELLER: I would repeat; it's hard to
6 understand how the Commission can justify outside of the
7 constraints of the -- I guess for want of a better term --
8 the legal discussion, that even within that time -- even
9 within that frame, how can it be justified that it would
10 only be adhered to within the Ninth -- within that district
11 where the decision was made in the Ninth Circuit. We think
12 that's unreasonable.

13 >>CHAIRMAN BOLLWERK: All right.

14 >>MR. ZELLER: And the fact that the Supreme Court
15 has let it stand seems to me that it should apply
16 nationally.

17 >>CHAIRMAN BOLLWERK: All right. Miscellaneous E,
18 which was formerly Contention 6, whether Bellefonte will
19 adequately limit atmospheric emissions of radionuclides.

20 >>MR. ZELLER: I think that one speaks for itself.
21 Thank you.

22 >>CHAIRMAN BOLLWERK: All right. Then NEPA L,

1 formerly Contention 14, waste confidence, high-level nuclear
2 waste from irradiated fuel.

3 I think you mentioned this previously in our argument.

4 >>MR. ZELLER: Right. We feel that environmental
5 report fails to provide sufficient discussion of the
6 environmental impacts here, and I've already stated the
7 same.

8 >>CHAIRMAN BOLLWERK: All right. Contention
9 FSAR-C, which was formerly a portion of Contention 15,
10 global warming impact are omitted from TVA License
11 Application, severe weather and carbon footprint.

12 >>MR. ZELLER: Yes. The only thing I would add to
13 this is that in addition to the reliance on the Design
14 Control Document, which is devoid of any discussion of the
15 acceleration and severe weather impacts, which is stated in
16 the contention, we also see in the July 11 request for
17 information, the staff asking TVA to discuss and provide
18 references for impacts of climate change on water supply.
19 And this is on Page 4 of the RAI.

20 That's question 5.2-2, and then two questions later,
21 5.2-4, describe the origin for the temperature data
22 collected from 1974 to 1990, and provide that data.

1 This is in reference to Section 5.2.2.2.2 -- there's
2 four 2's there -- of thermal impacts given the ongoing
3 drought in the Southeast.

4 So, there's outstanding questions here, which this
5 contention is based on.

6 >>CHAIRMAN BOLLWERK: All right. Anything further
7 on that one?

8 >>MR. ZELLER: Pardon?

9 >>CHAIRMAN BOLLWERK: Anything further on that
10 one?

11 >>MR. ZELLER: No. That's all I have, Your Honor.

12 >>CHAIRMAN BOLLWERK: Then there was NEPA M, which
13 was formerly in another portion of Contention 15, global
14 warming impacts are omitted from the TVA license application
15 carbon footprint.

16 >>MR. ZELLER: Also, we've said enough about that.

17 >>CHAIRMAN BOLLWERK: All right. Then there's
18 NEPA O, formerly part of Contention 17 -- sorry; formerly
19 Contention 17, the inadequacy of the environmental reports
20 analysis of human health impacts of irradiate fuel disposal.

21 >>MR. ZELLER: Yes. All I would add is to point
22 out that TVA's conclusions are not reasonable or supported

1 by credible evidence.

2 We believe the evidence shows that human health impacts
3 disposing of spent fuel from their proposed Bellefonte plant
4 would be large and we detail these in later contentions.

5 >>CHAIRMAN BOLLWERK: All right. And then I
6 believe the last one is contention NEPA Q, which was
7 formerly Contention 19, the environmental reports improper
8 characterization of health effects from the uranium fuel
9 cycle is small and failure to adequately compare them to
10 health effects of alternative energy sources. I think you
11 made reference to this one previously.

12 >>MR. ZELLER: Yes.

13 >>CHAIRMAN BOLLWERK: If you'd like to elaborate
14 on that, this would be the time to do that, obviously.

15 >>MR. ZELLER: Yes, I would. Thank you, Your
16 Honor.

17 19, Contention 19, the likely incidence of cancer,
18 illness and mortality is significantly in excess of the
19 mortality from exposure to natural sources of radiation.

