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United States of America

Nuclear Regulatory Commission

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Duke Energy Carolinas William States Lee III Nuclear Station

Units 1 and 2 Prehearing Conference

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Wednesday,

September 3, 2008

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Gaffney, South Carolina

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The hearing commenced in the Cherokee County Courthouse
in Gaffney, South Carolina, at 9:30 a.m.

BEFORE:

Paul S. Ryerson, Board Chairman

Nicholas G. Trikouros, Administrative Judge

William H. Murphy, Administrative Judge

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

9:30 a.m.

>>CHAIRMAN RYERSON: Welcome everyone. We are here to conduct an initial prehearing conference concerning the application of Duke Energy Carolinas, LLC to the United States Nuclear Regulatory Commission.

Duke is seeking a license to construct and operate two nuclear power reactors in Cherokee County, South Carolina. The site is called the William States Lee III site.

I'm Paul Ryerson. I'm an administrative judge at the NRC, trained as a lawyer, and I'm Chairman of this particular Atomic Safety and Licensing Board. That's not as lofty a position as our seating may indicate.

We're stuck with the way the courtroom is set up and the microphones, but I can assure you that my fellow judges will have just as much say as I do in our decisions after today.

On my left is Judge Nicholas Trikouros who is a nuclear engineer. And on my right is Dr. William Murphy who

1 is a geochemist. I should introduce a few others that
2 you'll be seeing today.

3 Ms. Erica LaPlante is our -- the panel's law clerk, who
4 is in front of me. We have Lorraine Carter who is the court
5 reporter today. And probably running around will be
6 Patricia Harich who's an administrative assistant to the
7 Board. Joseph Deucher is handling the web streaming
8 assignment today.

9 And this is part of a project that the NRC is
10 undertaking to try to make the Board's proceedings more
11 available generally, not only to those of you who are able
12 to come here today, but for everyone who has Internet
13 access.

14 And I've been asked to try to solicit some feedback on
15 the pilot project. So, if anyone out there on the Internet
16 has a view about how this is working, it would be helpful if
17 you would email your comments to WebStreamMaster -- and
18 that's all one word -- WebStreamMaster.Resource@nrc.gov.
19 Again, let me give that one more time. One word,
20 WebStreamMaster.Resource@nrc.gov.

21 Before we begin today, I would like to give thanks on
22 behalf of all of us to the staff and the judges of the

1 Cherokee County Courthouse here in Gaffney, South Carolina
2 who have been kind enough to make this facility available
3 for our proceeding today and who have been just tremendously
4 helpful in helping us set up the web casting and doing all
5 the other things that are necessary to have this proceeding.

6 And in particular I'd like to thank Ms. Brandy McBee,
7 the Clerk of the Court as well as Sheriff Blanton and his
8 deputies.

9 Before I ask the counsel representatives who are here
10 today to introduce themselves, it might be helpful, again,
11 particularly since we hopefully have an audience on the
12 Internet to very briefly provide an overview of where
13 today's proceeding fits into the NRC's review process of
14 Duke's application.

15 The NRC staff, which reports directly to the
16 Commission, will review the application and will prepare
17 reports on safety and the environmental consequences.

18 The staff also conducts public meetings at the site and
19 has already done that. There may be more, I'm not sure, but
20 that is the role of the staff.

21 The Board, the Atomic Safety and Licensing Board, is an
22 independent judicial arm of the Nuclear Regulatory

1 Commission and we are independent and totally separate from
2 the staff. We don't work with or for the staff and we don't
3 communicate with the Commissioners during the course of any
4 of these proceedings.

5 We are independent of the views the Commissioners may
6 have on any individual application. Ultimately, the Board's
7 decisions can be appealed to the full Commission and
8 eventually to the federal courts if that's the case.

9 The third part -- the third major part of the agency is
10 the Commission itself, which consist at the moment of four
11 Commissioners who are appointed by the President and
12 confirmed by the Senate.

13 They will be conducting, most likely themselves, a
14 mandatory hearing as well independent of anything that
15 happens today. There will be a mandatory hearing concerning
16 this application.

17 The Commission also receives a report from an Advisory
18 Committee on Reactor Safeguards which will also be factored
19 into the ultimate agency decision on this application.

20 So, what's our purpose today? What's the Board's
21 purpose?

22 The Atomic Energy Act provides an opportunity for

1 interested stakeholders to petition for a hearing on
2 specified specific issues which we generally call
3 contentions.

4 And the Blue Ridge Environmental Defense League, which
5 we'll generally refer to as BREDL, if that's alright, has
6 petitioned for a hearing on 11 specific contentions.

7 Our task today is really a very narrow one, very
8 specific one, and that is to determine whether BREDL has
9 submitted one or more admissible contentions.

10 What do we mean by admissible contentions? The
11 Commission's rules establish requirements for a contention
12 to be admissible; that is, for it to pass the first stage
13 before the contention goes to an actual hearing before the
14 Board.

15 There are a number of requirements in the regulations,
16 but I think they fundamentally get at two issues. The first
17 is: Is the issue appropriate for a hearing before a
18 licensing board?

19 In other words, if a contention deals with a broad
20 category, broad policy issues pertaining to nuclear energy
21 in general, but not to Duke's application in particular, it
22 would most likely not be appropriate for a hearing before

1 the Board.

2 The second question is: Has the petitioner shown enough
3 in its petition to justify a hearing, so that if we have a
4 hearing it's not going to be a waste essentially of
5 everybody's time and resources?

6 And I want to be clear that the petitioner doesn't have
7 to win on the merits with its petition, but it has to show
8 enough to pass that threshold test, which is quite different
9 from what is true in the federal courts and I believe in
10 most state courts where normally a complaint is filed and
11 for quite a while in the process, the Court simply accepts a
12 lawyer's representation that there's a good faith basis for
13 every factual assertion that's made. That's not the way the
14 rules work at the NRC.

15 There actually has to be some factual basis put forward
16 in the petition.

17 Judge Trikouros, Dr. Murphy and I have looked over at
18 this point, over 200 pages of briefs that have been filed in
19 connection with BREDL's 11 contentions. And we have
20 determined that it would be helpful to have a formal
21 argument today on four of those contentions. That's number
22 one, three, five, and eight.

1 But no one should draw any conclusions about our
2 decisions on any of the contentions as a result of that.
3 All the contentions remain in the running and nothing should
4 be drawn from the fact that we have identified those four.

5 We may have questions about any of the contentions,
6 which we'll get to, I think, after the formal arguments.
7 And in particular, I want to put the parties on notice now
8 that we're almost certainly going to have some questions
9 about Contention 2, which we hadn't previously identified
10 specifically.

11 And an issue in particular that arises under Contention
12 2 is the significance of Table S3 that appears in 10
13 CFR51.51, I believe. That's a table that sets forth on a
14 generic basis, some of the environmental consequences of the
15 uranium fuel cycle.

16 And one of the issues that we'd like to be asking some
17 questions about is whether Table S3 precludes consideration
18 of greenhouse gases specifically, which is an issue raised
19 in Contention 2.

20 Before I ask the parties, the counsel and their
21 representatives to introduce themselves and go over some
22 basic ground rules, I'd like to ask my fellow judges if you

1 have any comments at this point okay.

2 >>JUDGE TRIKOUROS: No.

3 >>CHAIRMAN RYERSON: Dr. Murphy?

4 >>JUDGE MURPHY: No.

5 >>CHAIRMAN RYERSON: Okay. Would representative
6 for the petitioner introduce himself?

7 >>MR. ZELLER: Yes, good morning, Your Honor. My
8 name is Louis A. Zeller. I'm representative for the Blue
9 Ridge Environmental Defense League. I've been on the staff
10 since 1986 working on a variety of items.

11 >>CHAIRMAN RYERSON: Thank you, Mr. Zeller. Did
12 you want to introduce the woman who is accompanying you?

13 >>MR. ZELLER: Yes, to my left is Diane Biggs.
14 She is one of the affiants who has signed a declaration.
15 She lives within the radius -- the 50-mile radius of the
16 proposed site at Lee. Thank you.

17 >>CHAIRMAN RYERSON: The applicant?

18 >>MR. BESSETTE: Good morning, Your Honor. My
19 name is Paul Bessette. I'm with Morgan, Lewis & Bockius
20 representing Duke in its application. To my right is Kate
21 Nolan, counsel for Duke Energy and to my left is my
22 colleague Kathryn Sutton, also from Morgan, Lewis.

1 >>CHAIRMAN RYERSON: Thank you. Welcome. The NRC
2 staff?

3 >>MS. BROCK: Good morning, Your Honor. I'm Sara
4 Brock and I represent the NRC staff. I'm accompanied by
5 Michael Spencer who also represents the NRC Staff. And Adam
6 Gendelman is an attorney with our office who will be
7 assisting us today. We also are accompanied by several of
8 our staff members.

9 >>CHAIRMAN RYERSON: Thank you. Okay. The
10 timing, I think we've indicated in at least one of the prior
11 orders, we'd like to cover, I think in order, Contentions
12 one, three, five and eight to start with, allocating up to
13 40 minutes for those.

14 So, we're going to have a flexible timekeeping system
15 here. If you're peppered with a lot of questions and the
16 Board has questions we may go longer. At the same time, I
17 encourage representatives and counsel not to talk if you
18 don't need to about any particular contention and we'll
19 hopefully move along.

20 We have read the briefs, I can assure you. We've read
21 the briefs carefully, so it's not necessary to repeat what's
22 in the briefs.

1 Mr. Zeller, you're welcome to reserve as much of your
2 20 minutes or so for rebuttal and you can do it the same for
3 all or you can do it for each different contention. How
4 would you like to handle that?

5 >>MR. ZELLER: Yes, thank you, Judge Ryerson. I
6 would tend to want to use 10 minutes first and then reserve
7 10 minutes.

8 >>CHAIRMAN RYERSON: And that would be true for
9 all -- on all four arguments?

10 >>MR. ZELLER: Yes, sir.

11 >>CHAIRMAN RYERSON: Okay. All right. We hope
12 and expect to be finished between noon and 1:00 or so. We
13 may have to go after lunch depending on our questions. We
14 will take obviously at least one break between now and noon,
15 maybe two if that seems to work better. We'll see how that
16 goes.

17 If anyone has a cell phone, I would ask you just to
18 turn it off for the duration of this session today. Any
19 other comments from the judges before we begin? Dr. Murphy?

20 >>JUDGE MURPHY: Not right now.

21 >>CHAIRMAN RYERSON: Anything the parties think we
22 need to address before we begin these arguments? As I said

1 we will have some questions after these four topics are
2 covered.

3 >>MR. ZELLER: Your Honor, if I might.

4 >>CHAIRMAN RYERSON: Yes?

5 >>MR. ZELLER: We will be talking about specific
6 contentions, but there are some preliminary things which I
7 could spend a minute or so on. You did mention Table S3.
8 Blue Ridge Environmental Defense League does plan to
9 petition for a rulemaking in that matter and we anticipate
10 that in the future.

11 The other point I would like to make briefly and I will
12 come back to it through today's arguments is that there are
13 many arguments back and forth about whether the rule is
14 subject to attack in the adjudicatory proceeding. This
15 tends to run, I think, throughout many of the back and forth
16 briefs that you have seen between the Applicant and the NRC
17 staff and Blue Ridge.

18 Just to bring to your attention something that you know
19 well. The Commonwealth of Massachusetts versus the NRC
20 decided in the First Circuit earlier this year saying that
21 the NRC must consider any news and information regarding
22 environmental impacts before renewing the nuclear power

1 plants operating license, and further that NRC may not
2 refuse to provide at least one path of which the challenging
3 party and establish the connection between the rulemaking
4 and the licensing proceeding.

5 So, it would be not let something fall through the
6 cracks. Many times in the past when an argument has been
7 thrown out, yet it seems to be that well, you have a point
8 there, but you're in the wrong place.

9 That may be our fault at times, but also it does seem
10 to have presented in the past more or less an impenetrable
11 wall whereby we try to find where an issue should be raised
12 properly and if we are rebuffed and get returned.

13 So, I think Massachusetts vs. NRC is a way to resolve
14 some of those more difficult problems. That's all I have to
15 say.

16 >>CHAIRMAN RYERSON: Thank you, Mr. Zeller. Does
17 the applicant have anything at this point?

18 >>MS. SUTTON: Nothing further, Your honor.

19 >>CHAIRMAN RYERSON: Thank you. Staff?

20 >>MS. BROCK: Nothing further.

21 >>CHAIRMAN RYERSON: Thank you. All right. We
22 will begin then with your argument, Mr. Zeller.

1 Approximately 10 minutes on Contention 1. Let me just --
2 again, for the benefit of our larger audience, let me read
3 that.

4 Contention 1 states: "The NRC cannot hold a fair
5 hearing at this time because the application adopts by
6 reference the design and operational practices that have not
7 been certified by the NRC or accepted by the Applicant."

8 Mr. Zeller?

9 >>MR. ZELLER: Yes, thank you, Your Honor. In a
10 nutshell, the key components for the design of the
11 Westinghouse AP1000 pressurized water reactor have not been
12 approved by the Nuclear Regulatory Commission.

13 We have pointed out that the letters going back and
14 forth between Office of New Reactors, for example, about the
15 scheduling and some of the problems there. We know that
16 some of these issues have an impact on some of the
17 contentions that we'll be talking about today regarding
18 protection from seismic events, earthquakes and water
19 hydrology issues.

20 So, the fact that the Applicant has made the Design
21 Control Document for the Westinghouse AP1000 was a matter of
22 choice. They have chosen to use that Design Control

1 Document as the basis as a reference document for their
2 application.

3 >>CHAIRMAN RYERSON: Mr. Zeller, don't the
4 Commission regulations expressly authorize that procedure?

5 >>MR. ZELLER: They do, but they do not require
6 them to preference a design. There are other avenues for an
7 applicant to go; for example, a custom built site plant.
8 There is flexibility within the rules, so it's not required
9 to use one of the generic designs in that.

10 So, I think that is probably in a nutshell what some of
11 the problems are that we have raised in this contention.

12 >>JUDGE TRIKOUROS: Mr. Zeller, you mentioned
13 seismic. Isn't that a site issue? Would that be handled
14 under the AP1000 DCD Rev. 16 Amendment or would that be
15 something that's associated specifically with the Lee site?

16 >>MR. ZELLER: Well, it's both, really. I mean,
17 you're talking about the site. Plainly, there are specifics
18 with regards to seismicity and we are talking to experts in
19 this area; Professor Talwani, for example, at South Carolina
20 University and others about some of those issues.

21 Of course, it's an engineering problem as well; the
22 reactor, the strength; these are issues -- high level or

1 high frequency I should say and low frequency vibrations
2 have different impacts. I guess we'll get into that a
3 little more later.

4 >>JUDGE TRIKOUROS: Can I pursue that for just a
5 second? There is an AP1000 DCD that was approved by the
6 Nuclear Regulatory Commission Rev.15 which really
7 encompassed the vast majority of the components that you're
8 talking about and was approved and likely will not change.

9 The Rev. 16 of this DCD is handling certain selected
10 items, but I don't know on a percentage basis what it might
11 be, but I would guess less than 5% of the design. So, you
12 know, 95% let's say of the design of this plant is set in
13 concrete, so to speak.

14 And therefore, I was trying to understand how that
15 remaining 5% would impact the fair hearing concern that you
16 have and I think you expressed it in your petition regarding
17 litigation of multiple issue -- litigating twice on an
18 issue, multiple times on an issue.

19 And I couldn't make the connection to your contentions
20 and the remaining Rev. 16 issues and how that might lead to
21 having to litigate multiple times.

22 And seismic was one that you had mentioned, but I had

1 originally thought that wasn't one because of the reasons I
2 stated.

3 >>MR. ZELLER: Well, I think there is -- that's
4 one reason, I believe, that this contention should be
5 admitted is because further exploration and discussion needs
6 to be had.

7 There is a genuine dispute here between what Blue Ridge
8 has said and what the Applicant has said. So, we have not
9 only a disagreement, but a genuine dispute.

10 Some of the scheduling changes which have been
11 identified by Office of New Reactors and others within NRC
12 talk about the East Tennessee seismic zone; the radioactive
13 waste structure abutting a Class One structure, near surface
14 ground effects and what not.

15 So, these are issues which are technical issues and
16 which are unsettled which would affect the scheduling of it.
17 And so far as we can tell the Design Control Document is not
18 set to be completed until some time in 2011 and here we are
19 in 2008.

20 So, that is the reason we have raised this petition and
21 why we're asking for the relief we're asking for.

22 >>CHAIRMAN RYERSON: Mr. Zeller, you said that the

1 Applicant did not have to proceed by this particular route,
2 but in doing so doesn't the Applicant do so at its own risk?
3 And aren't the interests that you represent protected then
4 by the consequences if something happens?

5 If, for example, there are substantial changes in
6 Revision 16 that require changes in the application, don't
7 you have an opportunity at that point to address those in
8 new contentions? And don't you have an opportunity in the
9 rulemaking, the final rulemaking with respect to the AP1000
10 design Revision 16 to comment on the rulemaking?

11 Aren't your interests protected that way, and if not,
12 why not?

13 >>MR. ZELLER: Well, there is a risk for us in
14 waiting until perhaps some other avenue becomes available.
15 As you say, Revision 16 could be followed by Revision 17. I
16 mean, we don't know that yet.

17 And so, here we have an opportunity now because we see
18 the AP1000 -- Revision 16 as being a moving target. And so
19 we are using the opportunity which is available to us here
20 and now to raise some of these questions; the risks to the
21 Applicant we understand those. And whichever route they
22 go -- this is a difficult engineering and technical and

1 environmental problem to solve and that is the fundamental
2 nature of atomic power reactors. It has been for half a
3 century. That has not changed. The physics have not
4 changed.

5 The rules have changed, but the generic design concept
6 without wanting to step into the area of rulemaking and what
7 not in getting out of areas of risk here is the problem it
8 obtains.

9 Here we have a Design Control Document which we see
10 still in flux and so we are using this opportunity to hear
11 them now today to ask you the judges to admit this
12 contention because we have this opportunity now.

13 There may be further opportunities, I don't know. I
14 don't know if it would be better to wait. I can't answer
15 that question.

16 >>CHAIRMAN RYERSON: The thrust of your contention
17 as I understand it is essentially procedural. Your
18 contention as you've described it is that Duke didn't have
19 to select this procedure and that you feel basically the
20 procedure is unfair. That the current Revision 16 -- to use
21 your words I believe -- is a "pig in a poke" at this point.
22 I understand the procedural argument.

1 I guess the question I have for you as you sit there,
2 are there specific problems with Revision 16 that are stated
3 in your petition in Contention 1 that you feel ought to be
4 either adjudicated now or referred to the rulemaking
5 process?

6 >>MR. ZELLER: I would say yes, the answer to that
7 is a flat yes. The technical issues I believe have to do
8 with some of the other contentions which we have raised.
9 So, Contention 1 may be largely a procedural issue. That's
10 the way it's couched, of course.

11 The technical issues are, I think, detailed more in
12 some of the other contentions. Obviously, they are related.
13 We're talking about the same device. We're talking about
14 the same adjudicatory procedure and licensing process. So,
15 it's difficult maybe to find, you know, what the difference
16 might be.

17 However, you're right, it is largely a procedural
18 issue, but the technical issues are why we are concerned.

19 >>CHAIRMAN RYERSON: Thank you, Mr. Zeller. I
20 think we'll come back to you for your final 10 minutes. The
21 Applicant?

22 >>MS. SUTTON: Yes, Your Honor. Kathryn Sutton

1 for the Applicant. There are many reasons why this proposed
2 Contention 1 is not admissible. Mr. Zeller would have you
3 believe that he has a material dispute with the Applicant
4 and that's not true. He has a dispute with the NRC process
5 and that's at the heart of why this proposed contention is
6 not admissible.

7 As we fully briefed in our Answer, BREDL's request to
8 suspend the proceeding is at heart a challenge to not only
9 the NRC regulations, but also Commission policy.

10 What regulations, you may ask? Well, there's
11 principally 52.55(c) and 52.73(a) which explicitly allow a
12 COL application to reference a design certification
13 application.

14 Next, petitioners also claim their claim regarding
15 improper reliance on non-certified design documents also
16 constitutes a challenge to Appendix D to Part 52 itself.

17 We're going to continually re-emphasize throughout this
18 proceeding that this is just not correct. Any generic
19 challenges to the NRC rules or the amendments to the AP1000,
20 Petitioners have the rulemaking avenue open to them in which
21 to make those arguments.

22 And finally, I would like to emphasize that there is

1 also before we move to the policy statement in terms of
2 regulations, there is a challenge here to 10CFR Section
3 2.104(a) which requires that the NRC publish a notice of
4 hearing as soon as practicable after the NRC has docketed
5 the application and the Duke application has been docketed.
6 So, we're complying with rules as is the staff.

7 Thus on this basis alone, we believe that the proposed
8 contention is not admissible and it violates
9 2.309(f)(1)(3)(i).

10 Now, I'd like to move next to the policy statement
11 itself and we've briefed that extensively, but there is some
12 new information on that here.

13 The policy statement expressly states that a contention
14 that raises an issue on a design matter addressed in a
15 design certification application should be resolved in the
16 design certification rulemaking proceeding -- that's what I
17 just emphasized before -- and not the COL proceedings.

18 So, the Commission has clearly contemplated this
19 situation in its regulatory framework.

20 >>CHAIRMAN RYERSON: Has BREDL raised issues that
21 you feel would be appropriate for referring to the
22 rulemaking?

1 >>MS. SUTTON: No, Your Honor because clearly as
2 part of this policy statement, there is an opportunity to
3 hold otherwise admissible contentions in advance.

4 But as we have fully briefed, we do not believe that in
5 this case the proposed contentions are admissible. And I
6 will get to that in two seconds if you will allow me.

7 I'd like to point out that on July 23rd, 2008, the
8 Commission reiterated this policy and this framework that
9 we're talking about including holding contentions in
10 abeyance when it rejected a motion to suspend the Notice of
11 Hearing at the Harris COL proceeding. I refer you there
12 to CLI08-15.

13 Therein, the Petitioner made arguments that are
14 essentially the same as those that BREDL is offering here in
15 this proceeding saying that, you know, they're asking the
16 Commission in that proceeding to suspend the hearing notice
17 until the Commission completed its design certification
18 review of Revision 16 to the AP1000 because resulting
19 modifications will be incorporated into the design and
20 operational practices for the Harris plant in that
21 proceeding.

22 Much like BREDL here, the petitioner in Sharon Harris

1 claimed that it was impossible to hold a fair hearing until
2 completion of the design certification rulemaking because of
3 the interconnection between the design and the rest of the
4 COL application.

5 It's very similar to the arguments that BREDL has
6 offered. And the Commission's reasoning in rejecting those
7 arguments in the Harris proceeding is directly relevant to
8 the disposition of BREDL's proposed contention herein.

9 And again, we talked about when the Commission set up
10 the regulatory paradigm in 50.55(a) and 2.335(a) it
11 recognized that if there is an issue with respect to the
12 design certification, it should be forwarded to the staff to
13 be dealt with in the rulemaking proceeding associated with
14 the amendment.

15 However, if there is an admissible contention and this
16 gets back to your question that it should be held in
17 abeyance and they did recognize that the NRC regulations
18 nonetheless allow the Applicant given this regulatory
19 framework to proceed at it's own risk.

20 And one thing in terms of the opening arguments, I
21 think that's important to add here is that that risk to
22 which the Commission refers is not the risk that the Board

1 will suspend the proceeding. It's simply the risk that the
2 risk of delay in issuance of the COL until the underlying
3 design certification rulemaking is complete.

4 That is a risk that the Applicant bears the burden of,
5 but it is not the risk of suspending the proceeding. That's
6 a key point in this case.

7 Now, in this case proposed Contention 1 is not
8 otherwise admissible, as you've just asked about in the
9 context of the new reactor policy statement in the Regs.
10 Because it fails to meet the admissibility criteria in
11 2.309(f), one, three, five and six, it should be rejected
12 regardless of the arguments that I just made regarding the
13 policy statement and the underlying regs.

14 In particular, the proposed contention fails to meet
15 the admissibility requirements of NRC regulations because it
16 only claims in general without the requisite support, expert
17 or otherwise, and specificity that Rev. 16 to the DCD
18 contains "serious safety inadequacies" and those are the
19 words that have been used by the Petitioner.

20 They've provided -- one example is the purported
21 incomplete recirculation screen design identified by the NRC
22 in the letter accompanying the docketing of the application.

1 There's two points I'd like to make on this front.

2 First, the NRC docketing letter itself does not
3 identify a serious safety inadequacy of any sort. It merely
4 discusses the status of certain open items that could impact
5 the staff's review schedule. It does not go to the merits
6 as you used that terminology earlier.

7 Moreover, Commission precedent prevents petitioners
8 from pointing to such NRC communications alone as the basis
9 for a genuine dispute which merits adjudication before the
10 Board. There's a long line of precedent. I'd be happy to
11 cite it to you. It's in our Answer as well.

12 In addition, the Petitioner's vague allegations that
13 Duke cannot prepare a proper SAMDAA; that's a Severe
14 Accident Mitigation Design Alternative Analysis, due to
15 alleged deficiencies in the AP1000, again, lacks
16 specificity. They lack expert support and they fail to
17 raise a genuine dispute on a material issue.