20 We're relying on our technical expert here, again, Dr.
21 Argen Marcojoni, and he has said here that applying BIER-7
22 risk factors, that the annual expected cancers based on

1 average males and females are cancer incidence over 40 years
2 of operation would be 102 cancers. Cancer deaths over 40
3 years of operation would be 51.

4 We submit that this is not a small impact over this
5 period of time. This is a large impact. Therefore, we feel
6 that the contention demonstrates a genuine and material
7 dispute regarding the adequacy of the Environmental Report
8 to address these environmental and public health impacts
9 from the Bellefonte nuclear power plant and the -- and to
10 adequately weigh the relative cost benefits of alternative
11 sources of energy which would not have that level of
12 morbidity and mortality.

13 Beyond that, I think the contention stands for itself.

14 >>CHAIRMAN BOLLWERK: All right. Let me then --
15 again, I offered you the opportunity, but if anyone has any
16 questions about any of these that we've gone over?

17 All right. Let me then turn to the Applicant and see
18 if they have any argument or discussion they'd like to have
19 on any of these contentions, as we've been going through
20 them.

21 >>MR. BURDOCK: Thank you, Your Honor. I'll try
22 to be brief.

1 The one issue that unites these nine contentions is
2 that they are all outside the scope of this proceeding.

3 The scope of this proceeding is defined in the notice
4 of hearing for this proceeding, which states that the
5 hearing will consider the application dated October 30th,
6 2007, filed by Tennessee Valley Authority.

7 So, therefore, this proceeding must focus on the actual
8 application. And it's not a forum to attack any NRC issue
9 with which the Petitioners disagree.

10 Additionally, as we mentioned before regarding these
11 challenges to the regulations, the Petitioners have not
12 provided waiver requests or the required affidavits.

13 Additionally, the Commission has provided other factors
14 to consider in determining these challenges, one of which is
15 whether there are unique issues that are specific to that
16 plant, and clearly these nine contentions could have been
17 made for any plant, and there are no unique circumstances
18 with Bellefonte.

19 I'll try to briefly address some of Mr. Zeller's
20 points.

21 He began with Contention 1 with Miscellaneous A and
22 discussed the human error. This contention is outside the

1 scope because he's challenging issues that are in the Design
2 Control Document. These issues are considered resolved in
3 this proceeding.

4 Additionally, with contention -- another part of this,
5 with AFI-A, Mr. Zeller himself claims that this is plainly
6 outside the control of this proceeding when he's discussing
7 the Energy Policy Act of 2005, and we agree with that, and
8 it cannot support an admissible contention here.

9 Turning to Miscellaneous B regarding due process,
10 Contention 2. This is a direct attack on the Commission
11 regulations in 10 CFR Part 20 and are outside the scope of
12 this proceeding.

13 Contention Miscellaneous C, regarding terrorist
14 attacks, the Commission has made it clear that the
15 environmental impacts of terrorist attacks do not need to be
16 considered in this proceeding.

17 Contention 14, which is NEPA L, is a direct attack on
18 the waste confidence rule, in 10 CFR Part 5123, and is
19 therefore outside the scope of this proceeding.

20 Contentions FSAR C regarding global warming is also
21 outside the scope of this proceeding, as it's a challenge to
22 the Design Control Document itself.

1 Petitioners raised an RAI for the first time today. As
2 we discussed earlier, those RAI's cannot by themselves
3 provide support for an admissible contention.

4 Contention 17, which is also NEPA O regarding Yucca
5 Mountain, is clearly outside the scope of this proceeding.
6 The Petitioners challenge the EPA regulations and the NRC's
7 implementing regulations regarding the dose standards at
8 Yucca Mountain, and this is clearly outside the scope of
9 this proceeding.

10 Finally, Contention NEPA Q, regarding the health
11 effects of the uranium fuel cycle, is outside the scope as
12 it's a challenge to NRC policy.

13 That's all I have. Thank you.

14 >>CHAIRMAN BOLLWERK: Let me interrupt one second.
15 I think I may have missed one when I was going through. I
16 think I did.

17 Let me go back to Mr. Zeller. I apologize.

18 There was also a NEPA P, which was formerly Contention
19 18, the inadequacy of environmental reports' reliance on
20 Table S3 regarding radioactive effluence from the uranium
21 fuel cycle. I apologize.