18 Apart from the generic non-specific nature of the
19 complaint, this aspect of proposed Contention 1 completely
20 ignores the content of the applicable sections of the COL
21 application and that a Petitioner cannot do. They must look
22 at the application.

1 As we explained in our Answer in particular FSAR
2 Section 19.59 which deals with probabilistic risk assessment
3 results and insights in Section 7.3 of the ER, which is the
4 underlying SAMDAA analysis addressed this and Petitioner has
5 not taken issue with those with the requisite specificity
6 and/or support.

7 So, BREDL has simply failed to dispute the
8 information in the application or provide any basis for its
9 assertion that Rev. 16 somehow invalidates the PRA or the
10 SAMDAA in the application.

11 >>JUDGE RYERSON: Your position is there's no
12 proper contention for us to hold in abeyance?

13 >>MS. SUTTON: Absolutely, Your Honor, and there
14 are numerous reasons for that. Thank you.

15 >>JUDGE TRIKOUROS: With respect to RAIs not being
16 permissible for any intervener to pick up as a contention
17 basis, does that also hold true for the Advisory Committee
18 on Reactor Safeguards?

19 >>MS. SUTTON: That it would -- absent additional
20 specificity and support, the fact that the ACRS has asked a
21 particular question about a reactor or an application or
22 particular licensing action, no. That in and of itself does

1 not serve as a basis. It could be a partial basis, but not
2 in and of itself; not alone.

3 >>JUDGE TRIKOUROS: Mr. Zeller mentioned in his
4 petition -- in fact, it was in his reply. Mr. Zeller, you
5 mentioned that the Applicant "rolled the dice" with respect
6 to this application with an amendment pending.

7 What did you mean by that? How does that have
8 significance to us? And that referred to the "at your own
9 risk" statement in 52.55(c).

10 >>MR. ZELLER: Sure, I understand. The problems
11 of trying to certify and get approval for a license in this
12 case, I believe, should not be a certainty. The best way to
13 do it, I cannot determine that. I'm not Duke Energy or
14 Progress Energy or Southern Company. They know their
15 business, but how to do that may be possible and may not be
16 possible.

17 So, the metaphor about rolling the dice is they
18 selected Method A and not Method B. If Method B perhaps the
19 older method of doing it under which all existing reactors
20 in operation today were certified a unique design on a site
21 working out all the problems. That's how it has been done
22 in the past.

1 The new rules which have been put into place over the
2 last decade or so, both procedural and under Part 52 of the
3 Combined Operating License are untried. So, I say you pay
4 your money and you take your chances.

5 >>JUDGE TRIKOUROS: And you don't see a difference
6 between a revision to a design certification versus a design
7 certification that has not yet been completed?

8 As I referred to earlier the 95% aspect of this design
9 is already certified and approved and tested, et cetera.
10 It's only the small percentage that we're talking about.
11 You still see that as a risk?

12 >>MR. ZELLER: Well, its 95% perhaps; however,
13 it's important to remember that an AP1000 reactor has never
14 been constructed any place in the world.

15 So, the entire design, 100% of it, is still
16 experimental in nature until we have some operating
17 experience, then the 95% figure is basically a paper or
18 exercise, a prognostication based on good information or not
19 good information. We don't know yet that yet, so the 5% is
20 -- may be accurate, but it's still talking about 100%
21 unknown.

22 >>JUDGE TRIKOUROS: We could go further on this,

1 but I think we're okay for now.

2 >>CHAIRMAN RYERSON: Let's move on to the Staff.

3 >>MS. BROCK: Your Honor, the only thing that the
4 staff would add -- Sara Brock for the NRC Staff -- the only
5 thing that the staff would add to this discussion is that
6 when the Commission referred to an applicant referencing at
7 their own risk in 52.55(c) they were discussing that as
8 compared to referencing an already certified design, not as
9 compared to using the old Part 50 process as Mr. Zeller is
10 referring to.

11 That, of course, is still open to an applicant, but the
12 specific "at their own risk" discussion suggests also as the
13 Applicant suggested they're a little bit further than that;
14 that they could in the end, not get a license at all if the
15 staff did not certify this design or something came up in
16 the rulemaking process for it.

17 It could be either a delay or potentially they would
18 have to go back to the beginning if the design was not
19 certified. Obviously, that's somewhat less of a risk as
20 Judge Trikouros has pointed out with an amendment to a
21 design than an already previously certified design.

22 >>CHAIRMAN RYERSON: Let me ask you, do you agree

1 with Ms. Sutton's characterization of the staff's letter as
2 dealing with the review schedule and not raising a merits
3 issue, if you will?

4 >>MS. BROCK: To a certain extent. Staff has sent
5 several issues on Rev. 16's AP1000 to Westinghouse, who is
6 the applicant in that procedure -- proceeding. And thus far
7 -- may I have a moment to consult?

8 >>CHAIRMAN RYERSON: Sure.

9 >>CHAIRMAN RYERSON: If you could speak into the
10 microphone.

11 >>MS. BROCK: I'll move it a little closer. Is
12 that better? Yes, thus far, the letters that the staff has
13 sent on the AP1000 have been schedule-oriented letters that
14 we've been identifying issues that we believe will take
15 longer for us to review or potentially things that we're
16 concerned about, but we will not be able to certify this
17 design.

18 >>CHAIRMAN RYERSON: Thank you. Mr. Zeller?

19 >>MR. ZELLER: Yes, thank you, Your Honor. The
20 correspondence between NRC and the Applicant in this matter
21 I think is revealing. There certainly could be more
22 technical expertise applied to this, but in our view, the

1 back and forth shows that there are technical issues as well
2 as procedural issues.

3 I mean, the technical issues here again are of concern
4 to the staff and that's reflected -- as I said before the
5 Senior Project Manager Office of New Reactors, Joelle
6 Starefos, on April 2nd talks about some of the incomplete
7 recirculation screen design of the reference design.

8 The response methods used to produce the final ground
9 seismicity source characterization of region and that would
10 be for the referenced COL as well as for the COLA and the
11 potential application and characterization dynamic response
12 of fill material under the Rad Waste Building.

13 So, if that's only 5% of the issue, then maybe they
14 should be resolved and then we can go forward. If that's
15 all it is, then why not resolve those, hold the procedure in
16 abeyance until those are resolved if it's only 5%.

17 >>CHAIRMAN RYERSON: Anything further, Mr. Zeller?

18 >>MR. ZELLER: No.

19 >>CHAIRMAN RYERSON: Why don't we move on then to
20 Contention Number 3. I'll read that. Contention 3 --
21 BREDL's Contention 3 reads: "Duke's application does not
22 identify the plans for meeting its water requirements with

1 sufficient detail in order to determine if there will be
2 adequate water during adverse weather conditions such as
3 droughts." Mr. Zeller?

4 >>MR. ZELLER: Thank you, Judge Ryerson. Duke in
5 this matter says that this contention should be dismissed
6 because regional surface water temperature assertions are
7 beyond the scope of the proceeding.

8 I don't know how that could be when looking at the
9 importance of water supply to a nuclear power reactor;
10 looking at the events all around us with regards to water
11 supply; that would be the drought. We see that water supply
12 trends are on a collision course.

13 We read the Environmental Report that Section 2.3.3.1.2
14 tests done between 1974 and 2006. We talked to an expert in
15 this area at Duke University, Mr. Holman, who is formally
16 the Secretary of the Department of Environment and Natural
17 Resources, and he shows that by 2030 daily water use
18 increases by 35%, long-term precipitation trends over the
19 last century from 1893 to 1993 will decrease from 50 inches
20 to 46 inches per annum.

21 >>CHAIRMAN RYERSON: Mr. Zeller, are Mr. Holman's
22 views set forth in your petition in any way?

1 >>MR. ZELLER: They are not explicit in the
2 petition, but we have been in discussion with Mr. Holman.
3 So, what I'm saying here is that the water supply issues are
4 not beyond the scope of the proceeding doesn't make sense
5 because of the reality of the situation.

6 >>JUDGE TRIKOUROS: Mr. Zeller, let me interrupt
7 you. When you say the "water supply issue" are you
8 referring to concerns over nuclear safety or are you
9 referring to concerns over simply the ability of the plant
10 to stay online? What is the issue as you see it with
11 respect to water supply?

12 >>MR. ZELLER: Well, it's partly an environmental
13 issue in that we have cumulative impacts which need to be
14 considered upstream and downstream. Of course you know --
15 or perhaps you don't -- about the Cliffside coal-fired power
16 plant which is upstream just over the state line on the same
17 river.

18 You've got the Summer Nuclear Plant downstream which
19 increases in the amount of consumptive use in both of those
20 facilities. In the facility, for example, at Cliffside with
21 a new permit that is not within the purview planning of the
22 Nuclear Regulatory Commission, but it's a part of the

1 environment that people in the Carolinas are living with.

2 So, it's not a part of the proceeding. It's not a
3 consideration under the Nuclear Regulatory Commission rules
4 and regulations, A) I think it should be, and B) it plainly
5 has an impact in this matter because we are talking about
6 the specifics of water use and a very large water user.

7 This proposed plant would use many times more water
8 than the entire public water supply use and agricultural use
9 in Cherokee County by a factor of four. So, it's not a
10 small use even if it may be a relatively small with regard
11 to the entire river flow.

12 The river flow and amount of rainfall and the heating
13 which is going on because of global warming are factors
14 which will affect this plant's operation over the life span
15 of its 40 year licensing period.

16 So, we're talking about the middle of the 21st century.
17 So, the trends going back over the last century is why I
18 mentioned what I did, need to be looked at. And looking
19 back maybe 20 years it's insufficient.

20 >>CHAIRMAN RYERSON: Did you have a question?

21 >>JUDGE TRIKOUROS: I do. You referred to the
22 intersection of drought and water temperature in your

1 petition. And when I look at that, you seem to be referring
2 to the intersection of a drought that's greater than has
3 ever occurred and a water temperature that's greater than
4 has ever occurred. So, that implies to me that's a global
5 warming issue.

6 However, in the same area of your petition -- I think
7 the same page, in fact -- you referred to an issue regarding
8 the use of an annual mean flow in which you reference the 2%
9 of the river being withdrawn into the intake.

10 And then you refer to a terminology -- you used the
11 word "snapshot" in your petition saying that one should not
12 use annual averages. One should use -- I assume that means
13 "worst case conditions". That refers to today, not
14 necessarily a global warming world. Am I reading that
15 correctly?

16 >>MR. ZELLER: That's right. That's correct.

17 >>JUDGE TRIKOUROS: Okay. All right. So, I am
18 going to have a question -- maybe I should ask it now --
19 regarding this issue of snapshot. I mean, clearly, a
20 nuclear design analysis -- although I wouldn't use the word
21 "snapshot" -- is a similar concept invoked in all nuclear
22 design analysis.

1 So, for example, if the river were at -- and this is
2 really for everyone -- if the river were at numbers like
3 538 cubic feet per second flow, that's prior to any action
4 taken by the plant to divert to make a Pump B, and looking
5 at the design consumptive usage that the plant will divert,
6 you end up with about 10 or 12, 13% depends on whether you
7 use the 73 CFS number or the 55 CFS number for the plant
8 withdrawal, significantly greater than 5%. It's like I
9 said, closer to 10 or 12 maybe even 13%; is that acceptable?
10 Is that snapshot an acceptable snapshot in the world of
11 licensing this plant?

12 >>MR. BESSETTE: If I can just take a minute to
13 consult.

14 Your Honor, the question you asked is an issue that has
15 to be resolved with the State of South Carolina,
16 particularly with regard to the water use and the water use
17 permit. Those discussions are ongoing.

18 The fact of the matter is, whatever permit requirements
19 the State of South Carolina imposes, Duke will have to
20 comply with them. And currently, I mean, we have as noted
21 in our ER and the FSAR we have certain requirements; the 538
22 CFS which you mentioned which is based on the 99 Island Dam

1 flow requirements and the flow of the plant and we
2 determined we would not be using water from the river below
3 that.

4 But there are ongoing discussions as noted in the ER.
5 There are consultations with South Carolina which are
6 required and those are prerequisites to the NRC issuing the
7 Combined Operating License to the plant. I would like to
8 raise -- that particular issue was not raised by BREDL in
9 its petition.

10 >>JUDGE TRIKOUROS: I understand, but I still
11 would like to ask the question. I'm just thinking, I have a
12 small hydro dam that produces -- I don't know what it
13 produces -- 45 or 50 megawatts perhaps. And I have two
14 nuclear reactors producing 300 megawatts -- 3,000 megawatts
15 electric and I'm certainly not going to shut down
16 3,000 megawatts of electric in favor of a 45-megawatt hydro
17 plant. At least that doesn't make a lot of sense to me.

18 So, you're saying all of this is ongoing and yet if I
19 don't shut the plants down, I have an increasing impact on
20 the river because -- and it depends on the makeup of Pump B
21 situation. So, you're saying this is all ongoing with the
22 State of South Carolina, but none of it is addressed in your

1 environmental report?

2 >>MR. BESSETTE: The Environmental Report does
3 provide river use restrictions on certain flow conditions as
4 stated and it is our intent to comply with those, but the
5 discussions have to on go with South Carolina.

6 I mean, to state that we would go below -- we would
7 continue to operate the nuclear plant as opposed to go below
8 the minimum code requirements on the 99 Island's Dam I think
9 it's speculation at this point.

10 >>JUDGE TRIKOUROS: I understand.

11 Is the 483 CFS number going to be a tech spec for the plant,
12 a safety tech spec or is it going to be an environmental
13 tech spec? Or any idea how that's going to get implemented
14 in the operation of the plant?

15 >>MR. BESSETTE: We have not proposed that as a
16 tech spec, Your Honor. We assume that it would be a
17 requirement in any of the permits issued by South Carolina.

18 >>JUDGE TRIKOUROS: So, it would be a requirement,
19 but it wouldn't be either a safety or environmental tech
20 spec?

21 >>MR. BESSETTE: We do not propose that as a
22 safety tech spec at this time. It would be a permit

1 requirement we'd be required to comply with and consult with
2 South Carolina.

3 >>JUDGE TRIKOUROS: I'm looking over at the staff.

4 >>MR. SPENCER: That's our understanding, too.

5 Compliance with the state requirement would be a matter for
6 the State permit.

7 >>CHAIRMAN RYERSON: Dr. Murphy, do you have any
8 questions?

9 >>JUDGE MURPHY: Yes, for Mr. Zeller please. I
10 think it's fair to say that everyone whose read this
11 contention have had some questions about what the central
12 focus of it is because it covers rather a broad range of
13 legitimately important questions and issues.

14 And in our answer to your petition, the Applicant, Duke
15 said that the most fundamental and fatal defect in this
16 contention is that BREDL fails to provide any support for
17 its basic underlying premises; that is, the water
18 temperatures in the Broad River have and will continue to
19 increase.

20 So, it seems to me that there is an interpretation that
21 the contention relies on a notion of future climate change
22 and indeed you do talk about future climate change.

1 Are there issues such as water use issues or other
2 issues beyond future climate change? Is it true that the
3 contention relies solely on projections of future climate
4 change?

5 >>MR. ZELLER: I believe that's right. The
6 projections which we are seeing are based on events which
7 are happening now. For example, we're seeing water
8 restrictions in place from the state line of North Carolina
9 along the I-85 corridor all the way to Georgia as part of
10 South Carolina and as I'm finding out is under severe
11 drought.

12 More counties were added over the past few months,
13 I guess, by the state of South Carolina. So, we are in the
14 midst of some of these changes and some of the predictions
15 actually didn't raise every -- cite every expert. We didn't
16 bring in, you know, Al Gore's information, for example,
17 about impacts on water supply and whatnot, but it's fairly
18 common knowledge.

19 So, I think if we bring up a specific issue about where
20 the evidence that we are bringing up to show that there's a
21 problem here, that's not the whole picture. We have brought
22 up as much as we could at the time in order to meet the

1 requirements of the procedure here under 2.309.

2 But there is more to be said here about this and I
3 believe that the data is on our side. What we are seeing
4 not only in South Carolina but across the southeast and as
5 you well know, reactors that are operated by Tennessee
6 Valley Authority were reduced to half power precisely
7 because of issues we are talking about here.

8 The water was too hot and the environmental report
9 submitted by Duke says that under local surface water
10 quality resource of processing cooling water is from the
11 Broad River.

12 It's possible to connect the dots here and see that
13 there is a looming crisis with regard to the water supply
14 and I think TVA's example should be instructed.

15 >>CHAIRMAN RYERSON: Mr. Zeller, is it still your
16 position that there is a safety issue with the AP1000
17 reactor in the event of an emergency shut down that relates
18 to water supply?

19 >>MR. ZELLER: Mr. Zeller: I'm uncertain if there
20 is an actual safety issue. The option is to shut the
21 reactor down.

22 >>CHAIRMAN RYERSON: The position of the Applicant

1 as I understand it is that the AP1000 design does not
2 require a water supply for safe emergency shutdown and I
3 just want to know if you disagree with that?

4 >>MR. ZELLER: I do not disagree with that, Your
5 Honor.

6 >>CHAIRMAN RYERSON: Thank you. And I guess the
7 other question I have is in your petition, you refer to
8 outdoor or maybe public knowledge of increasing
9 temperatures. But what is there in your petition that
10 supports this fundamental concept that there are going to be
11 increasing temperatures and drought conditions? What in
12 your petition supports that?

13 >>MR. ZELLER: I think as I just pointed out the
14 drought conditions in South Carolina all the way to the
15 state line; in fact, in fact, all the upstate areas --

16 >>CHAIRMAN RYERSON: Those are mentioned in your
17 Reply, weren't they, as opposed to your petition?

18 >>MR. ZELLER: That's right.

19 >>CHAIRMAN RYERSON: Okay. Just so we're clear,
20 the test that we have to use is the adequacy of the petition
21 that you filed. In other words, that's what has to stand or
22 fall. And the Applicant and the Staff can file new file

1 answers -- have filed answers which bear upon the adequacy
2 of your petition and your reply is supposed to address those
3 answers.

4 But the reply is not an opportunity to, if you will,
5 fix the original petition. In other words, if there is not
6 factual support in the petition, we really can't consider it
7 unless there's good reason.

8 As I look at the petition, I'm looking very hard for
9 any factual support on the issue of drought or increasing
10 temperatures.

11 >>MR. ZELLER: I understand what the Judge is
12 saying in this matter and I'm aware of the jurisprudence as
13 well; however, we are in the early stage in this proceeding.
14 This is a preliminary meeting here today to discuss some of
15 these issues.

16 I would hope that everything that has been said both in
17 oral arguments and back and forth with the briefs you
18 mentioned would be considered. And if this judge panel is
19 constrained in any way from considering this information,
20 then, I don't know why that would be.

21 I understood that the panel itself was independent from
22 the agency in the course of the hearing and due precedents

1 and previous decisions by the Commission and all the
2 decisions made under the Atomic Energy Act and National
3 Environmental Policy Act. I understand that fully.

4 But the facts that we have brought to your attention if
5 it's in the petition or in the reply, I think are a part of
6 the back and forth discussion; the logical train of thought,
7 if you will, from the contentions which we raise.

8 Maybe it is a different point of view, but that is that
9 the petition says one thing; the Answer says well, there is
10 no reasonable basis for this argument because of A, B and C.
11 And so you argue A, B and C and that is not cognizable by
12 the Board. I don't understand that.

13 Maybe someone could explain that to me, but it does
14 seem like we've thrown down the gauntlet and we have an
15 argument. We have a dispute, plainly. And so, I think the
16 argument back and forth should be -- with all due respect --
17 in its entirety.

18 >>CHAIRMAN RYERSON: Thank you, Mr. Zeller. We
19 got the Applicant a little bit out-of-turn before, but what
20 would you like to say at this point?

21 >>MR. BESSETTE: Your Honor, I would like to
22 address several of the issues. As a preliminary matter, I

1 believe Mr. Zeller mischaracterizes our answer when he said
2 that, he said regional surface water issues are beyond the
3 scope. Our answer, certainly, the ER addresses regional
4 surface water issues.

5 Our answer is that the issues raised by Mr. Zeller were
6 beyond the scope of this proceeding and unsupported. I want
7 to make that clarification.

8 Also, as you pointed out Your Honor, he had no expert
9 support at all in his original petition. And I want to
10 focus on the original petition. You know, BREDL's sole
11 basis as it described in its original petition, the one
12 basis in this petition called "Basis" is that the
13 availability of cooling water is a significant constraint to
14 safe shut down of the proposed plant.

15 He then goes on to have a five page description which
16 raises additional issues unrelated to the basis and they are
17 all related to hypothetical elevated water temperatures in
18 the Broad River, presumably from climate change.

19 Although there was a different issue raised in the
20 basis of the description, we addressed both in our answer
21 just briefly here today. Boiling it down, it appears that
22 BREDL's concern is that Duke has not adequately analyzed the

1 safety and environmental impacts of assumed increased river
2 temperatures on such things as down river ecosystems and
3 water uses, plant water consumption, plant efficiency,
4 reliability, rig stability, severe accidents, impacts to
5 customers, and reactor cooling including technical
6 specifications. He then adds that drought will exasperate
7 all of the above temperature impacts.

8 As we've noted in our Answer, this petition -- this
9 contention is inadmissible because increased water
10 temperatures and related impacts are based on pure
11 speculation and are entirely unsupported by the facts or
12 expert opinion and failed to address the very exact
13 information that addresses his concern in the environmental
14 report. Specifically, section 2.3.3.1.2 in ER Figure 2.3-22
15 in our Environmental Report provide the precise data that
16 Mr. Zeller is looking for.

17 It contains temperature data from 2006 from ten
18 sampling locations, quarterly batch samples, to 1973, 1974
19 data from 23 stations, batch samples taken on a monthly
20 basis.

21 And that data shows that there is no appreciable
22 differences in ambient temperature of surface water

1 temperatures over that span of period. And that is all
2 depicted in the ER. BREDL does not reference or refute any
3 of that data.

4 As the Commission has stated, Petitioner must read the
5 pertinent portions of the application and BREDL hasn't done
6 so here. BREDL also fails to provide any support, expert or
7 otherwise, that climate change or global warming will
8 somehow impact appreciably river water temperatures.

9 Even assuming global warming as a fact, you cannot just
10 claim that global warming will somehow increase the river
11 water temperatures. Again, that is entirely refuted by the
12 data that we have. The fundamental precept of NEPA is that
13 applicants are not required to consider environmental
14 impacts that are remote and speculative.

15 Because BREDL's contention is entirely based on the
16 unsupported and incorrect assumption that river water
17 temperatures have and will continue to increase, this
18 contention should be rejected.

19 In fact, it's not even clear what else we could do to
20 address the river water temperature increases when we have
21 actual data that shows it is not occurring.

22 >>CHAIRMAN RYERSON: Let me ask you, Mr. Bessette,

1 about your motion to strike. BREDL's reply -- BREDL filed,
2 I think, a 20 page reply in response to which you filed a 19
3 page motion to strike, asking us to strike significant
4 portions of BREDL's reply.

5 In your view, are any of the items that you want
6 stricken material in this sense: that if we considered them,
7 it would change the outcome?

8 >>MR. BESSETTE: With regard to this contention?

9 >>CHAIRMAN RYERSON: With regard to all
10 contentions.

11 >>MR. BESSETTE: Yes, I think there are several
12 issues with regard in particular -- things come to mind on
13 the seismic issues. Mr. Zeller raised Charleston seismic
14 zoning issues ,in particular the definition of act of fault
15 in the vicinity of the plant. He then threw in an entirely
16 new argument which he discussed today.

17 >>CHAIRMAN RYERSON: I understand what his
18 arguments are and I understand where they're due, I believe.
19 My question for you is: Do you consider any of those
20 arguments material in the sense that it should change our
21 decision if we did consider it?

22 >>MR. BESSETTE: No, because we believe they're

1 all inadmissible.

2 >>CHAIRMAN RYERSON: Let's assume a hypothetical
3 world in which we were very generous and we considered
4 everything in BREDL's reply. Would that change the outcome
5 in your view about any of the contentions?

6 >>MR. BESSETTE: Well, I mean, it may, Your Honor,
7 because we haven't had a chance to reply to all of these new
8 issues. For instance, he's raised issues on the Eastern
9 Tennessee seismic zone, and he's raised issues on, I think
10 it's Option 3 of evaluating the movement of fill material in
11 a seismic event.

12 Those are brand new issues that were just raised for
13 the first time in the Reply; issues that were present --
14 could have been raised when the application was submitted.
15 So, we have not had a chance to reply to them.

16 I believe our reply would demonstrate that the issues
17 are adequately explained and are not admissible, but we
18 certainly haven't had an opportunity to reply and he
19 fundamentally raised those issues without any late file
20 contention standards.

21 We don't object if he wants to raise new issues under
22 the appropriate late file contention standards, he should do

1 so and he hasn't done that. And to do so, he would have to
2 demonstrate that this is new and significant information.

3 >>CHAIRMAN RYERSON: One of the items and we are
4 going across several contentions here and we'll give you
5 time to get back on them. I want to take a break before the
6 staff speaks. But while we're on this motion, one of your
7 objections, if I understand it was that we should not
8 consider the U.S. Supreme Court decision in Massachusetts vs
9 EPA because it wasn't in his original brief?