22 >>MR. ZELLER: Yes, that's the one. We had

1 discussed that.

2 >>CHAIRMAN BOLLWERK: You thought there was
3 something missing and you couldn't quite put your finger on
4 it.

5
6 >>MR. ZELLER: We had discussed that.

7 >>CHAIRMAN BOLLWERK: I Apologize for that, sir.

8 >>MR. ZELLER: That's all right. Thank you.

9 >>CHAIRMAN BOLLWERK: We'll come back to you all.
10 Thank you.

11 Go ahead, sir.

12 >>MR. ZELLER: We're just requesting that the
13 contention be admitted and held in abeyance pending the
14 outcome of the general proceeding.

15 >>CHAIRMAN BOLLWERK: Okay. Anything else?

16 >>MR. ZELLER: Yes, I would just say briefly with
17 regards to the rule being subject to an attack in the
18 adjudicatory proceeding under 10 CFR 2.335, that there is a
19 sole exception there, which says that special circumstances
20 such that would not serve the purposes for which the rule
21 was adopted.

22 In other words, if the rule is not -- the purpose of

1 the rule is, the spirit of the law is somehow undermined or
2 negated, that the rule -- the purpose of the rule should be
3 somehow dealt with at some level.

4 Not only at the rulemaking level, but at the petition
5 level or at the licensing level because it does have an
6 impact here. The rules are made in order to have an impact
7 on the licensing procedures.

8 So, this is a juncture we've come to before, where for
9 one reason or another it seems that it's not appropriate to
10 bring up an issue at a licensing proceeding and at some
11 other point in time the rulemaking procedure is also not the
12 place to bring it up.

13 I don't know if that's the case here, but sometimes it
14 does seem like a little bit like grasping at a cloud because
15 there doesn't seem to be a pigeonhole place for concerns
16 raised by the public or other interested parties to raise an
17 issue.

18 It seems to me that sometimes we get, "Well, we
19 appreciate your concerns, but you really should go talk to
20 somebody about this problem."

21 And so, therefore, there's no cop on the beat, in other
22 words.

1 And I did -- I would just also point out and bring up
2 that the recent decision which I mentioned before in the
3 First Circuit about that NRC must consider new and
4 significant information regarding environmental impacts
5 before renewing a nuclear power plants operating license.

6 The NRC must channel into generic rulemaking the
7 challenging parties concerns about the effects of new and
8 significant information on an individual licensing decision.

9 The NRC may not refuse to provide at least one path by
10 which the challenging party may establish a connection
11 between the rulemaking and the licensing proceeding.

12 This is to stop things from falling through the cracks.
13 So, if there is a sincere approach to dealing with some of
14 the concerns we have raised, if they have not been done as
15 eloquently as they might, and I admit there are -- we are
16 human, and so we also suffer from human error from time to
17 time, and so there needs to be some way to deal with these
18 concerns if you agree they are legitimate in some way, shape
19 or form and not simply put aside. I guess that's my at this
20 point.

21 Many of these issues are raised by citizens living in
22 this area who have genuine concerns, and if they don't fall

1 into one category or another, the Commission we feel should
2 at least make some attempt, sincere attempt, to deal with
3 them at some level, either at the Commission staff level if
4 not during the Atomic Safety Licensing Board decision. And
5 this is apart from our prospective request for rulemaking.

6 This is more along the lines of the kind of the bread
7 and butter, or the many issues that we have raised here in
8 this 109-page petition.

9 We do appreciate you hearing our concerns.

10 >>CHAIRMAN BOLLWERK: Thank you. Let's go back to
11 the Applicant then and see if you had any comments on that
12 particular contention.

13 >>MR. BURDOCK: Thank you, Your Honor. Regarding
14 Contention 18, I would also say that contention is outside
15 the scope and is acknowledged by that as outside the scope
16 by the Petitioners in their petition to intervene.

17 Petitioners are correct that Section 2.335 does provide
18 certain exceptions, but Petitioners have not satisfied those
19 exceptions for any of these contentions.

20 Section 2.335, Paragraph B, requires a request for a
21 waiver, which must include an affidavit that states with
22 particularity the special circumstances alleged to justify

1 the waiver or exception requested.