10 Is that your position, that we shouldn't consider a
11 Supreme Court decision if it's not in his brief, in his
12 original petition?

13 >>MR. BESSETTE: Your Honor, of course, you can
14 use whatever legal basis you need to make a decision.
15 However, one of the fundamental guidance -- the guidance
16 fundamentally the Commission has provided is that replies
17 are not an opportunity to cure a faulty petitioner.

18 You don't get to just throw out an idea, get the
19 Applicant's detailed responses and then go, "A-ha" and then
20 just use that as a fishing expedition. And we believe he's
21 done so here.

22 He's raised, for instance, in the seismic area, he

1 never referenced the 200 pages in the entire seismic
2 response. In the Reply, he does that for the first time.

3 We said he doesn't provide any legal or factual
4 support. In the Reply, he provides factual support. So, to
5 the extent that he is raising these new lead support and
6 facts, yes, we believe they should be stricken because there
7 was no reason he couldn't have done so originally.

8 With regard to the resources available to the Board, of
9 course, you should use whatever appropriate precedent is
10 available. With regard to precedent, to consider his new
11 arguments would be completely counter to long established
12 Commission precedent of not allowing petitioners to raise
13 new arguments or provide legal support in its Reply.

14 >>CHAIRMAN RYERSON: Thank you. And again, I
15 distracted you a bit from Contention 3. Is there anything
16 else you want to say on Contention 3?

17 >>MR. BESSETTE: Just briefly, Your Honor. You
18 did mention -- as I stated, his original contention was
19 based on safe shutdown of the plant. And as we stated
20 earlier, he -- Mr. Zeller acknowledges it now -- appeared in
21 his petition to misunderstand the operation of the river as
22 associated with the AP1000.

1 The AP1000 allows for safe shutdown without reliance on
2 any external water supply, does not rely on the Broad River
3 as an ultimate heat sink contrary to many plants that exist
4 today and there are no river water temperature limits in the
5 tech specs associated with the ultimate heat sink.

6 And finally, I want to emphasize that we believe BREDL
7 also misapprehends NRC's environmental requirements
8 regarding plant availability. Duke was required and did
9 address the impact of frequency and duration of water supply
10 shortages in its ER and its FSAR; however, it does not
11 require Duke to do what BREDL is asking, which is to assume
12 predicted or prolonged periods of drought.

13 Duke however has analyzed historical -- actual
14 historical meteorological data and addressed that
15 information in its application. It's well established that
16 NEPA's review is subject to a rule of reason. There is no
17 legal basis for a contention merely because some
18 environmental uncertainty may exist regarding a plant's
19 proposed water supply.

20 And I refer you to an old case of Palo Verde,
21 LBP-82-117(a). The rule of reason allows for the
22 possibility that a plant may be forced to shut down for lack

1 of sufficient cooling at some juncture. It is not as what
2 BREDL requires that there can be no uncertainty regarding
3 water supplies. Thank you.

4 >>CHAIRMAN RYERSON: Thank you. Do you have any
5 questions, Judges?

6 >>JUDGE TRIKOUROS: I'll wait for the staff.

7 >>CHAIRMAN RYERSON: The NRC staff, anything on
8 this?

9 >>MR. SPENCER: Yes, Your Honor. I'm Michael
10 Spencer for the NRC staff. The Applicant has gone over many
11 of the issues. Our arguments are contained in our Answer to
12 the petition. We would simply say that new issues, new
13 claims brought up on behalf of BREDL should not be
14 considered by the licensing board.

15 We would just say that new claims brought up by BREDL
16 in its Answer should not be considered by the licensing
17 board. Our general argument made in the brief -- made in
18 our answer to the petition is they've simply not provided
19 support for their contention.

20 It appears that every claim in their contention relies
21 upon some assumption of increase in drought or increased
22 water temperatures. They simply have not provided any

1 support for that.

2 >>CHAIRMAN RYERSON: Thank you, Mr. Spencer.

3 >>JUDGE TRIKOUROS: Whether or not a contention is
4 admissible or inadmissible is -- if you put that aside for a
5 minute, if a contention raises important issues associated
6 with the current licensing of this plant that we're airing
7 and discussing, I think; with respect to this global warming
8 question and the impact on the plant, I think existing
9 reactors have run into this problem. I know of three or
10 four where river water temperatures were originally designed
11 based to 85 degrees Fahrenheit and started to experience
12 numbers closer to 90 degrees Fahrenheit.

13 So, it is not an occurrence that -- it's not so
14 remote and speculative from that point of view.

15 Now, I don't know if the river water temperature or the
16 bay temperature in another case increased because of global
17 warming or because of any of a hundred other factors. I'm
18 not commenting on that, but this idea that an environmental
19 input to the plant could change is not a new idea. And the
20 plants have dealt with that on an individual basis in each
21 case by re-evaluating the design basis analysis for the
22 plant and concluding that they can continue to operate

1 safely with the higher river or bay temperature, whatever it
2 is.

3 I don't know how that would work in this world of DCDs
4 and I'm not going to get into that, although it is an
5 interesting question. So, I just wanted to point out that
6 this is not something that if it occurs there is some cliff
7 that someone falls over.

8 And so, I just want to make that statement that this
9 isn't something that is a very major concern. But
10 nonetheless, it's worthy of mentioning that it has occurred
11 in existing reactors.

12 >>JUDGE MURPHY: I have a question for the staff
13 which -- just to help me clarify how the process is working
14 here. My understanding is that the staff prepares the
15 Environmental Impact Statement to satisfy the NEPA
16 requirements eventually and I presume that you're working on
17 that now and you make use of the environmental report from
18 the Applicant to prepare that; is that correct?

19 >>MR. SPENCER: Yes, Your Honor.

20 >>JUDGE MURPHY: One of the points raised in the
21 petition was that there is a lack of completeness with
22 regard to the issue of temperature and future climate

1 change. And that may not be a safety issue and it may not
2 be an issue that's within the scope of this procedure
3 because it is a docketing issue, but it seems that it could
4 be an issue in the context of environmental concerns.

5 And whether or not the possibility of climate change
6 has been fully considered in -- or completely considered to
7 the extent that such environmental changes need to be a part
8 of an environmental impact statement.

9 So, my question is rather simple now: Is the staff
10 addressing future climate change in their environmental
11 impact statement? Do you feel that is within the scope of
12 what needs to be complete -- a complete addressing of
13 environmental issues?

14 >>MR. SPENCER: Can I confer?

15 >>JUDGE MURPHY: Sure.

16 >>MR. SPENCER: Your Honor, the staff is currently
17 considering these global warming issues and the extent to
18 which the staff might incorporate them into their
19 environmental impact statements. We haven't decided to
20 change our guidance in that regard.

21 It's not entirely clear how it would necessarily apply
22 to each particular plant. So, it's something we're looking

1 at. That's -- I mean, we don't have, like, a firm concrete
2 answer to the extent to which such an issue would need to be
3 -- should be considered or should be considered with respect
4 to particular plants.

5 And it wasn't raised by BREDL. They didn't raise that.
6 The NRC staff guidance, for instance, requires -- or NRC
7 staff regulations requires some -- explicitly require any
8 analysis of this issue, meaning basically, the environmental
9 issues are considered, but they need to be material, too.

10 And so, there has to be some significant change that
11 would be material to our considerations for it to have --
12 potentially have an effect on our decision-making.

13 >>JUDGE MURPHY: Thank you.

14 >>CHAIRMAN RYERSON: Thank you, Mr. Spencer. If
15 there are no further questions at this time --

16 >>MR. BESSETTE: Your Honor, may I just -- Paul
17 Bessette here just to address one issue raised by Judge
18 Trikouros with regard to river temperature and design.

19 I think it is important to understand that the AP1000
20 design river temperature is just not an important design
21 frame, not for safety, not for operation. The temperature
22 of the cooling water systems are generally driven by the

1 cooling tower design, which is an AP1000 design
2 certification issue.

3 Again, it's just not an important design parameter for
4 the AP1000. We raised that appropriately in our Answer.

5 >>CHAIRMAN RYERSON: Thank you.

6 >>JUDGE TRIKOUROS: Just to make a point. I'm not
7 concerned at all with the river water temperature from the
8 point of view of the plant. The only concerns I would have
9 with respect to -- and it wouldn't be river water
10 temperature so much as it would be the flow issue that we
11 discussed, and that's environmental, that's not safety.

12 >>MR. BESSETTE: Thank you.

13 >>CHAIRMAN RYERSON: Mr. Zeller?

14 >>MR. ZELLER: I looked back to the Answer. I
15 don't think I misread it, maybe I misspoke it, but the
16 answer on July 22nd does say Contention 3 should be
17 dismissed because, one, regional surface water temperature
18 has surfaced are beyond the scope of the proceeding. So,
19 unless I misspoke, that was the interpretation.

20 And I do think the NEPA Section 1, these are all
21 practical means and utility responsibilities that we have
22 for future generations.

1 JUDGE RYERSON: If you could speak more into the mike
2 Mr. Zeller.

3 MR. ZELLER: I'm sorry. I read the quote and that's on
4 page 28 of the answer of Contention 3 whether it's regional
5 surface water. Assertions are beyond the scope of the
6 proceeding. Those are Duke's words.

7 And the other thing is that under NEPA Section 101,
8 that they are to use all practicable means to fulfill
9 responsibilities to future generations and to recognize the
10 worldwide character for some of the environmental problems.
11 This is the charge in the Environmental Policy Act 2 as well
12 as to all federal agencies. That's all I have to say. Thank
13 you.

14 >>CHAIRMAN RYERSON: Thank you all. We will take a
15 short break. It will be just a little over ten minutes and
16 start promptly at 11:10. We'll begin with Contention 5.

17

18 (Whereupon a short break was taken)

19

20 >>CHAIRMAN RYERSON: Please be seated. Okay, we
21 are now moving using the same ground rules to Contention 5,
22 which again, for the benefit of the audience here and on the

1 Internet, I'll read.

2 BREDL's Contention 5 says: "The application does not
3 provide reasonable assurance of adequate protection of
4 public health and safety required by 10CFR50.57(a)(3).

5 The final safety analysis report insufficiently
6 analyzes reactor unit's capability to withstand a design
7 basis and safe shutdown earthquake because they failed to
8 include the more recent information regarding the type,
9 frequency and severity of potential earthquakes in violation
10 of 10CFR Part 100." Mr. Zeller?

11 >>MR. ZELLER: Yes, thank you, Your Honor. I have
12 a hotter microphone now. Can you hear me all right?

13 >>CHAIRMAN RYERSON: I've heard you all the way
14 through. I think there is a problem on the other side of
15 the room. Can you hear Mr. Zeller, staff? Okay, we're
16 fine.

17 >>MR. ZELLER: Yes, thank you. In a nutshell, the
18 regulation states the responsibilities of the applicant for
19 a Combined Operating License that you shall evaluate all
20 citing factors and potential causes of failures, such as
21 physical properties and materials underlying the site of
22 ground destruction and effects of ground motion that may

1 affect the design and operation of the proposed nuclear
2 power plant. That's 10 CFR100.23, paragraph D4.

3 The site criteria do include the following assessments:
4 ground motion, surface tectonic, non-tectonic defamiation,
5 seismic floods and waves, soil and rock stability, action
6 and potential slope stability, cooling water supply and
7 promote safety structure citing.

8 Regulatory Guide 1.208 points to any new information
9 related to seismic source that impacts the hazard
10 calculations must be evacuated and incorporated into the
11 probabilistic seismic hazard analysis in the COL
12 application.

13 The applicant has not updated the Eastern Tennessee
14 seismic zone models and I think that's where one of the --
15 that is part of the problem here that we raise in our
16 contention.

17 >>CHAIRMAN RYERSON: Mr. Zeller, when you say that
18 "the Applicant has not updated the models" can you be a
19 little more specific? What is the more recent information
20 that you say the Applicant has not included?

21 >>MR. ZELLER: The seismology issues are subject
22 of ongoing internal debate between the Nuclear Regulatory

1 Commission and both Duke and TVA and Westinghouse, the
2 manufacturer of the AP1000. The referenced COLA, Combined
3 Operating License Application, is the TVA one and of course,
4 that is one that is holding up the review schedule.

5 So far as I understand that these matters are unsettled
6 and there is some back and forth, some, dispute, really, as
7 to how these factors can be accounted for.

8 >>JUDGE TRIKOUROS: Mr. Zeller, sorry to interrupt
9 you. I just didn't get what you said. You're saying that
10 these matters are not settled within the DCD proceeding? Is
11 that what I heard?

12 >>MR. ZELLER: Correct.

13 >>JUDGE TRIKOUROS: Okay, that's fine.

14 >>MR. ZELLER: The DCD -- you're exactly right.

15 In fact the seismology as well as the hydrological analysis
16 in that is the basis for this application.

17 In our submissions, we have pointed to letters from the
18 Office of New Reactors, the Bergman Letter and subsequent
19 correspondence showing that additional information for
20 seismology is necessary and that these -- that the
21 application is not complete.

22 The referenced Combined Operating License, that is for

1 TVA, is not complete. And this letter shows that the
2 completion of TVAs application is delayed. Maybe there is
3 new information which I haven't heard about, but so far as I
4 understand, that these things are still unresolved.

5 And that is the fact, Your Honor, at the heart of our
6 contention is that the Design Control Document and its
7 stability in such circumstances as a seismic event, which is
8 highly -- is not remote and speculative, I should say, in
9 the upstate of South Carolina. It needs to be dealt with.

10 >>CHAIRMAN RYERSON: Mr. Zeller, your position as
11 I understand it is that there are experts at the University
12 of South Carolina who have said that any reactor at this
13 site should be designed to withstand the equivalent of
14 another Charleston earthquake referring to the, I guess,
15 probably, one of the largest earthquakes on the East Coast
16 in known history. But you don't identify who they are.
17 Why?

18 >>MR. ZELLER: Good question. At the time I was
19 talking to Dr. Pradeep Talwani at the University of South
20 Carolina at Columbia, and I asked him, in fact, specifically
21 if he could be -- do the expert affidavit or something like
22 that and he was simply too busy with his administrative and

1 educational chores to take that on. So, that's where it
2 stands.

3 >>CHAIRMAN RYERSON: Okay, I'm sorry. I didn't
4 mean to interrupt your presentation.

5 >>MR. ZELLER: In a nutshell, the application is
6 still complete. The Office of New Reactors has written to
7 Vice President Dolan at Duke Power about these same issues.
8 So, it is a Design Control Document issue that is the basis
9 for the application. And all this is unsettled, so that is
10 the basis for our contention.

11 >>CHAIRMAN RYERSON: The applicant, Mr. Bessette
12 or Ms. Sutton? Mr. Bessette?

13 >>MR. BESSETTE: Yes, Your Honor. Again, several
14 of the issues raised by Mr. Zeller were not raised in the
15 petition. At this point, I want to focus on the issue of
16 actually raising the petition.

17 He raises two purported basis for this contention.
18 First, that an AP1000 reactor, I think WLS site, should be
19 designed to withstand another Charleston earthquake as you
20 stated and that that information is somehow missing from its
21 application.

22 And secondly, that the Environmental Report wrongly

1 seems to suggest there are no active faults near the Lee
2 site. This contention fails to meet any of the basic
3 contention admissibility standards. Although BREDL asserts
4 in general that the FSAR is insufficient, it fails to cite
5 to a single page of the entire FSAR in its petition.

6 Particularly, Section 2.5 of the FSAR contains more
7 than 200 pages of analysis, tables, figures of extensive
8 geological, seismological and geotechnical data pertaining
9 to the Lee site and the surrounding area, including
10 Charleston.

11 It was prepared by a team of geologists and engineers
12 with substantial expertise in seismic hazards analysis and
13 engineering geology.

14 As questioned today, BREDL furnishes in its petition,
15 no expert opinion of its own to counter any of this
16 information, notwithstanding the technical complexity of
17 the issues; therefore, it is entirely unclear which specific
18 portions of the hundred pages of seismic information
19 contained in the FSAR that BREDL believes it is deficient.

20 With regard to the factual information provided by
21 BREDL in proposed Contention 5, it fails to explain the
22 potential safety significance of that information or how it

1 impacts the analysis in Section 2.5. That information
2 relates to the Charleston seismic source, presence of active
3 faults and WLS AP1000 units of design margin.

4 I'll address each of these briefly. With regard to the
5 Charleston seismic source, FSAR Section 2.5 provides a
6 comprehensive compilation of current geological data
7 concerning earthquake sources, maximum earthquakes and
8 earthquake rates. Specifically, FSAR Section, 2.5.2.1.2 and
9 Table 2.5.2-201 include a catalog of earthquakes from 1627
10 to 2006 within a 200 mile radius of the Lee site.

11 That information specifically includes the Charleston
12 seismic source. In fact, Section 2.5.1.1.3.2.1 discusses
13 the specific tectonic features of the Charleston source
14 including an 1886 earthquake.

15 Two other sections including 2.5.2.2.4 and 2.5.2.4.2.1
16 discuss the most current characterization, updated
17 characterization of the Charleston seismic source, and it
18 particularly includes the type, frequency and severity of
19 that information which is the basis for this proposed
20 contention.

21 In fact, the FSAR indicates that the ground motion
22 hazard for the Lee site is dominated by the Charleston

1 seismic source. If a BREDL assertion that the FSAR somehow
2 doesn't consider the seismic source is entirely unsupported
3 and factually incorrect.

4 With regard to active faults near the site, Duke's
5 application is prepared in accordance with Reg Guide 1.208.
6 As part of that, Duke did not use BREDL's definition of
7 active fault; instead used capable tectonic source as
8 defined in 1.208.

9 As we noted in our Answer, capable tectonic source is
10 more concerted and bounds BREDL's definition of an active
11 fault. Section 2.5.3 concludes that there are no capable
12 tectonic sources within the WLS site vicinity.

13 Importantly, site vicinity is defined by Reg Guide
14 1.208 that's within a 25-mile radius. The Charleston source
15 is approximately -- Charleston is approximately 180 to
16 200-miles away. Again, BREDL ignores this information,
17 including the Reg Guide 1.208 definition of the vicinity.

18 With regard to the design margin of AP1000, 10CFR100.23
19 requires that the applicant determine a safe shutdown
20 earthquake ground motion for a given site and estimate the
21 uncertainty inherent in its estimates for probabilistic
22 seismic hazards analysis.

1 The SSE is defined as the voluntary ground motion for
2 which systems start using components of the design pursuant
3 to Appendix S. FSAR Section 2.5.2 presents the Lee site
4 specific ground motion response sector in Section 3.7.1.1.3
5 compares that site specific ground motion specter to the
6 AP1000 ground motion design.

7 It concludes that the calculated site specific
8 horizontal and vertical response spectra are within the
9 seismic design margin of the AP1000. Again, BREDL ignores
10 this comparison of site specific information to AP1000
11 design criteria.

12 Finally, Your Honor, we were going to address the
13 motion to strike, but we believe we've adequately addressed
14 it in response to your other questions.

15 Again, there were issues raised in the response this
16 morning with regard to RAIs, with regard to Eastern
17 Tennessee seismic zone and issues raised earlier on seismic
18 response fill material were never raised in the petition
19 although all of that information was available.

20 In fact, in April of 2008, Duke submitted a white paper
21 to the NRC on the Eastern Tennessee seismic zone updating
22 that data which again was available to BREDL at the time the

1 petition was filed.

2 >>CHAIRMAN RYERSON: Thank you, Mr. Bessette. The
3 NRC staff, do you have anything?

4 >>MR. SPENCER: Well, we would just -- Michael
5 Spencer for the NRC staff. Well, I don't have too much to
6 add. Basically, with regard to the Charleston earthquake
7 the FSAR deals with that and BREDL never really contests
8 that or really engages that issue.

9 As for the act of faults claim, it seems like it's more
10 of an argument over definitions of what a site vicinity or
11 general location and that section of the ER that they
12 actually dispute says that the more detailed description is
13 in the FSAR. So, there is just not enough here to make an
14 admissible contention.

15 Now, as for the new arguments BREDL brings up in its
16 reply brief, we agree that the argument on the random
17 vibration theory in conjunction with Approach 3 and the
18 Eastern Tennessee seismic, those are new arguments that
19 weren't in the original petition.

20 It appears that they've just taken those from staff
21 scheduling documents or docketing letters and really have
22 not added anything more to that than what we see in those

1 letters.

2 >>CHAIRMAN RYERSON: The staff hasn't actually
3 taken a position on the motion to strike; is that right?
4 You noted that you believe that there were some
5 inappropriate new matters raised in the reply, but you did
6 not take a position on the motion to strike, correct?

7 >>MR. SPENCER: Can we pause?

8 >>CHAIRMAN RYERSON: Sure.

9 >>MR. SPENCER: We agree with the substance of the
10 motion, not necessarily that it should be stricken from the
11 record. But we would agree that it can't be considered by
12 the Licensing Board.

13 >>CHAIRMAN RYERSON: The new information?

14 >>MR. SPENCER: New information, yes.

15 >>CHAIRMAN RYERSON: Thank you. Mr. Zeller, do
16 you have anything to add?

17 >>MR. ZELLER: Yes, Your Honor. BREDL is not
18 saying that Duke did nothing, but 200 pages of analysis
19 which is about the seismic impacts and whatnot appears to
20 have been used to discount the potential for earthquake
21 impacts.

22 The analysis of a 25-mile radius for capable tectonic

1 sources, which was mentioned, I think could be a part of the
2 problem. But if what we are hearing from Dr. Talwani is
3 correct, that means that the capable tectonic sources
4 perhaps outside the 25-mile zone -- I mean, why are the 25
5 miles come from? (sic) If there is a capable tectonic source
6 of the magnitude of the Charleston earthquake outside the
7 25-miles should that not be considered? If not, why not?

8 >>CHAIRMAN RYERSON: Those opinions, again, just
9 to be clear, are not set forth in the petition, correct?
10 The opinions of Dr. -- I'm sorry, I missed the name.

11 >>MR. ZELLER: His name is not used in the
12 petition. That's the only omission I guess I would say then
13 of that document on that matter. We do not use his name
14 simply for the reasons I told you before.

15 >>CHAIRMAN RYERSON: Right, I understand.

16 >>MR. ZELLER: More recently on June 27th, after
17 April's submission on the East Tennessee seismic zone data
18 ,there is a letter of June the 27th to Westinghouse Electric
19 Company from Thomas Bergman in the Office of New Reactors
20 talking about the information provided in your June 3 letter
21 is insufficient with regards to earlier submittals,
22 technical items here and I'm going over the letter.

1 If those issues have been resolved, then I'm unaware of
2 that information and I would like to see how that has been
3 resolved. Thank you.

4 >>CHAIRMAN RYERSON: Thank you, Mr. Zeller. Let's
5 turn to Contention 8, which again, I'll read it for the
6 benefit of the audience here and on the Internet.

7 BREDL Contention 8: "The assumption that uranium fuel
8 is a reliable source of energy is not supported in the
9 Combined Operating License Application submitted by Duke
10 Energy to the U.S. Nuclear Regulatory Commission." Mr.
11 Zeller?

12 >>MR. ZELLER: Thank you, Your Honor. Regarding
13 Contention 8, uranium fuel and the Combined Operating
14 License; Federal regulations do, of course, require under
15 10CFR50.33(f) require an assessment of related fuel cycle
16 costs for the licensing period, which would be 40 years.

17 So, what would be classified in the cost of uranium
18 fuel in the middle of the 21st century? We know that
19 worldwide uranium prices have increased more than 6-fold
20 within the last -- since 2001. And so, that is part of the
21 equation here which would affect the application.

22 This information, I believe, does not take into account

1 in the application --

2 >>CHAIRMAN RYERSON: Mr. Zeller, doesn't the web
3 site that you cite in your petition suggest that
4 conservatively worldwide, there is at least an 80 year
5 supply of uranium, conservatively?

6 >>MR. ZELLER: Well, there are -- it does say that
7 in that particular site there. In fact, Duke's
8 environmental report states that worldwide resources are
9 over 4.7 million metric tons; enough to last 70 years.

10 I would say that the percentages regarding the Lee site
11 or the Lee plants consumption are beside the point. No
12 matter what fraction of the worldwide supply that this plant
13 would use amongst all the reactors operating on the planet,
14 the cost of the uranium fuel would be based on worldwide
15 supply and demand.

16 So, a 6-fold increase in world uranium prices similar
17 to the doubling price of gasoline at the pump would have a
18 huge impact. So, that is the trend that we see. The curve
19 here looks to be a hyperbolic curve showing uranium prices
20 increasing over this period of time.

21 And there is an assertion within Duke's documents which
22 say that world uranium prices -- that the supply could well

1 double. I didn't see any substantiation for that. That is
2 speculative itself assuming that deeper sources or more
3 remote sources of uranium could have gotten less
4 concentrated or less high quality sources of uranium could
5 economically be used.

6 And that doesn't even address the questions of the
7 energy debt created by very energy intensive form of
8 extracting fuel; in this case, purifying uranium 235 from
9 the uranium ore can be done, which does not outweigh its
10 effectiveness as a fuel. That is, it takes so much energy
11 to make the fuel for the less lower quality ores that it
12 becomes not only a cost issue, it becomes a practical issue.