2 Additionally, the Commission, in the Millstone
3 decision, which we discuss in our briefings, states that
4 there's other standards that must be satisfied, one of which
5 I already mentioned; that there are circumstances that are
6 unique to that facility rather than to a large common class
7 of facilities, and those standards simply have not been met
8 in this proceeding for these contentions.

9 Turning back to Contention 18, the Petitioners rely
10 upon --

11 >>CHAIRMAN BOLLWERK: Contention 19?

12 >>MR. BURDOCK: Contention 18.

13 >>CHAIRMAN BOLLWERK: All right. I thought we
14 were still talking about Contention 18.

15 >>MR. BURDOCK: I think that was the one that --

16 >>CHAIRMAN BOLLWERK: Did I -- I think I'm
17 confused.

18 >>MR. BURDOCK: I did make a comment on 18. I'm
19 turning back to it.

20 >>CHAIRMAN BOLLWERK: All right.

21 >>MR. BURDOCK: The Petitioners discussed this
22 First Circuit decision, Massachusetts versus NRC, and

1 Mr. Frantz has already discussed how that doesn't apply
2 here.

3 It does not allow the Petitioners to hold any
4 contentions in abeyance in this proceeding pending the
5 rulemaking. For these contentions, the relief that
6 Petitioners request is to submit a rulemaking petition, but
7 that does not support admissibility of these contentions.

8 Thank you.

9 >>CHAIRMAN BOLLWERK: All right. Thank you. Let
10 me turn to the staff. Any comments that you all have on any
11 of these contentions that Mr. Zeller has talked about?

12 >>MS. HODGDON: No, we have no comments. We
13 briefed --

14 >>CHAIRMAN BOLLWERK: You may need to move the mic
15 a little closer.

16 >>MS. HODGDON: Okay. Thank you. No, we have
17 none. We briefed Massachusetts, the case cited in our --
18 several places, I think, in our response, and he said much
19 of the same thing that the Applicant did regarding the fact
20 that it's not applicable here, and that's all the staff has
21 to say on all these contentions.

22 >>CHAIRMAN BOLLWERK: All right. Anything that

1 the Board Members want to say before I turn back to Mr.
2 Zeller? No?

3 All right, sir. Anything further you want to say in
4 terms of what you've heard from the Applicant or the Staff
5 on these contentions?

6 >>MR. ZELLER: Thank you, Your Honor. The only
7 thing I would add is that I do understand that this is a
8 give-and-take process, and I honor the contributions of the
9 Applicant here in dealing with some of the contentions we
10 have raised.

11 I do still have an outstanding question, which relates
12 to the Nuclear Regulatory Commission's staff itself, and I
13 appreciate they are also doing their best under difficult
14 circumstances, with limited resources, but at some point in
15 time I hope to hear something tantamount to "on the other
16 hand" from representatives of the Nuclear Regulatory
17 Commission staff.

18 Whether it's in regard to Contention A, well, we agree
19 with the Applicant in this case; on the other hand, we agree
20 with the petitioners for this reason.

21 To be in lockstep with the Applicant over the course of
22 this proceeding from the petition to the reply, I believe

1 it's passing strange. And so with all due respect, like I
2 say, to people who are doing the best they can with limited
3 resources, I cannot fathom how that can be the case every
4 single time.

5 Plainly, from time to time the Atomic Safety Licensing
6 Board -- other boards, I should say, have admitted
7 contentions and we participated in some of those
8 proceedings.

9 So, there must be some legitimate contentions out
10 there, but I -- again, I cannot understand why the NRC staff
11 never seems to agree that, yes, this is a contention that
12 should be admitted.

13 That's all I have to say about that subject, and I
14 appreciate very much the opportunity to be here in
15 Scottsboro with you here today.

16 We're pleased that the Panel has come to the community,
17 which has the greatest interest in the decision which is
18 before you all. So, I appreciate you for coming to the
19 community, which is most effected.

20 Thank you very much.

21 >>CHAIRMAN BOLLWERK: Thank you, sir.

22 (Audience Clapping)

1 >>CHAIRMAN BOLLWERK: I'll just make one
2 observation. There are times that the Staff does agree that
3 the contention is admissible. I have seen it myself. It
4 does happen. It didn't happen in this case, but it does
5 happen from time to time. So, again, the Staff makes its
6 own judgment about those things.

7 At this point we've concluded basically hearing from
8 the participants about the admissibility of the contentions,
9 as well as the question of standing of BEST and the question
10 of the timeliness of the Petition.

11 Our job at this point now will be to take all the
12 information we've received both in writing and orally and to
13 make a decision with respect to each one of these
14 contentions as well those two issues.

15 Under the rules, we have 45 days from the time the
16 reply is filed within which to do that. Or alternatively if
17 we are not going to make that schedule, we need to let the
18 Commission know what the problem is and when we expect to do
19 so, and we'll either make the 45 days or we'll tell the
20 Commission.

21 That's basically the way we approached it in the past
22 and that's what we'll do in this case.

1 There were a couple of administrative matters that I
2 wanted to mention to the parties.

3 Again, several of these deal with sort of the
4 contingency if we were to admit a contention we need to
5 think about a few things. We're not ruling one way or the
6 other on anything today, but simply looking ahead at
7 possibilities.

8 Before I mention that, however, there's one thing,
9 Mr. Zeller. I think we still don't have a notice of
10 appearance from you and we asked for one in the last order
11 that we issued or one of the last orders we issued by the
12 end of last week.

13 You had indicated previously that you had submitted one
14 and I think maybe on the 1st of April. I'm losing the
15 bubble on that. We have searched the Agency's records and
16 cannot find it.

17 So, I guess I would ask simply that you either resubmit
18 the one you submitted previously, if you would, or just
19 submit a new one.

20 Again, there is a letter, I think, that was submitted
21 by your co-representative that indicated you were sending in
22 a notice of appearance, but we haven't been able to find it,

1 and we've talked with the Office of the Secretary. We
2 checked ourselves in the record to try to find it and it
3 isn't available.

4 So, again, it's not -- it's simply a question of
5 resubmitting what you already did, that would certainly be
6 appropriate, or just put together a new one that conforms
7 with the rules and simply submit it and then we'll have it
8 on the record.

9 >>MR. ZELLER: I'll do that.

10 >>CHAIRMAN BOLLWERK: I appreciate that.

11 In terms of the scheduling and discovery matters,
12 assuming a contention is admitted, in setting Section
13 2.332(d) schedule, the Board will assume that merits
14 determination with respect to any admitted contentions would
15 be based on an evidentiary hearing must await the issuance
16 of the staff's FEIS or FSER. That's fairly standard to
17 Commission practice.

18 I know, for instance, in the Vogtle ESP proceeding we
19 did ask the Commission about the possibility of moving
20 forward before the FEIS, the Final Environmental Impact
21 Statement, was completed.

22 We were told fairly definitively that that was not the

1 current practice, and so we would need to wait until the
2 FEIS or the FSER were issued before we could go to
3 evidentiary hearing.

4 Now, I'll also say in the Vogtle case we also moved
5 forward on summary disposition motions after the DEIS in
6 that case since there were environmental contentions that
7 were issued.

8 So, there is that possibility, and one of the things is
9 we said if we were to set a schedule, we would be looking at
10 that sort of submission if the parties were interested in
11 seeking summary disposition, and we did do that prior to the
12 issuance of the FEIS after the DEIS came out.

13 After the Staff had indicated what its position was
14 relative to -- and the DEIS relative to that particular
15 issue in general, and the Applicant did submit an additional
16 -- or submitted a summary disposition motion. So, that is a
17 possibility.

18 Assuming contentions admitted, the parties should be
19 aware that general discovery provisions under Section 2.336,
20 including the need for the NRC staff to provide a hearing
21 file, will be activated regardless of whether there's any
22 Board order or party discovery request. That's in the

1 rules.

2 Also, relative to general discovery, the parties may
3 wish to discuss whether they want to prepare and produce
4 privilege logs or waive the production and the preparation
5 of such logs.

6 Again, I would point you to the Vogtle ESP proceeding
7 if you want to look at an example where there was an action
8 agreement among all the parties to waive the production of a
9 development of a privilege log, something you may wish to
10 consider.