13 You could spend as much energy getting the uranium out
14 of the ground, putting it into the reactor as you would get
15 out of the reactor. At some point, it becomes a balance and
16 then it becomes even greater.

17 And at the present time, we are looking at an energy
18 payback for nuclear reactors on the order of a decade with
19 the existing uranium ores extraction and the energy debt.

20 So, with that -- if that impacts the price, then all
21 this should be considered in the NEPA application since they
22 are required to consider the impacts of the uranium fuel in

1 their application.

2 >>CHAIRMAN RYERSON: Are those arguments
3 documented or set forth in your petition, Mr. Zeller?

4 >>MR. ZELLER: Some of the -- yes, we've made
5 mention of the Stormsmith site, which I know there was some
6 back and forth about that, but the analysis there has to do
7 with some of these very issues that I just mentioned.

8 And one can simply do the math there by going to that
9 site, which we cite in our petition and see that some of
10 these issues are coming to a head and the prospects for
11 uranium fuel, both from an economic standpoint and costs
12 matters and in terms of supply and energy I think are really
13 shaky at this point and a better case, absolutely, needs to
14 be made by the Applicant in this case.

15 >>JUDGE TRIKOUROS: Mr. Zeller, you said that -- I
16 assume you're speculating that the cost of uranium will
17 increase 6-fold? You made that statement?

18 >>MR. ZELLER: No, it has increased 6-fold.

19 >>JUDGE TRIKOUROS: Well, it's even increased more
20 than that if you go back enough in time, but I'm talking
21 about the future price of uranium. Even if it did increase
22 6 fold from now into the future, you indicated that would be

1 a huge impact.

2 What did you mean by "huge impact"? What would be
3 impacted in a huge way?

4 >>MR. ZELLER: You mean from a cost point of view?

5 >>JUDGE TRIKOUROS: The cost of electricity?

6 >>MR. ZELLER: From a cost point of view, it would
7 have an impact, obviously, on -- to the rate payers and the
8 economics of the plant is also the environmental concerns
9 which I mentioned.

10 >>JUDGE TRIKOUROS: And everything you're saying
11 about uranium could also be said about any other fuel
12 supply; is that right? The price of oil, the price of coal,
13 the price of other things?

14 >>MR. ZELLER: You can say that uranium -- you
15 could say that about uranium. I could say it about
16 petroleum. Although, there's some dispute that, but yes, I
17 think you could say it about petroleum. I don't think you
18 could say it about coal. You can certainly not say it about
19 solar and wind.

20 >>CHAIRMAN RYERSON: Thank you, Mr. Zeller. For
21 the Applicant?

22 >>MS. SUTTON: Yes, Kathryn Sutton for the

1 Applicant. Your Honor, there's many reasons again why this
2 proposed contention is not admissible. Let's first begin
3 with the web site that Mr. Zeller has cited to it. It
4 clearly contradicts and undercuts their basic argument.

5 There are many sections of this that are discussed in
6 Duke's answer that explain why it does, but in essence, I
7 point to our Answer on page 80 that WNA, the World Nuclear
8 Association explains that while uranium exploration was
9 relatively stagnant between '85 and 2005, the past few years
10 have seen a significant increase in exploration effort which
11 could readily double the known economic resources.

12 Also between 2005 and 2006, the uranium resources
13 increased by 15%. And it goes on to say that if prices are
14 doubled, they would further expect -- this is WNA -- a ten
15 fold increase in measured resources over time due both to
16 increased exploration and reclassification of resources
17 regarding what is economically recoverable.

18 Again, this is the same source material that BREDL
19 cites and it just simply does not support their argument as
20 a matter of fact.

21 The figure that Mr. Zeller has referred to on page 40
22 of the BREDL petition only illustrates the historical

1 uranium production and demand in the western world between
2 1945 and 2004 and it's devoid of any sort of information
3 about forecasted supply and demand for the post-2004 era.

4 So, proposed Contention 8 should be dismissed on this
5 basis. Now, I would like to point out that the ASLB in the
6 North Anna COL proceeding recently reached the same finding
7 and rejected BREDL's same contention on this basis alone.
8 And I point you to LBP-08-15. It's a slip opinion and you
9 should look at page 49. I'll quote the Board there because
10 I think it's important for purposes of this proceeding.

11 "BREDL has not cited any document that read as a whole
12 supports the theory that uranium supplies will be
13 insufficient to support the operation of," in that case,
14 "North Anna Unit 3 during its licensing period." This same
15 conclusion holds true in this proceeding.

16 But there is another independent ground upon which to
17 reject the contention here. Namely, it fails to establish a
18 genuine dispute with the Applicant on a matter of law or
19 fact.

20 Yes, in trying to meet the standard BREDL does cite
21 certain portions of the application, and here I will point
22 to tech spec 4.2.1 which discusses fuel assemblies to be

1 used in the AP1000; ER Section 5.7 which discusses uranium
2 fuel cycle impacts; and ER -- ER standing for Environmental
3 Report -- Section 9.1.2 discussing Duke's supply and demand
4 and energy balance under the new action alternative.

5 However, none of these references are relevant to the
6 contention and none support admissibility of that
7 contention.

8 First, BREDL does not explain in any way, shape or form
9 how tech spec 4.2.1 is even remotely relevant to future
10 reliability of global uranium fuel supplies. It simply
11 describes the number and type of fuel assemblies to be
12 installed in making a balancing reactor cooler.

13 With respect to the ER Section 5.7 it only concerns the
14 environmental impacts of the uranium fuel cycle.

15 And third, BREDL's reliance on section 9.1.2 is
16 similarly misplaced. It discusses the consequence of the
17 known action alternative in the context of Duke's electric
18 supply and demand balance, again, bearing no relevance
19 whatsoever to uranium fuel supply.

20 What is important as well is that BREDL fails to
21 reference in its petition the section of the ER that does
22 relate to its alleged concerns about the reliability of the

1 uranium fuel cycle. In this case, it's ER Section 10.2.2.

2 It's entitled "Irreversible and Irretrievable Commitments of
3 Material Resources".

4 It's quoted extensively, again, in Duke's answer at
5 pages 83 through 84. And this section of the ER also relies
6 upon the very same WNA web site that the petitioner relies
7 on. So, that web site not only contradicts BREDL's claims,
8 but also highlights that there is no material dispute here
9 with the Applicant because we're citing the same source
10 material, although Petitioner is citing it in a mistaken
11 manner.

12 Finally, I must add that in trying to challenge the
13 application, BREDL does engage in more speculation that if
14 there is a plan to address reported uranium supply issues
15 through the use of plutonium fuel, and in that case they're
16 referring to MOX or mixed oxide fuel, then such information
17 is also missing from the application.

18 This is simply uncorroborated speculation that does
19 not, again, establish a genuine dispute with respect to the
20 application. Thank you.

21 >>JUDGE TRIKOUROS: If Duke were to decide to use
22 plutonium, and I guess they do have a collaboration with

1 Shaw Group and Areva using weapons of grade plutonium to
2 convert to mixed oxide. As I see it, the AP1000 -- at least
3 I couldn't find anywhere the AP1000 DCD was licensed to
4 operate with mixed oxide fuel. And I just did a quick look,
5 but I didn't see anywhere where that showed up.

6 >>MS. SUTTON: Yes, Your Honor. We are unaware as
7 well that the DCD would envision the use of such fuel in the
8 first place. And in any event, the requirement would
9 require a change to the DCD COLA, which again, would offer
10 additional opportunities for intervention.

11 Moreover, it would probably involve a separate
12 licensing proceeding much as it did with the current
13 generation of reactors that are using that sort of fuel,
14 again, offering petitioners a chance to participate in any
15 such decision-making process.

16 >>JUDGE TRIKOUROS: Exactly the road I was walking
17 down. Therefore, there would be a significant opportunity
18 for BREDL to take note that a license application or a
19 license amendment is occurring or a new request for the use
20 of MOX. It would be noticed, I assume, at that point and
21 one could intervene at that point?

22 >>MS. SUTTON: Yes, Your Honor.

1 >>CHAIRMAN RYERSON: Thank you. NRC staff,
2 anything further?

3 >>MS. BROCK: The NRC staff has nothing beyond its
4 brief on this contention but we would be happy to answer any
5 questions.

6 >>CHAIRMAN RYERSON: I'm sorry?

7 >>MS. BROCK: We'd be happy to answer any
8 questions.

9 >>CHAIRMAN RYERSON: Thank you. Mr. Zeller,
10 anything in wrapping up on Contention 8.

11 >>MR. ZELLER: Thank you, Your Honor. Just one
12 point. I haven't heard anything new here today about this.
13 So, I think we have said enough about the technical issues
14 with our submissions and our responses.

15 Regarding Environmental Report Section 9.1.2, I know we
16 did make reference to that, but in my work yesterday to
17 address some of these very issues and to clarify some
18 things, I attempted to go to the NRC's web site to the
19 application documents to the Environmental Report, Chapter 3
20 to gain access to Section 9 and could not do so.

21 I tried again after an hour. I tried again later on.
22 I tried again at about 4:00 o'clock this morning, or 5:00

1 o'clock when I left out, and it was still -- I was still
2 unable to access that part of the application.

3 I should have made a copy of the several hundreds of
4 thousands of pages out there and it's my fault, but I was
5 really at a loss to explain why that section of the
6 application could not be accessed.

7 >>CHAIRMAN RYERSON: Were you able to access that
8 at an earlier time, that section?

9 >>MR. ZELLER: I did, sure, way back, but that's
10 months ago, but I attempted to deal with it yesterday.

11 >>CHAIRMAN RYERSON: Apparently, there is some --
12 for want of a better word -- glitch with the NRC system that
13 happened today or yesterday.

14 >>MR. ZELLER: We understand.

15 >>CHAIRMAN RYERSON: Sorry you weren't able to --
16 we appreciate you getting up at 4:00 a.m. and checking on
17 it.

18 >>MR. ZELLER: I would have been better prepared
19 if I were able to access it yesterday, but I couldn't.

20 >>CHAIRMAN RYERSON: Thank you. Well, now I think
21 --

22 >>MS. BROCK: Your Honor?

1 >>CHAIRMAN RYERSON: Yes?

2 >>MS. BROCK: If staff could be heard briefly on
3 the subject of access. We do have our hard copy of the
4 environmental report in the Cherokee County library here.

5 >>CHAIRMAN RYERSON: But it's 1,000 pages -- 700
6 or 1,000 pages long, isn't it?

7 >>MS. BROCK: Yes. It's pretty thick.

8 >>CHAIRMAN RYERSON: We won't force Mr. Zeller to
9 read that now. Thank you for the offer.

10 It's now about ten of 12:00 and we will have a few
11 questions on some of the other contentions, I think. At
12 least as I said earlier on Contention 2 and Table S3 in
13 particular.

14 I think our preference would be to plow ahead and
15 hopefully we can finish by 12:30 or so and have lunch
16 afterwards. Unless I see a groundswell of opposition to that
17 approach, why don't we start it that way. And I guess, let
18 me start with you, Mr. Zeller, on BREDL Contention 2.
19 Again, for the audience's benefit, let me read that.

20 "The Applicant fails to analyze the carbon footprint of
21 the construction and operation of the William States Lee
22 Nuclear Reactors 1 and 2 in its Environmental Report."

1 And I guess the first question I have for you Mr.
2 Zeller is, what is the legal basis for the requirement that
3 the Applicant do so? Why does the Applicant have to analyze
4 and evaluate the carbon footprint?

5 >>MR. ZELLER: The Applicant is -- well, several
6 bases. I believe beginning with the Massachusetts versus
7 EPA, that carbon dioxide is a pollutant under the Clean Air
8 Act of 1970. Duke does put carbon dioxide in its report --
9 in this application, I should say, with intermittent sources
10 such as diesel engines and what not.

11 It refers to Table S3 which does not include carbon
12 dioxide and that the Commission's decision CLI-01-04
13 required Duke to analyze carbon dioxide emissions from
14 uranium fuel.

15 It did analyze emissions which include sulfuric oxide,
16 nitrous oxide, et cetera, but did not analyze carbon dioxide
17 from the fuel.

18 >>CHAIRMAN RYERSON: Okay. Let's just make sure
19 everybody is in agreement on this point. Does everyone
20 agree that there is nothing in Table S3 that addresses
21 carbon dioxide? Applicant? Is that a fair statement.

22 >>MR. BESSETTE: It's my understanding that it

1 does not address carbon dioxide.

2 >>CHAIRMAN RYERSON: Staff?

3 >>MS. BROCK: The staff does not believe that
4 Table S3 directly addresses carbon dioxide. It does believe
5 that there are other things addressed in Table S3 which we
6 can use to help analyze carbon dioxide.