11 I believe at this point, that brings us to a close in
12 terms of things that I needed to talk about
13 administratively.

14 On behalf of the Board, I do want to thank the
15 participants today for your presentations to us. I think we
16 all found them -- we've talked about them at lunch time and
17 in the breaks. We found them to be useful to clarify things
18 in our minds as to what your positions were.

19 We found them uniformly pretty much across the board to
20 be very useful and excellent, and we do appreciate very much
21 what you've provided us with today.

22 So, on behalf the Board I want to thank all of you for

1 the presentations you made. It's been a long day. We
2 started 9:00 and we're about to wrap up close to 4:15, but
3 you've hung in there with us today and we really very much
4 appreciate that.

5 I would mention that this proceeding is being web
6 streamed. I mentioned it before. As we come to a close, I
7 would again ask anyone that's watching the web streaming
8 that's interested in providing us with comments, the e-mail
9 address is web stream -- I'm hearing some beeping here.

10 Does someone have something on?

11 I heard something go off. All right.

12 The e-mail address is webstreamingmaster -- I better
13 get my -- hold on here -- make sure I don't mess this up.

14 Webstreammaster, one word, dot resource@nrc.gov.

15 Webstreammaster.resource@nrc.gov.

16 Again, comments, negative, positive, whatever you have
17 to say about the accessing and use and having the
18 opportunity to watch this proceeding via web streaming would
19 be very useful to the Board and to the Commission.

20 Actually, when the pilot is done, we will be reporting
21 to the Commission on how things went and they'll make a
22 decision in consultation with the Board -- the Panel rather,

1 the Licensing Board Panel, as to how we move forward on it.

2 So, your comments would be appreciated and will be
3 utilized.

4 Some thank yous that we need to give are very important
5 to us.

6 We thank very much the City of Scottsboro for making
7 the Scottsboro Goosepond Civic Center available to us. It's
8 been a good venue for our hearing.

9 We especially want to thank Staffers Debbie Woods and
10 Larry Bowen, who have been just terrific. Mr. Bowen was
11 here last night till probably 10 o'clock, I think, working
12 with our web streaming contractor. So, he really put in a
13 lot of hours. And Debbie also helped us out a lot in
14 putting this proceeding on.

15 Also, to our Panel IT specialist, Joe Deucher, who has
16 been hanging in there in terms of the web streaming that
17 we've been doing. We really appreciate his efforts, as well
18 as to the folks from Onstream Media, who are the ones
19 working with us on our pilot project.

20 To Erica LaPlante and Sherverne, our law clerk and
21 administrative staff person, we thank you very much for
22 everything you've done.

1 And also to Lorraine Carter and our real-time court
2 reporter. As the web streaming has been going on, there's
3 actually been captioning of a type going out over the web
4 and they will also be producing the transcript that I
5 mentioned earlier. It that will be available, publicly
6 available, on the NRC website, www.nrc.gov in the electronic
7 hearing docket.

8 Again, if you missed part of the web stream, you want
9 to find out what happened, please feel free to go to the NRC
10 website within the next seven days and the full transcript
11 will be available for anyone to review.

12 At this point, let me see if any of the Board Members
13 have any comments they want to make? Judge Baratta?

14 >>JUDGE BARATTA: I just want to second the
15 appreciation we have for the support staff here. Larry did
16 an excellent job and we appreciate that.

17 >>CHAIRMAN BOLLWERK: All right. Judge Sager?

18 >>JUDGE SAGER: I'd also like to echo that comment
19 and just say thank you to the people of Scottsboro for their
20 hospitality.

21 >>CHAIRMAN BOLLWERK: All right. At this point,
22 if there's nothing else for the Board, again, we thank all

1 of you; the participants, the folks in the audience today
2 that took the time to come and see what this was all about.
3 We hope you found it interesting.

4 Also the folks that were part of our web stream.

5 The case at this point stands submitted for decision by
6 the Board in terms of the contention admission standing and
7 timeliness issues that we have before us, and the Board
8 stands adjourned.

9 Thank you very much.

10 (Whereupon, the proceedings were concluded.)

11

12