7 >>CHAIRMAN RYERSON: Okay. But the issue we are
8 getting to right now, I think, is there a requirement --
9 well, this goes back in a sense before Table S3. I mean,
10 does the Applicant disagree? Well, let me rephrase that.

11 What is the Applicant's position that as of today, post
12 Massachusetts versus EPA, is there an obligation on
13 someone's part to analyze carbon dioxide emissions in
14 connection with or limited to the uranium fuel site?

15 >>MR. BESSETTE: I guess I can answer that. The
16 answer is no. The Massachusetts -- the EPA case referred to
17 which was cited for the first time in the reply relates to
18 vehicle emission standards. And although it does say that
19 carbon dioxide can be used as a pollutant under the Clean
20 Air Act, it doesn't say -- provide any requirement of how
21 EPA should administer that.

22 It just said that EPA did not adequately justify its

1 exclusion of carbon dioxide as a pollutant. So, I don't
2 think that's directly applicable. And even if it were, it
3 doesn't require consideration of a carbon footprint which
4 from my understanding is that it's kind of a birth to death
5 analysis of carbon dioxide from the manufacturer of all
6 components under the law.

7 With regard to S3, S3 is a clear -- it says Applicant
8 shall take as given the information in S3 in its COL
9 application, which is the uranium fuel cycle. So, we
10 believe it does preclude a challenge as saying you should
11 have considered something S from something else.

12 In fact, if you look at footnote one, I believe, on
13 Table S3, it says -- it states: "In some cases where no
14 entry appears, it is clear from the background documents
15 that the matter was addressed and that in fact, the table
16 should be read as if a specific zero entry had been made."
17 And then it gives some examples where that does not apply.

18 Now, we did not -- if there is a challenge to what S3
19 requires, there's two things you can do. You can seek a
20 waiver in this particular proceeding, but he hasn't sought a
21 waiver and they would have to show why in this particular
22 circumstance that this case doesn't apply because this is a

1 generic issue about that one.

2 >>CHAIRMAN RYERSON: And there is nothing --
3 there's no -- switching just for a second to Mr. Zeller.
4 There is nothing about the Duke application that is
5 different from any other reactor application with respect to
6 carbon dioxide -- with respect to the requirement to have an
7 analysis. Would you agree with that?

8 >>MR. ZELLER: I guess my answer would be that we
9 find that this issue should be addressed in every case. It
10 would amount to perhaps a Petitioner's generic contention.

11 >>CHAIRMAN RYERSON: I understand your position on
12 that.

13 >>MR. BESSETTE: My only final point, Your Honor,
14 if they think that Table S3 should be revised to require
15 CO₂, as Mr. Zeller mentioned in his opening remarks, they
16 should seek a petition for rulemaking on Table S3. As it
17 stands, we believe a challenge to what is required is
18 precluded in this proceeding.

19 >>CHAIRMAN RYERSON: Does the Staff have a
20 position on two issues? First, as currently written, does
21 Table S3 preclude any requirement that there be a carbon
22 dioxide analysis that would go beyond Table 3?

1 And secondly, what is the Staff's position in light of
2 the Massachusetts EPA case as to whether in effect Table S3
3 is now broken and needs to be fixed? Is Table S3 still
4 perfectly viable as far as the staff is concerned?

5 >>MS. BROCK: I'll answer those questions in the
6 order you presented them. The staff does not believe that
7 Table S3 precludes consideration of carbon dioxide. The
8 staff does not read footnote one in the same way the
9 Applicant does.

10 >>CHAIRMAN RYERSON: Okay. And I think the
11 Applicant, Mr. Bessette, did not fully read perhaps -- well,
12 he didn't fully read the rather lengthy footnote, but there
13 is a specific reference to -- certain issues at least, maybe
14 the subject of litigation and individual licensing
15 proceedings. Is that what you're referring to?

16 >>MS. BROCK: Actually, what we're referring to on
17 footnote one is the statement that when it's clear from the
18 background documents, that this has been considered that it
19 would then be precluded. And we think specifically if
20 you're discussing carbon dioxide, then that is not discussed
21 in the background documents.

22 There are ways that we can use Table S3 to calculate

1 carbon dioxide and we don't believe that that was raised by
2 Petitioners in the context of this contention. But in terms
3 of the generic way the staff is looking at this issue, we do
4 not think that Table S3 precludes consideration of carbon
5 dioxide.

6 >>CHAIRMAN RYERSON: Okay. So, it's sort of two
7 key issues here. One is whether S3 precludes -- the staff
8 says it does not preclude. The Applicant says it precludes.
9 It was only Mr. Zeller says it does not preclude.

10 And then the other issue is, is it required? And what's
11 the staff's position on whether it's required?

12 >>MS. BROCK: In terms of, specifically the case
13 Massachusetts versus EPA, that has not - the Staff does not
14 believe that has driven the Staff to any action. That the
15 Staff -- that case was a direction to the EPA as the
16 Applicant stated of what they needed to regulate, not adding
17 a NEPA obligation, which is what Table S3 is essentially
18 addressing --

19 >>CHAIRMAN RYERSON: Doesn't the same statute, the
20 Clean Air Act, have some play in the Commission proceedings?

21 >>MS. BROCK: Well, the Clean Air Act would be
22 regulating the emissions, not from -- especially in the

1 context of carbon, that's not coming from the nuclear power
2 plant, so that the regulation on that wouldn't be coming
3 from the NRC. That would be another, possibly generally,
4 EPA would be regulating that in the context.

5 >>CHAIRMAN RYERSON: Isn't the Clean Air Act
6 referenced somewhere in connection with what the Standard
7 Review Plan for an application. Doesn't it require a Clean
8 Air Act type consideration?

9 >>MS. BROCK: Ms. Brock: May I have a moment to
10 consult with my staff?

11 >>CHAIRMAN RYERSON: Sure.

12 >>MS. BROCK: There is a few things that the Clean
13 Air Act would impact for example steam generators if they
14 come on for the few hours that they are up. And we looked
15 at a lot of those issues under transportation in our NEPA
16 document, but NRC staff is not the enforcer of the Clean Air
17 Act.

18 >>CHAIRMAN RYERSON: I understand. Thank you.

19 >>JUDGE TRIKOUROS: Mr. Zeller?

20 >>MR. ZELLER: Yes?

21 >>JUDGE TRIKOUROS: What exactly would we
22 litigate? Would we do a calculation that's specific to the

1 Duke site? Obviously, that wouldn't be feasible. How would
2 one do a calculation of the carbon dioxide emissions from
3 the fuel cycle?

4 Would they assume nuclear power plants would be
5 utilized for the energy source, or would they assume coal
6 without carbon sequestration was used? What would be
7 litigate, I guess, is the question?

8 >>MR. ZELLER: Well, there are experts in this
9 area and I think we have mentioned them in our petition and
10 later on that could actually crunch the numbers to help
11 determine what the carbon dioxide impacts would be. So, I
12 think that could be done. That could be done at this site
13 --

14 >>CHAIRMAN RYERSON: But it is a generic --

15 >>MR. ZELLER: -- based on the amount of uranium
16 fuel. I mean, certainly, the amount of uranium that the
17 plant intends to use over a period of time could be assessed
18 based on the tonnage, then you can --

19 >>CHAIRMAN RYERSON: What I'm asking, though, is
20 why would we do it in conjunction with this application
21 where it is clearly not necessarily the plant specific
22 issue? Why wouldn't a rulemaking be the more appropriate

1 way to do such a thing?

2 >>MR. ZELLER: Well, as I mentioned in my opening
3 statement, maybe a rulemaking -- in fact, I said we will
4 petition for a rulemaking on S3 because of that -- because
5 of those deficiencies, but how do we preserve our rights to
6 intervene in this matter if -- unless there's a pathway
7 provided that that change will have an impact on this
8 application and the license?

9 See what I'm saying? In other words, if you go to
10 rulemaking, fine. Does that mean that it will never have an
11 impact on Williams States Lee? That doesn't sound right.

12 >>JUDGE TRIKOUROS: This contention has been filed
13 in other applications as well, correct?

14 >>MR. ZELLER: This contention?

15 >>JUDGE TRIKOUROS: This same contention has been
16 filed in other applications?

17 >>MR. ZELLER: Yes, sir. Absolutely.

18 >>CHAIRMAN RYERSON: And Mr. Zeller, just so I'm
19 clear, you did not seek a waiver; you didn't comply with the
20 Commission requirements for a waiver application with
21 respect to Table S3.

22 Is that because your view is that the current Table S3

1 at least does not preclude consideration of carbon dioxide?

2 >>MR. ZELLER: That's right, Your Honor. We see
3 that there is an attempt to deal with the carbon dioxide
4 emissions from this plant and the uranium fuel impacts and
5 submissions. That simply did not include everything that it
6 should have included.

7 >>CHAIRMAN RYERSON: Now, I believe the Staff in
8 responding to Contention 8 in both 2.309(f)(1)(iv)(5), which
9 is the provision that deals with the Applicants not having
10 introduced adequate factual support. I'm a little confused
11 by that because if this is essentially, as I understand it,
12 a contention of omission.

13 That is, BREDL is saying this is something the
14 Applicant did not do and should have done. And I'm not sure
15 what factual support -- I think he needs to come up with
16 legal support for the notion that what is not there should
17 have been there, but I'm not sure what -- if it's a
18 contention of omission, what factual support he needs. Am I
19 missing something on that? Mr. Spencer?

20 >>MR. SPENCER: Michael Spencer. I would say that
21 a contention of omission -- in a classic case, the
22 contention of omission arises when you have some requirement

1 that says a plan -- a certain type of plan must be provided
2 with the application and the plan is defined. It says it is
3 a purely legal issue. It must provide it or nothing even
4 amounting to it was provided; therefore, there is no need to
5 provide any technical basis.

6 But if there is a contention, let's say in NEPA space,
7 well, why should we do an analysis of a certain thing? Is
8 this significant or not? And so -- would this be material
9 to our decision? And so in that case, there is a burden
10 upon -- unless there is some specific requirement to do a
11 particular type of analysis, there is a burden on the
12 Petitioner to provide some sort of technical basis to show
13 that an analysis should be done.

14 >>CHAIRMAN RYERSON: All right, any questions? I
15 think we're doing well time wise. I think that really
16 concludes what we've intended to cover today.

17 The job of this Board now is to go back and take all
18 the information we received and your 200 plus pages of
19 briefs and today's argument and make a decision.

20 And as I said early on, we would be addressing the
21 admissibility of each of the 11 contentions, not just the
22 ones that we discussed today, a substantial briefing on all

1 the contentions.

2 Under the Commission's rules, we are supposed to decide
3 that within 45 days of -- I guess it would be Mr. Zeller's
4 reply, which I think takes us to something like September
5 22. So, you will either see a decision by us by September
6 22 or consistent with practice, if we don't have a decision
7 by then, we will issue a notice predicting when we will have
8 a decision. I certainly would hope we would be able to have
9 a decision in September.

10 On behalf of all of us, I really would like to thank
11 everybody that participated today. We found your
12 presentations were very helpful. We talked about them at
13 the break. We appreciate your being here and your helping
14 us to clarify some of these things.

15 And again, I want to thank again the staff of the
16 Cherokee County Courthouse and Brandy McBee, the Clerk of
17 the Court; Sheriff Blanton for providing security.

18 And thank you very much, particularly with the web
19 streaming. It was a little difficult setting up, but people
20 were more than gracious in allowing us to do that.

21 One last time, too, as I've been requested, I would
22 like to let everyone who's on the Internet observing this

1 know that there is an e-mail address where they can send
2 some comments if they have any. The NRC would very much
3 like to hear comments about the web streaming process, which
4 is a pilot program.

5 Again, the address for that is WebStreamMaster --
6 again, one word -- dot Resource at nrc.gov. And one more
7 time, WebStreamMaster -- one word -- resource@ nrc.gov. Do
8 we have any comments from the other judges?

9 >>JUDGE MURPHY: I'd simply like to reiterate
10 Judge Ryerson's thanks to the community for hosting us and
11 to the participants for forthright responses and dialogue on
12 the subjects and to all the support we've gotten here.
13 Thank you.

14 >>CHAIRMAN RYERSON: Judge Trikouros?

15 >>JUDGE TRIKOUROS: I second that. Thank you.

16 >>CHAIRMAN RYERSON: All right, we stand
17 adjourned. Thank you very much.

18

19 (Whereupon, the foregoing matter was concluded at
20 12:10 p.m.)

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Certification

This is to certify that the attached proceedings before
the United States Nuclear Regulatory Commission in
the matter of:
Duke Energy Carolinas, Williams Lee States III
Nuclear Station

Cherokee Courthouse
Gaffney, South Carolina
September 3, 2008

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